

# UNOFFICIAL COPY

This Document Prepared by  
and After Recording Return to:  
Michael F. McGuire  
Riemer & Braunstein LLP  
71 South Wacker Drive, Suite 3515  
Chicago, Illinois 60606



Doc#: 1530922081 Fee: \$56.00  
RHSP Fee: \$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 11/05/2015 01:32 PM Pg: 1 of 10

PIN: 15-17-101-014-0000

Property Address:  
4600 West Frontage Road, Hillside, Illinois 60162

101778 e

MGR

## COLLATERAL ASSIGNMENT OF LEASES AND RENTS

THIS COLLATERAL ASSIGNMENT OF LEASES AND RENTS (the "Assignment") made this 30<sup>th</sup> day of October, 2015 by MS ARIA, LP, a Delaware limited partnership having an address at 14390 Clay Terrace Blvd., Suite 205, Carmel, Indiana 46032 (hereinafter called "Assignor", and the term Assignor shall include, wherever the context permits, its successors and assigns) to KEYBANK NATIONAL ASSOCIATION, a national banking association, as agent under a Credit Agreement dated as of October 30, 2015, (hereinafter, as same may be amended, restated, renewed, replaced, or modified, the "Credit Agreement") among the Assignor, Mainstreet Health Holdings, Inc., a Cayman Islands corporation, as "Parent", Mainstreet Health US Holdings, Inc., a Delaware corporation, Mainstreet Health Holdings, L.P., a Delaware limited partnership, as "Parent Borrower" and various other Subsidiaries and Affiliates thereof as "Subsidiary Borrowers", KeyBank National Association and the other lending institutions which become parties to the Credit Agreement (KeyBank National Association and the other lending institutions which become parties to the Credit Agreement are collectively referred to as the "Lenders" and individually as the "Lender"), and KeyBank National Association, as Agent (hereinafter called the "Agent"), having a place of business at 225 Franklin Street, Boston, Massachusetts 02110, (the term Agent shall include, whenever the context permits, its successors and assigns as the holder of this Assignment and the Note and other Obligations secured hereby).

### WITNESSETH THAT:

1. Grant of Assignment. This ASSIGNMENT is granted pursuant to the terms, provisions and conditions of the Credit Agreement. Capitalized terms used herein which are not otherwise specifically defined shall have the same meaning herein as in the Credit Agreement.

CCRD REVIEWER     R

# UNOFFICIAL COPY

Assignor, for good and valuable consideration, receipt of which is hereby acknowledged, hereby grants, transfers and assigns to Agent and the Lenders, and grants to Agent and the Lenders a continuing pledge of and security interest in, the entire present and future interest of Assignor in, to and under: (a) all leases, subleases, rental agreements or other occupancy agreements (including, without limitation, the Symphony Lease and Mortgagor's interest in any subleases thereof) ("Leases") now or hereafter in existence, with respect to all or any portion of the real property located and known as 4600 West Frontage Road, Hillside, Cook County, Illinois 60162 ("Property"); (b) all rents, income and profits of any kind arising from such interests in the Leases and any renewals or extensions thereof for the use and occupation of all or any portion of the Property; (c) all guaranties of and security for the Leases; and (d) all proceeds of the foregoing.

Assignor is the owner of the Property. A legal description of the Property is annexed hereto as Exhibit A.

2. Obligations Secured. This Assignment is made for the purpose of securing the "Obligations" as follows:

A. The payment of the principal sum, interest at variable rates, charges and indebtedness evidenced by certain promissory notes (hereinafter individually and collectively referred to as the "Note") issued under the Credit Agreement, including any extensions, renewals, replacements, increases, modifications and amendments thereof, in the original aggregate amount of up to THREE HUNDRED MILLION DOLLARS (\$300,000,000.00) given by Borrower to the order of the respective Lenders;

B. The payment, performance, discharge and satisfaction of each covenant, warranty, representation, undertaking and condition to be paid, performed, satisfied and complied with by Borrower under and pursuant to this Assignment, or the Credit Agreement and also by Borrower under and pursuant to each of the other Loan Documents referred to in, or executed in connection with, the Credit Agreement;

C. The payment of all costs, expenses, legal fees and liabilities incurred by Agent or any Lender in connection with the enforcement of any of Agent's or any Lender's rights or remedies under this Assignment, the other Loan Documents, or any other instrument, agreement or document which evidences or secures any other Obligations or collateral therefor, whether now in effect or hereafter executed; and

D. The payment, performance, discharge and satisfaction of all other liabilities and obligations of Borrower to Agent and the Lenders, whether now existing or hereafter arising, direct or indirect, absolute or contingent, and including, but without limitation express or implied upon the generality of the foregoing, each such liability and obligation of Borrower under any of the Loan Documents and each amendment, extension, modification, replacement or recasting of any one or more of the instruments, agreements and documents referred to herein or therein or executed in connection with the transactions contemplated hereby or thereby, including, without limitation, those arising in connection with any Hedge Obligations.

# UNOFFICIAL COPY

3. Warranties and Representations. Assignor warrants and represents that (i) the representations and warranties set forth in Section 6.22 of the Credit Agreement are true, correct and complete, (ii) it is and shall be in the future the sole owner of the entire interests described in Section 1 above and that no rent reserved in the Leases has been or will be in the future otherwise assigned or anticipated.
4. Covenants. Except as may be otherwise provided for or permitted by the Credit Agreement, Assignor covenants with Agent: (i) to comply with Sections 7.13 and 7.21 of the Credit Agreement; (ii) not to cancel, surrender, shorten the term or decrease the rent payable under any Lease without the prior written consent of Agent in each instance, which consent shall not be unreasonably withheld, conditioned or delayed; (iii) not to subordinate any Lease to any mortgage or other encumbrance, or permit, consent or agree to such subordination, without Agent's prior written consent in each instance, which consent shall not be unreasonably withheld, conditioned or delayed; (iv) not to convey or transfer or suffer or permit a conveyance or transfer of the premises demised by any Lease or of any interest therein so as to affect directly or indirectly a merger of the estates and rights, or a termination or diminution of the obligations, of any lessee thereunder subject to any rights of Tenants under Approved Leases; (v) not to cancel or terminate any guaranty of any Lease, or release or reduce any security for any Lease (other than application of any security deposits in the ordinary course of business), without the prior written consent of Agent in each instance, which consent shall not be unreasonably withheld, conditioned or delayed; not to consent to any assignment of or subleasing under any such Lease, unless in accordance with its terms, without the prior written consent of Agent in each instance, which consent shall not be unreasonably withheld, conditioned or delayed, subject to any rights of Tenants under Approved Leases; (vi) intentionally omitted; and (vii) at Agent's further request (and in confirmation of the assignment and transfer already made herein of future Leases) to assign and transfer to Agent any and all subsequent Leases upon all or any part of the Property and to execute and deliver at the request of Agent all such further assurances and assignments in the Property as Agent in good faith shall from time to time reasonably require.
5. Further Terms, Covenants and Conditions. This Assignment is made on the following terms, covenants and conditions:
  - 5.1 Prior to Event of Default. So long as no Event of Default (as defined in the Credit Agreement) exists: Assignor shall have the right and license to manage and operate the Property and to collect at the time of, but not more than one (1) month prior to, the date provided for the payment thereof, all rents, income and profits arising under the Leases or from the premises described therein and, subject to the provisions of the other Loan Documents, to retain, use and enjoy the same.
  - 5.2 After Event of Default. At any time when an Event of Default exists, Agent, without in any way waiving such Event of Default, may at its option, without notice, and without regard to the adequacy of the security for the obligations secured hereby and by the Mortgage revoke the right and license granted above to Assignor and:

# UNOFFICIAL COPY

(i) Authorize and direct the lessees named in any existing Leases or any other or future lessees or occupants of the Property, upon receipt from Agent of written notice to the effect that Agent is or the Lenders are then the holder of the Note and the Mortgage and that an Event of Default exists thereunder, to pay over to Agent all rents, income and profits arising or accruing under the Leases or from the Property and to continue to do so until otherwise notified in writing by Agent. Assignor agrees that every lessee and occupant shall have the right to rely upon any such statement and request by Agent that lessee or occupant shall pay such rents to Agent without any obligation or right to inquire as to whether such Event of Default actually exists notwithstanding any notice from or claim of Assignor to the contrary and that Assignor shall have no right or claim against lessees or occupants for any such rent so paid by lessees or occupants to Agent after such notice to the lessee or occupant by Agent;

(ii) Either in person or by agent, with or without bringing any action or proceedings or by a receiver appointed by a court, take possession of the Property and have, hold, manage, lease and operate the same on such terms and for such period of time as Agent may deem proper and, either with or without taking possession of the Property in its own name, demand, sue for, or otherwise collect and receive, all rents, income and profits of the Property, including those past due and unpaid, with full power to make from time to time all improvements, alterations, renovations, repairs and replacements thereto or thereof as may seem proper to Agent; and

(iii) Apply such rents, income and profits to the payment of:

(a) all reasonable expenses of managing the Property including, without being limited thereto, the salaries, fees and wages of a managing agent and such other employees as Agent may deem necessary or desirable, and all expenses of operating and maintaining the Property, including, without being limited thereto, all taxes, charges, claims, assessments, water rents, sewer rents and other liens, and premiums for all insurance which Agent may deem necessary or desirable, the payment or refund of security deposits, or interest thereon, and the cost of all improvements, alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Property, and

(b) all sums which Assignor is responsible to pay under the Mortgage, and the principal sum, interest and indebtedness secured hereby and by the Mortgage, and all other Obligations together with all reasonable costs and reasonable attorneys' fees, in such order of priority as to any of the items mentioned in this clause (iii) as Agent in its sole discretion may determine, any statute, law, custom, or use to the contrary notwithstanding.

The exercise by Agent of the option granted it in this Section 5.2 and the collection of the rents, income and profits and the application thereof as herein provided shall not be considered a waiver by Agent of any Default or Event of Default under the other Loan Documents, or the Leases, or this Assignment.



# UNOFFICIAL COPY

5.3 Continuing Effect. Upon payment in full to Agent and the Lenders of the Obligations, this Assignment shall become null and be void and of no effect, but the affidavit of any officer, agent, or attorney of Agent or the Lenders made in good faith showing any part of said principal, interest, indebtedness or other Obligations to remain unpaid shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment and any person may, and is hereby authorized to, rely thereon. The discharge of record of the Mortgage dated as of even date given by Assignor to Agent shall constitute a discharge of this Assignment and a release of Agent's and the Lenders' interest in the Leases and rents assigned hereby and the reassignment thereof (without recourse to Agent or any Lender) to Assignor and all those claiming of record by, through or under Assignor.

5.4 No Waiver; Concurrent Rights. Nothing contained in this Assignment and no act done or omitted by Agent pursuant to the powers and rights granted it hereunder shall be deemed to be a waiver by Agent of its rights and remedies hereunder or any one or more of the other Loan Documents, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Agent under the terms of any of the other Loan Documents. The right of Agent to collect said principal sums, interest and indebtedness and to enforce any other security therefor held by it may be exercised by Agent either prior to, simultaneously with, or subsequent to any action taken by it hereunder following the occurrence and during the continuance of an Event of Default.

5.5 No Liability. Neither Agent nor any Lender shall be liable for any loss sustained by Assignor resulting from Agent's failure to let the Property after an Event of Default or from any other act or omission of Agent in managing the Property after an Event of Default unless such loss is caused by the gross negligence or willful misconduct of Agent. Agent shall not be obligated to perform or discharge, nor does Agent hereby undertake to perform or discharge, any obligation, duty or liability under the Leases, under any ground lease, or under or by reason of this Assignment, and Assignor shall, and does hereby agree to, indemnify Agent and each of the Lenders for, and to defend and hold Agent and each of the Lenders harmless from, any and all liability, loss or damage which may or might be incurred under or by reason of this Assignment and from any and all claims and demands whatsoever which may be asserted against Agent or any Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases or any ground lease with respect to the period prior to Agent's foreclosure of the Mortgage. Should Agent or any Lender incur any such liability under the Leases or under or by reason of this Assignment with respect to the period prior to the foreclosure of the Mortgage, or in defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees shall be secured hereby and by the Mortgage and by the other collateral for the Obligations and Assignor shall reimburse Agent and the Lenders therefor immediately upon demand and upon the failure of Assignor so to do, Agent may, at its option, declare all sums secured hereby immediately due and payable. It is further understood that this Assignment shall not operate to place responsibility for the control, care, management or repair of said Property upon Agent, nor for the carrying out of any of the terms and conditions of the Leases or any ground lease; nor shall it operate to make Agent responsible or liable for any waste committed on the Property by tenants or any other parties, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of said Property resulting in loss or

# UNOFFICIAL COPY

injury or death to any tenant, licensee, employee or stranger. Notwithstanding the foregoing, Agent and the Lenders shall not be indemnified on account of, or exculpated from acts of, their own gross negligence or willful misconduct.

5.6 Effect of Foreclosure Deed. Unless Agent otherwise elects in the instance of a Lease which is subordinate to the Mortgage and is thus terminated by the foreclosure, upon the issuance of any deed or deeds pursuant to a judicial or non-judicial foreclosure of the Mortgage, all right, title and interest of Assignor in and to the Leases shall, by virtue of this instrument and such deed or deeds, thereupon vest in and become the absolute property of the grantee or grantees in such deed or deeds without any further act or assignment by Assignor. Assignor hereby irrevocably appoints Agent and its successors and assigns as its agent and attorney in fact to execute all instruments of assignment for further assurance in favor of such grantee or grantees in such deed or deeds as may be necessary or desirable for such purpose.

5.7 Upon Termination of Lease in Bankruptcy. In the event any lessee under any of the Leases should be the subject of any proceeding under the Federal Bankruptcy Code, as amended from time to time, or any other federal, state or local statute which provides for the possible termination or rejection of the Leases assigned hereby, Assignor covenants and agrees that, if any of the Leases is so terminated or rejected, no settlement for damages shall be made without the prior written consent of Agent, in each instance, and any check in payment of damages for termination or rejection of any such Lease will be made payable both to Assignor and Agent. Borrower hereby assigns any such payment to Agent and further covenants and agrees that upon the request of Agent after an Event of Default, Borrower will duly endorse to the order of Agent any such check, the proceeds of which will be applied to the indebtedness secured by this Assignment. Assignor hereby irrevocably appoints Agent and its successors and assigns as its-attorney-in-fact to so endorse any such checks if Assignor does not do so.

5.8 Rights Contained in Mortgage. This Assignment is intended to be supplementary to, and not in substitution for, or in derogation of, any assignment of rents to secure the Obligations contained in the Mortgage or in any other Loan Document. In the event of any conflict between this Assignment and the Credit Agreement, the terms of the Credit Agreement shall govern.

5.9 Notices. Any notice or communications in connection herewith shall be sufficiently given only if given in the manner provided for in the Credit Agreement.

5.10 Governing Law; Litigation. **THIS ASSIGNMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK (WITHOUT GIVING EFFECT TO NEW YORK CHOICE OF LAW PRINCIPLES), EXCEPT WITH RESPECT TO THE ENFORCEMENT HEREOF IN THE STATE OF ILLINOIS, WHICH ENFORCEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF ILLINOIS (WITHOUT GIVING EFFECT TO ILLINOIS CHOICE OF LAW PRINCIPLES). TO THE EXTENT THAT THIS ASSIGNMENT MAY OPERATE AS A SECURITY AGREEMENT UNDER THE UCC, AGENT SHALL HAVE ALL RIGHTS AND REMEDIES CONFERRED THEREIN FOR THE BENEFIT OF A SECURED PARTY, AS SUCH TERM IS DEFINED THEREIN, THE ENFORCEMENT OF WHICH SHALL BE GOVERNED BY**

# UNOFFICIAL COPY

THE LAWS OF THE STATE OF ILLINOIS (WITHOUT GIVING EFFECT TO ILLINOIS CHOICE OF LAW PRINCIPLES).

TO THE MAXIMUM EXTENT PERMITTED BY LAW, ASSIGNOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THE ENFORCEMENT OF REMEDIES UNDER THIS ASSIGNMENT SHALL BE TRIED AND DETERMINED ONLY IN THE STATE AND FEDERAL COURT LOCATED IN THE COUNTY OF NEW YORK, STATE OF NEW YORK, OR, AT THE SOLE OPTION OF AGENT, IN ANY OTHER COURT IN WHICH AGENT SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY, EXCEPT THAT ANY ACTION TO OBTAIN POSSESSION OF THE PROPERTY, TO HAVE A RECEIVER APPOINTED FOR THE PROPERTY OR TO ENFORCE ANY OTHER REMEDY HEREIN AFFECTING THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, INJUNCTIVE RELIEF, SHALL BE BROUGHT IN THE COUNTY OF COOK, STATE OF ILLINOIS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, ASSIGNOR HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION WITH RESPECT TO THE ENFORCEMENT OF REMEDIES UNDER THIS ASSIGNMENT TO THE MAXIMUM EXTENT PERMITTED BY LAW, ASSIGNOR HEREBY WAIVES PERSONAL SERVICE OF PROCESS UPON ASSIGNOR, AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO ASSIGNOR AT THE ADDRESS STATED IN THIS ASSIGNMENT AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

5.11 JURY WAIVER. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OF ASSIGNOR AND AGENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS ASSIGNMENT, OR IN ANY WAY CONNECTED WITH, RELATED TO OR INCIDENTAL TO THE DEALINGS OF ASSIGNOR AND AGENT AND LENDERS WITH RESPECT TO THIS ASSIGNMENT, OR THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OF ASSIGNOR AND AGENT HEREBY AGREES THAT ANY SUCH ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT ASSIGNOR OR AGENT MAY FILE A COPY OF THIS ASSIGNMENT WITH ANY COURT OR OTHER TRIBUNAL AS WRITTEN EVIDENCE OF THE CONSENT OF EACH OF ASSIGNOR AND AGENT TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY. ASSIGNOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST AGENT OR LENDERS ON THE THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.


[Remainder of Page Intentionally Left Blank]

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the Assignor has caused this Assignment to be duly executed and delivered as of the date first written above.

ASSIGNOR:

**MS ARIA, LP,**  
a Delaware limited partnership

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

Name: Scott White

Title: President

Property of Cook County Clerk's Office

[Signatures Continue on Following Page]



# UNOFFICIAL COPY

STATE OF GEORGIA )

) ss.

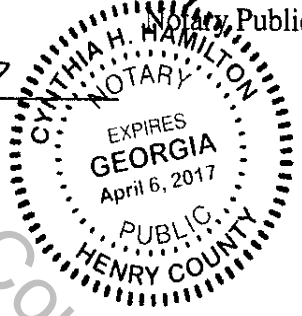
COUNTY OF FULTON )

I, CYNTHIA H HAMILTON a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Scott White, the President of MS Aria, LP, a Delaware limited partnership, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument in his capacity as President of MS Aria, LP, as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this 27<sup>th</sup> day of OCTOBER, 2015.

Cynthia H. Hamilton  
Notary, Public

My commission expires: 4/6/17



# UNOFFICIAL COPY

## EXHIBIT A

### LEGAL DESCRIPTION

That part of the south  $\frac{1}{2}$  of the northwest  $\frac{1}{4}$  of Section 17, Township 39 North, Range 12 East of the Third Principal Meridian, described as follows:

Commencing at the southwest corner of the northwest  $\frac{1}{4}$ ; Thence North 00 degrees 04 minutes 43 seconds East, 1324.21 feet; Thence North 89 degrees 35 minutes 43 seconds East, 954.00 feet to a found  $\frac{1}{2}$ " iron rod on the northeasterly right of way line of the Dwight D. Eisenhower Expressway (a 570 foot right of way), said iron rod being the POINT OF BEGINNING of the herein described tract; Thence North 89 degrees 35 minutes 43 seconds East 691.10 feet; Thence South 00 degrees 24 minutes 17 seconds East at right angles to the preceding course, a distance of 165.00 feet; Thence South 89 degrees 35 minutes 43 seconds West at right angles to the preceding course, a distance of 65.00 feet; Thence South 00 degrees 24 minutes 17 seconds East 153.17 feet to a point on the northeasterly line of the Dwight D. Eisenhower Expressway, said point also being on a curve concave southwesterly; Thence along the northeasterly line of said expressway being a curve to the left having a radius of 4029.83 feet and subtending a chord of length 702.31 feet and bearing North 63 degrees 27 minutes 57 seconds West for an arc distance of 703.20 feet to the POINT OF BEGINNING.

**PIN:** 15-17-101-014-0000

**Address:** 4600 West Frontage Road, Hillside, Illinois 60162