



OFFICE OF THE CITY ATTORNEY

Scott E. Post
City Attorney

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August 16, 2010

Common Council
City of West Allis

RE: West Allis Senior Living LLC
d/b/a West Park Place
Parking Space Lease Agreement

Dear Mayor and Alderpersons:

By Lease Agreement dated December 21st, 2006, the City and West Allis Senior Living LLC (Lessee) entered into a Lease Agreement for use of City-owned parking by West Allis Senior Living. At the August 2nd, 2010, Common Council meeting, the City agreed to assign the Lease to BRE/SW West Park Place LLC. The terms of the Lease provide that the Lessee pays to the City the sum of \$598.50 per month and that the term of the Lease runs from December 15th, 2005, until December 15th, 2010. Thereafter, pursuant to Section K of the Lease Agreement, the parties may, by mutual consent, agree to four (4) successive renewals of their Lease. The Lessor (City) is entitled to amend the amount of the rent provided that written notice of renewal is given by the Lessee to the Lessor not later than sixty (60) days prior to the end of the term of the Lease, or provided that notice of non-renewal is given by the Lessor to the Lessee not later than sixty (60) days prior to the end of the term of the Lease. Therefore, if the City wishes to terminate this Lease or wishes to increase the amount of rent, we must give notice to the Lessee on or before October 15th, 2010.

Therefore, the Common Council should take up this matter and provide me with guidance on what course of action the Common Council wishes to pursue at one of the council meetings in September or at the first council meeting in October.

Sincerely,

A handwritten signature in blue ink that reads "Scott E. Post".

Scott E. Post
City Attorney

SEP:da

H/Scott/Corr/Itr-CC&Mayor-West Park Place Lease

**ASSIGNMENT AND ASSUMPTION
OF PARKING SPACE LEASE AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION OF PARKING SPACE LEASE AGREEMENT (this "Assignment"), dated for reference purposes July 31, 2010 and to be effective as of the Effective Date (as defined hereinafter), is by and between STAYTON SW ASSISTED LIVING, L.L.C., an Oregon limited liability company ("Assignor"), and BRE/SW WEST PARK PLACE LLC, a Delaware limited liability company ("Assignee").

BACKGROUND

A. Assignor constitutes the Sunwest unified entity as determined by: (i) Order entered on October 2, 2009 in U.S. District Court Case No. 09 cv 6056-HO (United States District Court for the District of Oregon) entitled *Security and Exchange Commission v. Sunwest Management, Inc., et. al*; and/or (ii) Order entered on December 22, 2009 in U.S. District Court Case No. 09 cv 6082-HO (United States District Court for the District of Oregon) entitled *In re Stayton SW Assisted Living, LLC (the Consolidated Sunwest Related Entities)*, and as such is the successor to West Allis Senior Living, LLC, an Oregon limited liability company ("Original Lessee").

B. Assignor, as successor to Original Lessee, is the holder of the lessee's interest pursuant to that certain Lease Agreement dated December 21, 2006 (the "Parking Space Lease"), between Original Lessee, as lessee, and the City of West Allis, a Wisconsin municipal corporation, as lessor (the "City"), for certain 38 parking spaces in Rows 1 and 2 of the parking lot located on the west side of South 74th Street and north of the east/west alley of Greenfield Avenue, in the City of West Allis, Milwaukee County, Wisconsin, as are more particularly described in the Parking Space Lease. A true and correct copy of the Parking Space Lease is attached hereto as Exhibit A.

C. This Assignment is executed and delivered pursuant to an Agreement of Purchase, Sale and Contribution dated January 15, 2010 between Assignor and BRE/SW Portfolio, LLC, a Delaware limited liability company, an affiliate of Assignee (as amended from time to time, the "Purchase and Sale Agreement").

D. Assignor desires to assign to Assignee all of Assignor's right, title and interest in, and to delegate to Assignee all of Assignor's duties and obligations under, the Parking Space Lease. Assignee desires to acquire from Assignor and accept all of Assignor's right, title and interest in, and to assume all of Assignor's duties and obligations under, the Parking Space Lease, in each case, pursuant to the terms and conditions of this Assignment.

AGREEMENT

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignment and Delegation. Assignor hereby assigns, transfers and conveys to Assignee all of Assignor's right, title and interest as lessee in and to, and delegates to Assignee all of Assignor's duties and obligations under, the Parking Space Lease, in each case, arising from and after the ^{Effective Date} ~~date hereof~~. This Assignment shall be effective the same date as the deed to be given by Assignor to Assignee for Assignor's West Park Place property in West Allis, Wisconsin pursuant to the Purchase and Sale Agreement (the "Effective Date"), subject to obtaining the City's consent.

2. Acceptance and Assumption. Assignee hereby accepts the assignment and delegation of Assignor's interest as lessee under the Parking Space Lease and assumes all of the obligations, duties and liabilities of Assignor that arise, accrue or are incurred under the Parking Space Lease after the Effective Date, subject to obtaining the City's consent.

3. Successors and Assigns. This Assignment shall be binding upon, and inure to the benefit of, the respective successors and assigns of Assignor and Assignee.

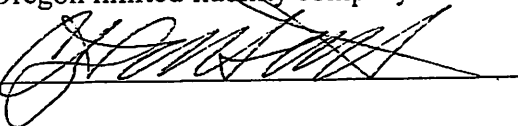
4. Counterparts. This Assignment may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall be one and the same instrument.

5. Conflicts. In the event of any conflict between this Assignment and the Purchase and Sale Agreement, the Purchase and Sale Agreement shall control and govern.

IN WITNESS WHEREOF, the parties have executed this Assignment and Assumption of Parking Space Lease Agreement effective as of the Effective Date.

ASSIGNOR:

STAYTON SW ASSISTED LIVING, L.L.C.,
an Oregon limited liability company

By: 

Its: _____

ASSIGNEE:

BRE/SW WEST PARK PLACE LLC., a
Delaware limited liability company

By: _____

Its: _____

CONSENT TO ASSIGNMENT AND ASSUMPTION

The CITY OF WEST ALLIS, a Wisconsin municipal corporation ("City"), in reliance on the attached Assignment and Assumption of Parking Space Lease Agreement, hereby consents to the assignment by STAYTON SW ASSISTED LIVING, L.L.C., an Oregon limited liability company ("Assignor"), and the assumption by SW/BRE WEST PARK PLACE LLC., a Delaware limited liability company ("Assignee"), set forth above and agrees that this Consent satisfies the requirements of the Parking Space Lease (as defined in the attached Assignment and Assumption of Parking Space Lease Agreement) pertaining to obtaining consent to the foregoing assignment and assumption; provided that nothing in this Consent shall be deemed to require City to consent to any other assignment, subletting, or transfer of any kind, and provided further that Assignor shall remain jointly and severally liable along with Assignee for the performance of all of the obligations and liabilities of the lessee under the Parking Space Lease.

Dated: 8/6/10, 2010.

CITY OF WEST ALLIS,
a Wisconsin municipal corporation

By: *John Devin*
Its: MAYOR

EXHIBIT A

LEASE AGREEMENT

This Lease Agreement is made and entered into on Dec. 21st, 2006 by and between the City of West Allis, a municipal corporation, with principal offices at 7525 West Greenfield Avenue, West Allis, Wisconsin (hereinafter called "Lessor") and West Allis Senior Living, LLC, P.O. Box 3006, Salem, OR 97302 (hereinafter called "Lessee").

WHEREAS, the Lessor is the owner of a parking lot consisting of approximately ninety (90) automobile parking stalls on the west side of South 74th Street and north of the east/west alley of Greenfield Avenue in the City of West Allis; and,

WHEREAS, the Lessor and Lessee have entered into this Lease Agreement for the rental of the aforesaid parking lot for the use in connection with Lessee's operation of an apartment-hotel at 7400 West Greenfield Avenue, West Allis; and,

WHEREAS, the current occupancy and use of said apartment-hotel requires thirty-five (35) parking spaces pursuant to Sec. 12.19(8) of the City of West Allis Revised Municipal Code, part of the Zoning Code of the City of West Allis; and,

WHEREAS, a building or use may be given credit for private off-street parking spaces owned by or under the control of a building owner, when such spaces are located within two hundred (200) feet of the proposed building or use, pursuant to Sec. 12.19(8) of the City of West Allis Revised Municipal Code; and,

WHEREAS, the Lessee has requested to lease thirty-eight (38) parking spaces in the aforesaid parking lot to comply with the minimum parking requirements under the zoning code of the City of West Allis for its apartment-hotel operation; and,

WHEREAS, the aforesaid parking lot is not necessary for City purposes at this time and the City is willing to enter into this agreement upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual representations, warranties, assurances, covenants and agreements hereinafter set forth, the parties agree as follows:

A. **Premises.** The premises covered by this lease agreement is the thirty-eight (38) designated parking spaces, as shown on the attached Exhibit "A", located on the West side of South 74th Street and North of the East/West alley North of West Greenfield Avenue and is located on part of the following described property:

Block 9, Otjen, Pullen and Shenners Subdivision of a part of the Southwest 1/4 of Section 34, Township 7 North, Range 21 East, in the City of West Allis, Milwaukee County, Wisconsin.

B. **Term.** The term of this lease shall be from December 15, 2005, until December 15, 2010.

C. **Rent.** The monthly rental for the premises shall be Five Hundred Ninety Eight and 50/100 Dollars (\$598.50), which represents a charge of Fifteen and 75/100 Dollars (\$15.75) per month for each of thirty-eight (38) designated parking spaces.

There shall be added to the monthly base rent all sales tax required by law.

D. **Use of Premises.** The premises shall be used by Lessee solely for the purpose of on-grade parking of passenger cars or trucks not exceeding six thousand (6,000) pounds in gross weight in connection with its operation of the aforesaid apartment-hotel, and for no other purpose.

E. **Maintenance and Repairs.** The Lessee shall be responsible for the maintenance of the parking lot, to include seal coating, patching and striping together with snow, ice and trash removal.

F. **Insurance.** The Lessor shall at all times maintain and keep in force such public liability insurance as will protect Lessor and Lessee from any claims for damages for

personal injury, including death, as well as from claims for damages to any property, which may arise out of the maintenance, use or occupation of the premises by the Lessee pursuant to this lease. The amount of liability insurance shall under no circumstances be less than Five Hundred Thousand and NO/100 Dollars (\$500,000.00) for injuries sustained by any one person and One Million and NO/100 Dollars (\$1,000,000.00) for injuries sustained by two or more persons in any one accident. The amount of property damage insurance shall not be less than Fifty Thousand and NO/100 Dollars (\$50,000.00). A certificate of such insurance shall be filed with the Lessor, containing a fifteen (15) day notice of cancellation. The Certificate of Insurance shall be filed within ten (10) days of the execution of this lease agreement by the parties.

G. Liability. The Lessor assumes no liability to the Lessee, its employees, tenants, guests, invitees, or to any other person other than to furnish space for parking vehicles.

I. Assignment. The Lessee shall not assign or sublease any part or all of the leased premises without the Lessor's prior written consent.

J. Right to Terminate Lease. If Lessee fails to pay the rent or any late charges which may be assessed as herein provided; or, if this lease is assigned without the written approval of the Lessor; or, if the Lessee is adjudged bankrupt; or, if a general assignment of assets is made for the benefit of its creditors; or, if a receiver is appointed for the Lessee or any of its property; or, if the Lessee is violating any of the material conditions of this lease; then in the event any of the foregoing occur, the Lessor may serve written notice upon the Lessee of the Lessor's intention to terminate this lease, unless within thirty (30) days after the serving of such notice, satisfactory arrangement is made for continuance, the Lessee shall be deemed in default and the lease shall automatically be terminated and Lessee shall be obligated to surrender the premises to the Lessor immediately.

It is agreed that in the event Lessee shall be adjudged bankrupt, a receiver appointed or a general assignment for the benefit of creditors is made or it is proved to be insolvent or fails in business, that this lease shall not be an asset of Lessee.

Lessee acknowledges that its occupancy and use of the building at 7400 West Greenfield Avenue, West Allis, is contingent upon maintaining the required off-street parking spaces for such occupancy and use, pursuant to Sec. 12.12 of the Revised Municipal Code of the City of West Allis, and that upon termination of the lease agreement as herein provided, the Lessee acknowledges that its occupancy and use of the said building will be unlawful under the zoning ordinances of the City of West Allis, and, therefore, hereby agrees to cease and desist from such occupancy and use, unless the parking requirements of said building are otherwise lawfully met or the occupancy and use is changed to conform to the parking regulations then in effect.

K. Option of Lessee to Extend. The parties may, by mutual consent, agree to four (4) successive renewals of this lease, each such renewal to be for a term of five (5) years and to be subject to the terms and conditions of this lease, except that the Lessor shall be entitled to amend the amount of rent set forth in Section C, provided that written notice of renewal is given by the Lessee to the Lessor not later than sixty (60) days prior to the end of the term of this lease or any succeeding term, or provided that notice of non-renewal is given by the Lessor to the Lessee not later than sixty (60) days prior to the end of the term of this lease or any succeeding lease.

L. Surrender of Leased Premises. Upon termination of this lease, either by lapse of time or otherwise, the Lessee shall surrender to the Lessor the leased premises. The Lessee, at its own expense, shall restore the leased premises to the condition it was in prior to entering into this Lease Agreement, reasonable wear and tear excepted. In the event the

Lessee fails to do so, the Lessor may remove any such improvements and charge the cost thereof to the Lessee.

M. Expenses. Lessee agrees to reimburse the Lessor for any expense incurred by the Lessor in protecting or enforcing its rights under this agreement, including, without limitation, reasonable attorneys fees and legal expenses.

N. Memorandum of Lease. The parties hereto will, at any time upon the request of either one, promptly execute a memorandum or short form of this lease, in recordable form, containing such of the terms and provisions of this lease as such party may desire to place of record.

O. Default. If the Lessee defaults in the payment of the annual rental payable hereunder, and such default shall continue for five (5) days after written notice thereof shall have been given to the Lessee, or if the Lessee defaults in the performance or observance of any other covenant or condition herein, and such default shall continue for five (5) days after written notice thereof is given to the Lessee, then, in either of the above-described events, the Lessor may elect, without further notice, to terminate this lease and declare the term ended, to re-enter the leased premises or any part thereof, to expel and remove the Lessee or any other person occupying the same and to regain and enjoy the leased premises. The foregoing rights shall be without prejudice to any other remedies, which the Lessor may have at law or in equity.

P. Notice. Any notice required or permitted under this lease shall be deemed sufficiently given or served if sent by registered or certified mail as follows:

If to the Lessee: West Allis Senior Living, LLC
 P.O. Box 3006
 Salem, OR 97302

If to the Lessor: City of West Allis
7525 West Greenfield Avenue
West Allis, WI 53214
Attn: Michael Pertmer
Director of Public Works

Notice given in accordance with the provisions of this paragraph shall be considered to be received when mailed.

Q. Amendments. This agreement contains the entire understanding of the parties with respect to the subject matter hereof, and no agreement or understanding, verbal or written, not contained herein, will be recognized by either party. This agreement may be amended or supplemented only by written instrument signed by each party.

R. Successors and Assigns. The terms, covenants and conditions of this lease shall be binding upon and inure to the benefit of the Lessor and the Lessee and their respective heirs, successors and assigns.

S. Waiver. The parties shall not be deemed to have waived any part, provision, language, covenant, condition or requirement of this agreement unless such waiver is in writing. Where any waiver is made, either partially or otherwise, of any provision, language, covenant, condition or requirement, it shall be strictly construed and deemed to be a waiver of no more than that which is clearly expressed in writing

T. Verbal Statements Not Binding. This agreement states the entire understanding and agreement of the parties hereto. It is understood and agreed that the written terms and provisions of this agreement shall supersede all verbal statements of any representatives of the parties. Verbal statements shall not be effective or be construed as being a part of this agreement. Amendment of this agreement shall not be made unless in writing and signed by the duly authorized representatives of the parties hereto.

U. Governing Law. This agreement shall be governed by, construed and enforced under and in accordance with the laws of the State of Wisconsin.

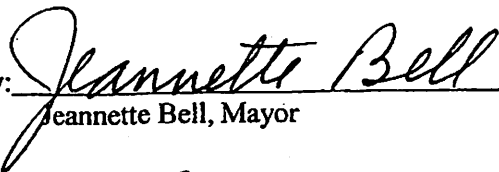
IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed as of the date, month and year first above written.

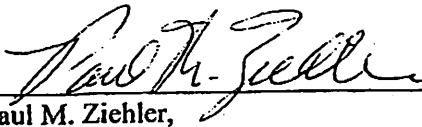
LESSEE:
WEST ALLIS SENIOR LIVING, LLC

By: 
Brian Schaffner, Property Controller

By: _____

LESSOR:
CITY OF WEST ALLIS

By: 
Jeannette Bell, Mayor

By: 
Paul M. Ziehler,
City Administrative Officer
Clerk/Treasurer

Approved as to form this
12 day of Dec, 2006.

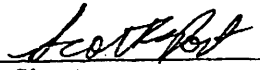

City Attorney

EXHIBIT "A"

South 75th Street



LOT - 74 NW

NORTH 27 OF LOT 27 & ALL OF LOTS
28, 29, 30, 31, 32, 33 & 34 IN BLK 9
OF OTJEN PULLEN AND SHERNER'S SUBD.

South 74th Street

LOT - 75 NE

LOTS 15 & 16 IN BLK 9 OF OTJEN
PULLEN AND SHERNER'S SUBD.

ROWS 1 & 2

2 HOUR PARKING
8 AM TO 6 PM
MON THRU FRI
NO PARKING
11 PM TO 6 AM

DAY PERMITS AVAILABLE (ROW 2 ONLY)

ROWS 1 & 2

LEASED TO WEST PARK PLACE INC.

ROWS 3 & 4

LEASED TO UNITED STATES POSTAL SERVICE

West Greenfield Avenue

MUNICIPAL PARKING LOTS

74 NW & 75 NE

REVISED AUGUST 19, 1997
CITY OF WEST ALLIS ENGINEERING DEPT.