

# UNOFFICIAL COPY

Prepared by and  
When Recorded, Mail to:

Polsinelli  
150 N. Riverside Plaza, Suite 3000  
Chicago, IL 60606  
Attention: Jason Kaplan, Esq.

Doc#: 1914149320 Fee: \$98.00  
Edward M. Moody  
Cook County Recorder of Deeds  
Date: 05/21/2019 11:20 AM Pg: 1 of 12

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**DYER APL MP, LLC,**  
a Delaware limited liability company  
(Assignor)

to

**CAPITAL ONE, NATIONAL ASSOCIATION,**  
(Administrative Agent)

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**ASSIGNMENT OF LEASES AND RENTS**

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Dated as of October 12, 2018

Permanent Index Numbers: 33-29-200-004 and 33-29-400-004

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## ASSIGNMENT OF LEASES AND RENTS

This Assignment of Leases and Rents (this "Agreement") is executed as of October 12, 2018, by **DYER APL MP, LLC**, a Delaware limited liability company, whose address for notice is 181 W. Madison Street, Suite 4700, Chicago, Illinois 60602 ("Assignor" and "Grantor" for purposes of indexing), to **CAPITAL ONE, NATIONAL ASSOCIATION**, a national banking association, as administrative agent for the Lenders (as defined in the Loan Agreement) whose address for notice is 77 W. Wacker Drive, 10<sup>th</sup> Floor, Chicago, Illinois 60601, Attention: Jeffrey M. Muchmore, Reference: MB Kayne Montecito ("Administrative Agent" and "Grantee" for purposes of indexing).

### RECITALS:

A. This Agreement is given in connection with a loan in the principal sum of up to ONE HUNDRED TWENTY-FIVE MILLION SEVEN HUNDRED THIRTY-NINE THOUSAND SIX HUNDRED TWENTY-SEVEN AND NO/100 DOLLARS (\$125,739,627.00) pursuant to the Amended, Restated and Consolidated Loan Agreement dated as of even date herewith, by and among Administrative Agent, Lenders (as defined in the Loan Agreement), Assignor and the other Borrower parties thereto (the "Other Borrower Parties") (as the same may be amended, restated, replaced, supplemented, extended or otherwise modified from time to time, the "Loan Agreement") and evidenced by one or more amended, restated and consolidated promissory notes, executed by Assignor and the Other Borrower Parties, bearing interest and being payable to the order of one or more Lenders (as the same may be amended, restated, replaced, supplemented, extended or otherwise modified from time to time, collectively, the "Note"). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

B. The Note is secured by, among other things, that certain Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing of even date herewith executed by Assignor in favor of Administrative Agent for the benefit of Lenders and relating to the Property (defined below) (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "Mortgage").

C. Assignor desires to further secure the payment of the Obligations and the performance of all of its obligations under (i) the Note, (ii) the Mortgage, and (iii) the Loan Agreement (each of the foregoing, this Agreement, and such other documents and instruments evidencing the Loan to which Assignor, the Other Borrower Parties or Guarantor are parties, and such modifications, amendments, extensions, replacements, and substitutions thereof being herein collectively called the "Loan Documents").

D. The assignment pursuant to this Agreement is given pursuant to the Loan Agreement, and payment, fulfillment, and performance by Assignor and the Other Borrower Parties of the Obligations secured hereby, and each and every term and provision of the Loan Agreement, the Note and the Mortgage, including the rights, remedies, obligations, covenants,

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conditions, agreements, indemnities, representations and warranties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Agreement.

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

## AGREEMENT:

1. **Absolute Assignment.** Assignor unconditionally and absolutely collaterally assigns, sells, transfers and sets over to Administrative Agent, for the benefit of Lenders, all of Assignor's right, title and interest in and to: (a) all existing and future leases, subleases, occupancy agreements, licenses, concessions, rental contracts and other agreements (written or oral) now or hereafter existing relating to the use or occupancy of the project located on the real property described in Exhibit A attached hereto and made a part hereof (said land and project herein collectively referred to as the "**Property**"), together with all guarantees, letters of credit and other credit support, modifications, extensions and renewals thereof (whether before or after the filing by or against Assignor of any petition of relief under 11 U.S.C. § 101 et seq., as same may be amended from time to time, the "**Bankruptcy Code**"), and all related security and other deposits (collectively, the "**Leases**"); (b) all rents, revenues, liquidated damages following defaults under the Leases, issues, profits, income and proceeds due or to become due from tenants of the Property, including rentals and all other payments of any kind under the Leases for using, leasing, licensing, possessing, operating from, rendering in, selling or otherwise enjoying the Property (collectively, the "**Rents**"); (c) all of Assignor's claims and rights (the "**Bankruptcy Claims**") to the payment of damages arising from any rejection by a lessee of any Lease under the Bankruptcy Code; and (d) any and all other rights of Assignor in and to the items set forth in subsections (a) through (c) above, and all amendments, modifications, replacements, renewals, proceeds and substitutions thereof. This Agreement is an absolute assignment to Administrative Agent for the benefit of Lenders and not an assignment as security for the performance of the obligations under the Loan Documents, or any other indebtedness, and such absolute assignment is presently and immediately effective without further or supplemental assignment. The absolute assignment contained herein shall not itself reduce the obligations owing to Lenders under the Loan Documents unless and until Administrative Agent actually receives the Rents and such Rents are applied by Administrative Agent to such obligations pursuant to Section 4 below.

2. **Rights of Administrative Agent.** Subject to the provisions of Section 6 below and subject to applicable Requirements of Law, Administrative Agent shall have the right, power and authority to: (a) notify any person that the Leases have been assigned to Administrative Agent for the benefit of Lenders and that all Rents are to be paid directly to Administrative Agent, whether or not Administrative Agent on behalf of the Lenders has commenced or completed foreclosure or taken possession of the Property; (b) settle, compromise, release, extend the time of payment of, and make allowances, adjustments and discounts of any Rents or

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other obligations under the Leases; (c) enforce payment of Rents and other rights under the Leases, prosecute any action or proceeding, and defend against any claim with respect to Rents and Leases; (d) enter upon, take possession of and operate the Property; (e) lease all or any part of the Property; and/or (f) perform any and all obligations of Assignor under the Leases and exercise any and all rights of Assignor therein contained to the full extent of Assignor's rights and obligations thereunder, with or without the bringing of any action or the appointment of a receiver. At Administrative Agent's request, Assignor shall deliver a copy of this Agreement to each tenant under a Lease and to each manager and managing agent or operator of the Property. Assignor irrevocably directs any tenant, manager, managing agent, or operator of the Property, without any requirement for notice to or consent by Assignor, to comply with all demands of Administrative Agent under this Agreement and to turn over to Administrative Agent on demand all Rents which it receives.

3. **No Obligation or Liability.** Notwithstanding Administrative Agent's rights hereunder, Administrative Agent shall not be obligated to perform, and Administrative Agent does not undertake to perform, any obligation, duty or liability with respect to the Leases, Rents or Property on account of this Agreement. Administrative Agent shall have no responsibility on account of this Agreement for the control, care, maintenance or repair of the Property, for any waste committed on the Property, for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property. Administrative Agent shall not be liable for any loss sustained by Assignor resulting from Administrative Agent's failure to let the Property after an Event of Default or from any other act or omission of Administrative Agent or Lenders in managing the Property after an Event of Default. Nothing herein contained shall be construed as constituting Administrative Agent or any Lender a "mortgagee in possession" in the absence of the taking of actual possession of the Property by Administrative Agent or Lenders. In the exercise of the powers herein granted Administrative Agent for the benefit of Lenders, no liability shall be asserted or enforced against Administrative Agent or Lenders, all such liability being expressly waived and released by Assignor.

4. **Right to Apply Rents.** Administrative Agent shall have the right, but not the obligation, to use and apply any Rents received by Administrative Agent pursuant to the terms hereof, and subject to Section 2.6 of the Loan Agreement, in such order and such manner as Administrative Agent may determine for:

(a) **Enforcement or Defense.** The payment of costs and expenses of enforcing or defending the terms of this Agreement or the rights of Administrative Agent hereunder, and collecting any Rents;

(b) **Loan Payments.** Interest, principal or other amounts payable pursuant to the Loan Documents and any and all modifications, amendments or extensions thereof or replacements or substitutions therefor; and

(c) **Operating Expenses.** Payment of costs and expenses of the operation and maintenance of the Property, including (i) rentals and other charges payable by Assignor under

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any ground lease or other agreement affecting the Property; (ii) electricity, telephone, water and other utility costs, taxes, assessments, water charges and sewer rents and other utility and governmental charges levied, assessed or imposed against the Property; (iii) insurance premiums; (iv) costs and expenses with respect to any litigation affecting the Property, the Leases or the Rents; (v) wages and salaries of employees, commissions of agents and attorneys' fees and expenses; and (vi) all other carrying costs, fees, charges, reserves, and expenses whatsoever relating to the Property.

After the payment of all such costs and expenses and after Administrative Agent has established such reserves as it, in its sole and absolute discretion, deems necessary for the proper management of the Property, Administrative Agent shall apply all remaining Rents received by it to the reduction of the Loan.

5. **No Waiver.** The exercise or nonexercise by Administrative Agent of the rights granted in this Agreement or the collection and application of Rents by Administrative Agent shall not be a waiver of any default by Assignor under this Agreement or any other Loan Document. No action or failure to act by Administrative Agent with respect to any obligations of Assignor under the Loan Documents, or any security or guaranty given for the payment or performance thereof, shall in any manner affect, impair or prejudice any of Administrative Agent's rights and privileges under this Agreement, or discharge, release or modify any of Assignor's duties or obligations hereunder.

6. **Collection of Rents.** Until the occurrence and during the continuance of an Event of Default under the Mortgage or until Assignor shall default in the performance of any of its obligations under this Agreement (beyond any applicable notice and cure periods), and subject to the terms of any Cash Management Agreement, Assignor may receive, collect and enjoy the Rents and income from the Property. Upon the occurrence and during the continuance of an Event of Default under the Mortgage or a default by Assignor in the performance of any of its obligations under this Agreement beyond any applicable notice and cure periods, Administrative Agent shall immediately be entitled to receive and apply all Rents, whether or not Administrative Agent or Lenders enter upon and take control of the Property. Other than during the existence of an Event of Default under the Mortgage or a default by Assignor in the performance of any of its obligations under this Agreement (beyond any applicable notice and cure periods), Assignor shall apply any Rents which it receives to the payment of debt service on the Note and other payments due in accordance with and under the Loan Agreement, and any taxes, assessments, water charges, sewer rents and other governmental charges levied, assessed or imposed against the Property, insurance premiums, operation and maintenance charges relating to the Property, and other obligations of lessor under the Leases before using such proceeds for any other purpose. Administrative Agent is hereby granted and assigned by Assignor the right, at its option, upon the occurrence and during the continuance of an Event of Default under the Mortgage or a default by Assignor in the performance of any of its obligations under this Agreement beyond applicable notice and cure periods, to enter upon the Property in person, by agent or by court-appointed receiver to collect the Rents. Any Rents collected during the

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existence of an Event of Default under the Mortgage or a default by Assignor in the performance of any of its obligations under this Agreement, after any applicable notice and cure periods, may be applied toward payment of the Indebtedness in such priority and proportion as Administrative Agent, in its discretion, shall deem proper.

7. **Term; Release.** This Agreement shall continue in full force and effect until all amounts due under the Loan Documents are paid in full. No judgment or decree entered as to the indebtedness under the Loan Documents shall operate to abrogate or lessen the effect of this Agreement until such indebtedness has actually been paid. The affidavit, certificate, letter, or statement of any officer of Administrative Agent showing any part of such indebtedness remaining unpaid shall be and constitute conclusive evidence of the validity, effectiveness, and continuing force of this Agreement. Any person, firm, corporation, or other entity may and is hereby authorized to rely on such affidavit, certificate, letter, or statement.

8. **Appointment.** Assignor irrevocably appoints Administrative Agent its true and lawful attorney in fact, which appointment is coupled with an interest, to exercise any or all of the rights or powers described herein with the same force and effect as if exercised by Assignor, and Assignor ratifies and confirms any and all acts done or omitted to be done by Administrative Agent, Lenders, their respective agents, servants, employees or attorneys in, to or about the Property to the extent permitted by this Agreement. Notwithstanding the foregoing, Administrative Agent agrees not to exercise such rights or powers except during the continuance of an Event of Default.

9. **Liability of Administrative Agent.** Administrative Agent shall not in any way be liable to Assignor for any action or inaction of Administrative Agent, Lenders, their respective employees or agents under this Agreement, except to the extent due to the gross negligence or willful misconduct of any of the foregoing.

10. **Indemnification.** Assignor shall indemnify, defend and hold harmless Administrative Agent from and against all liability, actual loss, actual damage, out-of-pocket cost or expense which it may incur under this Agreement or under any of the Leases, including any claim against Administrative Agent by reason of any alleged obligation, undertaking, action, or inaction on its part to perform or discharge any terms, covenants or conditions of the Leases or with respect to Rents, and including reasonable attorneys' fees and expenses, but excluding any claim to the extent caused by Administrative Agent's gross negligence or willful misconduct. Any amount covered by this indemnity shall be payable within three (3) Business Days after Administrative Agent's demand, and shall bear interest from such date until the same is paid by Assignor to Administrative Agent at a rate equal to the Default Rate.

11. **Modification.** This Agreement may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of such change is sought.

12. **Bankruptcy.**

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(a) Upon the occurrence of an Event of Default and during the continuance thereof, Administrative Agent shall have the right to proceed in its own name on behalf of Lenders or in the name of Assignor in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Assignor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code.

(b) If there shall be filed by or against Assignor a petition under the Bankruptcy Code, and Assignor, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Assignor shall give Administrative Agent not less than ten (10) days' prior notice of the date on which Assignor shall apply to the bankruptcy court for authority to reject the Lease. Administrative Agent shall have the right, but not the obligation, to serve upon Assignor within such ten-day period a notice stating that (i) Administrative Agent demands that Assignor assume and assign the Lease to Lenders pursuant to Section 365 of the Bankruptcy Code and (ii) Administrative Agent covenants to cure or provide adequate assurance of future performance under the Lease. If Administrative Agent serves upon Assignor the notice described in the preceding sentence, Assignor shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Lenders of the covenant provided for in clause (ii) of the preceding sentence.

13. **Authority.** Assignor represents and warrants that it has full power and authority to execute and deliver this Agreement and the execution and delivery of this Agreement has been duly authorized and does not conflict with or constitute a default under any law, judicial order or other agreement affecting Assignor or the Property.

14. **Liability.** If Assignor consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several.

15. **Headings, Etc.** The headings and captions of various paragraphs of this Agreement are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

16. **Notices.** Any notice required or permitted to be given under this Agreement shall be (a) in writing, (b) sent in the manner set forth in the Loan Agreement, and (c) effective in accordance with the terms of the Loan Agreement.

17. **Successors and Assigns.** This Agreement shall inure to the benefit of Administrative Agent, Lenders and their respective successors and assigns and shall be binding on Assignor and its successors and assigns.

18. **GOVERNING LAW.** THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF ILLINOIS APPLICABLE TO CONTRACTS MADE AND TO BE

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PERFORMED IN SUCH STATE (WITHOUT REGARD TO THE PRINCIPLE OF CONFLICTS OF LAW APPLICABLE UNDER ILLINOIS LAW) AND APPLICABLE LAWS OF THE UNITED STATES OF AMERICA; PROVIDED THAT (A) WITH RESPECT TO THE PROVISIONS HEREOF WHICH RELATE TO TITLE, OR TO THE CREATION, PERFECTION, PRIORITY, ENFORCEMENT OR FORECLOSURE OF LIENS ON AND SECURITY INTERESTS IN OR ASSIGNMENTS OF REAL PROPERTY, THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE WHERE SUCH REAL PROPERTY IS LOCATED; AND (B) WITH RESPECT TO THE PROVISIONS HEREOF WHICH RELATE TO THE CREATION, PERFECTION, PRIORITY, ENFORCEMENT AND FORECLOSURE OF LIENS ON PROPERTY GOVERNED BY ARTICLE 9 OF THE UCC, THE CONFLICTS OF LAW PROVISIONS OF THE UCC SHALL CONTROL; IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY LAW, THE LAWS OF THE STATE OF ILLINOIS SHALL GOVERN.

19. **Conflict.** If any conflict or inconsistency exists between the absolute assignment of the Rents and the Leases in this Agreement and the assignment of the Rents and Leases as security in the Mortgage, the terms of this Agreement shall control. In addition, to the extent that the terms and conditions in this Agreement and the terms and conditions of the Loan Agreement conflict, the terms and conditions of the Loan Agreement shall control and supersede the terms of this Agreement with respect to such conflicts.

20. **Limitation on Liability.** Assignor's liability hereunder is subject to the limitation on liability provisions of Article 13 of the Loan Agreement.

21. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

22. **Merger.** There shall be no merger of the interest or estate created by this Agreement with any other interest or estate in the Property at any time held by or for the benefit of Administrative Agent in any capacity, without the written consent of Administrative Agent.

23. **Special State Provisions.**

(a) **Adequacy of Collateral.** Any of the actions referred to in this Agreement may be taken by Administrative Agent, irrespective of and without regard to the adequacy of the security for the Obligations.

(b) **Continuing Rights.** The rights and powers of Administrative Agent, Lenders or any receiver hereunder shall continue and remain in full force and effect until all Obligations, including any deficiency remaining from a foreclosure sale, are paid in full, and shall continue after commencement of a foreclosure action and after foreclosure sale and until expiration of any period of redemption.



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(c) Venue. ASSIGNOR HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF COOK, STATE OF ILLINOIS OR, AT THE SOLE AND EXCLUSIVE DIRECTION OF ADMINISTRATIVE AGENT, IN ANY OTHER COURT LOCATED IN A STATE WHERE THE PROPERTY IS LOCATED AND IRREVOCABLY AGREES THAT, SUBJECT TO ADMINISTRATIVE AGENT'S ELECTION, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS SHALL BE LITIGATED IN SUCH COURTS. ASSIGNOR EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. ASSIGNOR HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON ASSIGNOR BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO ASSIGNOR, AT THE ADDRESS SET FORTH IN THE LOAN AGREEMENT AND SERVICE SO MADE SHALL BE DEEMED COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED. NOTWITHSTANDING THE FOREGOING, IF ADMINISTRATIVE AGENT BRINGS ANY ACTION OR PROCEEDING IN ANY JURISDICTION OTHER THAN THE COUNTY OF COOK, STATE OF ILLINOIS, NOTHING HEREIN IS INTENDED TO PRECLUDE ASSIGNOR FROM BRINGING ANY ACTION OR RAISING ANY CLAIM OR DEFENSE IN RESPECT OF SUCH ACTION, PROCEEDING OR EXERCISE OF REMEDIES IN SUCH OTHER JURISDICTION.

*[Remainder of this page intentionally left blank. Signature page follows.]*

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EXECUTED as of the date first above written.

**DYER APL MP, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: Gregg Graines  
Title: Authorized Signatory

STATE OF ILLINOIS     )  
  ) ss.  
COUNTY OF COOK     )

On the 8 day of October, 2018, before me, Michelle Robertson, a Notary Public in and for said state, personally appeared Gregg Graines, who by me duly sworn did say that s/he is the Authorized Signatory of DYER APL MP, LLC, a Delaware limited liability company, and that the within instrument was signed and sealed in behalf of said limited liability company by authority of its sole member, and acknowledged said instrument to be the free act and deed of said limited liability company for the purposes therein stated.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal, the day and year last above written.



\_\_\_\_\_  
Michelle Robertson (SEAL)  
Notary Public  
My Commission Expires: 11/3/19

DOCUMENT PREPARED BY  
AND WHEN RECORDED, RETURN TO:  
Jason Kaplan, Esq.  
Polsinelli PC  
150 N. Riverside Plaza  
Suite 3000  
Chicago, IL 60606  
Telephone Number: (816) 753-1000

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I affirm under the penalties for perjury that I have taken reasonable care to redact each Social Security Number in this document, unless required by law.

Jason Kaplan, Esq.

Address of Mortgagee:  
77 W. Wacker Drive, 10th Floor  
Chicago, Illinois 60601

Property of Cook County Clerk's Office

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## EXHIBIT A

### Legal Description

Real property in the County of Cook, State of Illinois, described as follows:

EASEMENTS AS SET OUT IN THE ACCESS, PARKING AND UTILITY EASEMENT AGREEMENT BY AND BETWEEN SISTERS OF ST. FRANCIS HEALTH SERVICES, INC., AN INDIANA CORPORATION D/B/A ST. MARGARET MERCY HEALTHCARE CENTERS AND DYER MEDICAL PARTNERS, LLC, AN INDIANA LIMITED LIABILITY COMPANY DATED APRIL 30, 2007 AND RECORDED JULY 18, 2007, AS DOCUMENT NUMBER 0719960010 IN THE OFFICE OF THE RECORDER OF COOK COUNTY, ILLINOIS, AND AS AMENDED BY AN AMENDMENT TO ACCESS, PARKING AND UTILITY EASEMENT AGREEMENT DATED MARCH 31, 2008 AND RECORDED DECEMBER 27, 2017, AS DOCUMENT NUMBER 1736147069 IN THE OFFICE OF THE RECORDER OF COOK COUNTY, ILLINOIS, MADE BY AND BETWEEN SISTERS OF ST. FRANCIS HEALTH SERVICES, INC. AND DYER MEDICAL PARTNERS, LLC.

Permanent Index Numbers: 33-29-200-004 and 33-29-400-004