

# UNOFFICIAL COPY

## RIGHT OF FIRST REFUSAL AND CONSENT TO SELL

Document Prepared by  
and Return to:  
H. James Slinkman  
Assistant General Counsel  
Advocate Health Care  
2025 Windsor Drive  
Oak Brook, Illinois 60523



Doc#: 0406442194  
Eugene "Gene" Moore Fee: \$82.00  
Cook County Recorder of Deeds  
Date: 03/04/2004 10:15 AM Pg: 1 of 11

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**THIS AGREEMENT** (the "Agreement") made this 1st day of March, 2004, by **HRT OF ILLINOIS, INC.**, a Delaware corporation, (hereinafter referred to as the "Grantor"), and **ADVOCATE NORTH SIDE HEALTH NETWORK**, an Illinois not-for-profit corporation, (hereinafter referred to as Grantee").

### P R E A M B L E S:

A. Grantee is the owner of a certain parcel of real estate in Chicago, County of Cook, State of Illinois, legally described in Exhibit "A" attached hereto and incorporated herein (the "Property").

B. Grantor is the owner in fee simple of a building or building(s) located on the Property (the "Building"), and is also the tenant of the Property pursuant to that certain Ground Lease dated as of the date hereof between Grantor, as tenant, and Grantee, as landlord (the "Ground Lease").

**BOX 333-CT**

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**NOW, THEREFORE**, for and in consideration of the purchase and sale of the Building, and the parties' entry into the Ground Lease, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. Grantee's Buy Option.

(a) In the event Grantor elects to market the Building for sale Grantor shall give written notification ("Notice of Market") to the Grantee, by certified mail or personal delivery, of its intention to so market the Building for sale, along with the purchase price and other material terms pursuant to which Grantor intends to sell the Building.

(b) At such time as Grantor receives a bona fide written offer to purchase the Building (including, without limitation, a letter of intent) stating the terms and conditions upon which the purchase is to be made and the consideration offered therefore, and Grantor wishes to accept such offer (the "Third Party Offer"), Grantor shall give written notification ("Notice of Sale") to the Grantee, by certified mail or personal delivery, of its intention to sell the Building. The Notice of Sale shall be accompanied by a copy of the Third Party Offer, and shall not be delivered to Grantee less than sixty (60) days after the delivery of the Notice of Market. The Grantee shall have the option ("Buy Option") to purchase the Building on the same terms and conditions, including price and payment terms, as contained in the Third Party Offer. The Buy Option may be exercised only by the Grantee's giving unconditional acceptance by written notification to Grantor sixty (60) days after receiving the Notice of Sale (the "Option Period"), time being of the essence. If Grantee does not exercise its Buy Option as aforesaid, Grantor may sell the Building pursuant to the Third Party Offer, free and clear of the rights of Grantee under this Agreement. Grantee's Buy Option shall terminate in the event of the sale of the Building (provided the provisions of this Agreement are followed and Grantee does not effectively exercise the Buy Option).

(c) If Grantee does exercise its Buy Option, Grantee and Grantor shall enter into a Sale Agreement concerning the Building in accordance with the terms of the Third Party Offer and in accordance with local custom as of the Closing Date with respect to all charges incident to such conveyance and transfer, including counsel fees, escrow fees, recording fees, title insurance premiums and all applicable federal, state and local transfer taxes which may be incurred or imposed by reason of such conveyance and transfer. On the date fixed for any such sale, Grantee shall pay to Grantor the applicable purchase price, and Grantor shall deliver to Grantee a deed conveying title to the Building. Upon the completion of such sale to Grantee, the Ground Lease and all obligations thereunder shall terminate, except with respect to any obligations and liabilities of either party which are expressly intended to survive termination.

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2. Termination of Grantee's Buy Option. Notwithstanding anything in this Agreement to the contrary, Grantee's Buy Option shall terminate upon (i) the termination of the Ground Lease or (ii) a default by Grantee under the Ground Lease beyond any applicable cure or grace period.

3. Lockout Period. From the date hereof and expiring on the day preceding the tenth anniversary of the date hereof, Grantor hereby agrees that without the prior written consent of Grantee, Grantor shall not transfer the Building, by sale or otherwise, to any third party. Notwithstanding the foregoing sentence, Grantor shall have the right, without Grantee's consent, to transfer the Building, by sale or otherwise, to an Affiliate of Grantor, as herein defined. Affiliate of Grantor shall mean with respect to Grantor, any other individual, corporation, partnership, trust, or limited liability company which, directly or indirectly, through one or more intermediaries, to whom the Building is transferred where there has not been deemed to be a Change in Control.

For purposes of this Agreement, a "Change in Control" shall mean a change in control of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), whether or not the Grantor is then subject to such reporting requirement; provided that, without limitation, such a change in control shall be deemed to have occurred if:

(i) any person (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) (a "Person") is or becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Grantor (not including in the amount of the securities beneficially owned by such person any such securities acquired directly from the Grantor or its affiliates) representing twenty percent (20%) or more of the combined voting power of the Grantor's then outstanding voting securities; provided, however, that for purposes of this Agreement the term "Person" shall not include (a) the Grantor or any of its subsidiaries, (b) a trustee or other fiduciary holding securities under an employee benefit plan of the Grantor or any of its subsidiaries, (c) an underwriter temporarily holding securities pursuant to an offering of such securities, or (d) a corporation owned, directly or indirectly, by the stockholders of the Grantor in substantially the same proportions as their ownership of stock of the Grantor; and provided, further, however, that for purposes of this paragraph (i) there shall be excluded any Person who becomes such a beneficial owner in connection with an Excluded Transaction (as defined in paragraph (iii) below); or

(ii) the following individuals cease for any reason to constitute a majority of the number of directors then serving: individuals who, on the date hereof, constitute the Board and any new director (other than a director whose initial assumption of office is in connection with an actual or threatened election contest including, but not limited to, a consent

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solicitation, relating to the election of directors of the Grantor) whose appointment or election by the Board or nomination for election by the Grantor's stockholders was approved or recommended by a vote of at least two-thirds (2/3) of the directors then still in office who either were directors on the date hereof or whose appointment, election or nomination for election was previously so approved or recommended; or

(iii) there is consummated a merger or consolidation of the Grantor or any direct or indirect subsidiary thereof with any other corporation, other than a merger or consolidation (an "Excluded Transaction") which would result in the voting securities of the Grantor outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving corporation or any parent thereof) at least 50% of the combined voting power of the voting securities of the entity surviving the merger or consolidation (or the parent of such surviving entity) immediately after such merger or consolidation, or the shareholders of the Grantor approve a plan of complete liquidation of the Grantor, or there is consummated the sale or other disposition of all or substantially all of the Grantor's assets.

In no event shall the terms of this paragraph 3 apply to (i) any leasehold mortgagee that acquires title to the Building by foreclosure or by conveyance or transfer in lieu of foreclosure; provided, however, that paragraph 3 shall expressly apply to the conveyance or transfer of the Building by said leasehold mortgagee to a third-party purchaser unless such third party purchaser has experience in owning medical office properties similar to the Property, having a good business reputation and being willing to cause the Building to be managed by an experienced property management company, in which case this paragraph 3 shall not apply to such third party purchaser who has acquired title from said leasehold mortgagee or (ii) any condemning authority. Notwithstanding anything in the paragraph 3 to the contrary, this paragraph 3 shall no longer apply in the event the Hospital Property (as defined in the Ground Lease) is no longer operated as an acute care hospital.

4. Release of Buy Option. In the event Grantee's Buy Option under this Agreement terminates pursuant to the terms of this Agreement, Grantee agrees, upon the written request of Grantor, to promptly execute and record an instrument stating that the right of first refusal has terminated.

5. Notices. All notices required or desired to be given hereunder shall be deemed given if and when delivered personally, or on the next business day after being deposited with a national overnight courier service, or upon transmission sent by facsimile prior to 5:00 p.m. local time at the recipient's location, or on the third business day after being deposited in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to a party at its address set forth below, or to such other address as the party to receive such notice may have designated to all other parties by notice in accordance herewith:

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(i) If to Grantor: HRT of Illinois, Inc.  
3310 West End Avenue, Suite 700  
Nashville, TN 37203  
Attn: Chief Operating Officer

With a copy to: HRT of Illinois, Inc.  
3310 West End Avenue, Suite 300  
Nashville, TN 37203  
Attn: General Counsel

(ii) If to Grantee: Advocate North Side Health Network  
2025 Windsor Drive  
Oak Brook, Illinois 60523  
Attn: General Counsel  
Facsimile No: (630) 990-5494

With a copy to: Advocate North Side Health Network  
2025 Windsor Drive  
Oak Brook, Illinois 60523  
Attn: Deborah J. Rohde, Vice President  
Facsimile No.: (630) 490-4798

6. Binding Effect. All the terms and conditions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective, successors and assigns.

7. Severability. In the event that any term or provision of this Agreement or the application thereof to any particular party or circumstance, is found by a court of competent jurisdiction to be invalid or unenforceable (in whole or in its application to a particular party or circumstance), the remaining terms and provisions of this Agreement or the application thereof to different parties or circumstances, as the case may be, shall not be affected thereby and this Agreement shall remain in full force and effect in all other respect.

8. Applicable Law. This Agreement, its interpretation and enforcement shall be governed by the internal laws of the state in which the Property is located, without resort to the choice or conflicts of law provisions of that or any other state.

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9. Counterparts. This Agreement may be executed in any number of counterparts, each of which will for all purposes be deemed to be an original, and all of which are identical.

**IN WITNESS WHEREOF**, the parties have caused their names to be signed to these presents as of the date and year first above mentioned.

**Signature page to follow**

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**GRANTEE:**

**ADVOCATE NORTH SIDE  
HEALTH NETWORK**, an  
Illinois not-for-profit corporation

By: *William P. Santulli*

Name: William P. Santulli  
Title: President

**GRANTOR:**

**HRT OF ILLINOIS, INC.**  
a Delaware corporation

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

Name: Eric W. Fischer  
Title: Senior Vice President, Investments

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**GRANTEE:**

**ADVOCATE NORTH SIDE  
HEALTH NETWORK**, an  
Illinois not-for-profit corporation

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

Name: William P. Santulli

Title: President

**GRANTOR:**

**HRT OF ILLINOIS, INC.**  
a Delaware corporation

By: 

Name: Eric W. Fischer

Title: Senior Vice President, Investments

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## EXHIBIT A

### DESCRIPTION OF THE LAND

THAT PART OF LOTS 4 AND 5 IN THE SUBDIVISION OF OUTLOT 4 IN CANAL TRUSTEES' SUBDIVISION OF THE EAST HALF OF SECTION 29, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 4; THENCE SOUTH  $00^{\circ}04'43''$  EAST 230.40 FEET ALONG THE EAST LINE OF SAID LOTS 4 AND 5 (ALSO BEING THE WEST LINE OF NORTH HALSTED STREET) TO THE SOUTHEAST CORNER OF SAID LOT 5; THENCE SOUTH  $89^{\circ}51'40''$  WEST 252.90 FEET ALONG THE SOUTH LINE OF SAID LOT 5 (ALSO BEING THE NORTH LINE OF WEST WELLINGTON STREET); THENCE NORTH  $00^{\circ}07'29''$  WEST 71.20 FEET; THENCE NORTH  $89^{\circ}58'44''$  EAST 156.80 FEET; THENCE NORTH  $46^{\circ}24'23''$  EAST 52.48 FEET; THENCE NORTH  $00^{\circ}02'15''$  WEST 123.51 FEET TO THE NORTH LINE OF SAID LOT 4; THENCE NORTH  $89^{\circ}56'55''$  EAST 58.01 FEET ALONG NORTH LINE OF SAID LOT 4 TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PIN: Parts of PIN: 14-29-214-004

Address: 3000 N. Halsted, Chicago, Illinois

Office of Cook County Clerk's Office

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STATE OF ILLINOIS       )  
  ) SS.  
COUNTY OF COOK       )

I, \_\_\_\_\_, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Eric W. Fischer, the Senior Vice President of Investments of HRT of Illinois, Inc., a Delaware corporation personally known to me to be the same person whose name is subscribed to the foregoing Declaration, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said Agreement, on behalf of the Grantor and as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Notary Public

STATE OF ILLINOIS       )  
  ) SS.  
COUNTY OF COOK       )

I, A. James Slinkman, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that William P. Santulli, the President of Advocate North Side Health Network, personally known to me to be the same person whose name is subscribed to the foregoing Agreement, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said Agreement, on behalf of the Grantee and as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and seal, this 1<sup>st</sup> day of March, 2004.

  
\_\_\_\_\_  
Notary Public

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Tennessee )  
 STATE OF ~~ILLINOIS~~ )  
 Davidson ) SS.  
 COUNTY OF ~~COOK~~ )

I, Robin J. Payton, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Eric W. Fischer, the Senior Vice President of Investments of HRT of Illinois, Inc., a Delaware corporation personally known to me to be the same person whose name is subscribed to the foregoing Declaration, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said Agreement, on behalf of the Grantor and as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and seal, this 27<sup>th</sup> day of February, 2004.

Robin J. Payton  
 Notary Public Commission  
 Expiration 2/29/04

STATE OF ILLINOIS )  
 ) SS.  
 COUNTY OF COOK )

I, \_\_\_\_\_, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that William P. Santulli, the President of Advocate North Side Health Network, personally known to me to be the same person whose name is subscribed to the foregoing Agreement, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said Agreement, on behalf of the Grantee and as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
 Notary Public