



200712050001

Skagit County Auditor

12/5/2007 Page

1 of

21 9:04AM

Assessor's Tax Parcel ID #:

P115534 and P24800

RECORDED AT THE REQUEST OF AND  
AFTER RECORDING RETURN TO:

Oksana M. Ludd, Esq.  
Shumaker, Loop & Kendrick, LLP  
1000 Jackson Street  
Toledo, Ohio 43604-5573

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

GRANTOR:

Stanley & Shorten, LLC

GRANTEE #1 (Trustee):

Transnation Title Insurance Company

GRANTEE #2 (Lender):

Health Care REIT, Inc.

ABBREVIATED LEGAL DESCRIPTION:

ptn SW  $\frac{1}{4}$  NW  $\frac{1}{4}$ , 15-34-4 E W.M. and ptn  
NW  $\frac{1}{4}$  (aka Lot #1 Survey 9904080041)

Official Legal Description on Exhibit A

Assessor's Tax Parcel ID #:

P115534 and P24800 or 340415-2-013-0700  
and 340415-0-022-003

Recording Requested by and when Recorded  
Return to:

Oksana M. Ludd, Esq.  
Shumaker, Loop & Kendrick, LLP  
1000 Jackson Street  
Toledo, Ohio 43604-5573

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(Space above this line reserved for County Recorder's use.)

### AMENDED AND RESTATED LEASEHOLD DEED OF TRUST

THIS AMENDED AND RESTATED LEASEHOLD DEED OF TRUST (this "Deed of Trust") is made effective as of the 16<sup>th</sup> day of November, 2007 ("Effective Date") by **STANLEY & SHORTEN, LLC**, a limited liability company organized under the laws of the State of Washington ("Trustor"), having its chief executive office at 19119 N. Creek Parkway, Suite 102, Bothell, Washington 98011, in favor of **LAWYERS TITLE COMPANY**, a California corporation ("CA-Trustee"), with an address at 325 W. Hospitality Lane, Suite 100, San Bernardino, California 92408, with power of sale, and **WESTERN TITLE COMPANY, INC.**, a Nevada corporation ("NV-Trustee"), with an address at 241 Ridge Street, Reno, Nevada 89501, with power of sale and **TRANSNATION TITLE INSURANCE COMPANY**, a Nebraska company ("WA-Trustee"), having an address at Two Union Square, 601 Union Street, Suite 1100, Seattle, Washington 98101, with power of sale, for the benefit of **HEALTH CARE REIT, INC.**, a corporation organized under the laws of the State of Delaware ("Beneficiary"), having its principal office at One SeaGate, Suite 1500, P.O. Box 1475, Toledo, Ohio 43603-1475.

With respect to the document being recorded in Riverside, County, California, effective March 30, 2007, Trustor executed a certain Leasehold Deed of Trust ("Original Deed of Trust") in favor of Beneficiary, which Original Deed of Trust was filed as Instrument No. 248599 of Official Records with the Office of the County Recorder of Riverside County, California on April 12, 2007.

The parties hereto desire to amend and restate the Original Deed of Trust as set forth herein.

Trustor is the owner of a leasehold estate in the Real Property (defined below) pursuant to the Second Amended and Restated Master Lease Agreement dated November 16, 2007 by and



between Beneficiary and HCRI Nevada Properties, Inc., as landlord (collectively "Landlord"), and Trustor, as tenant, as amended from time to time ("Lease"), together with all options to purchase or lease the Real Property or any portion of or interest in the Real Property, all modifications, extensions and renewals of the Lease and all rights to renew, cancel, modify or terminate the Lease or extend the term of the Lease and all options, privileges and rights granted Trustor under the Lease. Trustor intends to operate, directly or through its subsidiaries, health care facilities located or to be located on the respective Real Property, as described on Exhibit B, attached hereto and made a part hereof (collectively, the "Facility").

In consideration of, and as security for, the loan advances described in Article 2 made or to be made by Beneficiary to Trustor and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Trustor has executed and delivered this Deed of Trust and by these presents does warrant, grant, transfer and convey to CA-Trustee and NV-Trustee in trust with power of sale, and does hereby GRANT BARGAIN, SELL, ASSIGN, TRANSFER AND CONVEY to WA-Trustee WITH POWER OF SALE for the benefit of Beneficiary (hereinafter, CA-Trustee, NV-Trustee and WA-Trustee shall be referred to individually and collectively as "Trustee") and to its successors and assigns, in trust with power of sale, for the benefit of Beneficiary and its successors and assigns, forever all of Trustor's right, title, and interest to and under the following property which Trustor now owns or may hereafter acquire, subject to the rights and powers of Beneficiary set forth elsewhere in this Deed of Trust, including, but not limited to, rights to possession and appoint a Receiver (defined below) as set forth in Article 6 of this Deed of Trust:

1. The leasehold estate of Trustor in the real property described on Exhibit A attached hereto and made a part hereof ("Real Property") including without limiting the completeness of the foregoing grant Trustor's interest in all tenements, hereditaments, and easements, rights of way, licenses, rights, privileges, and appurtenances pertaining to the Real Property presently owned or hereafter acquired by Trustor, including, without limitation, easements, rights of way, streets, ways, alleys, gores, or strips of land, whether or not adjoining the Real Property. The Real Property and Facility are collectively referred to as the "Property".

TO HAVE AND TO HOLD the same with all of the rights, privileges and appurtenances thereto belonging unto Trustee and Beneficiary, their successors and assigns forever in accordance with the terms and conditions set forth herein.

## ARTICLE 1: WARRANTIES

Trustor covenants with Beneficiary and its successors and assigns that the Lease is in all respect valid and in full force and effect, that Trustor is not in default under any of the terms and provisions thereof, that Trustor has no knowledge of, nor has received any notice from Landlord of any default under the Lease, that no controversy exists involving any claim of default under the Lease.



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## ARTICLE 2: PURPOSES

2.1 Secured Obligations. This Deed of Trust secures performance of the following obligations (the "Secured Obligations") of Trustor:

2.1.1 Payment of Credit Extended – Hemet Loan. The payment of the indebtedness of Trustor to Beneficiary in the original principal amount of \$850,000.00, or so much thereof as has been advanced to Trustor, plus interest on the unpaid balance thereof, which indebtedness is evidenced by a promissory note with a maturity date of April 1, 2021 ("Hemet Note") made by Trustor and delivered to Beneficiary on this date, and any extensions, modifications, substitutions or renewals of the indebtedness or Note.

2.1.2 Payment of Credit Extended – Sparks Loan. The payment of the indebtedness of Trustor to Beneficiary in the original principal amount of \$2,600,000.00, or so much thereof as has been advanced to Trustor, plus interest on the unpaid balance thereof, which indebtedness is evidenced by a promissory note made by Trustor and delivered to Beneficiary on this date, and any extensions, modifications, substitutions or renewals of the indebtedness or the promissory note ("Sparks Note"), which Sparks Note has a maturity date of the 14<sup>th</sup> anniversary of the Commencement Date, as defined in the Sparks Note.

2.1.3 Payment of Credit Extended – Kent Loan. The payment of the indebtedness of Trustor to Beneficiary in the original principal amount of \$1,100,000.00, or so much thereof as has been advanced to Trustor, plus interest on the unpaid balance thereof, which indebtedness is evidenced by a promissory note made by Trustor and delivered to Beneficiary on this date, and any extensions, modifications, substitutions or renewals of the indebtedness or the promissory note ("Kent Note"), which Kent Note has a maturity date of the 14<sup>th</sup> anniversary of the Commencement Date, as defined in the Kent Note.

2.1.4 Obligations Under Loan Documents. The performance of all obligations of Trustor under the Loan Agreement (defined in §2.3), the Note, this Deed of Trust and all other documents executed by Trustor or its affiliates in connection therewith, any extensions, modifications or renewals thereof, and any documents executed in substitution therefor (collectively, the "Loan Documents").

2.1.5 Advances to Protect Property. The payment of unpaid balances of all advances made by Beneficiary for the payment of taxes, assessments, insurance premiums, or costs incurred for the protection of the Property if paid by Beneficiary in accordance with the terms of the Lease.

2.1.6 Future Advances. The payment of any unpaid balances of loan advances which Beneficiary may make or may be obligated to make under this Deed of Trust or the Loan Agreement at any time after this Deed of Trust is delivered to the recorder for record to the extent that the total unpaid loan indebtedness, exclusive of interest thereon, does not exceed the maximum amount of \$3,450,000.00 which may be outstanding at any time and from time to time.



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2.2 Open-End Deed of Trust. This Deed of Trust is executed pursuant to, and is intended by the parties to be subject to, the applicable provisions of the Loan Agreement. It is expressly understood and acknowledged by Trustor that this Deed of Trust is intended to secure future advances of principal by Beneficiary made after this Deed of Trust is left for record. In addition, notwithstanding any provision hereof regarding the maximum principal indebtedness secured hereby, Trustor acknowledges and agrees that additional amounts advanced by Beneficiary to repair or protect the Property as provided herein will be deemed to constitute additional advances secured by the lien of this Deed of Trust.

2.3 Loan Agreement. This Deed of Trust is subject to a certain Loan Agreement ("Hemet Loan Agreement") executed by Trustor and Beneficiary dated March 30, 2007 and a certain Loan Agreement ("Sparks Loan Agreement") executed by Trustor and Beneficiary of even date. (Hereinafter the Hemet Loan Agreement and the Sparks Loan Agreement, individually and collectively, referred to as the "Loan Agreement". The Loan Agreement sets forth, among other things, the terms and conditions under which Beneficiary is obligated to advance up to the full amount of the Note and may make nonobligatory advances, all of which are secured by this Deed of Trust. The Loan Agreement is hereby incorporated herein and made a part hereof as though fully rewritten herein, including the defined terms. No defenses, offsets, or counterclaims available to Trustor arising out of any Loan Document will be valid or effective against any transferee of this Deed of Trust or the Note or its successors or assigns after this Deed of Trust and the Note are collaterally assigned by Beneficiary to one or more transferees who are providing financing to Beneficiary, and Trustor hereby expressly waives all such defenses, offsets, or counterclaims to that extent. A copy of the Loan Agreement is maintained at the offices of Beneficiary and may be inspected by interested persons.

2.4 Interpretation. This Deed of Trust form is and will be construed accordingly to reflect the fact that the credit giving rise to the Secured Obligations would not have been extended by Beneficiary but for the security provided by this Deed of Trust. Where the sense requires it, the singular may be read as the plural or the reverse and any gender may be read as any other gender.

### ARTICLE 3: COVENANTS

3.1 Obligations. Trustor will pay and perform all Secured Obligations when due and required.

3.2 Lease.

3.2.1 Trustor agrees to keep and perform all obligations of the Trustor under the Lease. Trustor agrees not to commit or permit any breach of the Lease. If an Event of Default (as defined in the Lease) occurs under the terms of the Lease, Beneficiary may, at its option and after written notice to and receipt of consent from Landlord, with or without notice to Trustor, take any action necessary or desirable to cure the Event of Default. Trustor authorizes Beneficiary to enter upon the Real Property for that purpose.

3.2.2 Trustor agrees to give immediate written notice to Beneficiary of any default under the Lease within Trustor's knowledge, or the receipt by Trustor of any notice of default from



Landlord and to furnish to Beneficiary all information that Beneficiary may request concerning the performance by Trustor of obligations of the Trustor under the Lease; provided, however, this §3.2.2 shall not apply at any time that Beneficiary and Landlord are the same party.

3.2.3 Beneficiary does not assume, nor will it be deemed to have assumed or otherwise be responsible for, performance of any of the obligations of Trustor as Lessee under the Lease.

3.2.4 Trustor agrees that as long as this Deed of Trust is in effect, there will be no merger of the Lease with the fee estate of the Real Property, by reason of the fact that the Lease may be held directly or indirectly by or for the account of any person who holds the fee interest in all or part of the Real Property or any interest of Landlord under the Lease. In the event Trustor acquires the fee title or any other interest in the Real Property covered by the Lease and fails, notwithstanding any language to the contrary set forth in the Lease, to concurrently satisfy in full its obligations under the Note, unless Trustor furnishes to Beneficiary evidence reasonably satisfactory to Beneficiary that the leasehold estate and the fee estate have not merged and the Lease retains priority over any encumbrances on the fee interest or other interest in the Real Property (or that there are no such encumbrances), this Deed of Trust will attach to and cover and be a lien upon the fee title or such other interest so acquired and the fee title or other interest will, without further assignment, Deed of Trust or conveyance, become subject to the lien of this Deed of Trust.

3.2.5 Except as otherwise set forth in the Lease, so long as this Deed of Trust is in effect, Trustor agrees that no surrender or termination of the Lease by Trustor, in whole or in part, will be valid or effective. Nothing in this §3.2.5 shall be construed to limit the right of Landlord to exercise its rights and remedies under the Lease including any right to retake possession of the Property or to terminate the Lease upon the occurrence of an Event of Default thereunder.

3.2.6 Trustor agrees that if the Lease is terminated prior to the expiration of its term by reason of Trustor's default, and if, pursuant to any provision of the Lease, or otherwise, Beneficiary or its designee acquires, from Landlord, a new lease of the fee interest of the Property or any part of the Property, Trustor will have no right, title or interest in the new lease.

3.2.7 Trustor agrees that if any action or proceeding is instituted to evict Trustor or to recover possession of the Property or for any other purpose affecting the Lease or this Deed of Trust, Trustor will immediately deliver to Beneficiary true copies of the complaint, summons, and all other pleadings and papers received by Trustor; provided, however, this §3.2.7 shall not apply at any time that Beneficiary and Landlord are the same party.

3.2.8 Trustor will pay, or reimburse Beneficiary for, all sales taxes, intangible taxes, Deed of Trust taxes, gross receipts taxes, documentary stamp taxes, Deed of Trust assignment taxes, transfer taxes and similar taxes imposed on Beneficiary relating to the Secured Obligations, Note, this Deed of Trust, or the indebtedness secured by this Deed of Trust. Upon demand, Trustor will pay or reimburse Beneficiary for such taxes after Beneficiary gives notice to Trustor.



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3.2.9 In the event any terms and conditions of the Deed of Trust conflict with the Lease, the terms of the Lease will control and Trustor's compliance with the terms of the Lease will be deemed to be compliance with the terms of this Deed of Trust.

3.3 Insurance. Trustor will furnish to Beneficiary copies of all insurance policies, certificates and other evidence of insurance required under the Lease on or before the dates provided in the Lease and with those policies, certificates or other evidence of insurance are required to be furnished to Landlord under the Lease; provided, however, this §3.3 shall not apply at any time that Beneficiary and Landlord are the same party.

3.4 Funds for Impositions and Insurance.

3.4.1 After the occurrence and during the continuance of an Event of Default and with the written consent of Landlord (if Beneficiary and Landlord are not the same party), Trustor will pay to Beneficiary a sum (called "Funds") equal to one-twelfth of the yearly payments for Impositions and insurance on the Property, as may be reasonably estimated by Beneficiary, together with the monthly payments to be made under the Note; provided, however this §3.4.1 shall not apply at anytime that Beneficiary and Landlord are the same party and such Funds are required to be delivered by Trustor to Landlord under the terms of the Lease. The Funds paid to Beneficiary will be used to make the specified payments and as additional security for the Secured Obligations.

3.4.2 The Funds will be deposited by Beneficiary with an institution the deposits or accounts of which are insured or guaranteed by federal or state agency, and will not be deemed to be funds held in trust, and may be held with the general funds of such depository. The funds will be placed in an interest-bearing account. All interest thereon will be considered "Funds".

3.4.3 If the amount of the Funds held by Beneficiary together with future monthly installments of Funds payable prior to the due dates of the Impositions and the insurance on the Property is not sufficient to make payments as they fall due, Trustor will pay to Beneficiary the amount necessary to pay the deficiency within 10 days after the date from which Beneficiary gives notice requesting payment thereof.

3.4.4 Upon performance in full of the Secured Obligations, Beneficiary will promptly refund to Trustor any Funds held by Beneficiary.

3.4.5 If the Property is sold or acquired by Beneficiary, Beneficiary will apply any Funds then held by Beneficiary as a credit against the Secured Obligations.

3.4.6 Beneficiary has the right to make payments for which it is holding Funds, and at its election, to make other reasonably necessary payments required to be made by Trustor.

3.5 Application of Payments. All payments and proceeds of sale received by Beneficiary under this Deed of Trust will be credited as set forth in the Note.



3.6 Charges and Liens. Except to the extent Trustor makes payments therefor under §3.4 and except for items being contested in good faith in compliance with the requirements of the Lease, Trustor will promptly pay before delinquent taxes, assessments, levies, and any other charges which have or may become a lien on any of the Property.

3.7 Preservation of Property. Subject to the terms of the Lease, Trustor will keep the Property in good repair, and will neither commit waste nor permit impairment or deterioration of the Property.

3.8 Protection of Security. If Trustor fails to perform Trustor's agreements under this Deed of Trust or if any action or proceeding is commenced which materially affects Beneficiary's interest in the Property, including, without limitation, any proceeding concerning eminent domain, insolvency, any decedent, or enforcement of any ordinance, legislation, or regulation, then Beneficiary is authorized to make such appearances, disburse such sums, and take such action that Beneficiary reasonably determines is necessary or desirable to protect the Property and Beneficiary's interest therein, including, without limitation, the disbursement of sums for payment of reasonable attorneys' fees, taxes, assessments, insurance premiums, costs incurred for the protection of the Property, and the entry upon the Property to make repairs; provided, however, nothing herein shall be construed to grant Beneficiary any greater rights with respect to the Property than those granted to Landlord under the Lease.

3.9 Inspection. After reasonable notice to Trustor, Beneficiary or any person authorized by Beneficiary may enter upon and inspect any of the Property at all reasonable times subject to the rights of the residents of the Facility and to any obligations imposed by any applicable state or federal laws governing the confidentiality of resident and employee records.

3.10 Eminent Domain. If the Property or any part thereof becomes the subject of any proceeding ("Condemnation") for the taking of property or any conveyance in lieu thereof, the provisions set forth in the Lease regarding Condemnation will prevail in the event that there are any proceeds paid to Trustor as a result of a Condemnation. After the payment of any amount due to Landlord under the Lease, the balance of the Condemnation proceeds will be paid or caused to be paid by Trustor to Beneficiary to be applied to the payment of principal under the Note, up to the outstanding amount of Secured Obligations, and Trustor hereby directs such payment to be made directly to Beneficiary and hereby assigns to Beneficiary Trustor's right thereto.

3.10.1 Payment Pending Restoration. Trustor's obligation to make payment on Secured Obligations will not abate pending any repair or restoration of the Property due to the Condemnation. In addition, Trustor will reimburse Beneficiary, within 10 days after demand, for all reasonable costs, expenses, and fees (including architect and engineer fees) incurred by Beneficiary in connection with any repair or restoration of the Property due to the Condemnation.

3.10.2 Condemnation Proceeds Not Trust Funds. Notwithstanding anything in this Deed of Trust or at law or equity to the contrary, none of the Proceeds paid to Beneficiary will be deemed trust funds, and Beneficiary will be entitled to dispose of such proceeds as provided in this §3.10.





Trustor expressly assumes all risk of loss, including a decrease in the use, enjoyment, or value, of the Property from any Condemnation.

3.11 Other Deed of Trusts and Liens.

3.11.1 No Merger of Liens. Beneficiary may at any time during the term of this Deed of Trust hold more than one lien against the Property or any part thereof. All such liens held by Beneficiary will remain separate and distinct from each other and each will retain their individual priority and will not merge with any other lien held by Beneficiary, unless and until Beneficiary executes and records an instrument expressly merging any such liens. If a default in this Deed of Trust occurs, Beneficiary may foreclose upon any lien against the Property held by it in such order and at such times as Beneficiary may elect. If Beneficiary acquires title to the Property other than through foreclosure of this Deed of Trust, the lien of this Deed of Trust will continue and will not merge with Beneficiary's title to the Property.

3.11.2 No Consent. Nothing in this §3.11 will be construed to mean that Beneficiary consents to any lien prior to the lien of this Deed of Trust except to the extent any liens granted to Landlord under the Lease are deemed to be prior to the lien of this Deed of Trust.

3.12 Advances and Default Rate. Any payment made by Beneficiary that Beneficiary has the right to make under any term of this Deed of Trust (except for payments from Funds for which Funds have been deposited by Trustor) and reasonable expenses incurred and payments made by Beneficiary in taking action authorized by this Deed of Trust will be indebtedness of Trustor secured by this Deed of Trust, will be payable upon demand, will bear interest at the Default Rate (as defined in the Note) from the date of disbursement, and will be deemed advances under subsections 2.1.3 and 2.1.4.

3.12.1 Damage, Destruction and Rebuilding. In the event of a casualty, as hereinafter defined, Trustor will comply with the terms of the Lease.

**ARTICLE 4: TRANSFER OF THE PROPERTY; ASSUMPTION**

4.1 Trustor's Successors. This Deed of Trust will be binding upon Trustor's successors and assigns and will be binding upon and inure to the benefit of Beneficiary and its successors and assigns; however, Trustor may neither assign Trustor's rights under this Deed of Trust nor delegate Trustor's duties under this Deed of Trust other than in conjunction with an assignment of the Lease as contemplated by the terms thereof or otherwise with the express written consent of Beneficiary.

4.2 No Transfer. Except for transfers made in connection with Permitted Liens (as defined in the Lease), Trustor will not sell, lease, grant a lien on or security interest in, or otherwise transfer or encumber all or any part of the Property or any legal or equitable interests therein without the prior written consent of Beneficiary.

4.3 No Release of Trustor. No sale, transfer, or encumbrance of the Property or of Trustor's rights under this Deed of Trust and the Note and no delegation of Secured Obligations under this



Deed of Trust or any other Secured Obligations will release Trustor from liability for any Secured Obligations unless: [i] Beneficiary and such transferee or delegee agree in writing that such transferee or delegee is satisfactory to Beneficiary and that such transferee or delegee will perform the Secured Obligations and pay such interest thereon as Beneficiary may request, and [ii] Beneficiary delivers to Trustor a written release.

#### **ARTICLE 5: [RESERVED]**

#### **ARTICLE 6: DEFAULT, ACCELERATION, AND REMEDIES**

6.1 Event of Default. The occurrence of any Event of Default under a Loan Document or the Lease will constitute an Event of Default under this Deed of Trust.

6.2 Rights and Remedies Upon Default. Whenever any Event of Default occurs and is continuing, subject to the prior rights of Landlord and with Landlord's prior written consent, Beneficiary may take any one or more of the following remedial steps concurrently or successively in addition to any other remedies under the Loan Documents, at law or in equity, to the extent permitted by applicable law.

6.2.1 Beneficiary may enter and take possession of the Property without terminating this Deed of Trust, and complete construction of the Facility (or any part thereof) and perform the obligations of Trustor under the Loan Documents. Trustor hereby assigns to Beneficiary, as additional security for the Secured Obligations, all of Trustor's right, title, and interest in and too rents, issues, and profits that may, from time to time, arise from Property, reserving to Trustor the right to collect such rents, issues, and profits until an Event of Default occurs. Upon any Event of Default, Beneficiary shall have the right, by any lawful means, to take possession of the Property and collect such rents, issues, and profits and apply them to payment of the Secured Obligations or as otherwise provided in §6.2.8 of this Deed of Trust.

6.2.2 To the extent permitted by law, the Property may be sold by private sale without judicial process or appraisal (the same being hereby waived) upon lawful notice to Trustor and, by such sale, foreclose Trustor's equity of redemption in the Property completely and as effectively as through an action to foreclose, the same being hereby waived.

6.2.3 Beneficiary may foreclose this Deed of Trust or accept delivery of a lease assignment agreement in lieu of foreclosure. In any foreclosure or sale, the Property may be sold in one or more parcels, lots, or groups (including mixtures of personal and real property, or separately, any provision of law to the contrary notwithstanding) to the extent permitted by law, Beneficiary will be under no obligation either to marshal any assets of Trustor or to marshal any portions of the Property. . With respect to any portion of the Property located in Washington (the "Washington Property"), the following power of sale provisions shall apply:

Power of Sale. In addition to all other remedies available at law or in equity, during the continuance of an Event of Default, upon written request therefor by Beneficiary specifying the nature of the Event of Default and the amount or amounts due and owing, WA-Trustee shall execute a written notice of breach and of WA-Trustee's election to



cause the Washington Property to be sold to satisfy the obligations secured hereby, and shall cause such notice to be recorded and otherwise given according to applicable law. Notice of sale having been given as then required by law and not less than the time then required by law having elapsed after recordation of such notice of breach, WA-Trustee, without demand on Trustor, shall sell the Washington Property at the time and place of sale specified in the notice as provided by statute, either as a whole or in separate parcels and in such order as WA-Trustee may determine, at public auction to the highest and best bidder for cash in lawful money of the United States, payable at time of sale. Trustor agrees that such a sale (or a sheriff's sale pursuant to judicial foreclosure) of all the Washington Property as real estate constitutes a commercially reasonable disposition thereof, but that with respect to all or any part of the Washington Property which may be personal property WA-Trustee shall have and exercise, at Beneficiary's sole election, all the rights and remedies of a secured party under the Uniform Commercial Code. Whenever notice is permitted or required hereunder or under the Uniform Commercial Code, 10 days shall be deemed reasonable. WA-Trustee may postpone sale of all or any portion of the Washington Property, and from time to time thereafter may postpone such sale, as provided by statute. WA-Trustee shall deliver to the purchaser WA-Trustee's deed and bill of sale conveying the Washington Property so sold, but without any covenant or warranty, express or implied. The recital in such deed and bill of sale of any matters or facts shall be conclusive proof of the truthfulness thereof. The power of sale conferred by this Deed of Trust and by the Deed of Trust Act of the State of Washington is not an exclusive remedy, and when not exercised Beneficiary may foreclose this Deed of Trust as a mortgage.

6.2.4 Beneficiary may, to the extent permitted by law, sue Trustor directly to collect any monies then due and may take any action at law or equity (including bringing an action for a mandatory injunction, restraining order or specific performance) to enforce performance of the Secured Obligations.

6.2.5 For any security in which no interest arises under real estate law, Beneficiary may exercise its rights as a secured party under Article 9 of the Uniform Commercial Code. Trustor agrees that a commercially reasonable manner of disposition of the Property subject to security interests under Article 9 will include, without limitation and at the option of Beneficiary, the sale of the Property in whole or in part, concurrently with the foreclosure sale of the Property in accordance with the provisions of this Deed of Trust.

6.2.6 Beneficiary may terminate its obligation to disburse loan proceeds.

6.2.7 Beneficiary may, and is hereby authorized by Trustor, at any time or from time to time, to the fullest extent permitted by law, without advance notice to Trustor (any such notice being expressly waived by Trustor) to set off and apply any and all sums held by Beneficiary, any indebtedness of Beneficiary to Trustor, any and all claims by Trustor against Beneficiary, against any obligations of Trustor hereunder, whether or not such obligations or claims of Trustor are matured and whether or not Beneficiary has exercised any other remedies hereunder.



6.2.8 In any action or proceeding to foreclose this Deed of Trust, or upon actual or threatened waste to any part of the Property, or in order to collect rents, issues, and profits from the Property, Beneficiary may, subject to applicable laws and regulations, apply, without notice to Trustor, for the appointment of a receiver ("Receiver") of the Property. Unless prohibited by law, such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Trustor at the time of application for such Receiver and without regard to the then value of the Property, and Beneficiary may be appointed as Receiver. The Receiver will have the power to collect the rents, issues and profits of the Property during the pendency of the foreclosure and, in case of a sale and deficiency during the full statutory period of redemption, whether there be redemption or not, as well as during any future times, if any, when Trustor, except for the intervention of such Receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Property during the whole of said proceeding. All sums of money received by the Receiver from such rents and income, after deducting therefrom the reasonable charges and expenses paid or incurred in connection with the collection and disbursement thereof and the cost of operating the Property including the payment of any rent due to Landlord under the Lease, will be applied to the payment of the Secured Obligations or applied to remedy any default hereunder as Beneficiary may direct. Trustor, if requested to do so, will consent to the appointment of any such Receiver as aforesaid.

6.2.9 Beneficiary may take any other action which Beneficiary is entitled to take under any law, equity, or the Loan Documents.

6.2.10 Beneficiary may, at its option, but without any obligation so to do, and without waiving or releasing Trustor from any of the agreements and covenants in the Loan Documents, pay any sum or perform any act or take such action as Beneficiary may deem necessary or desirable in order to protect the lien of this Deed of Trust, the Property or otherwise in the sole discretion of Beneficiary. Trustor hereby grants to Beneficiary, and agrees that Beneficiary will have, after the occurrence and during the continuance of one or more Events of Default, the absolute and immediate right to enter in and upon the Property or any part thereof to such extent and as often as Beneficiary, in its sole discretion, deems necessary or desirable for such purpose. Beneficiary may pay and expend such sums of money as it may, in its sole discretion, deem necessary for the purposes stated herein. Trustor hereby agrees to pay to Beneficiary, on demand, all such sums so paid or expended by Beneficiary, together with interest thereon from the date of each such payment or expenditure at the default rate specified in the Note.

6.3 Sale of Property. Subject to the prior rights of Landlord and with Landlord's prior written consent, the following provisions apply to any sale of the Property pursuant to this Article 6 or pursuant to any judicial proceeding.

6.3.1 Receipt Sufficient Discharge for Purchaser. The receipt of the court officer or other person conducting any such sale for the purchase money paid at any such sale will be sufficient discharge thereof to any purchaser of the Property, or any part thereof, sold as aforesaid. No such purchaser or his representatives, grantees or assigns, after paying such purchase money and receiving such receipt, will be bound to see to the application of such purchase money upon or



for purpose of this Deed of Trust, nor will be answerable in any matter whatsoever for any loss, misapplication or nonapplication of any such purchase money or any part thereof, nor will any such purchaser be bound to inquire as to the necessity or expediency of any such sale.

6.3.2 Beneficiary's Purchase of Property. Beneficiary or any holder of the Note may bid for and purchase the Property being sold, and upon compliance with the terms of sale. Beneficiary or any holder of the Note may hold, retain, possess and dispose of such Property in its own absolute right without further accountability.

6.3.3 Application of Proceeds of Sale. Unless Beneficiary elects otherwise, the purchase money or proceeds of any such sale will be applied first, to all charges, expenses and fees payable by Trustor under the Loan Documents, including all attorney's fees, Receiver's fees and other costs and expenses incurred by Beneficiary, with interest thereon at the default rate specified in the Note; second, to all unpaid interest accrued on any of the Secured Obligations; third, to the principal amount outstanding of the Secured Obligations; and the balance, if any, to Trustor, except with respect to any proceeds of the sale of the Property located in Washington, in which case the following provision shall apply: After deducting all costs, fees and expenses of Trustee and of this trust, including the cost of evidence of title search and reasonable attorneys' fees in connection with the sale, Trustee shall apply the proceeds of sale to payment of the Note and the remainder, if any, to the clerk of the superior court of the county in which the sale took place, as provided in RCW 61.24.080.

6.3.4 No Defense; Waiver. Failure to join or to provide notice to subtenants of Trustor as defendants in any foreclosure action or suit will not [i] constitute a defense for Trustor to such foreclosure; [ii] preclude Beneficiary from obtaining a deficiency judgment or otherwise reduce or diminish the amount of any such judgment in any manner whatsoever; or [iii] give rise to any claims by Trustor, or any person claiming through or under Trustor, against Beneficiary. Upon the request of Beneficiary and to the extent not prohibited by applicable law, Trustor will execute and file with the clerk of the court a legally sufficient waiver of any statutory waiting period with respect to the execution of a judgment obtained by Beneficiary in connection with any foreclosure proceedings. The obligations of Trustor to so execute and file such waiver will survive the termination of this Deed of Trust.

## **ARTICLE 7: MISCELLANEOUS**

7.1 Advances by Beneficiary. At any time and from time to time during the term of this Deed of Trust, Beneficiary may incur and/or pay and/or advance costs or expenses [i] incurred or advanced by Beneficiary which Beneficiary is authorized or has the right (but not necessarily the obligation) to incur or may incur under any term of any Loan Document or any law; [ii] of whatever nature incurred or advanced by Beneficiary in exercising any right or remedy provided by any term of any Loan Document or in taking any action which Beneficiary is authorized to take by any term of any Loan Document; [iii] required to be paid by Trustor by any term of any Loan Document, but which Trustor fails to pay upon demand; or [iv] any and all costs and expenses from which Trustor is required to hold Beneficiary harmless by any term of any Loan Document, but from which Trustor fails to hold Beneficiary harmless. Any reasonable costs, expenses, or advances incurred or paid by Beneficiary become part of the Loan and, upon



demand, will be paid to Beneficiary together with interest thereon at the default rate specified in the Note from the date of disbursement by Beneficiary. Payment of such costs, expenses, or advances will be secured by this Deed of Trust.

7.2 Attorney's Fees and Expenses. Trustor will pay all reasonable costs and expenses incurred by Beneficiary in administering the Secured Obligations and all collateral for the Secured Obligations, enforcing or preserving Beneficiary's rights under the Loan Documents, and in all matters of collection, whether or not an Event of Default has actually occurred or has been declared and thereafter cured, including, but not limited to, [i] the reasonable fees, expenses, and costs of any litigation, receivership, administrative, bankruptcy, insolvency or other similar proceeding; [ii] reasonable attorney and paralegal fees and disbursements; [iii] the reasonable expenses of Beneficiary and its employees, agents, attorneys, and witnesses in preparing for litigation, administrative, bankruptcy, insolvency or other proceedings and for lodging, travel and attendance at meetings, hearings, depositions, and trials in connection therewith; [iv] court costs; and [v] consulting and witness fees and expenses incurred by Beneficiary in connection with any such proceedings. All such costs, charges and fees as incurred will be deemed to be secured by this Deed of Trust and collectible out of the proceeds of this Deed of Trust in any manner permitted by law or by this Deed of Trust.

7.3 Construction of Rights and Remedies and Waiver of Notice and Consent.

7.3.1 The provisions of this §7.3 will apply to all rights and remedies provided by this Deed of Trust or any Loan Document or by law or equity provided Beneficiary obtains Landlord's prior written consent.

7.3.2 **WAIVER OF NOTICES AND CONSENT TO REMEDIES.** Unless otherwise expressly provided herein, any right or remedy, to the extent permitted by law, may be pursued without notice to or further consent of Trustor, both of which Trustor waives.

7.3.3 Each right or remedy under the Loan Documents is distinct from but cumulative to each other right or remedy and may be exercised independently of, concurrently with, or successively to any other rights and remedies.

7.3.4 No extension of time for or modification of amortization of the Loan will release the liability or bar the availability of any right or remedy against Trustor or any successor in interest, and Beneficiary will not be required to commence proceedings against Trustor or any successor or to extend time for payment or otherwise to modify amortization of the loan secured by this Deed of Trust by reason of any demand by Trustor or any successor.

7.3.5 Beneficiary has the right to proceed at its election against all security or against any item or items of such security from time to time, and no action against any item or items of security will bar subsequent actions against any item or items of security.

7.3.6 No forbearance in exercising any right or remedy will operate as a waiver thereof; no forbearance in exercising any right or remedy on any one or more occasion will operate as a



waiver thereof on any further occasion; and no single or partial exercise of any right or remedy will preclude any other exercise thereof or the exercise of any other right or remedy.

7.3.7 Failure by Beneficiary to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon default by Trustor hereunder will not be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce by mandamus or other appropriate legal or equitable remedy strict compliance by Trustor with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such default by Trustor is continued or repeated, or of the right to recover possession of the Property by reason thereof. To the extent permitted by law, any two or more of such rights or remedies may be exercised at the same time.

7.3.8 If any covenant or agreement contained in any Loan Document is breached by Trustor and thereafter waived by Beneficiary, such waiver will be limited to the particular breach so waived and will not be deemed to waive any other breach thereunder. No waiver will be binding unless it is in writing and signed by Beneficiary. No course of dealing between Beneficiary and Trustor, nor any delay or omission on the part of Beneficiary in exercising any rights under any of the Loan Documents, will operate as a waiver.

7.3.9 Trustor and any other person now or hereafter obligated for the payment or performance of all or any part of the Note will not be released from paying and performing under the Note, and the lien of this Deed of Trust will not be affected by reason of [i] the failure of Beneficiary to comply with any request of Trustor (or of any other person so obligated) to take action to foreclose this Deed of Trust or otherwise enforce any of the provisions of this Deed of Trust or of any of the Secured Obligations, or [ii] the release, regardless of consideration, of the obligations of any person liable for payment or performance of the Note, or any part thereof, or [iii] any agreement or stipulation extending the time of payment or modifying the terms of the Note, and, in the event of such agreement or stipulation, Trustor and all such other persons will continue to be liable under such documents, as amended by such agreement or stipulation unless expressly released and discharged in writing by Beneficiary.

7.3.10 Trustor, for itself and its successors and assigns, hereby irrevocably waives and releases, to the extent permitted by law, and whether now or hereafter in force, [i] the benefit of any and all valuation and appraisal laws, [ii] any right of redemption after the date of any sale of the Property upon foreclosure, whether statutory or otherwise, in respect of the Property, [iii] any applicable homestead or dower laws, and [iv] all exemption laws whatsoever and all moratoriums, extensions or stay laws or rules, or orders of court in the nature of any one or more of them.

7.3.11 Nothing contained in any of the Loan Documents will constitute any consent or request by Beneficiary, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof, or be construed to permit the making of any claim against Beneficiary in respect of labor or services or the furnishing of any materials or other property or any claim that any lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the lien of this Deed of Trust.



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7.4 Notices. All notices, demands, requests, and consents (hereinafter "Notices") given pursuant to the terms of this Deed of Trust will be in writing, will be addressed to the addresses set forth in the introductory paragraph of this Deed of Trust and to Landlord at the address set forth in the Lease and will be served by [i] personal delivery; [ii] United States certified mail, return receipt requested, postage prepaid; or [iii] nationally recognized overnight courier. All Notices will be deemed to be given upon the earlier of actual receipt or three days after mailing or one business day after deposit with the overnight courier. Any Notices meeting the requirements of this Section will be effective, regardless of whether or not actually received. Beneficiary and Trustor may change their notice address at any time by giving the other party written notice of such change.

7.5 Amendment. This Deed of Trust may be amended only by a writing signed by Beneficiary and Trustor and consented to by Landlord. All references to this Deed of Trust, whether in this Deed of Trust or in any other document or instrument, will be deemed to incorporate all amendments, modifications and renewals of this Deed of Trust made after the Effective Date.

7.6 Acceptance of Trust; Reliance. WA-Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto (other than Beneficiary) of a pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary or WA-Trustee shall be a party unless brought by WA-Trustee. Upon presentation to WA-Trustee of an affidavit signed by Beneficiary setting forth facts showing an Event of Default by Trustor under the Loan Documents, WA-Trustee is authorized to accept as true and conclusive all facts and statements therein and to act thereon hereunder. This provision shall be ineffective if, at any time, no portion of the Property is located in Washington.

7.7 Successor Trustee. Beneficiary may, at any time, by instrument in writing, appoint a successor or successors to the Trustee named herein or acting thereunder, which instrument, executed and acknowledged by Beneficiary, and recorded in the office(s) of the County Recorder where the Property is located, shall be conclusive proof of the proper substitution of such successor trustee, who shall have all the estate, powers, duties and trusts in the premises vested in or conferred on the original trustee. If there be more than one trustee, either may act alone and execute these trusts upon the request of Beneficiary and his acts shall be deemed to be the acts of all trustees, and the recital in any conveyance executed by such sole trustee of such request shall be conclusive evidence thereof and of the authority of such sole trustee to act. This provision shall be ineffective if, at any time, no portion of the Property is located in Nevada.

7.8 No Impairment of Right to Pursue Unsecured Obligations. The foreclosure of this Deed of Trust or sale by WA-Trustee of the Washington Property through the exercise of the power of sale granted hereunder shall not preclude or impair any action to collect or enforce any obligation of Trustor, any guarantor or other party liable for any of the obligations secured by this Deed of Trust or the substantial equivalent of such obligation, which obligation is not secured by this Deed of Trust. All of such obligations (and all substantial equivalents of such obligations) shall constitute separate recourse obligations of Trustor and each such guarantor or other party and shall not be deemed to be evidenced by the Note or secured by this Deed of





Trust. This provision shall be ineffective if, at any time, no portion of the Property is located in Washington

7.9 **Commercial Loan.** The Secured Obligations secured by this Deed of Trust are a "Commercial Loan" as that term is defined in RCW 61.24.005(7). This provision shall be ineffective if, at any time, no portion of the Property is located in Washington.

## ARTICLE 8: INTERPRETATION

8.1 **Captions.** The captions and headings contained in this Deed of Trust are for convenient reference only and are not to be used to interpret or define the provisions hereof.

8.2 **Severability.** If any provision of this Deed of Trust or the application thereof to any party or circumstance will, to any extent, be adjudged to be invalid or unenforceable, the remainder of this Deed of Trust and the application of any such provision to other parties or circumstances will not be affected thereby, and each provision of this Deed of Trust will be valid and enforceable to the fullest extent permitted by law.

8.3 **Governing Law.** This Deed of Trust and the rights and obligations of the parties hereunder will be governed by and construed and interpreted in accordance with the laws of the State of Ohio, except that the creation and perfection of liens and security interests in the Property, and the procedures for foreclosure and execution of the liens and security interests will be governed by, construed and interpreted in accordance with the laws of the state where the Real Property at issue is located, in each case without regard to the conflict of law rules of such state.

8.4 **Survival.** All agreements, representations, and warranties contained in this Deed of Trust will survive the execution and delivery of this Deed of Trust, and will be deemed to be effective continuously throughout the term of this Deed of Trust.

## ARTICLE 9: CONSTRUCTION

9.1 **No Liability for Beneficiary.** Trustor hereby acknowledges and agrees that the undertaking of Beneficiary under this Deed of Trust is limited as follows:

(a) **Beneficiary is not and will not be in any way the agent for or trustee of Trustor. Beneficiary does not intend to act in any way for or on behalf of Trustor in disbursing the proceeds under the Loan Agreement. Beneficiary's purpose in making the requirements set forth herein and in the Loan Agreement is to protect the validity and priority of this Deed of Trust and the value of its security.**

(b) **This Deed of Trust is not to be construed by Trustor or anyone furnishing labor, materials, or any other work or product for improving the Property as an agreement by Beneficiary to assure that anyone will be paid for furnishing such labor, materials, or any other work or product. Trustor is and will be solely responsible for such payments.**



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(c) **Beneficiary is not responsible for construction of any improvements to the Property. Notwithstanding Beneficiary's inspection of the Property and the improvements, Beneficiary assumes no responsibility for the quality of construction or workmanship, or for the architectural or structural soundness of any improvements to the Property, or for the adherence to or approval of any plans and specifications for any improvements to the Property.**

NOW, THEREFORE, if Trustor pays the Secured Obligations in full and fully complies with this Deed of Trust, then this Deed of Trust and the estate hereby granted will cease, and Beneficiary will thereupon release this Deed of Trust and/or cause the Trustee to execute and record a full reconveyance, as may be necessary or appropriate to clear title to the Property, at the cost and expense of Trustor (all claims for statutory penalties, in case of Beneficiary's failure to release, being hereby waived to the extent such waiver is permitted by law); otherwise, this Deed of Trust will remain in full force and effect.

**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.**

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IN WITNESS WHEREOF, this Deed of Trust has been duly executed as of (but not necessarily on) the Effective Date.

Signed and acknowledged in the presence of:

STANLEY & SHORTEN, LLC

Signature

Print Name

Signature

Print Name

By:

Title:

Tax I.D. No.:

STATE OF WASHINGTON )

) SS:

COUNTY OF KING )

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of November, 2007 by William Shorten, a duly authorized Member of Stanley & Shorten, LLC, a limited liability company, on behalf of the limited liability company.

Notary Public

My Commission Expires: 1-9-11

[SEAL]

THIS INSTRUMENT PREPARED BY  
AFTER RECORDING RETURN TO:

Oksana M. Ludd, Esq.  
Shumaker, Loop & Kendrick, LLP  
1000 Jackson Street  
Toledo, Ohio 43604-5573



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## EXHIBIT A: LEGAL DESCRIPTION

Facility Name: Mt. Vernon Facility

### PARCEL A:

The North 306 feet of the South 511 feet of the East 237 feet of the West 267 feet of the Southwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 15, Township 34 North, Range 4 East, W.M.

Situate in the City of Mount Vernon, County of Skagit, State of Washington.

### PARCEL B:

Lot 1 of Survey recorded April 8, 1999, under Auditor's File No. 9904080041 in Volume 21 of Surveys, page 174, records of Skagit County, Washington; being a portion of the Southwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 15, Township 34 North, Range 4 East, W.M.

Situate in the City of Mount Vernon, County of Skagit, State of Washington.



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## EXHIBIT B: FACILITY INFORMATION

Facility Name <i>Subtenant</i>	Street Address County	Facility Type (per license or plans and specifications) Beds/Units
Ashley Gardens at Mount Vernon ("Mt. Vernon Facility")  <i>Cascade Living Group – Ashley Gardens, LLC</i>	3807 E. College Way Mount Vernon, WA 98273 County: Skagit	Assisted Living 40 licensed beds 36 operating beds 36 units
Ashley Gardens at Bremerton ("Bremerton Facility")  <i>Cascade Living Group – Ashley Gardens, LLC</i>	3231 Pine Road Bremerton, WA 98310 County: Kitsap	Assisted Living 40 licensed beds 36 operating beds 36 units
Desert Hills Alzheimer's Special Care Center  ("Hemet Facility")  <i>Cascade Living Group – Hemet, LLC</i>	25818 Columbia Street Hemet, CA 92544 County: Riverside	Residential Care for the Elderly (Alzheimer's Dementia Care) 56 licensed beds 56 operating beds 28 units
TBD ("Sparks Facility")  <i>Cascade Living Group – Sparks, LLC</i>	Approximately seven acres of land near the intersection of Ember Dr. and Eagle Canyon Dr. Sparks, NV 89436 County: Washoe	Senior Housing Facility (to be constructed) 231 units (120 IL, 96 AL, 15 ALZ) 240 beds (120 IL, 96 AL, 24 ALZ)
Arbor Village Retirement & Assisted Living Community ("Kent Facility")  <i>Cascade Living Group – Kent, LLC</i>	24121 116 <sup>th</sup> Avenue SE Kent, WA 98030 County: King	Independent Living & Assisted Living  89 assisted living units 79 licensed assisted living units 83 licensed assisted living beds 30 independent living units (with 10 licensed boarding home units)  Alzheimer's Care Facility (to be constructed) 60 licensed beds 30 units (the "Kent Alzheimer's Facility")



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