



\*W2181752\*  
E# 2181752 PG 1 OF 22  
DOUG CROFTS, WEBER COUNTY RECORDER  
23-MAY-06 4:11 PM FEE \$57.00 DEP JM  
REC FOR: TALON GROUP  
ELECTRONICALLY RECORDED

THIS INSTRUMENT PREPARED BY  
~~AND SHOULD BE RETURNED TO:~~  
Gary R. Preston, Esq.  
GREENBERG, TRAURIG, P.A.  
450 South Orange Ave., Suite 650  
Orlando, Florida 32801  
(407) 420-1000

RT 05701965  
Return to: NDS  
Republic Title of Texas, Inc.  
2626 Howell Street, 10th Floor  
Dallas, TX 75204

**DECLARATION OF EASEMENT AGREEMENT**

THE TALON GROUP  
ANN 15004

THIS DECLARATION OF EASEMENT AGREEMENT ("Agreement") is made as of the 22 day of May, 2006, by and between COLUMBIA OGDEN MEDICAL CENTER, INC, a Utah corporation, d/b/a OGDEN REGIONAL MEDICAL CENTER, with an address at 5475 South 500 East, Ogden, Utah 84405-6976 ("Grantor"), and CNL RETIREMENT CRS2 OGDEN UT, LP, a Delaware limited partnership, with an address at c/o The Cirrus Group, LLC, 9301 N. Central Expressway, Suite 300, Dallas, Texas 75231 ("Grantee").

RECITALS:

A. Grantor is the owner of certain real property legally described on Exhibit "A" attached hereto and made a part hereof upon which there exists a hospital facility known as Ogden Regional Medical Center and other facilities and improvements which make up the Hospital campus (the "Hospital Land"); and

B. A certain portion of the Hospital Land, which is legally described on Exhibit "B" attached hereto and made a part hereof (the "Ground Lease Property"), has been leased by Grantor to Grantee pursuant to a Ground Lease dated May 22, 2006 (the "Ground Lease"), a memorandum of which is to be recorded in the Official Records of Weber County, Utah. The Hospital Land, less and except (i) the Ground Lease Property and (ii) any other portions of the Hospital Land currently subject to a ground lease in favor of a third party is hereinafter referred to as the "Easement Property"; and

C. Under the terms of the Ground Lease, Grantor has agreed to provide to Grantee with non-exclusive easements over and across certain portions of the Hospital Land for parking, vehicular and pedestrian ingress and egress, and utilities to and from the Ground Lease Property and adjoining public streets, and the parties have agreed to certain terms and conditions of these easements, all as set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants of and benefits to the parties thereto, the receipt and sufficiency of which are hereby acknowledged, the parties agree that the foregoing recitals are true and correct and are incorporated herein by this reference, and further agree as follows:

**ARTICLE 1: DEFINITIONS**

As used herein, the terms specifically defined below shall have the meanings indicated.

1.1 **"Mortgage"** shall mean any mortgage encumbering any interest in the Hospital Land, now existing or hereafter given in good faith and for value.

1.2 **"Mortgagee"** shall mean any lender, its successors and assigns, including, without limitation, any savings and loan association, commercial bank, savings bank, insurance company, pension trust, or real estate investment trust, holding a Mortgage.

1.3 **"Owner"** shall mean, as applicable, (a) a Person owning fee title to any portion of the Hospital Land (including, without limitation, Grantor), (sometimes referred to herein as Owner of the Hospital Land or Owner of the Easement Property), (b) a ground lessee of any portion of the Hospital Land (including, without limitation, Grantee (sometimes referred to herein as Owner of the Ground Lease Property), and (c) the successors and assigns of any Owner.

1.4 **"Permittees"** shall mean the officers, directors, employees, agents, partners, contractors, customers, visitors, invitees, licensees, lessees, tenants, subtenants, and concessionaires of any Owner, its successors and assigns, and its tenants and subtenants, and any other Persons authorized hereunder or otherwise to be on the Hospital Land.

1.5 **"Person" or "Persons"** shall mean individuals, partnerships, associations, trusts, corporations and any other form of business entity, or one or more of them, as the context may require.

**ARTICLE 2: EASEMENTS**2.1 **Access Easements.**

(a) Grantor, as the fee owner of the Easement Property and all roads, driveways, sidewalks, parking areas, and similar facilities now or hereafter located on the Easement Property (collectively, the **"Grantor Property Interests"**), hereby grants to:

Grantee, its successors and assigns, as an appurtenance to and for the benefit of the Ground Lease Property, including (without limitation) the interests of each Owner of the Ground Lease Property, and any successors in interest of Grantee to any portion of the Ground Lease Property whether by sale, assignment or as a result of the foreclosure of any Mortgage or taking of a deed in lieu of foreclosure of any Mortgage encumbering any portion of the Ground Lease Property,

(i) a non-exclusive easement on, over and across all roads, driveways, sidewalks, parking areas, and similar facilities now or hereafter located on the Easement Property, for vehicular and pedestrian ingress, egress and access for Permittees to and from the Ground Lease Property and all adjoining public streets, including, without limitation, vehicular and pedestrian ingress, egress and access on, over and across such roadways, driveways and parking areas as may from time to time be located on the Easement Property connecting the Ground Lease Property to public right-

of-ways adjacent to the Easement Property (the "General Access Easement"), and (ii) in addition to the General Access Easement, a non-exclusive easement on, over and across the portion of the roadway (the "Western Roadway") located on the Easement Property as indicated on **Exhibit "C"** attached hereto and made a part hereof (hereinafter collectively referred to as the "Specific Access Easement") for vehicular and pedestrian ingress, egress and access for Permittees to and from the Ground Lease Property and all adjoining public streets. The General Access Easement shall be limited to such portions of the Easement Property as are now or may hereafter be used, established, designated or permitted by the Owner of the Easement Property for use by any Permittees as sidewalks (with respect to pedestrian ingress, egress and passage only), driveways, roads, parking areas, and similar facilities or otherwise for any of the purposes referenced in this Section 2.1; provided, however, that the foregoing limitation shall not be deemed to permit an Owner of the Easement Property to restrict the General Access Easement in any manner that would (i) unreasonably restrict or impair the use and enjoyment of the General Access Easement by any Owner or Permittee of the Ground Lease Property; (ii) prevent the use of the General Access Easement for its intended purposes; or (iii) be contrary to or in violation of the requirements of the site plan or any zoning or other conditions or approvals of any controlling governmental authorities applicable to the improvements located from time to time on the Ground Lease Property.

b) Grantee, as ground lessee of the Ground Lease Property and all roads, driveways, sidewalks, parking areas, and similar facilities now or hereafter located on the Ground Lease Property (collectively, the "Grantee Property Interests"), hereby grants to:

Grantor, its successors and assigns, as an appurtenance to and for the benefit of the Easement Property, including (without limitation) the interests of each Owner of the Easement Property, and any successors in interest of Grantor to any portion of the Easement Property whether by sale, assignment or as a result of the foreclosure of any Mortgage or taking of a deed in lieu of foreclosure of any Mortgage encumbering any portion of the Easement Property,

a non-exclusive easement during the term of the Ground Lease on, over and across all roads, driveways, sidewalks, parking areas, and similar facilities now or hereafter located on the Ground Lease Property, for vehicular and pedestrian ingress, egress and access for Permittees to and from the Easement Property and all adjoining public streets, including, without limitation, vehicular and pedestrian ingress, egress and access on, over and across such roadways, driveways and parking areas as may from time to time be located on the Ground Lease Property connecting the Easement Property to public right-of-ways adjacent to the Ground Lease Property. The aforesaid easement shall be limited to such portions of the Ground Lease Property as are now or may hereafter be used, established, designated or permitted by the ground lessee of the Ground Lease Property for use by any Permittees as sidewalks (with respect to pedestrian ingress, egress and passage only), driveways, roads, parking areas, and similar facilities or otherwise for any of the purposes referenced in this Section 2.1; provided, however, that the foregoing limitation shall not be deemed to permit the restriction of the easement in any manner that would (i) unreasonably restrict or impair the use and enjoyment of the easement by any Owner or Permittee of the Easement Property; (ii) prevent the use of the easement for its intended purposes; or (iii) be contrary to or in violation of the requirements of the site plan or

any zoning or other conditions or approvals of any controlling governmental authorities applicable to the improvements located from time to time on the Easement Property.

**2.2 Walkway Easement.** Grantor, as the owner of the Grantor Property Interests, hereby grants to:

Grantee, its successors and assigns, as an appurtenance to and for the benefit of the Ground Lease Property, including (without limitation) the interests of each Owner of the Ground Lease Property, and any successors in interest of Grantee to any portion of the Ground Lease Property whether by sale, assignment or as a result of the foreclosure of any Mortgage or taking of a deed in lieu of foreclosure of any Mortgage encumbering any portion of the Ground Lease Property,

a non-exclusive easement in, over and across the enclosed walkway (the "Walkway") between the medical office building on the Ground Lease Property and the Hospital building situated on the Easement Property for the passage and accommodation of pedestrians in connection with access by Permittees between the Ground Lease Property and Hospital, which Walkway extends across the boundary line between the Ground Lease Property and the Easement Property and is generally located as shown on Exhibit "D" attached hereto and made a part hereof (hereinafter collectively referred to as the "Walkway Easement"). The Walkway is presently unobstructed except for a set of doors located near the south end thereof. Except for the aforesaid doors and subject to such reasonable security measures as may be imposed by the Owner of the Grantor Property Interests or Grantee, the Walkway shall remain unobstructed for the use at all times by the Permittees.

**2.3 Relocation of Facilities; Rules and Regulations.**

(a) The Owner of the Easement Property shall have the right, at any time and from time to time, to relocate the roads, driveways, sidewalks, parking areas and similar facilities now or hereafter located on the Easement Property which are used, established, designated or permitted for the General Access Easement. Further, Grantee acknowledges and agrees that the General Access Easement shall be exercised in common with all Persons permitted by the Owner of the Easement Property to use the Easement Property, whether subject to agreements now or hereafter existing, and the Owner of the Easement Property shall have the right, from time to time, to establish rules and regulations governing the use of the Easement Property, provided that such rules and regulations shall not be discriminatory and shall be implemented and enforced without discrimination. However, notwithstanding the foregoing provisions of this Section 2.4, no relocation of roads, driveways, sidewalks, or similar facilities now or hereafter located on the Easement Property, and no rules and regulations established with respect to the Easement Property, may (i) unreasonably restrict or impair the use and enjoyment of the General Access Easement, or (ii) be contrary to or cause the Ground Lease Property to be in violation of the requirements of any zoning or other conditions or approvals of any controlling governmental authorities applicable to the improvements located from time to time on the Ground Lease Property. Notwithstanding the foregoing, the Owner of the Easement Property shall not relocate, modify, alter or change any of the roads, driveways, sidewalks, parking areas and similar facilities now or hereafter located on the Easement Property which are used, established,

designated or permitted for the Specific Access Easement or Walkway Easement without Grantee's prior, written consent.

(b) Grantee shall have the right, at any time and from time to time, to relocate the roads, driveways, sidewalks, parking areas and similar facilities now or hereafter located on the Ground Lease Property. Further, Grantee shall have the right, from time to time, to establish rules and regulations governing the use of the Ground Lease Property, provided that such rules and regulations shall not be discriminatory and shall be implemented and enforced without discrimination. However, notwithstanding the foregoing provisions of this Section 2.4, no relocation of roads, driveways, sidewalks, or similar facilities now or hereafter located on the Ground Lease Property, and no rules and regulations established with respect to the Ground Lease Property, may (i) unreasonably restrict or impair the use and enjoyment of the easement created under Section 2.1(b) above, or (ii) be contrary to or cause the Easement Property to be in violation of the requirements of any zoning or other conditions or approvals of any controlling governmental authorities applicable to the improvements located from time to time on the Easement Property.

#### 2.4 Utility Easements.

Grantor, as the owner of the Grantor Property Interests, hereby grants to:

Grantee, its successors and assigns, as an appurtenance to and for the benefit of the Ground Lease Property, including (without limitation) the interests of each Owner of the Ground Lease Property, and any successors in interest of Grantee to any portion of the Ground Lease Property whether by sale, assignment or as a result of the foreclosure of any Mortgage or taking of a deed in lieu of foreclosure of any Mortgage encumbering any portion of the Ground Lease Property,

(i) non-exclusive easements in, over, under and across such portions of the Easement Property as are currently used or may from time to time hereafter be used for drainage and utility services or improved with facilities therefor, and such additional non-exclusive easements as may hereafter be necessary, in connection with the ownership, operation, maintenance, repair and/or restoration of improvements now or hereafter located on the Ground Lease Property, including (without limitation) easements for the maintenance, repair, alteration, and operation of electric lines, telephone and data communication lines, irrigation lines, drainage lines, sewer lines, water lines, waterworks, sewer works, force mains, lift stations, water mains, sewer mains, water distribution systems, sewage disposal systems, effluent disposal systems, pipes, wires, syphons, valves, gates, pipelines, cable television service, electronic security systems and all machinery and apparatus appurtenant to all of the foregoing (collectively, the "General Utility Easement"), provided, that the location of each such easement herein granted with respect to any future installations shall be approved in writing by the Owner of the Easement Property in its reasonable discretion, and (ii) a non-exclusive easement in, over, under and across such portions of the Easement Property as may from time to time be used to maintain the existing connection to the sewer line on the Easement Property and use such sewer line for the purpose of servicing the improvements on the Ground Lease Property (the "Sewer Easement"). The locations of all existing drainage and utility installations in, over, under and across portions of the Easement Property are hereby approved.

Grantee, at its sole expense, shall repair any damage to the Easement Property which is caused as a result of its installation, maintenance or relocation of utility facilities including, but not limited to, removal of debris and trash, the backfilling and compaction of trenches, the restoration of paved parking areas, restoration of improvements, the replacement of fences, the replacement of topsoil and the restoration of any landscaping.

**2.5 Right to Eject.**

The Owner of the Easement Property shall have the right to eject lawfully from the Easement Property any Persons not hereby or otherwise authorized to use the Easement Property. Grantee is also granted the right of ejection, but only with respect to the Ground Lease Property.

**2.6 No Diminution of Rights or Obligations; Exclusion of Ground Lease Property.**

No easements or other rights granted or reserved hereunder shall be diminished in any respect by any use of or failure to use such rights from time to time. Further, it is expressly understood and agreed that no Owner or its Permittees shall have any easement rights under this Agreement on, over, under or across the Ground Lease Property.

**2.7 Subordination; Mortgage Protection.**

All Mortgages shall be subordinate to this Agreement, and this Agreement shall survive foreclosure of any such Mortgage; provided, however, that nothing in this Agreement will affect the validity of any Mortgage. No amendment to or termination of this Agreement shall be effective unless the prior written consent of all Mortgagees is first obtained. Grantor hereby represents and warrants to Grantee that there are no Mortgages on its fee interest the Easement Property. Grantee hereby represents and warrants to Grantor that there are no Mortgages on its leasehold interest the Ground Lease Property.

**ARTICLE 3: MAINTENANCE**

**3.1 Maintenance of Easement Property.**

The Owner of the Easement Property shall, at its sole cost and expense, maintain in its normal manner, all roads, driveways, sidewalks, parking areas and similar facilities now or hereafter on the Easement Property (including, without limitation, the Western Roadway and Northeast Parking Lot) in good, safe and clean condition, ordinary wear and tear excepted. Such maintenance shall include, without limitation, snow and ice removal, filling of all holes and cracks, keeping the parking areas free of debris, and resurfacing and restriping the roads, driveways and parking areas as may be reasonably needed to keep them in good, safe and clean condition, reasonable wear and tear excepted, and in compliance with all applicable laws. The Owner of the Ground Lease Property shall be responsible for maintenance of the Ground Lease Property.

Notwithstanding the foregoing, the Owner of the Easement Property shall have no responsibility for maintenance of any utility improvements for the sole benefit of the Ground Lease Property that are located on the Easement Property from time to time, such maintenance

being the sole responsibility of Grantee and/or the applicable utility companies to whom such utility improvements may be conveyed with the consent and joinder of the Owner of the Easement Property.

The Owner of the Easement Property and Grantee shall each maintain, at its sole cost and expense, the portion of Walkway on its respective property, such maintenance to be performed in its normal manner such that the Walkway shall be kept in good, safe and clean condition, ordinary wear and tear excepted. The Owner of the Easement Property and Grantee shall share equally in the maintenance cost of the sewer line referenced under the Sewer Easement described in Section 2.5 above from the point of Grantee's connection to the point where such sewer line connects to the City's sewer system.

### **3.2 Performance of Maintenance.**

Any damage caused to any improvements as a result of the performance of an Owner's maintenance obligations under this Article 3 or any other activity on the Easement Property shall be promptly repaired by the party performing such maintenance at such party's sole expense. No Owner responsible for any maintenance under this Article 3 shall be liable for any loss or damage caused by inconvenience, disturbance, loss of business or other annoyance arising from or related to the performance of such maintenance or other activities, except where such loss or damage results from the intentional misconduct of the Owner or its agents. Notwithstanding the foregoing, each Owner and its agents shall use commercially reasonable efforts to ensure that all maintenance activities are conducted with the minimum inconvenience, disturbance, loss of business or other annoyance, consistent with accepted maintenance practices in the vicinity of the Easement Property, and all applicable laws, ordinances, rules and regulations. To the extent of any claim brought by an aggrieved party under this Section 3.2, such party shall first look to available insurance proceeds before seeking to attach liability to the responsible Owner.

## **ARTICLE 4: REMEDIES AND ENFORCEMENT**

### **4.1 Nonperformance.**

In the event that any Owner shall be in breach or default of any of its respective obligations hereunder, and if any such breach or default remains uncured following the expiration of thirty (30) days following receipt of written notice of such breach or default from any other Owner (or such shorter period as may be required if the safety of Permittees or the operations of improvements on any portion of the Easement Property are materially affected), then any other Owner may pursue any rights or remedies provided hereunder or otherwise available at law or in equity. In no event, however, may this Agreement be terminated as a result of any breach, default or non-performance of the terms of this Agreement.

### **4.2 Enforcement.**

Without limitation of any other remedies, any Owner may enforce the obligations of another Owner under this Agreement by suit or judicial proceeding for specific performance. In no event shall any Owner be liable for general or consequential, special or punitive damages.

### **4.3 Substitute Performance.**

If any Owner fails to cure any nonperformance in the applicable time specified in this Article 4, then any other Owner may, without any obligation to do so, (i) pay any unpaid sum; (ii) perform such work as may be necessary to cure the nonperformance or restore the applicable property or improvements to the required condition; or (iii) provide other substitute performance of any obligations of the non-performing Owner.

#### 4.4 Reimbursement.

The non-performing Owner shall reimburse such other Owner for all costs and expenses incurred in connection with any payment, performance of work or substitute performance made under Section 4.3 above, in each case within ten (10) days after such other Owner provides an itemized statement of such costs and expenses that were incurred, together with receipts or other reasonable evidence of expenditures. If the non-performing Owner should fail to reimburse the performing Owner entitled to such reimbursement in accordance with this Section 4.4, then until such full reimbursement occurs, the performing Owner entitled to such reimbursement will be entitled to collect interest at the rate of five percent (5%) per annum over the Prime Rate (but not to exceed the maximum rate allowed by law) for all such sums paid and expended in accordance with the terms of this Agreement. For purposes of this Section 4.4, the term "Prime Rate" shall mean and refer to the "Prime Rate" as published daily in the "Money Rates" table of *The Wall Street Journal*. If the "Prime Rate" is published as a range of rates, the reference herein to the "Prime Rate" shall be construed to refer to the highest published rate within such range. If *The Wall Street Journal* or the "Money Rates" column contained therein shall cease to be published, then the Prime Rate shall be determined by reference to another publication reporting prime rates in a similar manner selected by the Owner entitled to such reimbursement.

#### 4.5 Costs and Attorneys' Fees.

In the event of any action brought to enforce any obligation under this Agreement, the prevailing party shall, in addition to such other relief as the court may grant, be entitled to reasonable attorneys' fees and costs, as well as expenses of investigation, including, without limitation, all of the same incurred in appellate and bankruptcy or insolvency proceedings.

#### 4.6 Reciprocal Lien Rights.

In addition to, and not to the exclusion of, any other remedy provided for in this Article 4, any delinquent reimbursement provided for in this Article 4, together with any interest and costs of collection relating thereto, shall become a lien against the nonperforming Owner's property in accordance with the applicable law of the State of Utah (the "Lien") on the recordation of a notice thereof in the Official Records of Weber County, Utah. Such notice shall include the name of the nonperforming Owner, the legal description of the property subject to the Lien, a description of the nonperforming Owner's nonperformance, and the total amount due from the nonperforming Owner. The notice shall be signed by the Owner claiming the lien and may be enforced and/or otherwise foreclosed upon in a manner in which mortgages are foreclosed and in accordance with applicable Utah law. Upon payment in full of the delinquent amount, the Owner recording such a notice of the Lien shall take all steps requested by the nonperforming Owner to remove the Lien from record title. Notwithstanding the authorization of the Lien in this Agreement, it is the express intention of the parties hereto that the priority of any such Lien



recorded in accordance with the provisions of this Section 4.6 shall be established by the date the notice of the Lien is recorded in the Official Records of Weber County, Utah and not by the date of recordation of this Agreement.

**4.7 Remedies Cumulative.**

The exercise by any Owner of any remedy available hereunder, or at law or in equity, shall not constitute an election of remedies, and shall not prejudice the right of any such Owner to pursue any other remedy.

**ARTICLE 5: MISCELLANEOUS**

**5.1 Termination and Amendment.**

This Agreement may not be cancelled, changed, modified or amended in whole or in part except by a written instrument executed by all of the parties hereto, or by all record Owners of the Easement Property and the Ground Lease Property and the improvements thereon in the event that any of such record owners are not then parties hereto, together with the written consent of each holder of any lien, deed of trust lien or mortgage on either the Easement Property or the Ground Lease Property, or any portion thereof or interest thereon.

**5.2 Governing Law.**

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Utah.

**5.3 Covenants Running with the Land.**

(a) The covenants, easements, rights, privileges, agreements, promises and duties of each of the parties hereto, as set forth herein, shall run with the Ground Lease Property and the Easement Property and shall inure to the benefit of and be binding on the successors and assigns of each party hereto, each Owner, and their Permittees, as well as each Mortgagee, as covenants running with the Ground Lease Property and the Easement Property, without regard to whether any provision of this Agreement is expressly made applicable to the successors and assigns of any party hereto.

(b) With respect to the reserved rights of Grantor (including its successors or assigns as the Owner of the Easement Property) under this Agreement, no Owner shall succeed to any such rights unless (i) such Owner is the successor in interest to all of the assets of Grantor by merger or other business combination; (ii) such Owner (including, without limitation, a Mortgagee) is the successor in interest to all of the right, title and interest of Grantor in and to the entire Easement Property; or (iii) such Owner is the successor in interest to the right, title and interest of Grantor in and to a portion of the Easement Property and Grantor designates, in the instrument of conveyance, the rights under this Agreement relating to such portion of the Easement Property to which said successor in interest will succeed.

**5.4 Severability.**

To the extent that any provision or portion of any provision of this Agreement shall be invalid or unenforceable in any circumstance, the balance of this Agreement shall be enforceable nonetheless, and the entirety of this Agreement shall be enforceable in all other circumstances.

**5.5 Counterparts.**

This Agreement may be signed in counterparts, each which shall be deemed an original, and when taken together shall constitute one instrument.

**5.6 Notices.**

Unless otherwise specifically provided in this Agreement, all notices required or permitted hereunder shall be in writing and shall be deemed delivered when hand delivered by messenger or overnight courier service, or deposited in the United States Mail, postage prepaid, registered or certified mail, return receipt requested, to the respective addresses of the parties as follows:

If to Grantor: Columbia Ogden Medical Center, Inc.  
5475 South 500 East  
Ogden, Utah 84405-6976  
Attn: CEO

With copies to: HCA Inc.  
 One Park Plaza  
 Nashville, Tennessee 37203  
 Attention: Mr. Steve Denney, Real Estate Dept.  
 Facsimile No.: (615) 344-2137

Waller Lansden Dortch & Davis, PLLC  
 511 Union Street, Suite 2700  
 Nashville, Tennessee 37219  
 Attention: Carla F. Fenswick, Esq.  
 Facsimile No.: (615) 244-6804

If to Grantee: CNL Retirement CRS2 Ogden UT, LP  
 c/o The Cirrus Group, LLC  
 9301 N. Central Expressway, Suite 300  
 Dallas, Texas 75231

With copy to: CNL Retirement, Inc.  
 420 South Orange Avenue  
 Orlando, Florida 32801  
 Attn: Property Management

or to such other address as any party may designate by notice complying with the terms hereof. Each such notice shall be deemed delivered (a) on the date delivered if by personal or overnight

delivery, and (b) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed.

**5.7 Mortgaging of Easement Rights.**

Grantee shall be entitled to mortgage, in connection with the financing and refinancing of its leasehold interest in the Ground Lease Property and any improvements thereon, all of its rights, easements and benefits granted under this Agreement. Any Mortgagee, subsequent purchaser or tenant of the Ground Lease Property shall have no greater rights or privileges with respect to parking, access, utilities and the easements granted herein than as expressly provided for in this Agreement, in favor of the Owner of the Ground Lease Property.

**5.8 Term of Easements.**

Unless otherwise provided in this Agreement, all easements and other rights created under this Agreement are irrevocable and non-exclusive, shall exist by virtue of this Agreement without the necessity of confirmation by any other document, and shall continue in effect during the term of that certain Ground Lease of even date herewith by and between Grantor and Grantee, as the same may be extended from time to time, and the term of any new lease entered into between Grantor, its successors or assigns, and a Recognized Mortgagee (as defined in Section 18.2(d) of the Ground Lease). Further, the release of any easement, in whole or in part, shall be effective on the execution, acknowledgment and recordation, by the Owner(s) and Mortgagee(s) of the Ground Lease Property or the Easement Property as the case may be, of a document memorializing such release. The consent of any tenant or Permittee shall not be required to amend or terminate this Agreement or any easements, rights or benefits created hereunder, provided that the foregoing shall not apply to Grantee as a tenant of the Ground Lease Property.

**5.9 Effective Date.**

The effective date of this Agreement shall be the date first written above.

**5.10 Time of Essence.**

Time is of the essence of each covenant and obligation of each party to this Agreement.

**5.11 Written Modifications.**

The provisions of this Agreement may be waived or amended, as to any particular transaction or otherwise, only by an instrument in writing executed by or on behalf of all parties to this Agreement.

**5.12 Titles.**

The titles of the Articles and Sections herein have been inserted as a matter of convenience or for reference only, and shall not control or affect the meaning or construction of any of the terms or provisions hereof.

**5.13 Complete Agreement.**

This Agreement contains the entire understanding between the parties and supersedes any prior understandings and agreements between them regarding the within subject matter. There are no representations, agreements, arrangements or understandings, oral or written, between or among the parties hereto relating to the subject matter of this Agreement that are not fully expressed herein.

**5.14 Interpretation.**

The terms of this Agreement have been negotiated by the parties, and this Agreement shall not be construed or interpreted more strictly against one party than another on the grounds that the Agreement or any draft thereof was prepared by a party or its counsel.

**5.15 Further Documentation.**

Each party to this Agreement agrees to execute any further documentation necessary to effectuate the terms of this Agreement.

**5.16 Other Documents.** The terms contained in this Agreement and the easements and other rights and obligations granted and created hereunder shall be in addition to all other easements, rights and obligations that may exist by virtue of any other documents previously recorded in the official records of Weber County, Utah.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

**WITNESSES:**

Stephen Penney  
Name: STEPHEN PENNEY

Gavin Maloy  
Name: GAVIN MALOY

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

**GRANTOR:**

**COLUMBIA OGDEN MEDICAL CENTER, INC.**, a Utah corporation, d/b/a Ogden Regional Medical Center

By: Howard K. Patterson

Name: Howard K. Patterson

Title: Vice President

**GRANTEE:**

**CNL RETIREMENT CRS2 OGDEN UT, LP**, a Delaware limited partnership

By: **CNL RETIREMENT CRS2 OGDEN UT GP, LLC**, a Delaware limited liability company, as General Partner

By: \_\_\_\_\_

Name: \_\_\_\_\_

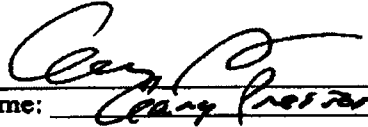
Title: \_\_\_\_\_

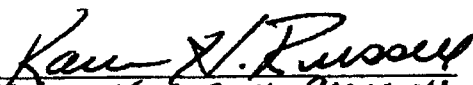
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

**WITNESSES:**

Name: \_\_\_\_\_

Name: \_\_\_\_\_

  
Name: Cary Prosser

  
Name: KAREN H. RUSSELL

**GRANTOR:**

**COLUMBIA OGDEN MEDICAL CENTER, INC.,** a Utah corporation, d/b/a Ogden Regional Medical Center

By: \_\_\_\_\_

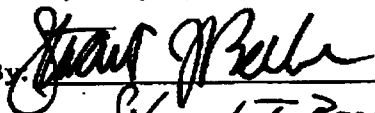
Name: \_\_\_\_\_

Title: \_\_\_\_\_

**GRANTEE:**

**CNL RETIREMENT CRS2 OGDEN UT, LP,** a Delaware limited partnership

By: CNL RETIREMENT CRS2 OGDEN UT GP, LLC, a Delaware limited liability company, as General Partner

By: 

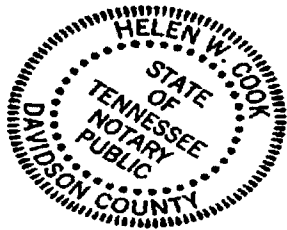
Name: Stuart J. Baebz

Title: EVP

STATE OF Tennessee  
COUNTY OF Davidson

BEFORE ME, the undersigned authority, on this day personally appeared Howard K. Patterson, as Vice President of COLUMBIA OGDEN MEDICAL CENTER, INC., a Utah corporation, d/b/a Ogden Regional Medical Center, on behalf of the corporation. The above individual [] is personally known to me or [] produced the following identification \_\_\_\_\_, which is current or has been issued within the past five years and bears a serial or other identifying number, and who did not take an oath.

GIVEN under my hand and seal of office this 19<sup>th</sup> day of May, 2006.



Helen W. Cook  
Printed Name: Helen W. Cook  
Notary Public in and for the State of Tennessee  
My Commission Expires: March 20, 2010

STATE OF Florida  
COUNTY OF Orange

BEFORE ME, the undersigned authority, on this day personally appeared Stuart J. Beebe, as EVP of CNL Retirement CRS2 Ogden UT GP, LLC, a Delaware limited liability company, as General Partner of CNL RETIREMENT CRS2 OGDEN UT, LP, a Delaware limited partnership, on behalf of the limited partnership. The above individual [] is personally known to me or [] produced the following identification \_\_\_\_\_, which is current or has been issued within the past five years and bears a serial or other identifying number, and who did not take an oath.

GIVEN under my hand and seal of office this 18<sup>th</sup> day of May, 2006.



Christy Albury  
Printed Name: Christy Albury  
Notary Public in and for the State of Florida  
My Commission Expires: 2-1-07



**EXHIBIT "A"**

**Legal Description of Hospital Land**

HANSEN AND ASSOCIATES, INC.  
MAY 17, 2006  
06-3-42

ST. BENEDICTS HOSPITAL OVERALL DESCRIPTION

07-053-0054, 0028, 0018, 0027, 0059  
07-053-0036, 0037, 0038

A PART OF THE SOUTHEAST QUARTER OF SECTION 17, TOWNSHIP 5 NORTH, RANGE 1 WEST OF THE SALT LAKE BASE AND MERIDIAN.

BEGINNING AT A POINT ON THE WEST RIGHT-OF-WAY LINE OF ADAMS AVENUE LOCATED 230.00 FEET NORTH 00°26'00" EAST ALONG THE EAST LINE OF SAID SOUTHEAST QUARTER AND NORTH 89°34'00" WEST 66.00 FEET FROM THE SOUTHEAST CORNER OF SAID SOUTHEAST QUARTER; RUNNING THENCE NORTH 89°45'56" WEST 326.70 FEET; THENCE SOUTH 00°26'00" WEST 230.63 FEET (230.00 FEET RECORD) TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER; THENCE NORTH 89°48'32" WEST 1010.28 FEET (1008.50 FEET RECORD) TO THE SOUTHEAST CORNER OF GRAND HEIGHTS SUBDIVISION NO. 5; THENCE ALONG THE EAST BOUNDARY LINE OF GRAND HEIGHTS SUBDIVISION NO. 5, NO. 4, NO. 3 AND THEN NO. 2 THE FOLLOWING TWO (2) COURSES; (1) NORTH 00°26'00" EAST 1410.81 FEET (1415.49 FEET RECORD); (2) TO THE LEFT ALONG THE ARC OF A 156.35 FOOT RADIUS CURVE, A DISTANCE OF 81.89 FEET, CHORD BEARS NORTH 14°34'17" WEST 80.96 FEET TO THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF 5500 SOUTH STREET; THENCE NORTH 60°25'30" EAST 66.00 FEET ALONG SAID RIGHT-OF-WAY LINE; THENCE SOUTH 29°34'30" EAST 100.00 FEET; THENCE NORTH 60°25'30" EAST 254.95 FEET; THENCE NORTH 00°26'00" EAST 154.83 FEET TO A POINT SOUTH 45°00'00" EAST 7.00 FEET FROM SAID SOUTHEASTERLY RIGHT-OF-WAY LINE OF 5500 SOUTH STREET; THENCE NORTH 45°00'00" EAST 164.31 FEET PARALLEL TO SAID RIGHT-OF-WAY LINE TO THE SOUTHERLY RIGHT-OF-WAY LINE OF 5350 SOUTH STREET; THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE THE FOLLOWING THREE (3) COURSES; (1) SOUTH 45°00'00" EAST 100.00 FEET; (2) TO THE LEFT ALONG THE ARC OF A 582.06 FOOT RADIUS CURVE, A DISTANCE OF 452.75 FEET, CHORD BEARS SOUTH 67°17'00" EAST 441.42 FEET; (3) SOUTH 89°34'00" EAST 435.00 FEET TO THE WEST RIGHT-OF-WAY LINE OF ADAMS AVENUE; THENCE SOUTH 00°26'00" WEST 280.97 FEET; THENCE SOUTH 72°24'35" WEST 275.26 FEET; THENCE NORTH 17°35'25" WEST 25.00 FEET; THENCE SOUTH 72°24'35" WEST 17.50 FEET; THENCE NORTH 17°35'25" WEST 23.39 FEET TO A POINT DESCRIBED OF RECORD AS BEING LOCATED 1265.67 FEET NORTH 00°26'00" EAST AND 354.61 FEET NORTH 89°00" WEST FROM THE SOUTHEAST CORNER OF SAID SOUTHEAST QUARTER; THENCE NORTH 72°24'35" EAST 5.00 FEET; THENCE NORTH 17°35'25" WEST 100.75 FEET; THENCE SOUTH 72°24'35" WEST 103.50 FEET MORE OR LESS TO A POINT NORTH 17°35'25" WEST FROM THE NORTHEAST CORNER OF THE EXISTING RADIATION THERAPY BUILDING; THENCE SOUTH 17°35'25" EAST 117.57 FEET TO THE EAST OUTSIDE WALL OF THE MAIN HOSPITAL BUILDING OF ST. BENEDICTS HOSPITAL WHICH POINT IS DESCRIBED OF RECORD AS BEING LOCATED 1217.65 FEET NORTH 00°26'00" EAST AND 447.85 FEET NORTH 89°34'00" WEST FROM THE SOUTHEAST CORNER OF SAID SOUTHEAST QUARTER; THENCE NORTH 27°24'35" EAST 23.80 FEET; THENCE NORTH 72°24'35" EAST 61.67 FEET (66.67 FEET RECORD); THENCE SOUTH 17°35'25" EAST 27.53 FEET; THENCE SOUTH 62°35'25" EAST 28.28 FEET; THENCE SOUTH 17°35'25" EAST 73.92 FEET; THENCE NORTH 72°24'35" EAST 268.99 FEET TO SAID WEST RIGHT-OF-WAY LINE AND A POINT DESCRIBED OF RECORD AS BEING LOCATED 1231.87 FEET NORTH 00°26'00" EAST AND 66.00 FEET NORTH 89°34'00" WEST FROM THE SOUTHEAST CORNER OF SAID SOUTHEAST QUARTER; THENCE SOUTH 1003.52 (1001.87 FEET RECORD) ALONG SAID RIGHT-OF-WAY LINE TO THE POINT OF BEGINNING. CONTAINING 47.07 ACRES.

LESS AND EXCEPTING:

THE GROUND LEASE ENTERED INTO ON THE 18TH DAY OF DECEMBER, 2000, BY AND BETWEEN COLUMBIA OGDEN MEDICAL CENTER, INC., A UTAH CORPORATION (THE LESSOR) AND DAVID C. TRIMBLE (THE LESSEE).

LESS AND EXCEPTING:

THE GROUND LEASE ENTERED INTO ON THE 30TH DAY OF AUGUST, 1989, BY AND BETWEEN ST. BENEDICT'S HOSPITAL, A UTAH NONPROFIT CORPORATION, (THE LESSOR) AND BOYER OGDEN MEDICAL ASSOCIATES, A UTAH LIMITED PARTNERSHIP, C/O THE BOYER COMPANY, (THE LESSEE).

LESS AND EXCEPTING:

THE GROUND LEASE ENTERED INTO ON THE 6TH DAY OF JULY, 1977, BY AND BETWEEN ST. BENEDICT'S HOSPITAL, A UTAH NONPROFIT CORPORATION, (THE LESSOR) AND GFI LIMITED AND LEON AND KAREN F. PETERSON, (THE LESSEE).

LESS AND EXCEPTING:

THE GROUND LEASE ENTERED INTO ON THE 28TH DAY OF SEPTEMBER, 1984, BY AND BETWEEN WOODBURY CORPORATION, A UTAH CORPORATION, (LANDLORD) AND ST. BENEDICT'S MANAGEMENT CO., A UTAH CORPORATION, (TENANT).

LESS AND EXCEPTING:

THE GROUND LEASE ENTERED INTO ON THE 25TH DAY OF JANUARY, 1977, BY AND BETWEEN ST. BENEDICT'S HOSPITAL, A UTAH NONPROFIT CORPORATION, (THE LESSOR) AND MOUNT OGDEN CONVALESCENT CENTER, INC., OF SALT LAKE CITY (LESSEE).

**EXHIBIT "B"****Legal Description of Ground Lease Property**

PT 07-053-0028 ✓

Commencing at a point that is North 00°26'00" East along Section Line (Basis of Bearing) 1,282.77 feet and West 588.96 feet from the Southeast corner of Section 17, Township 5 North, Range 1 West, S.L.B.&M. said point also being the P.O.B. of Parcel "2" Book 1395 Page 512; thence the following courses:

North 17°34'00" West, a distance of 30.00 feet; thence South 72°26'00" West, a distance of 100.00 feet; thence South 17°34'00" East, a distance of 30.00 feet; thence South 72°26'00" West, a distance of 330.00 feet; thence North 33°01'30" West, a distance of 109.01 feet; thence North 00°26'00" East, a distance of 23.06 feet; thence North 72°26'00" East, a distance of 305.00 feet to the Southwest corner of Parcel "1" Book 1395 Page 512; thence North 00°26'00" East, a distance of 145.10 feet; thence North 72°26'00" East, a distance of 89.93 feet; thence North 16°06'00" East, a distance of 89.71 feet to the point of curve of a non tangent curve to the left, of which the radius point lies North 16°06'02" East, a radial distance of 582.06 feet; thence easterly along the arc, through a central angle of 15°40'03", a distance of 159.16 feet; thence South 89°34'00" East, a distance of 94.24 feet to the P.O.B. of said Parcel "1"; thence South 17°34'00" East, a distance of 185.99 feet to the outside wall of Medical Arts Building; thence South 72°18'05" West, along said outside wall a distance of 25.21 feet to the Northwest corner of said building; thence South 17°41'55" East, along said outside wall of building a distance of 39.02 feet; thence South 72°24'35" West, a distance of 215.96 feet to the easterly outside wall of a covered corridor connecting Saint Benedict's Professional Building & Ogden Regional Hospital; thence South 17°35'25" East, along said corridor a distance of 4.03 feet to the northerly outside wall of Ogden Regional Hospital; thence South 72°18'05" West, along said outside wall a distance of 9.99 feet to the Northeast corner of said Hospital; thence South 17°41'55" East, along the outside wall of said Hospital a distance of 12.19 feet; thence South 72°26'00" West, a distance of 18.96 feet to the Point of Beginning.

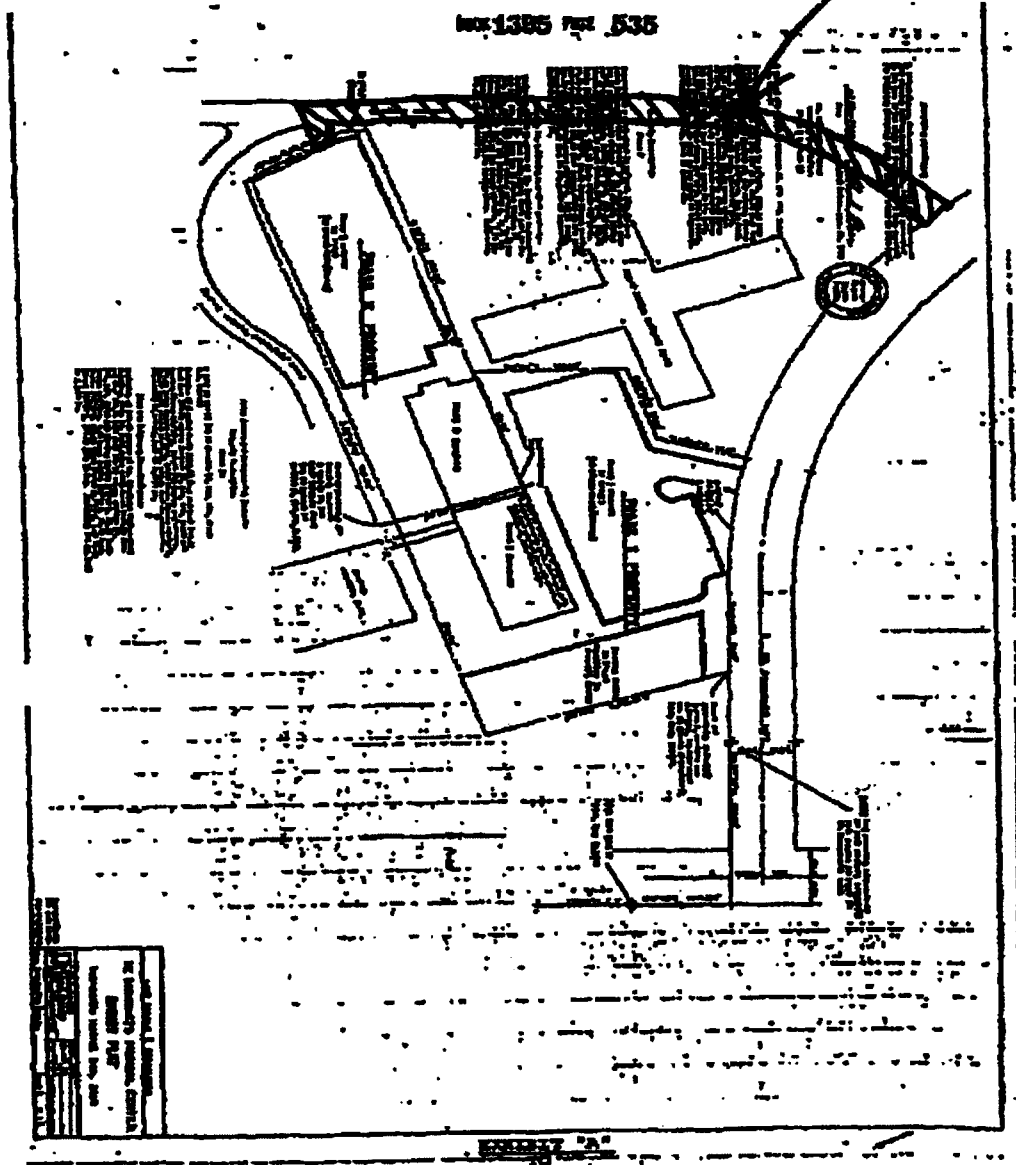
Containing 143.591 square feet or 3.29 acres, more or less.

Parcels ~~30-300-6810~~  
~~30-300-6814~~

**EXHIBIT "C"**

**Depiction of Western Roadway**

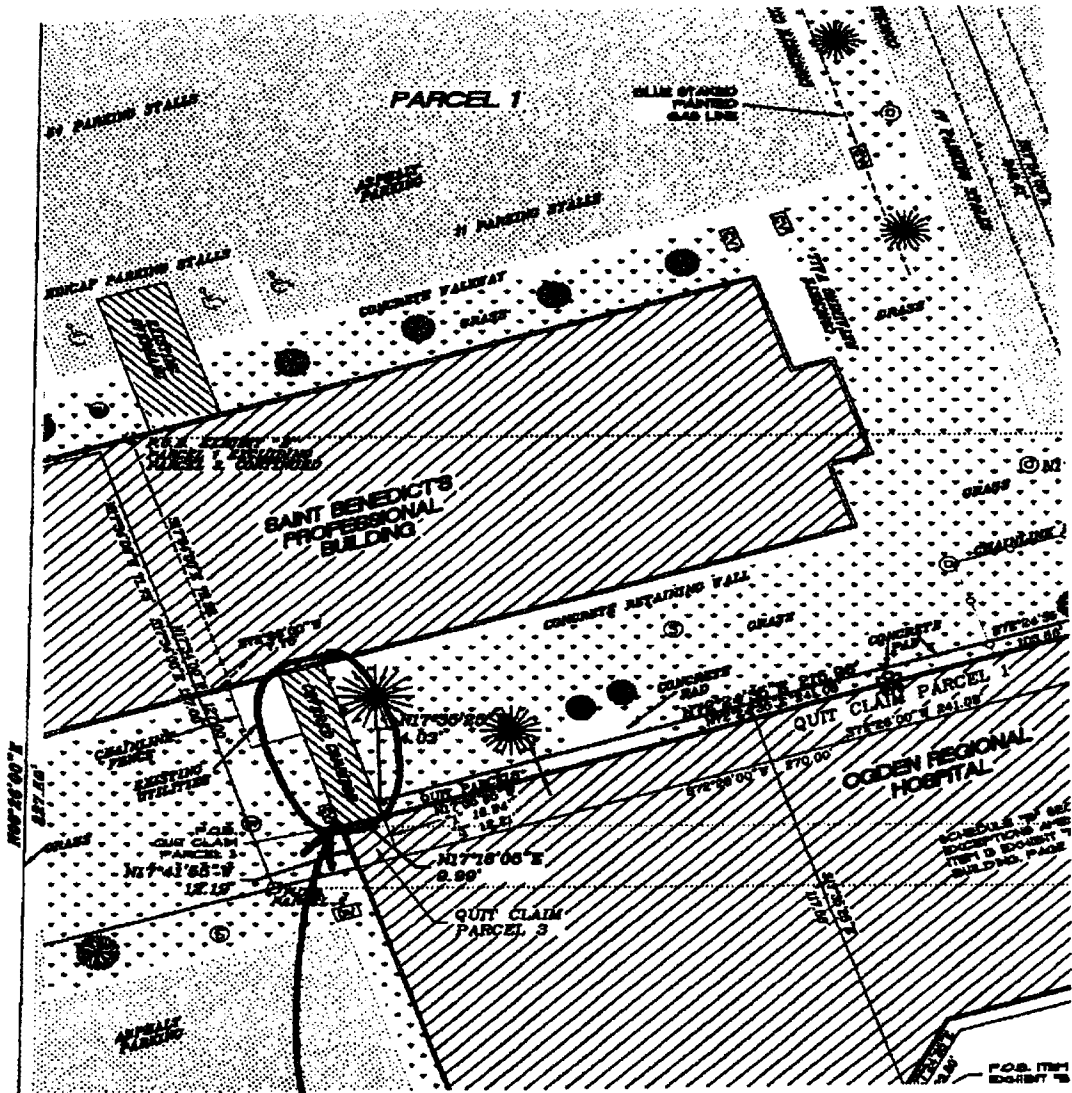
*Western Roadway*



**EXHIBIT "A"**  
**DECLARATION OF RESTRICTIONS, EASEMENTS**  
**AND COMMON AREA MAINTENANCE**

**EXHIBIT "D"**

Depiction of Walkway



*Walkway*