



State of Utah

DEPARTMENT OF COMMERCE
DIVISION OF SECURITIES

Protecting Investors; Promoting Commerce

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July 16, 1998

Ms. Victoria C. Phelps
Latham & Watkins
633 West Fifth Street Suite 4000
Los Angeles CA 90071-2007

Re: LTC Healthcare, Inc.
File #006-6609-05/B00073827
Request for No-Action/Interpretive Opinion

Dear Ms. Phelps:

This letter is in response to your request for a no-action/interpretive opinion from the Utah Division of Securities ("Division"). You asked the Division to opine whether the dividend distribution of all of the outstanding shares of LTC Healthcare, Inc. ("LTC Healthcare"), a 99%-owned subsidiary of LTC Properties, Inc. ("LTC Properties"), held by LTC Properties, to the common stockholders of LTC Properties would not constitute a "sale" under § 61-1-13(22) of the Utah Uniform Securities Act ("Act") or if the Division would take no enforcement action if the dividend distribution of LTC Healthcare is effected without registration of LTC Healthcare's common stock.

For the reasons stated below, it is the opinion of the Division that the dividend distribution would constitute a "sale." Furthermore, the Division declines to take a no-action position on the above described transaction but the Division will grant a conditional discretionary transactional exemption.

The main issue affecting the Division's position is the fact that the Utah legislature already has provided a number of examples of the types of transactions that would constitute a "sale" or "offer to sell" pursuant to § 61-1-13(22) of the Act. Specifically, § 61-1-13(22)(c)(vi) of the Act states that "a dividend of a security of another issuer is an offer or sale." The transaction described above clearly comes within § 61-1-13(22)(c)(vi). LTC Properties is distributing a dividend to its shareholders consisting of a security of another issuer, namely common stock of its 99% owned subsidiary, LTC Healthcare.

Counsel for LTC Properties and LTC Healthcare believes that the dividend distribution will

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not involve an "offer" or "offer to sell" because there will be no disposition by LTC Properties of securities for value and that the LTC Properties shareholders who receive the LTC Healthcare common stock will have no new investment decisions nor will they have to provide any consideration for the LTC Health care common stock that they receive.

The Utah Supreme Court considered a similar argument in *Capital General Corporation v. Utah Department of Business Regulation, Securities Division*, 777 P.2d 494 (Utah Ct. App.), cert. denied, 781 P.2d 878 (Utah 1989). In *Capital General*, the court was asked to decide whether *Capital General's* distribution of 90,000 shares of *Amenity, Inc.*, a subsidiary of *Capital General*, to approximately 900 of *Capital General's* clients, business associates, and other contacts would be considered a "disposition of . . . a security for value" and thus an "offer" or "sale" under § 61-1-13.

Citing to *SEC v. Datronics Engineers, Inc.*, 490 F.2d 250 (4th Cir. 1973), cert. denied, 416 U.S. 937 (1974) and *SEC v. Harwyn Industries Corp.*, 326 F. Supp. 943 (S.D.N.Y. 1971), in which the courts were asked to decide whether the distribution of a subsidiary's shares as a dividend to the parents shareholders would constitute a "sale" under the Federal Securities Act of 1933, the *Capital General* Court found that the economic benefits of the transaction rendered the disposition "for value," even though the benefits came indirectly from the marketplace rather than directly from the transferees. The court further found that such value can include an enhanced ability to borrow, raise capital, and other benefits associated with publicly held companies.

In short, as stated in § 61-1-13(22) (c)(vi) of the Act, a "sale" or "offer to sell" includes "a dividend of a security of another issuer." And therefore, the transaction described above should also be considered an "offer" or "sale" for purposes of the Act.

However, upon review of the Form 10 which was filed with the U.S. Securities and Exchange Commission ("SEC") and based upon the representations in your filing and a finding by the Division of Securities, ("Division"), that registration is not necessary or appropriate for the protection of investors, it is the order of the Division, that the above-referenced securities may be distributed in Utah, as described in your filing, without registration pursuant to §61-1-14(2)(s) of the Act, upon effectiveness of the LTC Healthcare Form 10 Registration Statement with the SEC.

Furthermore, pursuant to §61-1-13(2) of the Act, the definition of "Agent" does not include an individual who represents an issuer, provided that individual receives no commission or other remuneration, directly or indirectly, for effecting or attempting to effect purchases or sales of securities exempted from registration, pursuant to §61-1-14(2)(s) of the Act.

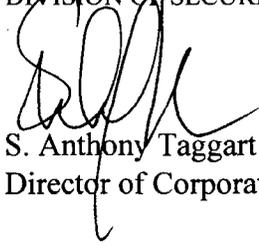
Please note that this opinion relates only to the offering discussed and shall have no value for future similar offerings. It should be further noted that any different facts or conditions of a

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material nature might require a different conclusion.

Very truly yours,

DIVISION OF SECURITIES

A handwritten signature in black ink, appearing to read 'S. Taggart', is written over the typed name and title.

S. Anthony Taggart
Director of Corporate Finance

JRN

LATHAM & WATKINS

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July 2, 1998

VIA FEDERAL EXPRESS

Department of Commerce
Division of Securities
160 East 300 South
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Salt Lake City, Utah 84111

Re: LTC Healthcare, Inc.
Request for No-Action

Ladies and Gentlemen:

As counsel to LTC Properties, Inc., a Maryland corporation ("LTC Properties"), and LTC Healthcare, Inc., a Nevada corporation and a 99%-owned subsidiary of LTC Properties ("LTC Healthcare"), we are submitting this letter in connection with a proposed distribution (the "Distribution") to common stockholders of LTC Properties of all of the outstanding shares of common stock of LTC Healthcare, par value \$.01 per share (the "LTC Healthcare Common Stock") held by LTC Properties. On behalf of LTC Properties, we respectfully request that the Utah Division of Securities (the "Division") confirm that either (a) it concurs with LTC Properties' belief that the Distribution would not constitute a "sale" of the LTC Healthcare Common Stock to the holders of LTC Properties common stock, par value \$.01 per share (the "LTC Properties Common Stock") under Section 61-1-13(22) of the Utah Uniform Securities Act (the "Securities Act"), or (b) it will not take enforcement action if the Distribution is effected without registration of the LTC Healthcare Common Stock under the Securities Act.

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LTC Properties is a self-administered, self-managed real estate investment trust ("REIT") which invests in long-term care facilities through mortgage loans, facility lease transactions and other investments. LTC Properties is limited in its activities by the investment limitations and leverage expectations imposed by the public markets and Federal income tax laws applicable to REITs. The Board of Directors of LTC Properties (the "LTC Board") believes that significant opportunities are available to those investors that are not restricted by the Federal income tax laws governing REITs or influenced by public market perception. Thus, the LTC Board determined that it is in the best interests of LTC Properties and its stockholders to organize LTC Healthcare to pursue such opportunities, to transfer to LTC Healthcare certain equity investments, real properties and related assets and liabilities currently held by LTC Properties, and to spin-off LTC Healthcare to the stockholders of LTC Properties. LTC Healthcare intends to create and realize value by identifying and making opportunistic real estate and health care investments through the direct acquisition, development, financing and operation of real properties and/or participation in these activities through the purchase of debt instruments or equity interests of entities engaged in the health care or real estate businesses. The Distribution will enable investors who own both LTC Properties Common Stock and LTC Healthcare Common Stock to participate in the benefits of the REIT operations of LTC Properties and the non-REIT operations of LTC Healthcare.

The general terms and conditions relating to the Distribution are set forth in the Distribution Agreement (the "Distribution Agreement") that will be executed on or prior to the Distribution between LTC Properties and LTC Healthcare. The Distribution will be made on the basis of one-tenth of one share of LTC Healthcare Common Stock for each share of LTC Properties Common Stock held as of the close of business on the record date. As of June 15, 1998, there were outstanding 26,826,413 shares of LTC Properties Common Stock. Based on such number, approximately 2,682,641 shares of LTC Healthcare Common Stock will be distributed to LTC Properties stockholders in the Distribution. The shares of LTC Healthcare Common Stock will be fully paid and nonassessable.

Upon consummation of the Distribution, LTC Healthcare will become an independent publicly-held corporation. On May 20, 1998, LTC Healthcare filed a registration statement on Form 10 under the Securities Exchange Act of 1934. The Distribution will not occur until the Form 10 has been declared effective and the Information Statement contained therein has been delivered to the stockholders of LTC Properties.

LTC Properties believes that the Distribution will not involve an "offer to sell" or "sale" of a security under Section 61-1-13(22) of the Securities Act because there will be no disposition by LTC Properties of securities for value and no new investment decision by the stockholders of LTC Properties receiving LTC Healthcare Common Stock in the Distribution. Furthermore, the stockholders of LTC Properties will not provide any consideration to LTC Properties for the LTC Healthcare Common Stock they will receive as a dividend in the

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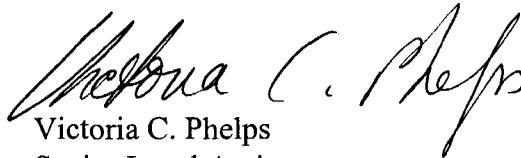
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Distribution. Thus, LTC Properties believes that registration of the Distribution is not required under the Securities Act. We urge the Division to concur in this view. Alternatively, we hereby request that the Division take no enforcement action if the Distribution is effected without registration under the Securities Act.

Enclosed for your review is the Form 10 for LTC Healthcare. Also enclosed is a check in the amount of \$120 in payment of the required filing fee.

Should you require additional information, please do not hesitate to contact Deborah Lee at (213) 891-8436 or the undersigned at (213) 891-8397.

Very truly yours,



Victoria C. Phelps
Senior Legal Assistant