

# UNOFFICIAL COPY

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Edward M. Moody  
Cook County Recorder of Deeds  
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**THIS DOCUMENT PREPARED BY:**

Katten Muchin Rosenman LLP  
50 S. Tryon Street, Suite 2900  
Charlotte, North Carolina 28202-4213  
Attention: John W. Dombay, Esq.

**AFTER RECORDING RETURN TO:**

Katten Muchin Rosenman LLP  
50 S. Tryon Street, Suite 2900  
Charlotte, North Carolina 28202-4213  
Attention: John W. Dombay, Esq.

(above space for Recorder's use only)

## **SUBORDINATION, NON DISTURBANCE AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NON DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made as of the 13 day of September, 2019 by and between the undersigned lender, having an address at 345 Park Avenue, 8<sup>th</sup> Floor, New York, New York 10154 (together with its affiliates and/or any of its successors and/or assigns, "Lender") and REHABILITATION INSTITUTE OF CHICAGO, an Illinois not-for-profit corporation d/b/a Shirley Ryan AbilityLab, having an address at 355 East Erie Street, Chicago, Illinois 60611 ("Tenant").

### RECITALS:

A. Lender's predecessor in interest made one or more loans in the approximate aggregate amount of \$37,100,000.00 (collectively, the "Loan") to Landlord (defined below) and certain other affiliates of Landlord, each as co-borrowers, which Loan is given, in part, pursuant to the terms and conditions of that certain Loan Agreement dated October 5, 2018, between Lender's predecessor in interest and Landlord (the "Loan Agreement"). The Loan is secured, in part, by that certain Mortgage, Assignment of Leases and Rents and Security Agreement dated October 5, 2018 and recorded in the Cook County Record of Deeds office on October 12, 2018 as Document # 1828513033, given by Landlord to Lender (the "Mortgage"), which encumbers the fee estate of Landlord in certain premises described in Exhibit A attached hereto (the "Property");

B. Lender is the current owner and holder of the Loan and the current "Lender" under the Loan Agreement and the other loan documents evidencing the Loan.

C. Tenant occupies a portion of the Property under and pursuant to the provisions of a certain lease dated September 13, 2019 between 3205-3231 NORTH WILKE PROPERTY

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LLC, a Delaware limited liability company, as landlord (“Landlord”) and Tenant, as tenant (the “Lease”); and

C. Tenant has agreed to subordinate the Lease to the Mortgage and to the lien thereof and Lender has agreed to grant non-disturbance to Tenant under the Lease on the terms and conditions hereinafter set forth.

## AGREEMENT:

For good and valuable consideration, Tenant and Lender agree as follows:

1. Subordination. Tenant agrees that the Lease and all of the terms, covenants and provisions thereof and all rights, remedies and options of Tenant thereunder are and shall at all times continue to be subject and subordinate in all respects to the lien of the Mortgage, including without limitation all renewals, increases, modifications, spreaders, consolidations, replacements and extensions thereof and to all sums secured thereby with the same force and effect as if the Mortgage and Loan Agreement had been executed, delivered and (in the case of the Mortgage) recorded prior to the execution and delivery of the Lease.
2. Non-Disturbance. Lender agrees that if any action or proceeding is commenced by Lender for the foreclosure of the Mortgage or the sale of the Property, Tenant shall not be named as a party therein unless such joinder shall be required by law, provided, however, such joinder shall not result in the termination of the Lease or disturb the Tenant’s possession or use of the premises demised thereunder, and the sale of the Property in any such action or proceeding and the exercise by Lender of any of its other rights under the Note, the Mortgage and the Loan Agreement shall be made subject to all rights of Tenant under the Lease, provided that at the time of the commencement of any such action or proceeding or at the time of any such sale or exercise of any such other rights (a) the Lease shall be in full force and effect and (b) Tenant shall not be in default under any of the terms, covenants or conditions of the Lease or of this Agreement on Tenant’s part to be observed or performed beyond the expiration of any applicable notice or grace periods.
3. Attornment. Lender and Tenant agree that upon the conveyance of the Property by reason of the foreclosure of the Mortgage or the acceptance of a deed or assignment in lieu of foreclosure or otherwise, the Lease shall not be terminated or affected thereby (at the option of the transferee of the Property (the “Transferee”) if the conditions set forth in Section 2 above have not been met at the time of such transfer) but shall continue in full force and effect as a direct lease between the Transferee and Tenant upon all of the terms, covenants and conditions set forth in the Lease and in that event, Tenant agrees to attorn to the Transferee and the Transferee shall accept such attornment, provided, however, that the provisions of the Mortgage and the Loan Agreement shall govern with respect to the disposition of any casualty insurance proceeds or condemnation awards and the Transferee shall not be (a) obligated to complete any construction work required to be done by Landlord pursuant to the provisions of the Lease or to reimburse Tenant for any construction work done by Tenant, (b) liable (i) for Landlord’s failure to perform any of its obligations under the Lease which have accrued prior to the date on which the Transferee shall become the owner of the Property, or (ii) for any act or omission of Landlord, whether prior to or after such foreclosure or sale, provided, however, that Transferee shall be liable for any act or

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omission of Landlord that (A) is continuing, such as and not by way of limitation, Landlord's failure to fulfill a repair, maintenance or service obligation, (B) pertains to operating expense adjustment provisions included in the Lease, or (C) is of a nature that can be cured by the Transferee and is not personal to Landlord, provided, however, in each of (A) and (C) that Transferee has properly received prior written notice of such act or omission and has been afforded the opportunity to cure the same in accordance with the terms of the Lease or this Agreement, (c) required to make any repairs to the Property or to the premises demised under the Lease required as a result of fire, or other casualty or by reason of condemnation unless the Transferee shall be obligated under the Lease to make such repairs and shall have received sufficient casualty insurance proceeds or condemnation awards to finance the completion of such repairs, (d) required to make any capital improvements to the Property or to the premises demised under the Lease which Landlord may have agreed to make, but had not completed, or to perform or provide any services not related to possession or quiet enjoyment of the premises demised under the Lease, (e) subject to any offsets, defenses, abatement or counterclaims which shall have accrued to Tenant against Landlord prior to the date upon which the Transferee shall become the owner of the Property, except for any express contractual rights (if any) to offset, defenses, abatement, or counterclaims set forth in the Lease, and provided that Lender has properly received written notice of any act or omission to which such right relates and has been afforded the opportunity to cure the same in accordance with the terms and conditions of the Lease and this Agreement, (f) liable for the return of rental security deposits, if any, paid by Tenant to Landlord in accordance with the Lease unless such sums are actually received by the Transferee, (g) bound by any payment of rents, additional rents or other sums which Tenant may have paid more than one (1) month in advance to any prior Landlord unless (i) such sums are actually received by the Transferee or (ii) such prepayment shall have been expressly approved of by the Transferee or (iii) such prepayment consists of Tenant's payments of its estimated operating expenses, taxes and insurance obligations pursuant to the Lease, (h) bound to make any payment to Tenant which was required under the Lease, or otherwise, to be made prior to the time the Transferee succeeded to Landlord's interest, (i) bound by any agreement amending or modifying the rental, lease term or the Landlord's obligations provided for in the Lease (including, without limitation, financial obligation) or granting Tenant a purchase option or right of first refusal to acquire all or any portion of the Property or terminating the Lease made without the Lender's prior written consent prior to the time the Transferee succeeded to Landlord's interest, or (j) bound by any assignment of the Lease or sublease of the Property, or any portion thereof, made prior to the time the Transferee succeeded to Landlord's interest other than if pursuant to the provisions of the Lease.

4. Notice to Tenant. After notice is given to Tenant by Lender that the Landlord is in default under the Note and the Mortgage and that the rentals under the Lease should be paid to Lender pursuant to the terms of the assignment of leases and rents executed and delivered by Landlord to Lender in connection therewith, Tenant shall thereafter pay to Lender or as directed by the Lender, all rentals and all other monies due or to become due to Landlord under the Lease and Landlord hereby expressly authorizes Tenant to make such payments to Lender and hereby releases and discharges Tenant from any liability to Landlord on account of any such payments.

5. Lender's Consent. Tenant shall not, without obtaining the prior written consent of Lender, (a) enter into any agreement amending, modifying or terminating the Lease, (b) prepay any of the rents, additional rents or other sums due under the Lease for more than one (1) month in advance of the due dates thereof unless (i) such sums are actually received by the Transferee or

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(ii) such prepayment consists of Tenant's payments of its estimated operating expenses, taxes and insurance obligations pursuant to the Lease, (c) voluntarily surrender the premises demised under the Lease or terminate the Lease without cause or shorten the term thereof except pursuant to an express and unilateral Tenant right set forth in the Lease, or (d) assign the Lease or sublet the premises demised under the Lease or any part thereof other than pursuant to the provisions of the Lease; and any such amendment, modification, termination, prepayment, voluntary surrender, assignment or subletting, without Lender's prior consent, shall not be binding upon Lender.

6. Lender to Receive Notices. Tenant shall provide Lender with copies of all written notices sent to Landlord pursuant to the Lease simultaneously with the transmission of such notices to the Landlord. Tenant shall notify Lender of any default by Landlord under the Lease which would entitle Tenant to cancel the Lease or to an abatement of the rents, additional rents or other sums payable thereunder, and agrees that, notwithstanding any provisions of the Lease to the contrary, no notice of cancellation thereof or of such an abatement shall be effective unless Lender shall have received notice of default giving rise to such cancellation or abatement and shall have failed within thirty (30) days after receipt of such notice to cure such default or if such default cannot be cured within thirty (30) days, shall have failed within thirty (30) days after receipt of such notice to commence and thereafter diligently pursue any action necessary to cure such default.

7. Notices. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person or by facsimile transmission with receipt acknowledged by the recipient thereof and confirmed by telephone by sender, (ii) one (1) Business Day (hereinafter defined) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Tenant:                   SHIRLEY RYAN ABILITY LAB  
355 East Erie Street  
Chicago, Illinois 60611  
Attention: Peggy Kirk, Chief Operating Officer and Senior Vice President

With a copy to:               SHIRLEY RYAN ABILITY LAB  
355 East Erie Street  
Chicago, Illinois 60611  
Attention: Nancy E. Paridy, Senior Vice President, Chief Administrative Officer

If to Lender:                   Ladder Capital Realty II LLC  
c/o Marsh Captive Solutions  
345 Park Avenue, 8th Floor  
New York, New York 10154  
Attention: Kelly Porcella  
Facsimile No.: (212) 715-3199

With a copy to:               Katten Muchin Rosenman LLP



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550 South Tryon Street, Suite 2900  
Charlotte, North Carolina 28202  
Attention: John W. Dombay, Esq.

or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Section, the term "Business Day" shall mean a day on which commercial banks are not authorized or required by law to close in New York, New York.

Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

8. Joint and Several Liability. If Tenant consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Agreement shall be binding upon and inure to the benefit of Lender and Tenant and their respective successors and assigns.

9. Definitions. The term "Lender" as used herein shall include the successors and assigns of Lender and any person, party or entity which shall become the owner of the Property by reason of a foreclosure of the Mortgage or the acceptance of a deed or assignment in lieu of foreclosure or otherwise. The term "Landlord" as used herein shall mean and include the present landlord under the Lease and such landlord's predecessors and successors in interest under the Lease, but shall not mean or include Lender. The term "Property" as used herein shall mean the Property, the improvements now or hereafter located thereon and the estates therein encumbered by the Mortgage.

10. No Oral Modifications. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto.

11. Governing Law. This Agreement shall be deemed to be a contract entered into pursuant to the laws of the State where the Property is located and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State where the Property is located.

12. Inapplicable Provisions. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision.

13. Duplicate Originals; Counterparts. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

14. Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

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15. Transfer of Loan. Lender may sell, transfer and deliver the Note and assign the Mortgage, this Agreement and the other documents executed in connection therewith to one or more investors in the secondary mortgage market (“Investors”). In connection with such sale, Lender may retain or assign responsibility for servicing the loan, including the Note, the Mortgage, this Agreement and the other documents executed in connection therewith, or may delegate some or all of such responsibility and/or obligations to a servicer including, but not limited to, any subservicer or master servicer, on behalf of the Investors. All references to Lender herein shall refer to and include any such servicer to the extent applicable.

16. Further Acts. Tenant will, at the cost of Tenant, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts and assurances as Lender shall, from time to time, require, for the better assuring and confirming unto Lender the property and rights hereby intended now or hereafter so to be, or for carrying out the intention or facilitating the performance of the terms of this Agreement or for filing, registering or recording this Agreement, or for complying with all applicable laws.

17. Limitations on Lender’s Liability. Tenant acknowledges that Lender is obligated only to Landlord to make the Loan upon the terms and subject to the conditions set forth in the Loan Agreement. In no event shall Lender or any purchaser of the Property at foreclosure sale or any grantee of the Property named in a deed-in-lieu of foreclosure, nor any heir, legal representative, successor, or assignee of Lender or any such purchaser or grantee (collectively the Lender, such purchaser, grantee, heir, legal representative, successor or assignee, the “**Subsequent Landlord**”) have any personal liability for the obligations of Landlord under the Lease and should the Subsequent Landlord succeed to the interests of the Landlord under the Lease, Tenant shall look only to the estate and property of any such Subsequent Landlord in the Property for the satisfaction of Tenant’s remedies for the collection of a judgment (or other judicial process) requiring the payment of money in the event of any default by any Subsequent Landlord as landlord under the Lease, and no other property or assets of any Subsequent Landlord shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant’s remedies under or with respect to the Lease; provided, however, that the Tenant may exercise any other right or remedy provided thereby or by law in the event of any failure by Subsequent Landlord to perform any such material obligation.

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IN WITNESS WHEREOF, Lender and Tenant have duly executed this Agreement as of the date first above written.

LENDER:

LADDER CAPITAL REALTY II LLC, a  
Delaware limited liability company

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

Name: Mark Ableman  
Title: Managing Director

STATE OF New York )  
 ) SS.  
COUNTY OF New York )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that MARK ABLEMAN, the Managing Director, of LADDER CAPITAL REALTY II, a DE LLC, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Managing Director appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 18 day of September, 2019.

Tierney Boisvert  
Notary Public

My Commission Expires:

TIERNEY BOISVERT  
Notary Public, State of New York  
No. 01BO6374224  
Qualified in New York County  
Commission Expires April 24, 2020

[Signatures continued on next page]

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**TENANT:**

**REHABILITATION INSTITUTE OF CHICAGO**, an Illinois not-for-profit corporation, d/b/a Shirley Ryan AbilityLab

By: *Peggy Kirk*  
 Name: Peggy Kirk  
 Title: Chief Operating Officer and SVP

STATE OF Illinois )  
 ) S.S.  
 COUNTY OF Cook )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Peggy Kirk, the Chief Operating Officer and SVP of Rehabilitation Institute of Chicago d/b/a Shirley Ryan AbilityLab, an Illinois not-for-profit corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Chief Operating Officer and SVP, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 13 day of September, 2018.

*Liana M Davila*  
 Notary Public

My Commission Expires: 11/07/2020

LIANA M DAVILA  
 Official Seal  
 Notary Public - State of Illinois  
 My Commission Expires Nov 7, 2020

[Signatures continued on next page]



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The undersigned accepts and agrees to the provisions of Section 4 hereof:

LANDLORD:

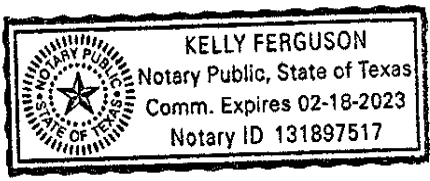
**3205-3231 NORTH WILKE PROPERTY LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF TEXAS )  
  ) SS.  
COUNTY OF HARRIS )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Andrew Seal, the manager of Boxer F3, LLC the sole member of landlord, 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/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 17 day of September, ~~2018~~ 2019.



Kelly Ferguson  
Notary Public

My Commission Expires:  
02-18-2023

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## EXHIBIT A

### LEGAL DESCRIPTION

Units 2, 3, 4 and 5 in the Arlington Ridge Condominiums as delineated on a survey of the following described real estate:

Lot 1 in Arlington Ridge West, being a subdivision in the Northwest 1/4 of Section 7, Township 42 North Range 11 East of the Third Principal Meridian, pursuant to the plat of subdivision recorded December 20, 1979 as document 25290181 in Cook County, Illinois;

Which survey is attached as Exhibit "B" to the Declaration of Condominium recorded February 3, 2012 as document number 1203431030, together with its undivided percentage interest in the common elements, all in Cook County, Illinois.