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Doc#: 1415529051 Fee: \$56.00
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Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 06/04/2014 11:58 AM Pg: 1 of 10

Property Address:

7040 North Ridgeway Avenue
Lincolnwood, Illinois 60712

Permanent Index Number:

10-35-104-076-0000

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SECOND MODIFICATION TO MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING AND ASSIGNMENT OF RENTS AND LEASES

THIS SECOND MODIFICATION TO MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING AND ASSIGNMENT OF RENTS AND LEASES (this "Modification") is made and entered into effective as of April 30, 2014, by LEGACY REAL PROPERTIES, LLC, an Illinois limited liability company (the "Mortgagor" or "Borrower"), to and for the benefit of THE PRIVATEBANK AND TRUST COMPANY, an Illinois banking corporation, its successors and assigns (the "Mortgagee" or "Lender"), having its principal place of business at 120 South LaSalle Street, Chicago, Illinois 60603.

RECITALS:

A. Mortgagee has made a loan to Mortgagor in the original principal amount of \$720,000 (the "Loan"), as evidenced by: (a) Promissory Note dated as of May 4, 2009, made by Mortgagor in favor of Mortgagee in the principal amount of up to Seven Hundred Twenty Thousand and No/100 Dollars (\$720,000), as amended and restated by that certain Amended and Restated Promissory Note dated as of April 30, 2014 made by Mortgagor in the amount of Six Hundred Eighteen Thousand Four Hundred Sixty-Seven and 78/100 Dollars (\$618,467.78) (the "Note"). The Loan is secured by, among other things: (i) Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing dated as of May 4, 2009, recorded with the Cook County Recorder of Deeds on May 5, 2009, as document no. 0912550014, as amended by that certain Modification to Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing and Assignment of Rents and Leases dated November 1, 2009 ("Mortgage Modification") and recorded on with the Cook County Recorder of Deeds on January 20, 2010 as document no. 1002029032 (together, the "Mortgage"), from Mortgagor to Mortgagee, conveying the property described in Exhibit A attached hereto, and commonly known as 7040 North Ridgeway Avenue, Lincolnwood, Illinois 60712 (the "Premises"); (b) Assignment of Rents and Leases dated as of May 4, 2009, and recorded with the Cook County Recorder of Deeds on May 5, 2009, as document no. 0912550015, as amended by the Mortgage Modification, each from Mortgagor to Mortgagee, encumbering the Premises (th

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"Assignment of Rents"); (c) Security Agreement dated as of May 4, 2009, made by Mortgagor in favor of Mortgagee; (d) Guaranty dated as of May 4, 2009, made by Legacy Healthcare Financial Services, LLC, an Illinois limited liability company, Chaim Rajchenbach, an individual ("Rajchenbach"), and Menachem Shabat, an individual ("Shabat", and collectively with Rajchenbach, the "Guarantors") guaranteeing the obligations of Mortgagor to Mortgagee; and (e) any other agreements, documents, or instruments executed or delivered in connection therewith (the foregoing (a) through (e) and all amendments, restatements supplements, and other modifications thereof or thereto are hereinafter referred to collectively as the "Loan Documents").

B. Mortgagee has made a loan to Shabat and Rajchenbach (the "Individual Borrowers Loan") evidenced by that certain Promissory Note dated as of November 1, 2009 made, jointly and severally, by Shabat and Rajchenbach in favor of Mortgagee in the original principal amount of Two Hundred Thousand and No/100 Dollars (\$200,000) (the "Individual Borrowers Note"), which has been paid in full. All references in the Mortgage and Loan Documents to the "Individual Borrowers Note", "Individual Borrowers Loan", and "Individual Borrowers Loan Documents" are hereby deleted.

C. At the present time Mortgagor and Mortgagee are agreeable to modify the Loan Documents to, among other things, (i) extend the Maturity Date, (ii) waive Debt Service Coverage Ratio violation for the period ending December 31, 2013 (iii) amend the financial covenants, and (iv) modify the Loan Documents to reflect all amendments, modifications, extensions, renewals, restatements, substitutions or replacements thereof through the date hereof pursuant to the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Mortgagor and Mortgagee hereby agree as follows:

1. AGREEMENTS.

1.1 RECITALS. The foregoing Recitals are hereby made a part of this Modification.

1.2 DEFINITIONS. Capitalized words and phrases used herein without definition shall have the respective meanings ascribed to such words and phrases in the Note.

2. AMENDMENTS TO THE MORTGAGE.

2.1 Amended Loan Amount. All references to "Loan" shall mean Six Hundred Eighteen Thousand Four Hundred Sixty-Seven and 78/100 Dollars (\$618,467.78). All instances in the Note, Mortgage, Assignment of Rents and other Loan Documents to "\$720,000" or "Seven Hundred Twenty Thousand Dollars", are hereby replaced with "\$618,467.78" and "Six Hundred Eighteen Thousand Four Hundred Sixty-Seven and 78/100 Dollars", respectively.

2.2 Amended Maturity Date. All references to "Maturity Date" shall mean April 30, 2017. All instances in the Note, Mortgage, Assignment of Rents and other Loan Documents to "April 30, 2014", are hereby replaced with "April 30, 2017".

2.3 Amended Address. All references to "9000 LaVergne, Skokie, IL 60077" in the Loan Documents are hereby replaced with "7040 N. Ridgeway Avenue, Lincolnwood, IL 60712"

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2.4 Financial Covenants. Section 37 of the Mortgage is amended and restated in its entirety as follows:

(a) NOI/Debt Service Ratio. As of the end of each of its fiscal quarters, commencing as of June 30, 2014, Mortgagor shall maintain for that quarter a ratio of (i) the sum of (A) Net Income, plus (B) Interest Charges, plus (C) depreciation, plus (D) amortization, minus (E) 5% vacancy factor (equal to 5% of revenues), minus (F) 3% management fees (equal to 3% of revenue), minus (G) \$0.15 per square foot annual reserve to (ii) Debt Service ("NOI/Debt Service Ratio") of not less than 1.15:1.00.

(b) EBITDAR/Rent + Interest Ratio. As of the end of each of its fiscal years, commencing as of December 31, 2014, Mortgagor shall cause Legacy Healthcare to maintain for that year a ratio of (i) EBITDAR to the sum of (ii)(A) Rental Expense plus (B) Interest Charges payable by Legacy Healthcare plus Rental Expense ("EBITDAR/Rent + Interest Ratio") of not less than 1.00:1.00.

(c) Additional Indebtedness. Mortgagor shall not incur any additional Indebtedness on and after the date hereof. As used herein, "Indebtedness" of any person shall mean, without duplication, (a) all indebtedness for borrowed money of such person (including principal, interest and, if not paid when due, fees and charges), whether or not evidenced by bonds, debentures, notes or similar instruments; (b) all obligations to pay the deferred purchase price of property or services; (c) all obligations, contingent or otherwise, with respect to the maximum face amount of all letters of credit (whether or not drawn), bankers' acceptances and similar obligations issued for the account of such person, and all unpaid drawings in respect of such letters of credit, bankers' acceptances and similar obligations; (d) all indebtedness secured by any lien on any property owned by such person, whether or not such indebtedness has been assumed by such person (provided, however, if such person has not assumed or otherwise become liable in respect of such indebtedness, such indebtedness shall be deemed to be in an amount equal to the fair market value of the property subject to such lien at the time of determination); (e) the aggregate amount of all capitalized lease obligations of such person; (f) all contingent liabilities of such person, whether or not reflected on its balance sheet; (g) all debt of any partnership of which such person is a general partner; and (h) all monetary obligations of such person under (A) a so-called synthetic, off-balance sheet or tax retention lease, or (B) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such person but which, upon the insolvency or bankruptcy of such person, would be characterized as the indebtedness of such person (without regard to accounting treatment). Notwithstanding the foregoing, Indebtedness shall not include trade payables and accrued expenses incurred by such person in accordance with customary practices and in the ordinary course of business of such person.

For purposes of Section 37,

- (i) As used herein, "Debt Service" for any period, shall equal the sum of all scheduled principal and interest payments on the Loan and any other indebtedness of the Mortgagor that is due and payable during such quarter.
- (ii) As used herein, "EBITDAR" for any period, shall equal the sum for such period of: (i) Net Income, plus (ii) Interest Charges, plus (iii) federal and state income taxes, plus (iv) depreciation and amortization, plus Rental Expense. In determining EBITDAR, extraordinary items of income, such as those

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resulting from casualty or condemnation or lease termination payments of tenants, shall be deducted from income.

- (iii) As used herein, "Interest Charges" shall mean with respect to any party, for any period, the sum of: (i) all interest, charges (including letter of credit charges) and related expenses payable with respect to that period to a lender in connection with borrowed money or the deferred purchase price of assets that are treated as interest in accordance with GAAP, plus (ii) the portion of Capitalized Lease Obligations with respect to that period that should be treated as interest in accordance with GAAP, plus (iii) all charges paid or payable (without duplication) during that period with respect to any Rate Management Transactions.
- (iv) As used herein, "Net Income" shall mean, with respect to any party, for any period, the net income (or loss) of such party for such period as determined in accordance with GAAP, excluding any gains from dispositions of assets, any extraordinary gains and any gains from discontinued operations.
- (v) As used herein, "Rental Expense" means with respect to any party, for any period, the net rental expense for real estate leased by such party as lessee for such period as determined in accordance with GAAP (which shall exclude real estate taxes passed through to the lessee).

3. AMENDMENT TO THE ASSIGNMENT OF RENTS.

3.1 Lease. Section 4(a) of the Assignment of Rents is amended and restated in its entirety as follows:

- (a) the Assignor shall not lease any portion of the Premises to any party unless the Assignor obtains Assignee's prior written consent to all aspects of such lease, with such consent not to be unreasonably withheld, it being understood that Lender consents to the Lease between Assignor and Legacy Healthcare Financial Services, LLC, an Illinois limited liability company, dated May 1, 2014.

4. WAIVER OF DEFAULTED COVENANT.

4.1 Mortgagor failed to maintain a Debt Service Coverage Ratio of not less than 1:50 to 1:00 for the fiscal quarter ending on December 31, 2013, in violation of Section 37(a) of the Mortgage (the "Defaulted Covenant"). Mortgagor agrees and acknowledges that, as a result of the occurrence of the Defaulted Covenant, an Event of Default has occurred and is continuing under the Mortgage. Mortgagor has therefore requested that Mortgagee waive compliance by Mortgagor with the Defaulted Covenant, as well as the resulting Event of Default.

4.2 Mortgagee hereby waives: (a) the Defaulted Covenant, (b) the resulting Event of Default occurring by reason of the Defaulted Covenant, and (c) Mortgagee's remedies under the Mortgage with respect thereto. This waiver shall be narrowly construed and shall neither extend to any other violations under, or default of, the Mortgage for any future period of time, nor shall this waiver prejudice any rights or remedies which the Mortgagee may have or be entitled to with respect to such future violations or defaults.

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5. REPRESENTATIONS AND WARRANTIES.

5.1 Organization. Mortgagor is a limited liability company duly organized, existing and in good standing under the laws of the State of Illinois, with full and adequate corporate power to carry on and conduct its business as presently conducted. Mortgagor is duly licensed or qualified in all foreign jurisdictions wherein the nature of its activities require such qualification or licensing. The Articles of Organization and Operating Agreement, Borrowing Resolutions and Incumbency Certificate of Mortgagor have not been changed or amended since the most recent date that certified copies thereof were delivered to Mortgagee. Mortgagor's state issued organizational identification number is 03093859. The exact legal name of Mortgagor is as set forth in the preamble of this Modification, and Mortgagor currently does not conduct, nor has it during the last five (5) years conducted, business under any other name or trade name. Mortgagor will not change its name, its organizational identification number, if it has one, its type of organization, its jurisdiction of organization or other legal structure.

5.2 Authorization. Mortgagor is duly authorized to execute and deliver this Modification and is and will continue to be duly authorized to borrow monies under the Note, as amended hereby, and to perform its obligations under the Note, as amended hereby.

5.3 No Conflicts. The execution and delivery of this Modification and the performance by Mortgagor of its obligations under the Note, as amended hereby, do not and will not conflict with any provision of law or of the Articles of Organization or Operating Agreement of Mortgagor or of any agreement binding upon Mortgagor.

5.4 Validity and Binding Effect. The Loan Documents, as amended hereby, is a legal, valid and binding obligation of Mortgagor, enforceable against Mortgagor in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency or other similar laws of general application affecting the enforcement of creditors' rights or by general principles of equity limiting the availability of equitable remedies.

5.5 Compliance with Loan Documents. The representation and warranties set forth in the Mortgage and Note, as amended hereby, are true and correct with the same effect as if such representations and warranties had been made on the date hereof, with the exception that all references to the financial statements shall mean the financial statements most recently delivered to Mortgagee and except for such changes as are specifically permitted under the Mortgage. In addition, except for the Defaulted Covenant, Mortgagor has complied with and is in compliance with all of the covenants set forth in the Mortgage, as amended hereby, including, but not limited to, those set forth in Section 37 of the Mortgage and Section 8 of the Note thereof.

5.6 No Event of Default. As of the date hereof, except for the Defaulted Covenant, no Event of Default under Section 16 of the Mortgage and Section 6 of the Note, as amended hereby, or event or condition which, with the giving of notice or the passage of time, or both, would constitute an Event of Default, has occurred or is continuing.

5.7 No Subordinated Debt Default. As of the date hereof, no default under any of the documents evidencing or securing any subordinated debt, or event or condition which, with the giving of notice or the passage of time, or both, would constitute a default under any of the documents evidencing or securing any subordinated debt, has occurred or is continuing.

5.8 Release and Waiver. Mortgagor does not possess (or have knowledge of) any claims, defenses, offsets or counterclaims against Mortgagee (or its officers, directors, members,

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shareholders, employees or agents) relating to this Modification or the Loan Documents. In the event there exists any facts that would give rise to any claim, defense, offset or counterclaim against or with respect to the enforcement of this Modification or the Loan Documents, Mortgagor hereby unconditionally, irrevocably, and unequivocally waives and fully releases Mortgagee (and its officers, directors, shareholders, employees or agents) of any such claim, defense, offset or counterclaim to the same extent as if such claims were the subject of a lawsuit adjudicated to conclusion and dismissed therein with prejudice.

6. **OMNIBUS AMENDMENT.** Each of the Loan Documents shall be deemed amended to give effect to the provisions of this Modification without need for referencing each of the Loan Documents by name. Without limiting the generality of the foregoing, Mortgagor and Mortgagee acknowledge that the term "Other Agreements" or "Loan Documents" shall mean all of Loan Documents as modified by this Modification (and any notes, amendments and agreements delivered in connection herewith). Additionally, as used in the other Loan Documents, the term "Documents" and/or "Loan Documents" shall now be deemed to include this Modification and any other documents, instruments or agreements executed in connection herewith.

7. CONDITIONS PRECEDENT.

This Modification shall become effective as of the date above first written after receipt by Mortgagee of the following:

7.1 Modification to Mortgage. This Modification executed by Mortgagor in favor of Mortgagee.

7.2 Amended and Restated Promissory Note. The Amended and Restated Promissory Note of even date herewith made by Mortgagor in favor of Mortgagee in the amount of \$618,467.78.

7.3 Joinder. The Joinder by Guarantor of even date herewith executed by the Guarantors.

7.4 Tenant Estoppel and SNDA. A Tenant Estoppel certificate and Subordination, Non-Disturbance and Attornment Agreement each of even date herewith made by and between Mortgagor and Legacy Healthcare.

7.5 Resolutions. A certified copy of resolutions of the Managers and/or members of Mortgagor and Legacy Healthcare Financial Services, LLC authorizing the execution, delivery and performance of this Modification and the related loan documents.

7.6 Date Down Endorsement. The receipt by Mortgagee of date down endorsement to the existing Title Policy, extending the effective date and coverage of the Title Policy and containing such other provisions as requested by Mortgagee or its counsel.

7.7 Expenses Mortgagor shall pay all costs and expenses in connection with the preparation of this Modification and other related loan documents, including, without limitation reasonable attorneys' fees and time charges of attorneys who may be employees of Mortgagee or any affiliate or parent of Mortgagee.

7.8 Other Documents. Such other documents, certificates, resolutions and/or opinions of counsel as Mortgagee may request or as set forth in the Closing Checklist.

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8. GENERAL.

8.1 Governing Law; Severability. This Modification shall be construed in accordance with and governed by the laws of Illinois. Wherever possible each provision of the Mortgage and this Modification shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of the Mortgage and this Modification shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of the Mortgage and this Modification.

8.2 Successors and Assigns. This Modification shall be binding upon Mortgagor and Mortgagee and their respective successors and assigns, and shall inure to the benefit of Mortgagor and Mortgagee and the successors and assigns of Mortgagee.

8.3 Continuing Force and Effect of Loan Documents. Except as specifically modified or amended by the terms of this Modification, all other terms and provisions of the Mortgage and the other Loan Documents are incorporated by reference herein, and in all respects, shall continue in full force and effect. Mortgagor, by execution of this Modification, hereby reaffirms, assumes and binds itself to all of the obligations, duties, rights, covenants, terms and conditions that are contained in the Mortgage and the other Loan Documents.

8.4 References to Mortgage. Each reference in the Mortgage to "this Agreement", "hereunder", "hereof", or words of like import, and each reference to the Mortgage in any and all instruments or documents delivered in connection therewith, shall be deemed to refer to the Mortgage, as amended hereby.

8.5 Expenses. Mortgagor shall pay all costs and expenses in connection with the preparation of this Modification and other related loan documents, including, without limitation, reasonable attorneys' fees and time charges of attorneys who may be employees of Mortgagee or any affiliate or parent of Mortgagee. Mortgagor shall pay any and all stamp and other taxes, UCC search fees, filing fees and other costs and expenses in connection with the execution and delivery of this Modification and the other instruments and documents to be delivered hereunder, and agrees to save Mortgagee harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay such costs and expenses.

8.6 Counterparts. This Modification may be executed in any number of counterparts, all of which shall constitute one and the same agreement.

8.7 Jury Waiver. MORTGAGOR AND MORTGAGEE IRREVOCABLY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING: (a) TO ENFORCE OR DEFEND ANY RIGHTS UNDER OR IN CONNECTION WITH THIS MODIFICATION OR ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HEREWITH; OR (b) ARISING FROM ANY DISPUTE OR CONTROVERSY IN CONNECTION WITH OR RELATED TO THIS MODIFICATION OR ANY SUCH AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT, AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the parties have executed this Second Modification to Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing and Assignment of Rents and Leases as of the date first above written.

MORTGAGOR:

LEGACY REAL PROPERTIES, LLC, an Illinois limited liability company

By: 

Chaim Rajchenbach, its Manager

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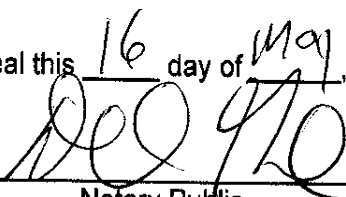
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ACKNOWLEDGEMENT

STATE OF ILLINOIS)
) SS.
 COUNTY OF COOK)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Chaim Rajchenbach, the Manager of **LEGACY REAL PROPERTIES, LLC**, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 16 day of May, 2014.



 Notary Public

My Commission Expires:

12/17/16



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EXHIBIT "A"

LEGAL DESCRIPTION

THE NORTH 119 FEET OF THAT PART OF LOT 4 LYING SOUTH OF A LINE DRAWN AT RIGHT ANGLES TO THE EAST LINE OF SAID LOT THROUGH A POINT WHICH IS 409 FEET NORTH OF THE SOUTHEAST CORNER OF SAID LOT IN JOHN R. WALL'S ADDITION TO LINCOLNWOOD BEING A SUBDIVISION OF PART OF THE WEST HALF OF THE WEST HALF OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ADDRESS: 7040 North Ridgeway Avenue, Lincolnwood, Illinois 60712

PIN: 10-35-104-076-0000

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