



3/28/08 2:02:56  
BK 2,876 PG 87  
DE SOTO COUNTY, MS  
W.E. DAVIS, CH CLERK

Prepared by and after recorded  
return to:  
Reliance Trust Company  
1100 Abernathy Road  
500 Northpark, Suite 400  
Atlanta, Georgia 30328-5646  
(404) 965-7228

To the Chancery Clerk of DeSoto County, Mississippi:

**INDEXING INSTRUCTIONS:**

The real property described herein is situated in the Quarter of  
Section \_\_\_\_, Township \_\_\_\_, Range \_\_\_\_, in DeSoto County,  
Mississippi. See Indexing Instruction on the  
Legal Description

**SECOND DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING**

From

LIFEPOINTE VILLAGE-SOUTHAVEN, LLC,  
The Grantor,

TO

ERIC L. SAPPENFIELD, ATTORNEY AT LAW,  
as Trustee,

for the Benefit  
of

JOHN B. LINFORD, A PROFESSIONAL LAW CORPORATION,  
The Beneficiary

Eric S.

22.

**SECOND DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING**

WHEREAS, LIFEPOINTE VILLAGE-SOUTHAVEN, LLC, a Delaware limited liability company (the "Grantor"), is indebted to JOHN B. LINFORD, A PROFESSIONAL LAW CORPORATION, as bond trustee (the "Beneficiary"), as evidenced by that certain Trust Indenture (the "Trust Indenture") of even date herewith in the principal amount of TWO MILLION SIX HUNDRED SEVENTY FIVE THOUSAND AND NO/100 DOLLARS (\$2,675,000.00) with Beneficiary with respect to Grantor's 2008 Series C Subordinate General Mortgage Bonds (the "Bonds") with final payment being due on or before June 19, 2013.

NOW, THEREFORE, the Grantor, in consideration of said Bonds and for other good and valuable consideration, receipt of which is hereby acknowledged, hereby grants, bargains, assigns, sells, conveys and warrants unto Eric L. Sappenfield, Attorney at Law, an individual (the "Trustee"), as Trustee for the benefit of the Beneficiary, the following described real and personal property (hereinafter collectively referred to as the "Property"):

**LAND, IMPROVEMENTS AND FIXTURES:**

That certain parcel or lot of land located in DeSoto County, Mississippi which is more particularly described on **Exhibit A** attached hereto and incorporated herein by reference, together with all hereditaments and appurtenances belonging thereto or inuring to the benefit thereof and together with all buildings and other improvements now or hereafter located or to be constructed thereon and all fixtures now or hereafter owned by the Grantor, or in which the Grantor has an interest, and placed in or upon such land or buildings or improvements thereon.

**PERSONAL PROPERTY:**

All fixtures, furniture, machinery, equipment and other personal property of every kind, description and nature whatsoever, now or hereafter located in or upon or affixed to the land described above or the improvements located thereon, or any part thereof, or now or hereafter used or to be used in connection with any present or future operation thereof or construction thereon, and now owned or hereafter acquired by the Grantor, together with any renewals, replacements or additions of or to any of the above or substitutions therefor; it being understood and agreed that all such fixtures, furniture, machinery, apparatus, equipment and other personal property are a part of and are declared to be a portion of the security for the indebtedness hereby secured, whether physically attached to such improvements or not.

**LEASES AND RENTS:**

All of the landlord's right, title and interest, owned by the Grantor, in and to all leases (which term, as used herein, shall include all occupancy agreements, licenses, concession agreements and all other agreements or tenancies, however denominated, affecting the occupancy of the Property, or any portion thereof) now or hereafter affecting or pertaining to the Property and the business operations conducted thereon, together with all of the rents, issues, benefits and profits of the Property.

PROCEEDS, AWARDS AND OTHER MONEYS:

A security interest in all proceeds paid for any damage or loss to the Property or any part thereof, all awards, including interest, in connection with any condemnation or other taking of the Property, or any part thereof, or for conveyance in lieu thereof, and all other moneys which may from time to time become subject to the lien hereof, whether by conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims or otherwise (collectively, the "Proceeds").

REPLACEMENTS AND SUBSTITUTIONS:

All of the Grantor's right, title and interest in and to all replacements, substitutions and additions of or to any or all of the foregoing.

TO HAVE AND TO HOLD unto the Trustee in trust for the use, benefit and behoove of the Beneficiary, forever.

SUBJECT, HOWEVER, to those certain liens, encumbrances and other matters set forth on Exhibit B attached hereto and made a part hereof (collectively, the "Permitted Exceptions").

Furthermore, this Deed of Trust is subject to and inferior to a prior deed of trust by and between Grantor and (i) California Baptist Foundation, a California non profit religious corporation (the "Lender Beneficiary") and (ii) Reliance Trust Company, a Georgia bank and trust company (the "Trustee Beneficiary"), dated March 17, 2008, recorded in the Deed of Trust Records of DeSoto County, Mississippi (the "Prior Deed of Trust"), securing a debt evidenced by a promissory note and trust indenture therein specifically described and Grantor hereby agrees that any default in the performance of the terms, provisions, conditions, covenants, and obligations contained in the Prior Deed of Trust shall constitute an event of default hereunder, in which event either the Lender Beneficiary or the Trustee Beneficiary may take any action as provided for in the Prior Deed of Trust, including, without limitation, the making of any payments or the performance of any acts necessary to relieve said default with the costs thereof added to the indebtedness secured hereby. Grantor hereby agrees to notify the Beneficiary, via the notice provisions provided herein, of any breach or event of default in the terms of the Prior Deed of Trust, and that the failure to so notify the Beneficiary shall be deemed a breach and event of default hereunder. Grantor hereby assigns and transfers unto the Beneficiary all surplus funds which may come into the hands of the holder of the Prior Deed of Trust upon any foreclosure of the same and hereby directs that such surplus funds be forthwith paid over to Beneficiary to be applied against the indebtedness secured hereby. Grantor hereby agrees not to seek nor to obtain additional advances from the holder of the Prior Deed of Trust and not to execute or consent to any modification or extension of the aforementioned Prior Deed of Trust without the prior written approval of Beneficiary. Any violation of this covenant shall also constitute an event of default hereunder.

This conveyance is made to secure:

(1) Payment of the indebtedness of the Grantor to the Beneficiary evidenced by the Trust Indenture, together with any obligations provided for therein, or any other indenture made

and delivered by the Grantor to the Beneficiary in substitution, extension or replacement therefor, whether of the same amount or otherwise, or any modification of any of the foregoing, which Trust Indenture and any substitute, extension and replacement indenture or indentures and any modification of any of the foregoing shall be hereinafter referred to as the "Bond Instruments";

(2) Payment, performance and observance by the Grantor of each and every covenant, condition and obligation contained in this Deed of Trust and/or any other document or instrument now or hereafter evidencing or securing the indebtedness evidenced by the Bond Instruments, or executed or delivered in connection therewith (all of such documents and instruments being hereinafter collectively referred to as the "Bond Documents"); and

(3) Payment by the Grantor to the Beneficiary of all future or additional advances which Beneficiary may make to the Grantor from time to time pursuant to any term or provisions of this Deed of Trust or with respect to the Bond Documents.

Notwithstanding the foregoing, the original principal amount secured hereby is \$2,675,000.00 which represents the principal amount of the Bonds.

The Grantor warrants that the Grantor has good title to the Property, and is lawfully seized and possessed of the Property and every part thereof, and has the right to convey and encumber the same; the Property is unencumbered except for the Permitted Exceptions and the Prior Deed of Trust; and the Grantor will forever warrant and defend the title to the Property unto the Trustee and the Beneficiary against the claims of all persons whomsoever except as to the Permitted Exceptions and the Prior Deed of Trust.

This Deed of Trust is a deed of trust and security agreement pursuant to the laws of the State of Mississippi governing deeds of trust and security agreements and is not a mortgage.

The Grantor hereby further covenants and agrees with the Beneficiary to pay, perform or observe, as the case may be, all of the following additional covenants and agreements:

## ARTICLE I

### PERFORMANCE OF OBLIGATIONS

1.1 The Grantor shall pay all indebtedness hereby secured at the time or times and in the manner provided herein or in the Bond Instruments, and shall pay, as and when the same respectively become due and payable, all premiums for insurance maintained on the Property and all expenses of repair to the Property.

1.2 The Grantor shall promptly and fully keep, perform and comply with all the terms, provisions, covenants and conditions imposed upon the Grantor hereunder, under the Bond Instruments and/or under any of the other Bond Documents.

## ARTICLE II

ASSIGNMENT OF LEASES AND RENTS

The Grantor, as additional security, hereby assigns, sets over and transfers to the Beneficiary all leases, licenses, concession agreements, occupancy agreements and all other tenancy agreements and all of the rents, issues and profits of the Property.

## ARTICLE III

INSURANCE AND TAX DEPOSITS

The Beneficiary may, at any time following the occurrence of an Event of Default, upon ten (10) days notice to the Grantor, require the Grantor to pay to the Beneficiary, on the first day of each calendar month, a sum (hereinafter referred to as the "Deposited Funds") equal to (i) one-twelfth (1/12) of the aforesaid annual taxes, assessments, water and sewer charges and all other charges upon the Property and/or upon the Beneficiary with respect to the Property (for the purposes of this Article, collectively referred to as the "taxes") and (ii) one-twelfth (1/12) of the annual premiums for the insurance required hereunder to be maintained on the Property, the respective amounts of such taxes and premiums to be reasonably estimated from time to time by the Beneficiary. The Beneficiary shall apply the Deposited Funds to the payment of such taxes and premiums and shall render an annual accounting to the Grantor of all disbursements of the Deposited Funds. No interest shall be paid on the Deposited Funds, and the Deposited Funds may be commingled with the Beneficiary's general funds. Upon payment in full of all sums secured by this Deed of Trust, any excess Deposited Funds shall be refunded to the Grantor.

## ARTICLE IV

ALTERATIONS

Except as otherwise provided in the Bond Documents or in connection with leasehold improvements in the ordinary course of business, the Grantor shall not:

- 4.1 Remove or demolish any of the improvements located on the Property;
- 4.2 Make changes or alterations to the improvements located on the Property which would change their general character or size;
- 4.3 Alter the design or structural character of the improvements located on the Property;
- 4.4 Make any other material alteration or addition thereto; or
- 4.5 Do or permit anything to be done to the improvements located on the premises that might diminish the value thereof in any material respect, without in each instance having first obtained the prior written consent of the Beneficiary.

## ARTICLE V

COMPLIANCE WITH LEASES, ETC.

The Grantor shall promptly and fully keep, perform and comply with all the terms, provisions, covenants, conditions and agreements imposed upon or assumed by the Grantor as landlord, licensor or grantor under any lease, license, concession, occupancy and other tenancy agreement now or hereafter in effect (including any amendments or supplements thereto) covering any part of the Property or any other property owned or controlled by the Grantor that is affected by the terms, provisions, covenants, conditions and agreements imposed upon or assumed by the Grantor in such lease, license, concession, occupancy or other tenancy agreement and the Grantor shall not do, or permit to be done, or omit or refrain from doing, any act or thing the doing or omission of which will give any tenant, licensee, concessionaire or occupant a right to terminate any such lease, license, concession, occupancy or other tenancy agreement or to abate the rental or other payments due thereunder.

## ARTICLE VI

OPERATION

The Grantor shall ensure that its tenant, Equity Capital Source, Inc., continuously operate the improvements located on the Property as an assisted living facility in an efficient manner and in compliance with all applicable laws, ordinances, rules, regulations and directions of governmental authorities having jurisdiction over the Property, and also in compliance with the requirements of all policies of insurance on the Property. The Grantor shall also procure, pay for, maintain and comply with all permits, licenses and other authorizations needed for the operation of the improvements located on the Property.

## ARTICLE VII

BOOKS AND RECORDS

The Grantor shall keep proper and separate books of account, in accordance with generally accepted accounting principles, and make, or cause to be made, full and true entries of all dealings and transactions of every kind relating to the Property, which books and records shall be open to inspection by the Beneficiary, the agents and accountants and representatives, at all reasonable times of the Beneficiary.

## ARTICLE VIII

CONDEMNATION

8.1 Forthwith upon the receipt by the Grantor of notice of the initiation of any proceeding or negotiations for the taking of the Property, or any part thereof, in condemnation or by the exercise of the power of eminent domain, the Grantor shall give notice thereof to the Beneficiary. The Beneficiary may appear in any such proceeding and participate in any such negotiations and may be represented therein by counsel of the Beneficiary's choice, all at the Grantor's cost and

expense, and whether or not the Beneficiary shall become a party to any such proceeding or negotiations, the Grantor shall promptly give to the Beneficiary copies of all notices, pleadings, judgments, determinations and other papers received by the Grantor therein. The Grantor shall not enter into any agreement consenting to or acquiescing in the taking of the Property, or any part thereof, by any governmental agency or instrumentality, or other person or legal entity authorized to acquire the same in condemnation or by eminent domain unless the Beneficiary shall have first consented thereto in writing.

8.2 Any award paid in connection with a condemnation by the exercise of the power of eminent domain shall be paid in accordance with the terms of the Trust Indenture.

## ARTICLE IX

### TRANSFER OF INTEREST IN THE PROPERTY

The Grantor shall not suffer or permit any sale, conveyance, mortgage, pledge, hypothecation, encumbrance, lease, assignment or other transfer of the Property or any portion thereof or any interest therein without in each instance obtaining the prior written consent of the Beneficiary.

## ARTICLE X

### IMPAIRMENT OF DEED OF TRUST

The Grantor shall not do or suffer any act or thing to be done, or omit to do any act or thing, if such act or thing, or such forbearance or omission, would impair in any material respect the security of the payment of the indebtedness secured hereby or the lien of this Deed of Trust.

## ARTICLE XI

### COLLECTION COSTS

11.1 The Grantor agrees, by execution hereof, to pay all reasonable costs, charges and expenses, including, without limitation, reasonable attorneys' fees and expenses, heretofore or hereafter incurred by the Beneficiary in connection with this Deed of Trust, the Bond Instruments and the other Bond Documents and any amendments or supplements hereto or thereto, and any other documents executed herewith or pursuant hereto or any interpretation, enforcement or other question arising under any such document or in connection with the enforcement of the Beneficiary's rights hereunder or under the Bond Instruments or the other Bond Documents in the event of a default hereunder or thereunder.

11.2 Without limiting the generality of the foregoing, the Grantor further agrees that in the event that the indebtedness secured by this Deed of Trust, or any part thereof, is collected by suit or action, or this Deed of Trust be foreclosed, or in the event said indebtedness or Deed of Trust is put into the hands of an attorney for collection, suit, action or foreclosure, or in the event of the foreclosure of any deed of trust prior to or subsequent to this Deed of Trust, in which proceeding the Beneficiary is made a party, or in the event of the bankruptcy of the Grantor, or an

assignment by the Grantor for the benefit of creditors, the Grantor, the Grantor's successors or assigns, shall be chargeable with all costs of collection, including a reasonable amount as attorneys' fees not to exceed such maximum amount as may be permitted by law, including attorneys' fees for all appellate proceedings involved therein, which shall be due and payable at once; the payment of which charges and fees, together with all costs and expenses, shall be secured hereby, and may be recovered in any suit or action hereupon or hereunder.

11.3 The Grantor shall pay any stamp taxes or any fees imposed by any governmental authority with respect to the execution, recordation, assignment or discharge of this Deed of Trust, the Bond Instruments or the other Bond Documents, or any other instrument executed and delivered or assigned to the Beneficiary in connection with this Deed of Trust or the indebtedness secured hereby.

## ARTICLE XII

### EVENTS OF DEFAULT

The occurrence of any one or more of the following events shall constitute an event of default ("Event of Default") under this Deed of Trust:

12.1 Any direct or indirect, voluntary or involuntary mortgage, pledge, hypothecation, encumbrance, sale, lease (other than tenant leases in the ordinary course of business and as permitted by this Deed of Trust), assignment or other transfer of the Property or any portion thereof or any interest therein or in the Grantor, made or suffered by the Grantor, unless made with the prior written consent of the Beneficiary or expressly permitted by the terms of this Deed of Trust.

12.2 The commission by the Grantor of any act which may not be cured and which by itself constitutes a material breach of a covenant or representation contained herein.

12.3 There shall occur an event of default or a default which continues beyond the applicable grace or notice period, if any, under any of the other Bond Documents.

12.4 There shall occur any default under, or in connection with, any existing or future swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time) of the Grantor (or any of its affiliates) with Beneficiary (or any of its affiliates).

## ARTICLE XIII

### AMENDMENTS, WAIVERS, ETC.

13.1 No change, amendment, modification, cancellation or discharge of this Deed of Trust, or any part hereof, shall be valid unless in writing and signed by the parties to be charged therewith or their respective successors and assigns.

13.2 No waiver, forbearance, extension of time or other indulgence shown by the Beneficiary to the Grantor or to any person now or hereafter interested herein or in the Property, the Bond Instruments or any of the other Bond Documents with respect to any or any combination

of conditions, covenants or agreements on the part of the Grantor to be performed or observed as set forth or referred to herein or in the Bond Instruments or any of the other Bond Documents, shall affect the right of the Beneficiary thereafter to require performance or observance of the same or any other condition, covenant or agreement.

#### ARTICLE XIV

##### BENEFICIARY'S RIGHTS UPON DEFAULT

Upon the occurrence of any Event of Default hereunder, the Beneficiary shall have the right, forthwith, at the election of the Beneficiary, by and through the Trustee or otherwise, to exercise any and all rights and remedies granted to the Beneficiary under this Deed of Trust, the Bond Instruments or any of the other Bond Documents or otherwise available to the Beneficiary at law or in equity, all of which rights and remedies shall be cumulative and not exclusive, and which shall include, without limitation, the following:

14.1 The Beneficiary shall have the right forthwith, at the election of the Beneficiary, by and through the Trustee or otherwise, to declare the entire indebtedness of the Grantor under the Bond Instruments immediately due and payable; and, in any such case, the prepayment premium, if any, which would have been applicable to a voluntary prepayment of the indebtedness at the time of such declaration by the Beneficiary shall be treated as part of the indebtedness secured hereby and added to and become a part of the principal thereof;

14.2 The Beneficiary shall have the right, forthwith, at the election of the Beneficiary, by and through the Trustee or otherwise, and without further notice or demand and without the commencement of any action to foreclose this Deed of Trust, to enter immediately upon and take possession of the Property without further consent or assignment by the Grantor, with the right to lease the Property, or any part thereof; and to collect and receive all of the rents, issues and profits, and all other amounts past due, due or to become due to the Grantor by reason of the Grantor's ownership of the Property, and to apply the same, after the payment of all necessary charges and expenses in connection with the operation of the Property (including any managing agent's commission, at the option of the Beneficiary), on account of interest and principal amortization under the Bond Instruments, taxes, payments in lieu of taxes, water and sewer charges, assessments and insurance premiums with respect to the Property, and any advance made by the Beneficiary for improvements, alterations or repairs to the Property or on account of any other indebtedness hereby secured. Grantor hereby authorizes and directs each tenant under the leases of the Property to pay rents and other amounts due under its respective lease to the party designated therein upon written demand by Beneficiary, without further consent of Grantor and regardless of whether Beneficiary has taken possession of the Property. The Grantor hereby irrevocably appoints Beneficiary as the Grantor's attorney-in-fact to institute summary proceedings against any tenant, licensee, concessionaire or other occupant of any portion of the Property who shall fail to comply with the provisions of any covenant, agreement or condition applicable to the possession or occupancy of the Property by such tenant, licensee, concessionaire or other occupant. If the Grantor or any other person claiming by, through or under the Grantor is occupying all or any part of the Property, it is hereby agreed that the Grantor and each such other person (other than tenants having a nondisturbance agreement with Beneficiary) shall, at the option of the Beneficiary, either immediately surrender possession of the Property to the

Beneficiary and vacate the part of the Property so occupied or pay a reasonable rental for the use thereof, monthly in advance, to the Beneficiary; and

14.3 The Beneficiary shall have the right forthwith, at the election of the Beneficiary, by and through the Trustee or otherwise, to sell or offer for sale the Property in such portions, order and parcels as the Beneficiary may determine, with or without having first taken possession of same, at public auction for cash or cash equivalent, including, without limitation, for certified checks, bank drafts, wire transfer funds, cashier checks and any other method of payment which, in the sole discretion of the Beneficiary, is "cash equivalent", to the highest and best bidder during legal hours, at any front door of the county courthouse of the county in which the land is situated after having advertised and given notice of said sale, giving the time, place and terms thereof, together with a description of the land according to the laws of the State of Mississippi governing sales of land under deeds of trust in force at the time the publication of said notice has begun. If the land is situated in two or more counties or in two judicial districts of the same county, then the Trustee shall have power, in case the Trustee is directed to foreclose under this Deed of Trust, to select in which county, or judicial district, the sale of all the Property shall be made, and the selection shall be binding upon the Grantor and the Beneficiary and all persons claiming through or under it, whether by contract or by law. The Trustee shall have full power to fix the day, time and place of sale, and may sell the Property in parcels or as a whole as the Trustee may deem best. The Trustee shall have full power to conduct any sale through an agent appointed by the Trustee for the purpose, but said appointment of agent need not be recorded. At any such sale: (i) the Trustee shall not be required to have been physically present, or to have constructive possession of, the Property (the Grantor hereby covenanting and agreeing to deliver to the Trustee any portion of the Property not actually or constructively possessed by the Trustee immediately upon demand by the Trustee) and the title to and right of possession of any such Property shall pass to the purchaser thereof as completely as if the same had been actually present and delivered to purchaser at such sale; (ii) the Trustee may, from time to time, adjourn said sale to a later date without readvertising, by giving notice of the time and place of such continued sale at the time when and where the Trustee shall make such adjournment; (iii) each and every recital contained in any instrument of conveyance made by the Trustee shall conclusively establish the truth and accuracy of the matters recited therein, including, without limitation, nonpayment of the indebtedness secured by this Deed of Trust, advertisement and conduct of such sale in the manner provided herein and otherwise by law and by appointment of any successor Trustee hereunder; (iv) any and all prerequisites to the validity of such sale shall be conclusively presumed to have been performed; (v) the receipt of the Trustee or of such other party making the sale shall be a sufficient discharge to the purchaser for its or his purchase money and no such purchaser, or its or his assigns, successors or personal representatives, shall thereafter be obligated to see to the application of such purchase money or be in any way answerable for any loss, misapplication or nonapplication thereof; (vi) the Grantor shall be completely and irrevocably divested of all of the Grantor's right, title, interest, claim and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against the Grantor, and against any and all other persons claiming or to claim the Property sold or any part thereof; (vii) Beneficiary may be a purchaser at any such sale; and (viii) and the Trustee, in the name of the Beneficiary or as the attorney of the Grantor (the Trustee being for that purpose by this Deed of Trust duly and irrevocably authorized and appointed as the Grantor's agent and attorney in fact, coupled with an interest and with full power of substitution, delegation and revocation) to make, execute, acknowledge and deliver to the purchaser or purchasers thereof a

good and sufficient deed or deeds of the Property in fee simple and to receive the proceeds of such sale or sales.

The Grantor waives the provisions of Section 89 1 55 of the Mississippi Code of 1972, or laws amending said section, if any, so far as the same restricts the right of the Trustee to offer at sale more than one hundred sixty (160) acres at a time, and the Trustee may offer the land as a whole, regardless of the manner in which the land may be described.

Should the Property be sold in one or more parcels as permitted herein, the right of sale arising out of any Event of Default shall not be exhausted by any one or more such sales, but other and successive sales may be made until all of the Property has been sold or until the indebtedness secured by this Deed of Trust has fully satisfied.

The Grantor hereby irrevocably and unconditionally waives and releases: (i) all benefits that might accrue to the Grantor by virtue of any present or future law exempting the Property from attachment, levy or sale or execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment; (ii) all notices of any Event of Default or of the Trustee's exercise of any right, remedy or recourse provided for hereunder or under any of the other Bond Documents; and (iii) any right to a marshaling of assets or a sale in inverse order of alienation.

14.4 In case the Beneficiary or the Trustee, on behalf of the Beneficiary, shall have proceeded to invoke any right, remedy or recourse permitted hereunder or under any of the other Bond Documents and shall thereafter elect to discontinue or abandon same for any reason, the Beneficiary or the Trustee, on behalf of the Beneficiary, as applicable, shall have the unqualified right so to do and, in such event, the Grantor, the Beneficiary and the Trustee shall be restored to their former positions with respect to the indebtedness secured hereby, this Deed of Trust, the Bond Documents, the Property and otherwise, and the rights, remedies, recourses and powers of the Beneficiary and the Trustee, on behalf of the Beneficiary, shall continue as if same had never been invoked.

## ARTICLE XV

### BENEFICIARY APPOINTED ATTORNEY

15.1 The Beneficiary shall be and is hereby authorized and empowered, for and in the name or names and on behalf of the Grantor and/or the Beneficiary, and shall be and is hereby irrevocably made, constituted and appointed the Grantor's true and lawful attorney in fact, coupled with an interest and with full power of substitution, delegation and revocation, to do the following:

15.2 In the event of foreclosure of this Deed of Trust or any transfer of title to the Property to a third-party purchaser pursuant to the powers hereinafter granted the Beneficiary, to surrender up the policies of insurance covering the Property and to collect any amounts due thereunder or, at the Beneficiary's option, to transfer the Beneficiary's right, title and interest in and to said policies and the proceeds thereof to any purchaser of the Property without obligation to

account therefor to any person claiming title to the Property; provided, however, that any amounts received by the Beneficiary under said policies by way of refunds, dividends or otherwise, as aforesaid, shall be applied to the payment of the indebtedness secured hereby, and any surplus shall be paid over as a surplus on foreclosure;

15.3 In the event of the sale of the Property pursuant to the power of sale hereinafter granted, to sell, by and through the Trustee or otherwise, subject to this Deed of Trust, all parcels which comprise the Property, notwithstanding the fact that the proceeds of such sale may exceed the amount then secured hereby;

15.4 To cause the assignment to the Beneficiary of any lease, license, concession, occupancy or other tenancy agreement with respect to the Property which has not been so assigned by the Grantor after request therefor from the Beneficiary;

15.5 In any action or other proceeding with respect to the Property in which the Beneficiary shall become a party or which may affect any rights of the Beneficiary hereunder with respect to the Property or the lien of this Deed of Trust thereon, to appear, prosecute, defend, intervene and retain counsel in such action or proceeding and to take such other and further action in connection therewith as the Beneficiary or the Beneficiary's successors or assigns shall deem advisable; and the costs thereof (including attorneys' fees and all applicable statutory costs, allowances and disbursements), with interest from the time of payment at the highest rate then prevailing under the Note for overdue payments of principal, shall be due from and payable by the Grantor to the Beneficiary on demand, shall be a lien on the Property, prior to any right or title to, interest in or claim upon the Property attaching or accruing subsequent to the lien of this Deed of Trust, shall be added to the indebtedness of the Grantor to the Beneficiary and shall be secured by this Deed of Trust; and

15.6 Upon the occurrence of any Event of Default hereunder, to seek the immediate appointment by any court of competent jurisdiction of a receiver for the Property and the business of the Grantor in connection therewith and of the rents and profits arising therefrom which receiver shall be entitled to immediate possession of the entire Property, whether or not occupied by the Grantor. The Beneficiary shall be entitled to the appointment of such a receiver as a matter of right without consideration of the value of the Property or other security for the amounts due the Beneficiary or the solvency of any person or corporation liable for the payment of such amounts. If the Grantor is then in possession of the Property or any portion thereof, the Grantor shall immediately, upon the appointment of such receiver, vacate the Property or such portion thereof, as the case may be, or pay a reasonable rental for the use thereof, during such receivership, to be agreed upon between said receiver and the Grantor or to be fixed by the court in which said receiver shall have been appointed; and the relationship between said receiver and the Grantor shall be that of landlord and tenant.

ARTICLE XVI

BENEFICIARY'S RIGHTS TO RELEASE AND NEGOTIATE

16.1 Without affecting the liability of the Grantor, or any other person (except any person expressly released in writing), for payment of the indebtedness hereby secured or for the performance of any obligations set forth or referred to in this Deed of Trust, the Bond Instruments or any of the other Bond Documents, and without affecting any lien or other security not expressly released in writing, the Beneficiary at any time, and from time to time, either before or after maturity of the Bond Instruments, and without notice or consent, may:

16.1.1 Release any person liable for payment of said indebtedness, or for the performance of any of said obligations;

16.1.2 Make any agreement extending the time, or otherwise altering the terms of payment of said indebtedness, or modifying or waiving any of said obligations, or subordinating, modifying or otherwise dealing with the lien securing payment of the Bond Instruments;

16.1.3 Exercise or refrain from exercising or waive any right the Beneficiary may have;

16.1.4 Accept additional security of any kind; or

16.1.5 Release or otherwise deal with any property, real or personal, securing said indebtedness, including all or any part of the Property.

16.2 All payments on the indebtedness hereby secured, and all proceeds from foreclosure sales, shall be applied as determined by the Beneficiary from time to time.

ARTICLE XVII

PROTECTION OF SECURITY

At any time and from time to time until payment of the indebtedness secured hereby and upon request of Beneficiary, the Grantor will promptly execute, notarize and deliver to the Beneficiary such additional instruments as the Beneficiary may reasonably require to evidence further the lien of this Deed of Trust and to protect further the security position of the Beneficiary with respect to the Property subject to this Deed of Trust, including, without limitation, additional chattel mortgages, security agreements, financing statements, continuation statements and the like, covering items of personal property, replacements thereof and additions thereto.

ARTICLE XVIII

SECURITY AGREEMENT

18.1 It is the intent of the Grantor, the Trustee and the Beneficiary that, in addition to being a deed of trust of real property, this instrument shall constitute a security agreement within

the meaning of the Uniform Commercial Code (as from time to time in effect in the State of Mississippi, the "Code") with respect to all fixtures, furniture, machinery, equipment, chattels and all replacements thereof, substitutions therefor, additions thereto and proceeds thereof (said property being sometimes hereinafter referred to as the "Collateral"), and that a security interest shall attach thereto for the benefit of the Beneficiary to secure the indebtedness evidenced by the Bond Instruments and all other obligations secured by this Deed of Trust, and all other sums and charges which may become due hereunder or thereunder.

18.2 The Grantor warrants and covenants as follows:

18.2.1 No financing statement covering any of the Collateral or any proceeds thereof is on file in any public office, other than financing statements with respect to the security interest granted hereby; and except for the security interest granted hereby the Grantor is, or upon acquiring rights in any of the Collateral will be, the owner of the Collateral free from any other lien, security interest or encumbrance; and the Grantor shall defend the security interest of the Beneficiary in the Collateral against claims and demands of all persons at any time claiming the same or any interest therein; and

18.2.2 At the request of the Beneficiary from time to time, the Grantor shall join with the Beneficiary in executing one or more financing and/or continuation statements pursuant to the Code in form satisfactory to the Beneficiary and shall pay the costs of filing or recording the same in all public offices wherever filing or recording is deemed by the Beneficiary to be necessary or desirable, and to the extent permitted by law, the Grantor hereby further authorizes the Beneficiary to file such financing and continuation statements and amendments thereto without the signature of the Grantor or to sign such financing and continuation statements and amendments on behalf of the Grantor (each Beneficiary being for such purposes by this instrument duly and irrevocably appointed as the Grantor's agent and attorney-in-fact, coupled with an interest and with full power of substitution, delegation and revocation).

18.3 Upon the occurrence of an Event of Default under this Deed of Trust, the Beneficiary, pursuant to the Code, shall have the right, at the election of the Beneficiary, by and through the Trustee or otherwise:

18.3.1 To proceed as to both the real and personal property covered by this Deed of Trust in accordance with the Beneficiary's rights and remedies in respect of said real property, in which event (i) the provisions of the Code otherwise applicable to sale of the Collateral shall not apply, and (ii) the sale of the Collateral in conjunction with and as one parcel with said real estate (or any portion thereof) shall be deemed to be a commercially reasonable manner of sale; or

18.3.2 To proceed as to the Collateral separately from the land and the improvements located thereon, in which event the requirement of reasonable notice shall be met by mailing notice of the sale, postage prepaid, to the Grantor or any other person entitled thereto at least ten (10) days before the time of the sale or other disposition of any of the Collateral.

18.4 The Collateral shall be kept at the land referred to on Exhibit A attached hereto, and until installed will be suitably and safely stored thereon.

18.5 The Grantor shall not remove or permit to be removed from the land referred to on Exhibit A attached hereto any of the Collateral without the prior written consent of the Beneficiary.

## ARTICLE XIX

### FIXTURE FILING

Grantor agrees and acknowledges that this Deed of Trust shall be effective as a financing statement filed as a fixture filing for purposes of Article 9 of the Uniform Commercial Code. The fixture filing covers all goods that are or are to become affixed to the land described on Exhibit A. The goods are described by item or type in under the headings "Land, Improvements, and Fixtures" and "Personal Property" on page 1 of this Deed of Trust. The Grantor is the debtor, and the Beneficiary is the secured parties. The names of the debtor (Grantor) and the secured party (Beneficiary) are given in the first paragraph of this Deed of Trust. This Deed of Trust is signed by the debtor (Grantor) as a fixture filing. The mailing address of the Beneficiary set out in Article XXI is the address of the secured party from which information concerning the security interest may be obtained. The mailing address of the Grantor set out in Article XXI is a mailing address for the debtor. A statement indicating the types, or describing the items, of collateral is set forth in this Article XIX and on page 1 of this Deed of Trust. The real estate to which the goods are or are to be affixed is described in Exhibit A. The Grantor is a record owner of the real estate.

## ARTICLE XX

### INVALIDITY OF PROVISIONS

20.1 All agreements between the Grantor and the Beneficiary contained herein are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration of maturity of the Bond Instruments, or otherwise, shall the amount paid or agreed to be paid to the Beneficiary for the use, forbearance or detention of the principal amount evidenced by the Bond Instruments and secured by this Deed of Trust exceed the maximum permissible under applicable law the benefit of which may be asserted by the Grantor as a defense, and if, from any circumstances whatsoever, fulfillment of any provision of the Bond Instruments and this Deed of Trust, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law, or if from any circumstances the Beneficiary should ever receive as interest under the Bond Instruments, this Deed of Trust or any of the other Bond Documents such an excessive amount, then, ipso facto, the amount which would be excessive interest shall be applied to the reduction of the principal balance as evidenced by the Bond Instruments and secured by this Deed of Trust and not to the payment of interest. This provision shall control every other provision of all agreements between the Grantor and the Beneficiary.

20.2 In case any one or more of the provisions contained in the Bond Instruments or in this Deed of Trust shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof or thereof, but each shall be construed as if such invalid, illegal or unenforceable provision had never been included.

ARTICLE XXI

NOTICES

All notices, requests, demands, consents or other communications given hereunder or in connection herewith shall be in writing, shall be sent by registered or certified mail, return receipt requested, postage prepaid, or by hand delivery or expedited delivery service, with delivery charges prepaid and with acknowledged receipt of delivery, shall be deemed given on the date of acceptance or refusal of acceptance shown on such receipt, and shall be addressed to the party to receive such notice at the following applicable address:

If to the Grantor, to:

LifePointe Village-Southaven, LLC  
Attn: David M. Dunlap, Secretary  
7729 East Greenway Road, Suite 500  
Scottsdale, Arizona 85260

With a copy by ordinary first class mail to:

Farris Mathews Branam Bobango Hellen & Dunlap PLC  
Attn: John R. Dunlap  
One Commerce Square, Suite 2000  
Memphis, Tennessee 38103

and

David M. Dunlap, Secretary  
7203 Goodman Road  
Olive Branch, Mississippi 38654

If to the Beneficiary, to:

John B. Linford, a Professional Law Corporation  
Attn: John B. Linford  
4800 Easton Drive, Suite 103  
Bakersfield, California 93309

If to the Trustee, to:

Eric L. Sappenfield, Attorney at Law  
6858 Swinnea Road  
#5 Rutland Place  
Southaven, Mississippi 38671

Any party may, by notice given as aforesaid, change such party's address for all subsequent notices. Each notice by or on behalf of the Beneficiary herein named shall be deemed sufficient if signed by any one of the Beneficiary's officers or by the Beneficiary's counsel and if otherwise given or made in compliance with this Section.

## ARTICLE XXII

PERFORMANCE BY THE BENEFICIARY

In the event that the Grantor fails to perform any covenant, duty or agreement of the Grantor contained in this Deed of Trust, the Bond Instruments or any of the other Bond Documents in accordance with the terms thereof, the Beneficiary may, at its option, perform, or attempt to perform, such covenant, duty or agreement on behalf of the Grantor. In such event, the Grantor shall, at the request of Beneficiary, promptly pay any reasonable amount expended by Beneficiary in such performance or attempted performance to Beneficiary, together with interest thereon from the date of such payment at the highest rate then prevailing under the terms of the Bond Instruments for overdue payments of principal, and until so paid by the Grantor, all sums so expended by Beneficiary, and the interest thereon, shall be added to and secured by the lien of this Deed of Trust.

## ARTICLE XXIII

GENERAL PROVISIONS

23.1 The Grantor hereby waives and renounces all homestead exemption rights provided for by the Constitution and laws of the United States or the State of Mississippi, in and to the Property as against the collection of the indebtedness secured herein, or any part thereof; and the Grantor agrees that where, by the terms of this Deed of Trust or the Note, a day is named or a time fixed for the payment of any sum of money or the performance of any agreement, the time stated enters into the consideration and is of the essence of the whole contract.

23.2 The captions in this Deed of Trust are for convenience and reference only and do not define, limit or describe the scope of the provisions hereof.

23.3 This Deed of Trust shall inure to the benefit of and bind (i) the successors and assigns of the Beneficiary and (ii) the heirs, administrators, executors, successors and assigns of the Grantor, as if all the aforesaid were herein mentioned whenever the parties hereto are referred to. This instrument shall be so construed that whenever applicable with reference to any of the parties hereto, the use of the singular number shall include the plural number, the use of the neuter gender with respect to the Grantor shall include the masculine and feminine gender, and shall likewise be so construed as applicable to and including a corporation or corporations or any other entity that may be a party or parties hereto.

23.4 This Deed of Trust is made and delivered in the State of Mississippi and shall be governed by the laws thereof.

23.5 The Grantor, the Beneficiary and the Trustee hereby irrevocably consent (i) to the jurisdiction of the Courts of DeSoto County, Mississippi and of any Federal Court located in the Northern District of Mississippi, Delta Division, and agree that venue in each of such Court is proper in connection with any action or proceeding arising out of or relating to this Deed of Trust, the Bond Instruments, the other Bond Documents or any document or instrument delivered pursuant to this Deed of Trust, the Bond Instruments or the other Bond Documents, and (ii) to the

service of process by certified mail, return receipt requested. Nothing herein shall affect the right of the Grantor, the Beneficiary or the Trustee to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against any party in any other jurisdiction.

23.6 This Deed of Trust shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the indebtedness secured hereby is rescinded or otherwise must be returned by the Trustee or the Beneficiary upon the insolvency, bankruptcy or reorganization of the Grantor, any guarantor or otherwise, all as though such payment had not been made.

#### ARTICLE XXIV

##### THE TRUSTEE

The following provisions shall govern with respect to the Trustee:

24.1 The Trustee shall not be liable for any error of judgment or act done by the Trustee in good faith, or be otherwise responsible or accountable to the Grantor under any circumstances whatsoever, nor shall the Trustee be personally liable in case of entry by the Trustee, or anyone entering by virtue of the powers herein granted, upon the Property for debts contracted or liability or damages incurred in the management or operation of the Property. The Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by the Trustee hereunder, believed by the Trustee in good faith to be genuine. The Trustee shall be entitled to reimbursement for expenses incurred by the Trustee in the performance of the Trustee's duties hereunder and to reasonable compensation for such of the Trustee's services hereunder as shall be rendered. The Beneficiary will, from time to time, pay the compensation due to the Trustee hereunder and reimburse the Trustee for, and save the Trustee harmless against, any and all liability and expenses which may be incurred by the Trustee in the performance of the Trustee's duties.

24.2 All moneys received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law), and the Trustee shall be under no liability for interest on any money received by the Trustee hereunder.

24.3 The Trustee may resign at any time with or without notice. If the Trustee shall die, resign or become disqualified from acting in the execution of this trust or shall fail or refuse to execute the same when requested by the Beneficiary so to do, or if, for any reason, the Beneficiary shall prefer to appoint a substitute trustee to act instead of the afore named Trustee, the Beneficiary shall have full power to appoint a substitute trustee and, if preferred, several substitute trustees in succession who shall succeed to all the estates, rights, powers and duties of the afore named Trustee. If Beneficiary is a corporation, such appointment may be made by any one of Beneficiary's officers or agents.

24.4 Any new Trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed or conveyance, become vested with all the estates, properties, rights, powers

and trusts of its or his predecessor in the rights hereunder with like effect as if originally named as Trustee herein, but nevertheless, upon the written request of the Beneficiary or of the successor Trustee, the Trustee ceasing to act shall execute and deliver an instrument transferring to such successor Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and money held by such Trustee to the successor Trustee so appointed in its or his place.

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EXHIBIT "A"  
LEGAL DESCRIPTION

BK 2,876 PG 107

SURVEY OF A 4.189 ACRE PARCEL OF LAND BEING LOCATED IN THE SOUTHWEST AND SOUTHEAST QUARTERS OF THE SOUTHEAST OF SECTION 16 AND THE NORTHWEST AND NORTHEAST QUARTERS OF THE NORTHEAST QUARTER OF SECTION 21, TOWNSHIP 2 SOUTH, RANGE 7 WEST, SOUTHAVEN DESOTO COUNTY, MISSISSIPPI AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT AN IRON PIN IN THE SOUTH RIGHT-OF-WAY LINE OF BENDING CHERRY LANE (31' ROW), SAID POINT LIES S 42° 48' 24" E, 6,703.35 FEET FROM THE NORTHWEST CORNER OF SECTION 16, TOWNSHIP 2 SOUTH, RANGE 7 WEST, THENCE ALONG A LINE DIVIDING THE SUBJECT PROPERTY AND THE EBI, INC. PROPERTY AS SHOWN IN BOOK 474, PAGE 773 S 38° 56' 04" W, 34.55 FEET TO AN IRON PIN; THENCE S 31° 34' 39" W, 444.17 FEET TO AN IRON PIN; THENCE S 00° 12' 17" E, 298.28 FEET TO AN IRON PIN, SAID POINT BEING IN THE NORTH RIGHT-OF-WAY LINE OF STARLANDING ROAD AND BEING THE "POINT OF BEGINNING" FOR THE PROPERTY AS DESCRIBED HEREIN KNOW AS LIFE-POINTE VILLAGE AT CHERRY TREE, PHASE I, THENCE ALONG SAID NORTH LINE S 89° 47' 43" W, 425.24 FEET TO A POINT; THENCE LEAVING SAID NORTH LINE AND ALONG THE WEST LINE OF THE PROPERTY AS DESCRIBED HEREIN N 00° 00' 00" E, 103.24 FEET TO A POINT OF CURVATURE; THENCE NORTHEASTERLY ALONG A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 122.00 FEET (CENTRAL ANGLE 215° 48' 09", CHORD BEARING N 27° 05' 55" E, AND CHORD LENGTH OF 270.72), AN ARC LENGTH OF 459.50 FEET TO A POINT; THENCE N 45° 00' 00" E, 169.20 FEET TO A POINT IN THE NORTH LINE OF THE PROPERTY AS DESCRIBED HEREIN; THENCE ALONG SAID NORTH LINE, N 90° 00' 00" E, 189.06 FEET TO AN ANGLE POINT; THENCE S 00° 00' 00" W, 123.82 FEET TO AN ANGLE POINT; THENCE S 58° 25' 21" W, 11.39 FEET TO AN IRON PIN IN THE WEST LINE OF THE EBI, INC. PROPERTY AS SHOWN IN BOOK 474, PAGE 773; THENCE ALONG SAID LINE S 00° 12' 17" E, 298.28 FEET TO A POINT IN THE NORTH LINE OF STARLANDING ROAD AND THE "POINT OF BEGINNING" FOR THE PROPERTY AS DESCRIBED HEREIN AND CONTAINING 4.189 ACRES OR 182,464 SQUARE FEET.

INDEXING INSTRUCTIONS: Located In the Southwest and Southeast 1/4 of the Southeast 1/4 of Section 16 and the Northwest and Northeast 1/4 quarter of the Northeast 1/4 of Section 21, Township 2 South, Range 7 west, Southaven, DeSoto County, Mississippi.

**EXHIBIT B**

**List of Permitted Exceptions**

1. Any mineral or mineral rights leased, granted or retained by current or prior owners.
2. Taxes and assessments for the year 2008 and subsequent years and not yet due and payable.
3. Existing 8" sanitary sewer across the property as shown by survey from T.H.Y, Inc. dated September 21, 2007. Said sewer is not connected. No recorded easement was found.

IN WITNESS WHEREOF, the Grantor has caused this Deed of Trust and Security Agreement to be duly executed effective as of the 17<sup>th</sup> day of March, 2008, but actually signed by the Grantor on the date set forth in the acknowledgment below.

GRANTOR:

LIFEPOINTE VILLAGE-SOUTHAVEN, LLC, a Delaware limited liability company

By: *David M. Dunlap*  
Name: David M. Dunlap, Secretary/Manager

STATE OF Arizona

COUNTY OF Maricopa

Personally appeared before me, the undersigned authority in and for the said county and state, on this 17<sup>th</sup> day of March, 2008, within my jurisdiction, the within named David M. Dunlap, who acknowledged to me that (he) (she) is Secretary of LifePoint Village-Southaven LLC a ~~corporation~~ company and manager of LifePoint Village-Southaven LLC a ~~corporation~~ company manager-managed limited liability company, and that for and on behalf of said ~~corporation~~ company as manager of said limited liability company, and as the act and deed of said ~~corporation~~ company as manager of said limited liability company, and as the act and deed of said limited liability company, (he) (she) executed the above and foregoing instrument, after first having been duly authorized by ~~said corporation~~ said company and said limited liability company so to do.

*Patricia Frances Zainer*  
(NOTARY PUBLIC)

My commission expires:

3/3/2010

(Affix official seal, if applicable)



LifePointe Village-Southaven, LLC, a Delaware limited liability company  
7729 E. Greenway Road, Suite 500  
Scottsdale, Arizona 85260  
(662) 890-8904

John B. Linford, a Professional Law Corporation  
4800 Easton Drive, Suite 103  
Bakersfield, California 93309  
(661) 327-9080