

# UNOFFICIAL COPY

DOCUMENT PREPARED BY AND  
WHEN RECORDED, RETURN TO:

Akerman LLP  
1251 Avenue of the Americas, 37th Floor  
New York, New York 10020  
Attention: Randy Eckers, Esq.



\*2116149854\*

Doc# 2116149854 Fee \$88.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 06/10/2021 04:03 PM PG: 1 OF 25

---

FEE AND LEASEHOLD DEED TO SECURE DEBT, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND  
FIXTURE FILING

By

SOUTH SHORE SNF REALTY, LLC,

and

LINCOLN PARK SNF REALTY, LLC  
collectively, as Property Owner

and

SYM3CHICAGO MASTER TENANT LLC,  
as Master Tenant  
and

SYMPHONY SOUTH SHORE LLC,

SYMPHONY LINCOLN PARK LLC,

and

SYMPHONY IVY LLC,  
collectively, as Operator  
(Mortgagor)  
to

X-CALIBER FUNDING LLC  
(Mortgagee)

---

Dated: As of June 1, 2021

Property Location: See Exhibit A-1 and Exhibit A-2

---

# UNOFFICIAL COPY

**THIS FEE AND LEASEHOLD DEED TO SECURE DEBT, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING** (as it may be from time to time amended, modified, renewed, extended, substituted, and/or supplemented, this "Mortgage"), dated as of June 1, 2021, by **SOUTH SHORE SNF REALTY, LLC** ("South Shore Property Owner"), and **LINCOLN PARK SNF REALTY, LLC** ("Lincoln Park Property Owner"; together with South Shore Property Owner, collectively, "Property Owner"), each an Illinois limited liability company and each having an address at 7257 N. Lincoln Avenue, Lincolnwood, Illinois 60712, **SYM3CHICAGO MASTER TENANT LLC**, a Delaware limited liability company ("Master Tenant"), having an address at 7257 N. Lincoln Avenue, Lincolnwood, Illinois 60712, and **SYMPHONY SOUTH SHORE LLC** ("South Shore Operator"), **SYMPHONY LINCOLN PARK LLC** ("Lincoln Park SNF Operator"), and **SYMPHONY IVY LLC** ("Lincoln Park ALF Operator"; together with South Shore Operator and Lincoln Park SNF Operator, collectively, "Operator"; and together with Property Owner and Master Tenant, individually and collectively, as the context may require, "Borrower" or "Mortgagor"; provided, however, that the context shall always be one which affords the Lender the broadest possible rights and remedies under the Loan Documents and which permits Lender, in its discretion, to enforce the obligations and liabilities hereunder against one or more of the entities comprising Mortgagor), each an Illinois limited liability company and each having an address at 7257 N. Lincoln Avenue, Lincolnwood, Illinois 60712, to **K-CALIBER FUNDING LLC**, a New York limited liability company (together with its successors and assigns, hereinafter referred to as "Mortgagee"), having an address at 3 W. Main St., Suite 103, Irvington, New York 10533.

## WITNESSETH:

**WHEREAS**, Mortgagor and Mortgagee have entered into a Loan Agreement dated as of the date hereof (as amended, modified, restated, consolidated or supplemented from time to time, the "Loan Agreement") pursuant to which Mortgagee is making a secured loan to Mortgagor in the aggregate original principal amount of \$48,950,000.00 (the "Loan"). Capitalized terms used herein without definition are used as defined in the Loan Agreement. The Loan is evidenced by a Note dated the date hereof made by Mortgagor to Mortgagee in such principal amount (as the same may be amended, modified, restated, severed, consolidated, renewed, replaced, or supplemented from time to time, the "Note").

**NOW, THEREFORE**, for good and valuable consideration, receipt of which the parties hereto acknowledge, to secure the payment of the Note and all sums which may or shall become due thereunder or under any of the other documents evidencing, securing or executed in connection with the Loan (the Note, this Mortgage, the Loan Agreement and such other documents, as any of the same may, from time to time, be modified, amended or supplemented, being hereinafter collectively referred to as the "Loan Documents"), including (i) the payment of interest and other amounts which would accrue and become due but for the filing of a petition in bankruptcy (whether or not a claim is allowed against Mortgagor for such interest or other amounts in any such bankruptcy proceeding) or the operation of the automatic stay under Section 362(a) of Title 11 of the United States Code (the "Bankruptcy Code"), and (ii) the costs and expenses of enforcing any provision of any Loan Document (all such sums being hereinafter collectively referred to as the "Debt"), Mortgagor hereby irrevocably mortgages and warrants, grants, bargains, sells, conveys, transfers, pledges, sets over and assigns, and grants a security interest, to and in favor of Mortgagee, and its successors and assigns, **WITH POWER OF SALE**, all of each Individual

# UNOFFICIAL COPY

Property Owner's right, title and interest in and to the land and each Individual Operator's and Master Tenant's right, title and interest in and to the leasehold estate in the Property described in Exhibit A-1 and Exhibit A-2 (the "Premises"), and the buildings, structures, fixtures and other improvements now or hereafter located thereon (the "Improvements");

**TOGETHER WITH:** all right, title, interest and estate of Mortgagor now owned, or hereafter acquired, in and to the following property, rights, interests and estates (the Premises, the Improvements, and the property, rights, interests and estates hereinafter described are collectively referred to herein as the "Mortgaged Property");

(a) all easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, rights to oil, gas, minerals, coal and other substances of any kind or character, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Premises and the Improvements; and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road, highway, alley or avenue, opened, vacated or proposed, in front of or adjoining the Premises, to the center line thereof; and all the estates, rights, titles, interests, dower and rights of dower, courtesy and rights of courtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Premises and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(b) all machinery, furniture, furnishings, equipment, computer software and hardware, fixtures (including all heating, air conditioning, plumbing, lighting, communications and elevator fixtures), including inventory; furniture, furnishings; machinery, equipment, engines, boilers, incinerators and installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air or light; antennas, cable, wiring and conduits used in connection with radio, television, security, fire prevention or fire detection, or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors, cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; exercise equipment; supplies; tools; books and records (whether in written or electronic form); websites, URLs, blogs and social network pages; computer equipment (hardware and software); all kitchen or restaurant supplies and facilities; dining room supplies and facilities; medical supplies and facilities; leasehold improvements or related furniture and equipment; including all present and future parts, additions, accessories, replacements, attachments, accessions, replacement parts and substitutions of the foregoing, and the proceeds thereof (cash and non-cash, including insurance proceeds) and any other equipment, supplies or furniture owned by Mortgagor and leased to any third party service provider or any operator or manager of the Premises or the Improvements; and other tangible personal property which is used now or in the future in connection with the ownership, management, or operation of the Premises or the Improvements or are located on the Premises or in the Improvements, owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Premises or the Improvements, or appurtenant thereto, and

# UNOFFICIAL COPY

usable in connection with the present or future operation and occupancy of the Premises and the Improvements (hereinafter collectively referred to as the "Equipment"), including any leases of, deposits in connection with, and proceeds of any sale or transfer of any of the foregoing, and the right, title and interest of Mortgagor in and to any of the Equipment that may be subject to any "security interest" as defined in the Uniform Commercial Code, as in effect in the State where the Mortgaged Property is located (the "UCC"), superior in lien to the lien of this Mortgage;

(c) all awards or payments, including interest thereon, that may heretofore or hereafter be made with respect to the Premises or the Improvements, whether from the exercise of the right of eminent domain or condemnation (including any transfer made in lieu of or in anticipation of the exercise of such right), or for a change of grade, or for any other injury to or decrease in the value of the Premises or Improvements;

(d) all leases, subleases, and other agreements or arrangements heretofore or hereafter entered into affecting the use, enjoyment or occupancy of, or the conduct of any activity upon or in, the Premises or the Improvements, including, without limitation, any residency, occupancy, admission and care agreements pertaining to residents of the Mortgaged Property, and including any extensions, renewals, modifications or amendments thereof (hereinafter collectively referred to as the "Leases") and all rents, rent equivalents, moneys payable as damages (including payments by reason of the rejection of a Lease in a Bankruptcy Proceeding or in lieu of rent or rent equivalents), royalties (including oil and gas or other mineral royalties and bonuses), income, fees, receivables, receipts, revenues, deposits (including security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, subsidy payments received from any sources, parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Mortgaged Property, tenant security deposits, entrance fees (if any), application fees, processing fees, community fees and any other amounts or fees forfeited by any resident or tenant (excluding Resident Trust Funds), together with and including all proceeds from any private insurance for residents to cover rental charges and charges for services at or in connection with the Mortgaged Property, and the right to payments under Reimbursement Contracts (other than Medicaid payments from governmental entities) due for the rents or services of residents at the Mortgaged Property and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Mortgagor or its agents or employees from any and all sources arising from or attributable to the Premises and the Improvements, including all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of the Premises or the Improvements, or rendering of services by Mortgagor or any of its agents or employees, and proceeds, if any, from business interruption or other loss of income insurance (hereinafter collectively referred to as the "Rents"), together with all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

(e) all proceeds of and any unearned premiums on any insurance policies covering the Mortgaged Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Mortgaged Property;

# UNOFFICIAL COPY

(f) the right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of Mortgagee in the Mortgaged Property;

(g) all accounts (including reserve accounts), escrows, documents, instruments, chattel paper, claims, deposits and general intangibles, as the foregoing terms are defined in the UCC, and all franchises, trade names, trademarks, symbols, service marks, books, records, plans, specifications, designs, drawings, surveys, title insurance policies, permits, consents, licenses, management agreements, contract rights (including any contract with any architect or engineer or with any other provider of goods or services for or in connection with any construction, repair or other work upon the Mortgaged Property), approvals, actions, refunds of real estate taxes and assessments (and any other governmental impositions related to the Mortgaged Property), all rights to payment from Medicare or Medicaid programs or similar state or federal programs, boards, bureaus or agencies, and rights to payment from patients, residents, private insurers, and others arising from the operation of the Facility, including rights to payment pursuant to Reimbursement Contracts, any and all "health-care insurance receivables" (as defined in the UCC) and causes of action that now or hereafter relate to, are derived from or are used in connection with the Mortgaged Property, or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon (hereinafter collectively referred to as the "Intangibles");

(h) all agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Premises and any part thereof and any Improvements or any business or activity conducted on the Premises and any part thereof, including, without limitation, business licenses, state health department licenses, food service licenses, licenses to conduct business, certificates of need and all such other permits, licenses and rights, obtained from any governmental, quasi-governmental or private person or entity whatsoever concerning ownership, operation, use or occupancy, and all right, title and interest of Mortgagor therein and thereunder, including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Mortgagor thereunder;

(i) all inventories of food, beverages and other comestibles owned and held by Mortgagor for sale or use at or from the Premises, and soap, paper supplies, medical supplies, drugs and all other such goods, wares and merchandise held by Mortgagor (including, without limitation, embedded software) for sale to or for consumption by residents, guests or patients of the Facility and all such other goods returned to or repossessed by Mortgagor;

(j) all third-party Reimbursement Contracts for the Facility which are now or hereafter in effect with respect to residents or patients qualifying for coverage under the same, including Medicare and Medicaid, any health maintenance organization, preferred provider organization, individual practice association, competitive medical plan, or similar arrangement, entity, organization or Person, and private insurance agreements, and any successor program or other similar reimbursement program and/or private insurance agreements, now or hereafter existing; and

# UNOFFICIAL COPY

(k) the leasehold estate in and to the Premises, the Improvements and all of the foregoing described Mortgaged Property created pursuant to the lease agreement(s) by and between each Individual Operator and Master Tenant, as more particularly described on Exhibit B attached hereto (as amended from time to time in accordance with the Loan Documents, individually and collectively, the "Operating Lease"), together with all rights of each Individual Operator, as tenant, under the Operating Lease, and all rights of use, occupancy and enjoyment and in and to all rents, income and profits arising from or pursuant to the Operating Lease, and all modifications, extensions, replacements and renewals of the Operating Lease, and all credits, deposits (including, without limitation, any deposit of cash, securities or any other property which may be held to secure each Individual Operator's performance of its obligations under the Operating Lease), options (including any options to purchase or extend or renew set forth in the Operating Lease), privileges and rights of each Individual Operator under the Operating Lease (including all rights of each Individual Operator to treat the Operating Lease as terminated under Section 365(h) of the Bankruptcy Code or any other state or federal insolvency, reorganization, moratorium or similar law for the relief of debtors (a "Bankruptcy Law"), or any comparable right provided under any other Bankruptcy Law, together with all rights, remedies and privileges related thereto) and all guarantees, if any, of the Operating Lease, and all of each Individual Operator's claims and rights to the payment of damages that may arise from each Individual Operator's failure to perform under the Operating Lease, or rejection of the Operating Lease under any Bankruptcy Law, and any greater estate in the premises demised by the Operating Lease as hereafter may be acquired by each Individual Operator, and together with all of the easements, rights, privileges, franchises, tenements, hereditaments and appurtenances now or hereafter thereunto belonging or in any way appertaining thereto, and all of the estate, right, title, interest, claim and demand whatsoever of each Individual Operator therein or thereto, either at law or in equity, in possession or in expectancy, now owned or hereafter acquired;

(l) all rights of South Shore Property Owner under the Parking Lease; and

(m) all proceeds, products, offspring, rents and profits from any of the foregoing, including those from sale, exchange, transfer, collection, loss, damage, disposition, substitution or replacement of any of the foregoing.

Without limiting the generality of any of the foregoing, in the event that a case under the Bankruptcy Code is commenced by or against Mortgagor, pursuant to Section 552(b)(2) of the Bankruptcy Code, the security interest granted by this Mortgage shall automatically extend to all Rents acquired by the Mortgagor after the commencement of the case and shall constitute cash collateral under Section 363(a) of the Bankruptcy Code.

**TO HAVE AND TO HOLD** the Mortgaged Property unto Mortgagee and its successors and assigns, forever;

**PROVIDED, HOWEVER**, these presents are upon the express condition that, if Mortgagor shall well and truly pay to Mortgagee the Debt at the time and in the manner provided in the Loan Documents and shall well and truly abide by and comply with each and every covenant and condition set forth in the Loan Documents in a timely manner, these presents and the estate hereby granted shall cease, terminate and be void;

# UNOFFICIAL COPY

AND Mortgagor represents and warrants to and covenants and agrees with Mortgagee as follows:

## PART I - GENERAL PROVISIONS

1. **Payment of Debt and Incorporation of Covenants, Conditions and Agreements.** Mortgagor shall pay the Debt at the time and in the manner provided in the Loan Documents. All the covenants, conditions and agreements contained in the Loan Documents are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein. Without limiting the generality of the foregoing, Mortgagor (i) agrees to insure, repair, maintain and restore damage to the Mortgaged Property, pay Taxes and Other Charges, and comply with Legal Requirements, in accordance with the Loan Agreement, and (ii) agrees that the Proceeds and Awards shall be settled, held and applied in accordance with the Loan Agreement.

2. **Leases and Rents.**

(a) Mortgagor does hereby absolutely and unconditionally assign to Mortgagee all of Mortgagor's right, title and interest in all current and future Leases and Rents, it being intended by Mortgagor that this assignment constitutes a present, absolute assignment, and not an assignment for additional security only. Such assignment shall not be construed to bind Mortgagee to the performance of any of the covenants or provisions contained in any Lease or otherwise impose any obligation upon Mortgagee. Nevertheless, subject to the terms of this paragraph, Mortgagee grants to Mortgagor a revocable license to operate and manage the Mortgaged Property and to collect the Rents subject to the requirements of the Loan Agreement. Upon an Event of Default, without the need for notice or demand, the license granted to Mortgagor herein shall automatically be revoked, and Mortgagee shall immediately be entitled to possession of all Rents in the Deposit Account (including all Subaccounts thereof) and all Rents collected thereafter (including Rents past due and unpaid), whether or not Mortgagee enters upon or takes control of the Mortgaged Property. Mortgagor hereby grants and assigns to Mortgagee the right, at its option, upon revocation of the license granted herein, to enter upon the Mortgaged Property in person, by agent or by court-appointed receiver to collect the Rents. Any Rents collected after the revocation of such license may be applied toward payment of the Debt in such priority and proportions as Mortgagee in its sole discretion shall deem proper.

(b) Mortgagor shall not enter into, modify, amend, cancel, terminate or renew any Lease except as provided in Section 5.10 of the Loan Agreement.

3. **Use of Mortgaged Property.** Mortgagor shall not initiate, join in, acquiesce in or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Mortgaged Property. If under applicable zoning provisions the use of the Mortgaged Property is or shall become a nonconforming use, Mortgagor shall not cause or permit such nonconforming use to be discontinued or abandoned without the consent of Mortgagee. Mortgagor shall not (i) change the use of the Mortgaged Property, (ii) permit or suffer to occur any waste on or to the Mortgaged Property or (iii) take any steps to convert the Mortgaged Property to a condominium or cooperative form of ownership.

# UNOFFICIAL COPY

## 4. Transfer or Encumbrance of the Mortgaged Property.

(a) Mortgagor acknowledges that (i) Mortgagee has examined and relied on the creditworthiness and experience of the principals of Mortgagor in owning and operating properties such as the Mortgaged Property in agreeing to make the Loan, (ii) Mortgagee will continue to rely on Mortgagor's ownership of the Mortgaged Property as a means of maintaining the value of the Mortgaged Property as security for the Debt, and (iii) Mortgagee has a valid interest in maintaining the value of the Mortgaged Property so as to ensure that, should Mortgagor default in the repayment of the Debt, Mortgagee can recover the Debt by a sale of the Mortgaged Property. Mortgagor shall not sell, convey, alienate, mortgage, encumber, pledge or otherwise transfer the Mortgaged Property or any part thereof, or suffer or permit any Transfer to occur, other than a Permitted Transfer or a Permitted Property Release, each in accordance with the Loan Documents.

(b) Mortgagee shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon any Transfer in violation of this Paragraph 4. This provision shall apply to every sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property (and every other Transfer) regardless of whether voluntary or not. Any Transfer made in contravention of this Paragraph 4 shall be null and void and of no force and effect. Mortgagor agrees to bear and shall pay or reimburse Mortgagee on demand for all reasonable expenses (including reasonable attorneys' fees and disbursements, title search costs and title insurance endorsement premiums) incurred by Mortgagee in connection with the review, approval and documentation of any Permitted Transfer or a Permitted Property Release, as set forth in the Loan Documents.

5. Changes in Laws Regarding Taxation. If any law is enacted or adopted or amended after the date of this Mortgage which deducts the Debt from the value of the Mortgaged Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Mortgagee's interest in the Mortgaged Property, Mortgagor will pay such tax, with interest and penalties thereon, if any. If Mortgagee is advised by its counsel that the payment of such tax or interest and penalties by Mortgagor would be unlawful, taxable to Mortgagee or unenforceable, or would provide the basis for a defense of usury, then Mortgagee shall have the option, by notice of not less than 90 days, to declare the Debt immediately due and payable.

6. No Credits on Account of the Debt. Mortgagor shall not claim, or demand or be entitled to any credit on account of the Debt for any part of the Taxes or Other Charges assessed against the Mortgaged Property, and no deduction shall otherwise be made or claimed from the assessed value of the Mortgaged Property for real estate tax purposes by reason of this Mortgage or the Debt. If such claim, credit or deduction shall be required by law, Mortgagee shall have the option, by notice of not less than 90 days, to declare the Debt immediately due and payable.

7. Further Acts, Etc. Mortgagor shall, at its sole cost, perform, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers and assurances as Mortgagee shall, from time to time, require, for the better assuring, conveying, assigning, transferring, and confirming unto Mortgagee the property and rights hereby mortgaged, given, granted, bargained, sold, alienated, conveyed,



# UNOFFICIAL COPY

confirmed, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage, or for filing, registering or recording this Mortgage or for facilitating the sale and transfer of the Loan and the Loan Documents in connection with a "Secondary Market Transaction" as described in Section 9.1 of the Loan Agreement. Upon foreclosure, the appointment of a receiver or any other relevant action, Mortgagor shall, at its sole cost, cooperate fully and completely to effect the assignment or transfer of any license, permit, agreement or any other right necessary or useful to the operation of the Mortgaged Property. Mortgagor grants to Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Mortgagee at law and in equity, including such rights and remedies available to Mortgagee pursuant to this paragraph.

**8. Recording of Mortgage, Etc.** Mortgagor forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, shall cause this Mortgage, and any Mortgage creating a lien or security interest or evidencing the lien hereof upon the Mortgaged Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien or security interest hereof upon, and the interest of Mortgagee in, the Mortgaged Property. Mortgagor shall pay all filing, registration or recording fees, all expenses incident to the preparation, execution and acknowledgment of and all federal, state, county and municipal, taxes, duties, imposts, documentary stamps, assessments and charges arising out of or in connection with the execution and delivery of, this Mortgage, any Mortgage supplemental hereto, any Mortgage with respect to the Mortgaged Property or any instrument of further assurance, except where prohibited by law so to do. Mortgagor shall hold harmless and indemnify Mortgagee, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making or recording of this Mortgage.

**9. Right to Cure Defaults.** Upon the occurrence of any Event of Default, Mortgagee may, but without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, perform the obligations in Default in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. Mortgagee is authorized to enter upon the Mortgaged Property for such purposes or appear in, defend or bring any action or proceeding to protect its interest in the Mortgaged Property or to foreclose this Mortgage or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees and disbursements to the extent permitted by law), with interest thereon at the Default Rate for the period after notice from Mortgagee that such cost or expense was incurred to the date of payment to Mortgagee, shall constitute a portion of the Debt, shall be secured by this Mortgage and the other Loan Documents and shall be due and payable to Mortgagee upon demand.

**10. Remedies.**

(a) Upon the occurrence of any Event of Default, Mortgagee may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Mortgaged Property, by Mortgagee itself or otherwise, including the following actions, each of which may be pursued concurrently or otherwise, at such time and in

# UNOFFICIAL COPY

such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee:

- (i) declare the entire Debt to be immediately due and payable;
- (ii) institute a proceeding or proceedings, judicial or nonjudicial, to the extent permitted by law, by advertisement or otherwise, for the complete (or partial) foreclosure of this Mortgage, in which case the Mortgaged Property (or any part thereof) may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (iii) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Debt then due and payable, subject to the continuing lien of this Mortgage for the balance of the Debt not then due;
- (iv) sell for cash or upon credit the Mortgaged Property (or any part thereof) and all estate claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof, pursuant to the power of sale, to the extent permitted by law, or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;
- (v) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein or in any other Loan Document;
- (vi) recover judgment on the Note either before, during or after any proceeding for the enforcement of this Mortgage;
- (vii) apply for the appointment of a trustee, receiver, liquidator or conservator of the Mortgaged Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of the Mortgagor or of any person, firm or other entity liable for the payment of the Debt;
- (viii) enforce Mortgagee's interest in the Leases and Rents and enter into or upon the Mortgaged Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and employees therefrom, and thereupon Mortgagee may (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with the Mortgaged Property and conduct the business thereat; (B) complete any construction on the Mortgaged Property in such manner and form as Mortgagee deems advisable; (C) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property; (D) exercise all rights and powers of Mortgagor with respect to the Mortgaged Property, whether in the name of Mortgagor or otherwise, including the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive Rents; and (E) apply the receipts from the Mortgaged Property to the payment of the Debt, after deducting therefrom all expenses (including reasonable attorneys' fees and disbursements) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, insurance and other charges in connection with

# UNOFFICIAL COPY

the Mortgaged Property, as well as just and reasonable compensation for the services of Mortgagee, and its counsel, agents and employees;

(ix) require Mortgagor to pay monthly in advance to Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of any portion of the Mortgaged Property occupied by Mortgagor, and require Mortgagor to vacate and surrender possession of the Mortgaged Property to Mortgagee or to such receiver, and, in default thereof, evict Mortgagor by summary proceedings or otherwise; or

(x) pursue such other rights and remedies as may be available at law or in equity or under the UCC, including the right to receive and/or establish a lock box for all Rents and proceeds from the Intangibles and any other receivables or rights to payments of Mortgagor relating to the Mortgaged Property.

In the event of a sale, by foreclosure or otherwise, of less than all of the Mortgaged Property, this Mortgage shall continue as a lien on the remaining portion of the Mortgaged Property.

(b) The proceeds of any sale made under or by virtue of this Paragraph 10, together with any other sums which then may be held by Mortgagee under this Mortgage, whether under the provisions of this Paragraph 10 or otherwise, shall be applied by Mortgagee to the payment of the Debt in such priority and proportion as Mortgagee in its sole discretion shall deem proper.

(c) Mortgagee may adjourn from time to time any sale by it to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable law, Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(d) Upon the completion of any sale or sales pursuant hereto, Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Mortgagee is hereby irrevocably appointed the true and lawful attorney of Mortgagor, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property and rights so sold and for that purpose Mortgagee may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, Mortgagor hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Any sale or sales made under or by virtue of this Paragraph 10, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof, from, through or under Mortgagor.

# UNOFFICIAL COPY

(e) Upon any sale made under or by virtue of this Paragraph 10, whether made under a power of sale or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Debt the net sales price after deducting therefrom the expenses of the sale and costs of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage or any other Loan Document.

(f) No recovery of any judgment by Mortgagee and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of Mortgagor shall affect in any manner or to any extent the lien of this Mortgage upon the Mortgaged Property or any part thereof or any liens, rights, powers or remedies of Mortgagee hereunder, but such liens, rights, powers and remedies of Mortgagee shall continue unimpaired as before.

(g) Mortgagee may terminate or rescind any proceeding or other action brought in connection with its exercise of the remedies provided in this Paragraph 10 at any time before the conclusion thereof, as determined in Mortgagee's sole discretion and without prejudice to Mortgagee.

(h) Mortgagee may resort to any remedies and the security given by this Mortgage or in any other Loan Document in whole or in part, and in such portions and in such order as determined by Mortgagee's sole discretion. No such action shall in any way be considered a waiver of any rights, benefits or remedies evidenced or provided by any Loan Document. The failure of Mortgagee to exercise any right, remedy or option provided in any Loan Document shall not be deemed a waiver of such right, remedy or option or of any covenant or obligation secured by any Loan Document. No acceptance by Mortgagee of any payment after the occurrence of any Event of Default and no payment by Mortgagee of any obligation for which Mortgagor is liable hereunder shall be deemed to waive or cure any Event of Default, or Mortgagor's liability to pay such obligation. No sale of all or any portion of the Mortgaged Property, no forbearance on the part of Mortgagee, and no extension of time for the payment of the whole or any portion of the Debt or any other indulgence given by Mortgagee to Mortgagor, shall operate to release or in any manner affect the interest of Mortgagee in the remaining Mortgaged Property or the liability of Mortgagor to pay the Debt. No waiver by Mortgagee shall be effective unless it is in writing and then only to the extent specifically stated. All costs and expenses of Mortgagee in exercising its rights and remedies under this Paragraph 10 (including reasonable attorneys' fees and disbursements to the extent permitted by law), shall be paid by Mortgagor immediately upon notice from Mortgagee, with interest at the Default Rate for the period after notice from Mortgagee, and such costs and expenses shall constitute a portion of the Debt and shall be secured by this Mortgage.

(i) The interests and rights of Mortgagee under the Loan Documents shall not be impaired by any indulgence, including (i) any renewal, extension or modification which Mortgagee may grant with respect to any of the Debt, (ii) any surrender, compromise, release, renewal, extension, exchange or substitution which Mortgagee may grant with respect to the Mortgaged Property or any portion thereof or (iii) any release or indulgence granted to any maker, endorser, guarantor or surety of any of the Debt.

# UNOFFICIAL COPY

11. **Right of Entry.** In addition to any other rights or remedies granted under this Mortgage, Mortgagee and its agents shall have the right to enter and inspect the Mortgaged Property at any reasonable time during the term of this Mortgage. The cost of such inspections or audits shall be borne by Mortgagor should Mortgagee determine that an Event of Default exists, including the cost of all follow up or additional investigations or inquiries deemed reasonably necessary by Mortgagee. The cost of such inspections, if not paid for by Mortgagor following demand, may be added to the principal balance of the sums due under the Note and this Mortgage and shall bear interest thereafter until paid at the Default Rate.

12. **Security Agreement.** This Mortgage is both a real property mortgage and a "security agreement" within the meaning of the UCC. The Mortgaged Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Mortgaged Property. Mortgagor by executing and delivering this Mortgage has granted and hereby grants to Mortgagee, as security for the Debt, a security interest in the Mortgaged Property to the full extent that the Mortgaged Property may be subject to the UCC (such portion of the Mortgaged Property so subject to the UCC being called in this paragraph the "Collateral"). This Mortgage shall also constitute a "fixture filing" for the purposes of the UCC. As such, this Mortgage covers all items of the Collateral that are or are to become fixtures. Information concerning the security interest herein granted may be obtained from the parties at the addresses of the parties set forth in the first paragraph of this Mortgage. If an Event of Default shall occur, Mortgagee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the UCC, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Mortgagee, Mortgagor shall at its expense assemble the Collateral and make it available to Mortgagee at a convenient place acceptable to Mortgagee. Mortgagor shall pay to Mortgagee on demand any and all expenses, including reasonable attorneys' fees and disbursements, incurred or paid by Mortgagee in protecting the interest in the Collateral and in enforcing the rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Collateral, sent to Mortgagor in accordance with the provisions hereof at least ten days prior to such action, shall constitute commercially reasonable notice to Mortgagor. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Mortgagee to the payment of the Debt in such priority and proportions as Mortgagee in its sole discretion shall deem proper. In the event of any change in name, identity or structure of Mortgagor, Mortgagor shall notify Mortgagee thereof and promptly after request shall execute, file and record such UCC forms as are necessary to maintain the priority of Mortgagee's lien upon and security interest in the Collateral, and shall pay all expenses and fees in connection with the filing and recording thereof. If Mortgagee shall require the filing or recording of additional UCC forms or continuation statements, Mortgagor shall, promptly after request, execute, file and record such UCC forms or continuation statements as Mortgagee shall deem necessary, and shall pay all expenses and fees in connection with the filing and recording thereof, it being understood and agreed, however, that no such additional documents shall increase Mortgagor's obligations under the Loan Documents. Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact, coupled with an interest, to file with the appropriate public office on its behalf any financing or other statements signed only by Mortgagee, as secured party, in connection with the Collateral covered by this Mortgage.

# UNOFFICIAL COPY

13. **Actions and Proceedings.** Mortgagee has the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of Mortgagor, which Mortgagee, in its sole discretion, decides should be brought to protect its or their interest in the Mortgaged Property. Mortgagee shall, at its option, be subrogated to the lien of any mortgage or other Mortgage discharged in whole or in part by the Debt, and any such subrogation rights shall constitute additional security for the payment of the Debt.

14. **Marshalling and Other Matters.** Mortgagor hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Mortgaged Property or any part thereof or any interest therein. Further, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Mortgagor, and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Mortgage and on behalf of all persons to the extent permitted by applicable law. The lien of this Mortgage shall be absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of Mortgagee and, without limiting the generality of the foregoing, the lien hereof shall not be impaired by (i) any acceptance by Mortgagee of any other security for any portion of the Debt, (ii) any failure, neglect or omission on the part of Mortgagee to realize upon or protect any portion of the Debt or any collateral security therefor or (iii) any release (except as to the property released), sale, pledge, surrender, compromise, settlement, renewal, extension, indulgence, alteration, charging, modification or disposition of any portion of the Debt or of any of the collateral security therefor; and Mortgagee may foreclose, or exercise any other remedy available to Mortgagee under other Loan Documents without first exercising or enforcing any of its remedies under this Mortgage, and any exercise of the rights and remedies of Mortgagee hereunder shall not in any manner impair the Debt or the liens of any other Loan Document or any of Mortgagee's rights and remedies thereunder.

15. **Notices.** All notices, consents, approvals and requests required or permitted hereunder shall be in writing, and shall be sent, and shall be deemed effective, as provided in the Loan Agreement.

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

17. **Headings.** The paragraph headings in this Mortgage 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.

18. **Duplicate Originals.** This Mortgage may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.

19. **Definitions.** Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage may be used interchangeably in singular or plural form; and the word "Mortgagor" shall mean "Mortgagor and any subsequent

# UNOFFICIAL COPY

owner or owners of the Mortgaged Property or any part thereof or any interest therein,” the word “Mortgagee” shall mean “Mortgagee and any subsequent holder of the Note,” the words “Mortgaged Property” shall include any portion of the Mortgaged Property and any interest therein, the word “including” means “including but not limited to” and the words “attorneys’ fees” shall include any and all attorneys’ fees, paralegal and law clerk fees, including fees at the pre-trial, trial and appellate levels incurred or paid by Mortgagee in protecting its interest in the Mortgaged Property and Collateral and enforcing its rights hereunder.

20. **Homestead.** Mortgagor hereby waives and renounces all homestead and exemption rights provided by the Constitution and the laws of the United States and of any state, in and to the Mortgaged Property as against the collection of the Debt, or any part thereof.

21. **Assignments.** Mortgagee shall have the right to assign or transfer its rights under this Mortgage without limitation. Any assignee or transferee shall be entitled to all the benefits afforded Mortgagee under this Mortgage.

22. **Waiver of Jury Trial.** MORTGAGOR HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY MORTGAGOR, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. MORTGAGEE IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH 22 IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY MORTGAGOR.

23. **Consents.** Any consent or approval by Mortgagee in any single instance shall not be deemed or construed to be Mortgagee’s consent or approval in any like matter arising at a subsequent date, and the failure of Mortgagee to promptly exercise any right, power, remedy, consent or approval provided herein or at law or in equity shall not constitute or be construed as a waiver of the same nor shall Mortgagee be estopped from exercising such right, power, remedy, consent or approval at a later date. Any consent or approval requested of and granted by Mortgagee pursuant hereto shall be narrowly construed to be applicable only to Mortgagor and the matter identified in such consent or approval and no third party shall claim any benefit by reason thereof, and any such consent or approval shall not be deemed to constitute Mortgagee a venturer or partner with Mortgagor nor shall privity of contract be presumed to have been established with any such third party. If Mortgagee deems it to be in its best interest to retain assistance of persons, firms or corporations (including attorneys, title insurance companies, appraisers, engineers and surveyors) with respect to a request for consent or approval, Mortgagor shall reimburse Mortgagee for all costs reasonably incurred in connection with the employment of such persons, firms or corporations.

24. **Loan Repayment.** Provided no Event of Default exists, this Mortgage will be satisfied and discharged of record by Mortgagee prior to the Maturity Date only in accordance with the terms and provisions set forth in the Loan Agreement.

# UNOFFICIAL COPY

## 25. Governing Law/Submission to Jurisdiction.

(a) WITH RESPECT TO MATTERS RELATING TO THE CREATION, PERFECTION AND PROCEDURES RELATING TO THE ENFORCEMENT OF THIS MORTGAGE, THIS ASSIGNMENT SHALL BE GOVERNED BY, AND BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE IN WHICH THE PREMISES IS LOCATED (WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS THEREOF THAT WOULD APPLY THE LAWS OF ANOTHER JURISDICTION), IT BEING UNDERSTOOD THAT, EXCEPT AS EXPRESSLY SET FORTH ABOVE IN THIS PARAGRAPH AND TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK (WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS THEREOF THAT WOULD APPLY THE LAWS OF ANOTHER JURISDICTION) SHALL GOVERN ALL MATTERS RELATING TO THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS AND ALL OF THE INDEBTEDNESS OR LOAN ARISING HEREUNDER OR THEREUNDER. ALL PROVISIONS OF THE LOAN AGREEMENT INCORPORATED HEREIN BY REFERENCE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE NEW YORK, AS SET FORTH IN THE GOVERNING LAW PROVISION OF THE LOAN AGREEMENT

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST MORTGAGOR OR MORTGAGEE ARISING OUT OF OR RELATING TO THIS MORTGAGE MAY, AT MORTGAGEE'S OPTION, BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE STATE OF NEW YORK, AND MORTGAGOR HEREBY WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND MORTGAGOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING.

26. Variable Interest Rate. The Loan secured by this Mortgage is a variable interest rate loan, as more particularly set forth in the Loan Agreement.

## PART II

### STATE-SPECIFIC PROVISIONS

27. Conflicts With Part I. In the event of any conflict between the provisions of this Part II and any provision of Part I, then the provisions of this Part II shall control.

## 28. State-Specific Provisions.

(a) Notwithstanding the provisions of this Mortgage (including, but not limited to Sections 9 and 10), any foreclosure of all or any portion of the lien of this Mortgage shall be in accordance with the Illinois Mortgage Foreclosure Act, 735 ILCS 5/15-1101 et seq., as from time to time amended (the "Act").



# UNOFFICIAL COPY

(b) Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Act) or residential real estate (as defined in Section 15-1219 of the Act), and to the fullest extent permitted by law, Mortgagor hereby voluntarily and knowingly waives its rights to reinstatement and redemption as allowed under Sections 15-1601(b) and 15-1602 of the Act, and to the full extent permitted by law, the benefits of all present and future valuation, appraisal, homestead, exemption, stay, redemption and moratorium law, under any state or federal law.

(c) Subordination of Property Manager's Lien and Real Estate Broker's Lien. To the extent permitted by law, any property management agreement for the Property entered into hereafter by Mortgagor with a property manager shall contain a "no lien" provision whereby the property manager waives and releases any and all mechanics' lien rights that the property manager may have pursuant to the Illinois Mechanics Lien Act, 770 ILCS 60/1 et seq. Such property management agreement or a short form thereof shall, at Mortgagee's request, be recorded with the Recorder of Deeds of the county where the Property is located. In addition, Mortgagor shall cause the property manager under any property management agreement for the Property to enter into a subordination of management agreement with Mortgagee, in recordable form, whereby the property manager subordinates present and future lien rights and those of any party claiming by, through or under the property manager, to the lien of this Mortgage. To the extent permitted by law, any agreement entered into hereafter by Mortgagor or any agent of Mortgagor with any "broker" (as defined in the Real Estate License Act of 2000, 225 ILCS 45/1 et seq.) that is an affiliate of Mortgagor for the purpose of selling, leasing or otherwise conveying an interest in the Property shall contain a "no lien" provision whereby such broker waives and releases any and all lien rights that such broker or anyone claiming by, through or under such broker may have pursuant to the Commercial Broker Lien Act, 770 ILCS 15/1 et seq. Mortgagor shall cause such broker to enter into a subordination agreement with Mortgagee, in recordable form, whereby such broker, on its own behalf and on behalf of any party claiming by, through or under such broker, subordinates present and future lien rights to the lien of this Mortgage.

(d) The total principal amount secured by this Mortgage at any one time and from time to time shall not FORTY EIGHT MILLION NINE HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$48,950,000.00). Any limitation of amount does not include interest, attorneys' fees and other fees and charges validly made pursuant to this Mortgage. Also, this limitation does not apply to advances made under the terms of this Mortgage to protect Mortgagee's security and to perform any of the covenants contained in this Mortgage.

(e) Pursuant to 815 ILCS 180/5 et seq. of Illinois Compiled Statutes, unless Mortgagor provides Mortgagee with evidence of the insurance coverage required by the Loan Agreement, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interests in Mortgagor's collateral. This insurance may, but need not, protect Mortgagor's interests. The coverage that Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the collateral. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required by the Loan Agreement. If Mortgagee purchases insurance for the collateral, Mortgagor will be responsible for the costs of that insurance, including interest and any other charges Mortgagee may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The

# UNOFFICIAL COPY

costs of the insurance may be added to Mortgagor's total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance Mortgagor may be able to obtain on its own.

*[Signature pages follow]*

Property of Cook County Clerk's Office

COOK COUNTY CLERK OFFICE  
RECORDING DIVISION  
118 N. CLARK ST. ROOM 120  
CHICAGO, IL 60602-1387


COOK COUNTY CLERK OFFICE  
RECORDING DIVISION  
118 N. CLARK ST. ROOM 120  
CHICAGO, IL 60602-1387

# UNOFFICIAL COPY


IN WITNESS WHEREOF, Mortgagor has executed this instrument as of the day and year first above written.

**MORTGAGOR:**


**SOUTH SHORE SNF REALTY, LLC,**  
an Illinois limited liability company

By:   
Name: David Hartman  
Title: Authorized Signatory


**LINCOLN PARK SNF REALTY, LLC,**  
an Illinois limited liability company

By:   
Name: David Hartman  
Title: Authorized Signatory


**SYM3CHICAGO MASTER TENANT LLC,**  
a Delaware limited liability company

By:   
Name: David Hartman  
Title: Authorized Signatory


**SYMPHONY SOUTH SHORE LLC,**  
an Illinois limited liability company

By:   
Name: David Hartman  
Title: Authorized Signatory

**SYMPHONY LINCOLN PARK LLC**  
an Illinois limited liability company

By:   
Name: David Hartman  
Title: Authorized Signatory

**SYMPHONY IVY LLC,**  
an Illinois limited liability company

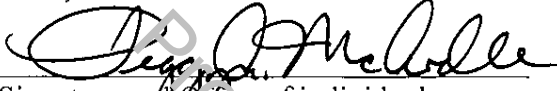
By:   
Name: David Hartman  
Title: Authorized Signatory

Property of COOK County Clerk's Office

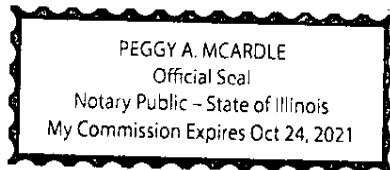
# UNOFFICIAL COPY

STATE OF ILLINOIS    )  
  ) ss.:  
COUNTY OF COOK    )

On 5/27, 2021, before me, the undersigned Notary Public in and for said County and State, personally appeared David Hartman, personally known to me (or proved to me on the basis of satisfactory evidence) to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the same instrument.



Signature and Office of individual taking acknowledgment



Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## EXHIBIT A-1

### Legal Description for the Lincoln Park SNF Facility and Lincoln Park ALF Facility

THAT PORTION OF LOT 9 OF THE COUNTY CLERK'S DIVISION OF BLOCK 43 OF SHEFFIELD'S ADDITION TO CHICAGO IN THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF THE EAST 132.10 FEET OF SAID LOT, ALSO;

ALL THAT PART OF THE EAST 132.10 FEET OF SAID LOT 9 OF COUNTY CLERK'S DIVISION OF BLOCK 43 OF SHEFFIELD'S ADDITION TO CHICAGO, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID EAST 132.10 FEET OF SAID LOT 9, WHICH POINT IS 99.64 FEET EAST FROM THE EAST LINE OF SOUTHPORT AVENUE; THENCE NORTH ALONG THE WEST LINE OF SAID EAST 132.10 FEET OF SAID LOT 9, A DISTANCE OF 595.00 FEET TO THE SOUTH LINE OF WEST ALTGELD STREET; THENCE EAST ALONG THE SOUTH LINE OF WEST ALTGELD STREET, A DISTANCE OF 9.60 FEET TO A POINT; THENCE SOUTH ON A STRAIGHT LINE, 9.60 FEET EAST OF AND PARALLEL TO THE WEST LINE OF THE SAID EAST 132.10 FEET OF SAID LOT 9, A DISTANCE OF 123.00 FEET TO A POINT; THENCE WEST PARALLEL TO AND 123.00 FEET FROM THE SOUTH LINE OF WEST ALTGELD STREET, A DISTANCE OF 6.90 FEET TO A POINT; THENCE SOUTH PARALLEL TO AND 2.70 FEET FROM THE WEST LINE OF SAID EAST 132.10 FEET OF SAID LOT 9, A DISTANCE OF 472.80 FEET TO THE NORTH LINE OF FULLERTON AVENUE; THENCE WEST ALONG THE NORTH LINE OF FULLERTON AVENUE, A DISTANCE OF 2.70 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

# UNOFFICIAL COPY

## EXHIBIT A-2

### Legal Description for the South Shore Facility

TRACT 1 (FEE SIMPLE):

LOT 2 IN DIVISION NO. 3 IN SOUTH SHORE SUBDIVISION IN THE NORTH FRACTIONAL 1/2 OF SECTION 30, TOWNSHIP 38 NORTH, RANGE 15 EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPT THAT PART OF SAID LOT 2 DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHERLY LINE OF SAID LOT 2, 12 FEET 3-1/4 INCHES SOUTHWESTERLY OF THE SOUTHEASTERLY CORNER OF SAID LOT; THENCE NORTHWESTERLY 74 FEET 5-1/2 INCHES TO A GAS PIPE 11 FEET 5-3/4 INCHES WESTERLY AT A RIGHT ANGLE TO THE EASTERLY LINE OF SAID LOT; THENCE WEST 46 FEET 6 INCHES TO A GAS PIPE ON THE NORTHERLY LINE OF SAID LOT 2 AND SOUTHERLY LINE OF LOT 9 OF SAUNDERS SUBDIVISION OF LOT 1 IN SAID DIVISION NO. 3 AT A POINT 49 FEET 11 INCHES SOUTHWESTERLY OF THE NORTHEASTERLY CORNER OF SAID LOT 2; THENCE NORTHEASTERLY ALONG THE NORTHERLY LINE OF SAID LOT 2 AND SOUTHERLY LINE OF SAID LOT 9 OF SAUNDERS SUBDIVISION AFORESAID 49 FEET 11 INCHES TO THE NORTHEASTERLY CORNER OF SAID LOT 2; THENCE SOUTHEASTERLY ALONG THE EASTERLY LINE OF LOT 2 TO THE SOUTHERLY LINE OF SAID LOT 2; THENCE SOUTHWESTERLY ALONG THE SOUTHERLY LINE OF SAID LOT 2, 12 FEET 3-1/4 INCHES TO THE PLACE OF BEGINNING.

ALSO THAT PART OF LOT 3 IN DIVISION 3, SOUTH SHORE SUBDIVISION, IN THE NORTH FRACTIONAL 1/2 OF SECTION 30, TOWNSHIP 38 NORTH, RANGE 15, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WESTERLY OF A STRAIGHT LINE, THE NORTH POINT OF SAID LINE BEING ON THE NORTH LINE OF SAID LOT 3 AND 134 FEET 10 INCHES WEST OF THE NORTHEAST CORNER OF SAID LOT AND THE SOUTH POINT OF SAID LINE BEING ON THE SOUTHERLY LINE OF SAID LOT 3 AND 148 FEET WESTERLY OF THE SOUTHEAST CORNER OF SAID LOT. ALSO A PART OF LOT 2 OF SAID DIVISION 3 AND LOTS 7 AND 9 AND A PART OF LOT 8 IN SAUNDERS SUBDIVISION OF LOT 1, DIVISION 3, SOUTH SHORE SUBDIVISION DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF SAID LOT 2, 12 FEET 3-1/4 INCHES SOUTHWESTERLY OF THE SOUTHEASTERLY CORNER OF SAID LOT; THENCE NORTHWESTERLY 74 FEET 5-1/2 INCHES TO A GAS PIPE 11 FEET 5-3/4 INCHES WESTERLY AT RIGHT ANGLES TO THE EASTERLY LINE OF SAID LOT; THENCE WEST 46 FEET 6 INCHES TO A GAS PIPE IN THE NORTHERLY LINE OF SAID LOT 2 AND SOUTHERLY LINE OF LOT 9 OF SAUNDERS SUBDIVISION OF LOT 1, SAID DIVISION 3, AT A POINT 49 FEET 11 INCHES SOUTHWEST OF THE NORTHEAST CORNER OF SAID LOT 2; THENCE SOUTHWESTERLY 66 FEET 7-1/4 INCHES ON THE NORTHERLY LINE OF SAID LOT 2, DIVISION 3, AND THE SOUTHERLY LINE OF LOTS 9 AND 8 OF SAUNDERS SUBDIVISION AFORESAID, TO A POINT ON THE WEST

# UNOFFICIAL COPY

LINE OF LOT 7, EXTENDED SOUTH ACROSS SAID LOT 8; THENCE NORTH ON SAID LINE, CROSSING SAID LOT 8 AND ON THE WEST LINE OF SAID LOT 7, 111 FEET 1/2 INCH TO THE NORTHWEST CORNER OF SAID LOT 7 OF SAUNDERS SUBDIVISION; THENCE EAST ON THE NORTH LINE OF SAID LOTS 7 AND 9 OF SAUNDERS SUBDIVISION TO THE NORTHEAST CORNER OF SAID LOT 9 AND THE NORTHWEST CORNER OF LOT 3, DIVISION 3, AFORESAID; THENCE SOUTHEASTERLY ALONG THE WESTERLY LINE OF SAID LOT 3 TO THE SOUTHWEST CORNER OF SAID LOT 3; THENCE SOUTHWESTERLY ALONG THE SOUTHERLY LINE OF LOT 2 AFORESAID, 12 FEET 3-1/4 INCHES TO THE PLACE OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

OTHER WISE DESCRIBED AS FOLLOWS:

LOT 2 AND THAT PART OF LOT 3, LYING WESTERLY OF A STRAIGHT LINE, THE NORTH POINT OF SAID LINE BEING ON THE NORTH LINE OF SAID LOT 3, AND 134 FEET 10 INCHES WEST OF THE NORTHEAST CORNER OF SAID LOT, AND THE SOUTH POINT OF SAID LINE BEING ON THE SOUTHERLY LINE OF SAID LOT 3, AND 148 FEET WESTERLY OF THE SOUTHEAST CORNER OF SAID LOT, IN DIVISION 3, SOUTH SHORE SUBDIVISION, IN THE NORTH FRACTIONAL 1/2 OF SECTION 30, TOWNSHIP 38 NORTH, RANGE 15, EAST OF THE THIRD PRINCIPAL MERIDIAN.

ALSO LOTS 7 AND 9 AND THAT PART OF LOT 8 LYING EAST OF THE WEST LINE OF SAID LOT 7 EXTENDED SOUTH, ALL IN SAUNDERS SUBDIVISION OF LOT 1, DIVISION 3, SOUTH SHORE SUBDIVISION AFORESAID; ALL IN COOK COUNTY, ILLINOIS.

EXCEPT FROM THE ABOVE THAT PART THEREOF DESCRIBED AS FOLLOWS:

THAT PART OF LOTS 7 AND LOT 8 IN SAUNDERS SUBDIVISION OF LOT 1, DIVISION 3, SOUTH SHORE SUBDIVISION IN THE NORTH FRACTIONAL HALF SECTION 30, TOWNSHIP 38 NORTH, RANGE 15 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE SOUTHERLY LINE OF LOT 2 IN DIVISION 3, SOUTH SHORE SUBDIVISION IN THE NORTH FRACTIONAL HALF SECTION 30 AFORESAID, A DISTANCE OF 12 FEET 3-1/4 INCHES SOUTHWESTERLY OF THE SOUTHEASTERLY CORNER OF SAID LOT; THENCE ALONG AN ASSUMED BEARING OF NORTH 34°29'35" WEST 74 FEET 5-1/2 INCHES TO A GAS PIPE 11 FEET 5-3/4 INCHES WESTERLY AT RIGHT ANGLES TO THE EASTERLY LINE OF SAID LOT; THENCE SOUTH 89°04'28" WEST A DISTANCE OF 46 FEET 6 INCHES TO A GAS PIPE IN THE NORTHERLY LINE OF SAID LOT 2 AND SOUTHERLY LINE OF LOT 9 OF SAUNDERS SUBDIVISION OF LOT 1, SAID DIVISION 3, AT A POINT 49 FEET 11 INCHES SOUTHWEST OF THE NORTHEAST CORNER OF SAID LOT 2; THENCE SOUTH 55°32'48" WEST A DISTANCE OF 66 FEET 7-1/4 INCHES ON THE NORTHERLY LINE OF SAID LOT 2, DIVISION 3, AND THE SOUTHERLY LINE OF LOTS 9 AND 8 OF SAUNDERS SUBDIVISION AFORESAID, TO A POINT ON THE WEST LINE OF LOT 7,

# UNOFFICIAL COPY

EXTENDED SOUTH ACROSS SAID LOT 8; THENCE NORTH 01°18'58" WEST ON SAID LINE, CROSSING SAID LOT 8 AND ON THE WEST LINE OF SAID LOT 7, A DISTANCE OF 0.74 FEET TO THE POINT OF BEGINNING; THENCE NORTH 01°18'58" WEST ON SAID LINE, CROSSING SAID LOT 8 AND ON THE WEST LINE OF SAID LOT 7, A DISTANCE OF 110.94 FEET TO THE NORTHWEST CORNER OF SAID LOT 7 OF SAUNDERS SUBDIVISION; THENCE NORTH 88°46'31" EAST ON THE NORTH LINE OF SAID LOT 7 OF SAUNDERS SUBDIVISION 2.46 FEET; THENCE SOUTH 01°18'29" EAST 15.15 FEET; THENCE SOUTH 88°41'31" WEST 0.87 FEET; THENCE SOUTH 01°17'13" EAST 54.23 FEET; THENCE NORTH 89°28'10" EAST 0.74 FEET; THENCE SOUTH 01°17'13" EAST 40.17 FEET; THENCE SOUTH 57°42'23" WEST 2.66 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

TRACT 2 (FEE SIMPLE):

THAT PART OF LOT 3 IN THIRD DIVISION OF SOUTH SHORE SUBDIVISION IN SECTION 30, TOWNSHIP 38 NORTH, RANGE 15 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT WHERE THE SOUTH LINE OF SOUTH SHORE DRIVE INTERSECTS THE WEST LINE OF COLES AVENUE (SAID POINT ALSO BEING THE NORTHEASTERLY CORNER OF LOT 3); THENCE WEST ALONG THE SOUTH LINE OF SOUTH SHORE DRIVE, A DISTANCE OF 134 FEET 10 INCHES; THENCE SOUTHEASTERLY A DISTANCE OF 119.5 FEET, MORE OR LESS, TO A POINT ON THE SOUTH LINE OF LOT 3, SAID POINT BEING 148 FEET SOUTHWESTERLY, MEASURED ALONG SAID LOT LINE, FROM THE SOUTHEAST CORNER OF SAID LOT 3; THENCE NORTHEASTERLY ALONG THE SOUTH LINE OF LOT 3 A DISTANCE OF 148 FEET TO THE WEST LINE OF COLES AVENUE; THENCE NORTHWESTERLY ALONG THE WEST LINE OF COLES AVENUE, A DISTANCE OF 37 FEET MORE OR LESS, TO THE PLACE OF BEGINNING.

TRACT 3 (EASEMENT):

THE APPURTENANT EASEMENT RIGHTS CONTAINED IN THAT CERTAIN CROSS DRIVEWAY LICENSE AGREEMENT, DATED OCTOBER 4, 1999 AND RECORDED OCTOBER 5, 1999 AS DOCUMENT NUMBER 99938958, IN COOK COUNTY, ILLINOIS.



# UNOFFICIAL COPY

EXHIBIT B

Operating Lease

Property of Cook County Clerk's Office

COOK COUNTY CLERK OFFICE  
RECORDING DIVISION  
118 N. CLARK ST. ROOM 120  
CHICAGO, IL 60602-1387

COOK COUNTY CLERK OFFICE  
RECORDING DIVISION  
118 N. CLARK ST. ROOM 120  
CHICAGO, IL 60602-1387