

LEASE TO AGENCY

THIS LEASE TO AGENCY ("Lease Agreement"), effective as of the 25th day of February, 2022, is by and between SUNSET LAKE LOCAL DEVELOPMENT CORPORATION, a New York Not-for-Profit Corporation with offices at 100 North Street, Monticello, New York 12701 (the "Company") and the COUNTY OF SULLIVAN INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having its principal offices at 548 Broadway, Monticello, New York 12701 ("Agency").

RECITALS

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York ("Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York ("State"); and

WHEREAS, the Enabling Act authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve its standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease any or all of its facilities at such rentals and on such other terms and conditions as it deems advisable; and

WHEREAS, the Agency was created pursuant to and in connection with the provisions of the Enabling Act, Chapter 560 of the Laws of 1970 of the State (collectively, referred to as the "Act") and is empowered under the Act to undertake the providing, financing and leasing of the facility escribed below; and

WHEREAS, on or about January 24, 2022, the Company submitted an application to the Agency (the "Application"), a copy of which Application is on file at the office of the Agency, requesting that the Agency consider (A) accepting a leasehold interest in a fifty (50.00) acre parcel of land depicted on the Town of Liberty Tax Map as Section 23, Block 1, Lot 126.6 ("Land") improved by the 146 bed County of Sullivan Adult Care Center (together with the Land, the "Facility"); (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) by making provision for a fixed amount payment in lieu of real property taxes; and (C) the lease of the Agency's interest in the Facility back to the Company or such other entity as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, by resolution, dated February 14, 2022 (“February 14 Resolution”), the Agency was authorized to (i) enter into a straight lease transaction with the Company; (ii) negotiate and enter into a PILOT Agreement with the Company pursuant to which the Company shall make a fixed amount payment in lieu of real property taxes; (iii) hold a leasehold interest in the Land and the improvements thereon which constitute the Facility and (iv) sublease the Agency’s leasehold interest back to the Company; and

WHEREAS, the February 14 Resolution was amended and supplemented by a resolution adopted by the Agency on February 24, 2022.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual terms, conditions, limitations and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is mutually agreed as follows:

ARTICLE I

REPRESENTATIONS AND COVENANTS

- 1.1. Representations and Covenants of the Agency. The Agency makes the following representations and covenants as the basis for the undertakings on its part herein contained:
- (a) The Agency is duly established under the provisions of the Act and has the power to enter into the transaction contemplated by this Lease Agreement and to carry out its obligations hereunder. Based upon the representations of the Company as to the utilization of the Facility, the Agency has the authority to take the actions contemplated herein under the Act.
 - (b) The Agency has been duly authorized to execute and deliver this Lease Agreement.
 - (c) The Agency will lease the Land from the Company pursuant to this Lease Agreement and lease the Land back to the Company pursuant to the Leaseback Agreement of even date herewith (“Leaseback Agreement”), all for the purpose of promoting the industry, health, welfare, convenience and prosperity of the inhabitants of the State and the County of Sullivan (“County”) and improving their standard of living.
 - (d) Neither the execution and delivery of this Lease Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the provisions of this Lease Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of the Act or of any corporate restriction or any agreement or instrument to which the Agency is a party or by which it is bound, or will constitute default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Agency under the terms of any such instrument or agreement.

- (e) The Agency has been induced to enter into this Lease Agreement by the undertaking of the Company to, among other things, make payments in lieu of taxation as contemplated by the Payment In Lieu of Taxation Agreement (“PILOT Agreement”) by and between the Agency and Company of even date herewith.

1.2. Representations and Covenants of the Company. The Company makes the following representations and covenants as the basis for the undertakings on its part herein contained:

- (a) The Company is a not-for-profit corporation duly organized, existing and in good standing under the laws of the State of New York, has the authority to enter into this Lease Agreement.
- (b) The Company was formed to act as a facilitator of the transition of operations at the Facility to a for profit commercial operator and has duly authorized the execution and delivery of this Lease Agreement.
- (c) Pursuant to Resolution No. 289-20, adopted July 14, 2020 (the “County Authorizing Resolution”), the Sullivan County Legislature authorized (i) the disposition by deed to the Company of portions of a certain parcel of land which included the Facility; and (ii) reserved to the County the right to continue operating the Facility until such time as the Company transfers ownership of the Facility to a third party or parties; and
- (d) In furtherance of the foregoing, and in accordance with the County Authorizing Resolution, the County transferred the Facility to the Company by Bargain and Sale Deed dated December 4, 2020 and recorded in the Sullivan County Clerk’s Office on December 4, 2020 as Instrument No. 2020-9686; and
- (e) In accordance with the County Authorizing Resolution, the Company entered into a certain Lease Agreement with the County, dated December 4, 2020 and recorded in the Sullivan County Clerk’s Office on December 4, 2020 as Instrument No. 2020-9687 (the “County Leaseback Agreement”), whereby the Company leased back the Facility to the County in order to allow the County to operate and fund the Facility until such time as a third party operator is identified, qualified and authorized to take over operation of the Facility; and
- (f) The Company issued an RFP and facilitated a process to present three qualified for-profit operators as candidates to the County Legislature to act as a consultant to assist in the transition of the operating license for the Facility to a private party;
- (g) The Company recommended and the County approved Infinite Care Management Inc (“ICMI”) to act as the consultant and ICMI is acting through its affiliate Sunset Lake Consulting LLC d/b/a Infinite Care (“Sunset Lake Consulting”) and Sunset SNF Operations LLC (“Sunset SNF”), also an affiliate of ICMI, will pursue a license for Sunset SNF to be the licensed operator of the Facility; and

- (h) Sunset SNF will apply to the New York State Department of Health for the transfer of the Certificate of Need (“CON”) currently issued to the County to a private operator. The date of the issue of the CON to a private operator is hereinafter referenced as the “CON Transition Date”; and
- (i) The County and Sunset Lake Consulting entered into a Consulting Agreement (“Consulting Agreement”) which provides for access to the Facility for purposes of performing under the Consulting Agreement and under the Consulting Agreement Sunset Lake Consulting is responsible for operating shortfalls that are exacerbated by property tax payments such that the benefits of this Lease Agreement and related Leaseback Agreement and the PILOT Agreement between the Agency and the Company are benefits to Sunset Lake Consulting as a for-profit company with a direct financial interest in the Facility and will be a benefit to Sunset SNF when operation of the Facility is transitioned; and
- (j) The Facility is subject to a lease from the Company to Sunset SNF which lease will be effective not earlier than the CON Transition Date (“Lease Transition Date”); and
- (k) The Company intends to assign to Sunset SNF the benefits of the PILOT Agreement on the Lease Transition Date and from the date hereof through the Lease Transition Date the benefits of the PILOT Agreement are held by the Company as a conduit for Sunset Lake Consulting given the financial obligations of Sunset Lake Consulting under the Consulting Agreement such that the transactions contemplated herein are meant by the parties hereto to be a “commercial” activity under the Act; and
- (l) Neither the execution and delivery of this Lease Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Lease Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any such instrument or agreement.

ARTICLE II

DEMISING CLAUSES AND RENTAL PROVISIONS

- 2.1. Agreement to Transfer to Agency. The Company has leased or has caused to be leased to the Agency a leasehold interest in the Facility, including any buildings, structures or improvements thereon, described in Schedule A attached hereto. The Company agrees the Agency's interest in the Facility resulting from said conveyances will be sufficient for the purposes intended by this Lease Agreement and agrees that it will defend, indemnify and hold the Agency harmless from any expense or liability or loss or damage arising out of the lease or a defect in title or a lien adversely affecting the Facility and

will pay all reasonable expenses incurred by the Agency in defending any action respecting the lease or title to or a lien affecting the Facility.

- 2.2. Demise of Facility. The Company hereby demises and leases the Facility to the Agency and the Agency hereby rents and leases the Facility from the Company upon the terms and conditions of this Lease Agreement.
- 2.3. Remedies to be Pursued Against Contractors and Subcontractors and its Sureties. In the event of a default by any contractor, subcontractor or any other person under any contract made by it in connection with the Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship, or performance, or guaranty, the Company at its expense, either separately or in conjunction with others, may pursue any and all remedies available to them and the Agency, as appropriate, against the contractor, subcontractor, manufacturer, supplier or other person so in default and against such surety for the performance of such contract. The Company in its own name or in the name of the Agency, may prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, manufacturer, supplier or surety or other person which is reasonably necessary, and in such events the Agency, at the Company's expense, hereby agrees to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the Agency (including but not limited to reasonable attorneys' fees) in any such action or proceeding.
- 2.4. Duration of Lease Term; Quiet Enjoyment.
- (a) The Company shall deliver to the Agency possession of the Facility (subject to the provisions hereof) and the leasehold estate created hereby shall commence as of the date hereof.
 - (b) The leasehold estate created hereby shall terminate at 11:59 P.M. on the February 15th following period for which payment in lieu of taxation are applicable as contemplated by that certain PILOT Agreement, or on such earlier date as may be permitted by Section 6.1 hereof.
 - (c) The period commencing on the date described in Section 2.4(a) herein through the date described in Section 2.4(b) herein shall be herein defined as the "Lease Term".
- 2.5. Rents. The rental under this Lease Agreement shall be One (\$1.00) Dollar and other good and valuable consideration, receipt of which is hereby acknowledged by the Company.
- 2.6. Use; Lease Agreement.
- (a) The Agency shall hold and use the Facility only for leaseback to the Company under the Leaseback Agreement and otherwise shall not sell or assign its rights hereunder nor the leasehold estate created thereby.
 - (b) Contemporaneously with the execution and delivery of this Lease Agreement, the Agency shall enter into the Leaseback Agreement. Pursuant to the Leaseback

Agreement, the Company, as tenant of the Agency under the Leaseback Agreement, is required to perform all of the Agency's obligations under this Lease Agreement. Accordingly, and notwithstanding anything to the contrary contained in this Lease Agreement, the Company shall not be entitled to declare a default hereunder or exercise any rights or remedies hereunder, if any asserted default by the Agency hereunder relates to a failure by the Company, as tenant of the Agency under the Leaseback Agreement, to perform its corresponding obligations under the Leaseback Agreement.

ARTICLE III

DAMAGE, DESTRUCTION AND CONDEMNATION

3.1. Damage or Destruction.

- (a) If the Facility shall be damaged or destroyed (in whole or in part) at any time during the term of this Lease Agreement:
 - (i) the Agency shall have no obligation to replace, repair, rebuild or restore the Facility; and
 - (ii) there shall be no abatement or reduction in the amounts payable by the Company under the Leaseback Agreement.
- (b) All such replacements, repairs, rebuilding or restoration made pursuant to this Section 3.1, whether or not requiring the expenditure of the Company's own money, shall automatically become a part of the Facility as if the same were specifically described herein.

ARTICLE IV

SPECIAL COVENANTS

- 4.1. Hold Harmless Provisions. The Company hereby releases the Agency from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold harmless the Agency, its chief executive officer, executive director, directors, officers, employees, members, agents (except the Company), representatives, and their respective successors and assigns and personal representatives from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Facility or (ii) liability arising from or expense incurred by the Agency and financing of the Facility, including without limiting the generality of the foregoing, all causes of action and reasonable attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing obligations of the Company shall remain in full force and effect after the termination of this Lease Agreement.

ARTICLE V

ASSIGNMENTS AND SUBLEASING; MORTGAGE AND PLEDGE OF INTERESTS

- 5.1. Assignment and Subleasing. This Lease Agreement may not be assigned in whole or in part, and the Facility may not be leased, in whole or in part, except that the Agency shall lease the leasehold interest created hereunder to the Company pursuant to the Leaseback Agreement.
- 5.2. Sunset SNF Assignment. This Lease Agreement, the Leaseback Agreement and the PILOT Agreement may be assigned to Sunset SNF on prior notice to the Agency on or after the Lease Transition Date and the parties acknowledge the benefits of the PILOT Agreement inure to Sunset Lake Consulting from the date hereof through the Lease Transition Date given the financial obligation of Sunset Lake Consulting under the Consulting Agreement to pay operating shortfalls.

ARTICLE VI

TERMINATION

- 6.1. Early Termination of Lease Agreement. The Company shall have the option at any time to terminate this Lease Agreement upon filing with the Agency a certificate signed by an authorized representative of the Company stating the Company's intention to do so pursuant to this Section 6.1 and upon compliance with the requirements set forth in Section 6.2 hereof.
- 6.2. Option to Terminate. Upon termination of this Lease Agreement in accordance with Section 6.1 hereof, the Company shall pay to the Agency all sums due under Sections 2.6, 3.3 and 3.7 of the Leaseback Agreement and all other sums due under the Leaseback Agreement ("Termination Payment").
- 6.3. Termination of Lease Agreement.
- (a) Pursuant to Section 6.2 hereof, the Agency shall deliver to the Company all necessary documents to reflect termination or amendment of this Lease Agreement, subject only to the following:
- (i) any liens to which the Facility was subject when leased to the Agency,
 - (ii) any liens created at the request of the Company or to the creation of which the Company consented or in the creation of which the Company acquiesced, and
 - (iii) any liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Lease Agreement.

- (b) The Agency shall release and convey to the Company all of the Agency's rights and interest in and to any rights of action or any net proceeds of insurance or condemnation awards in the event of a total, substantial or partial taking by eminent domain or for any public or quasi-public use under statute, with respect to the Facility (specifically excluding all rights of the Agency hereunder including its rights to indemnification hereunder).

ARTICLE VI

GENERAL PROVISIONS

- 7.1. Notices. All notices provided for by this Lease Agreement shall be made in writing, and shall be deemed to have been given on the date of delivery if personally served on the party to whom notice is to be given, or on the next day after mailing if mailed to the party to whom notice is to be given by overnight courier of national reputation providing evidence of receipt and properly addressed, or on the third day after mailing if mailed to the party to whom notice shall be given by First Class, Certified mail, postage prepaid and properly addressed to the following:

If to the Agency:

County of Sullivan Industrial Development Agency
548 Broadway
Monticello, New York 12701
Attn: Executive Director

with a copy to:

GARIGLIANO LAW OFFICES, LLP
449 Broadway, P.O. Drawer 1069
Monticello, New York 12701-1069
Attn: Agency General Counsel

to the Company:

Sunset Lake Local Development Corporation
c/o Sullivan County Manager's Office
100 North Street
Monticello, New York 12701

with an additional copy to:

Harris Beach PLLC
99 Garnsey Road
Pittsford, New York 14534
Attn: Shawn Griffin, Esq.

with an additional copy to:

Sunset Lake Consulting LLC and
Sunset SNF Operations LLC
267 Broadway
Brooklyn, New York 11211
Attn: Solomon Klein

with an additional copy to:

Ulmer & Berne LLP
1660 West 2nd Street, Suite 1100
Cleveland, Ohio 44113-1406
Attn: Daniel Gottesman, Esq.

or at such other address and/or addresses as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

- 7.2. Binding Effect. This Lease Agreement shall inure to the benefit of and shall be binding upon the Agency, the Company and its respective permitted successors and assigns.
- 7.3. Waiver. No waiver of any of the provisions of this Lease Agreement shall be deemed to or shall constitute a waiver or any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.
- 7.4. Severability. If any provision of this Lease Agreement shall be determined to be illegal and unenforceable by any court of law or any competent governmental or other authority, the remaining provisions shall be severable and enforceable in accordance with its terms so long as this Lease Agreement without such terms or provisions does not fail of its essential purpose or purposes. The parties will negotiate in good faith to replace any such illegal or unenforceable provision or provisions with suitable substitute provisions which will maintain the economic purposes and intentions of this Lease Agreement.
- 7.5. Governing Law, Venue. This Lease Agreement shall be governed, construed and enforced in accordance with the laws of the State for contracts to be wholly performed therein. The parties hereby designate a court of proper jurisdiction in Sullivan County, State of New York as the exclusive venue for resolution of any disputes which may arise under or by reason of this Lease Agreement.
- 7.6. Section Headings Not Controlling. The headings of the several sections in this Lease Agreement have been prepared for convenience of reference only and shall not control, affect the meaning or be taken as an interpretation of any provision of this Lease Agreement.
- 7.7. Recording and Filing. A memorandum of this Lease Agreement, shall be recorded or filed, as the case may be, in the Office of the Clerk of Sullivan County, State of New York, or in such other office as may at the time be provided by law as the proper place for the recordation or filing thereof.
- 7.8. No Recourse; Special Obligation. Notwithstanding anything to the contrary contained herein, the obligations and agreements of the Agency and the Company contained herein and in any other agreement executed by the Agency and the Company and in any other instrument or document supplemental thereto executed in connection herewith or

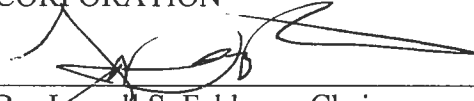
therewith shall be deemed the obligation and agreements of the Agency and the Company, and not of any chief executive officer, executive director, director, officer, employee, member, agent (except the Company), representative, or their respective successors and assigns and personal representatives in his or her individual capacity, and the chief executive officer, executive director, directors, officers, employees, members, agents (except the Company), representatives, and their respective successors and assigns and personal representatives of the Agency and the Company shall not be liable personally thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby. The obligations and agreements of the Agency contained herein or therein shall not constitute or give rise to an obligation of the State of New York, the County, or any of the taxing jurisdictions and neither the State of New York, the County, or any of the taxing jurisdictions shall be liable thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute a limited obligation of the Agency payable solely from revenues derived from the sale of the Agency's interest in the Facility.

- 7.9. Counterparts. This Lease Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.
- 7.10. Entire Agreement. This Lease Agreement, the Leaseback Agreement and the PILOT Agreement sets forth the entire agreement and understanding between the parties relating to the subject matter hereof and supersedes all prior discussions and negotiations between them. This Lease Agreement may not be amended in any respect except by a written amendment expressly referring to this Lease Agreement and executed by the parties to be bound thereby.

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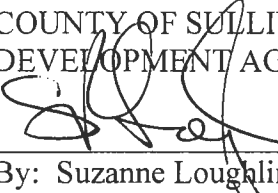
IN WITNESS WHEREOF, the Company and the Agency have caused this Lease Agreement to be executed in their respective names, all as of the date first written above.

SUNSET LAKE LOCAL DEVELOPMENT
CORPORATION



By: Lowell S. Feldman, Chairman

COUNTY OF SULLIVAN INDUSTRIAL
DEVELOPMENT AGENCY



By: Suzanne Loughlin, Chairperson

SCHEDULE A

Schedule A

All the certain plot, piece or parcel of land, with the buildings and improvements thereon erected, it being the intention to convey all of the lands and buildings owned by the Grantor and commonly known as "The Workmen's Circle Sanatorium" at Liberty, Sullivan County New York:

All that tract or parcel of land situate in the Town of Liberty in the County of Sullivan and State of New York and known as subdivision #1 of lot #8 in the Fourth allotment of Great Lot #3, Beginning at a heap of stones near a small hemlock tree marked J.M.C. 1819 and from thence North 20 degrees 40 Minutes East 20 Chains 21 links to a heap of stones near a beech tree marked J.D.C. standing on the subdivision line between lots #7 and #8; thence along said line South 66 degrees 20 minutes east 27 chains 78 links to a heap of stones near a beech tree standing on the line between the Fourth Allotment and the Expense lot; from thence South 21 degrees 45 minutes west 20 chains 21 links to a heap of stones near a small maple tree; and from thence to the place of beginning, containing 53 and one half acres of land more or less.

Also all that other piece or parcel of land situate in the same town, county and state and adjoining the above lot and being lot #2 in division #8 in the fourth allotment of the division of the lands of Nancy Ryerson in Great Lot #3 of the Hardenburgh Patent, and containing one hundred and six acres more or less; and being the same premises described in a deed dated November 23, 1908 from Joseph Weinberg and Tillie Weinberg his wife, to the Workmen's Circle, which deed was

recorded in the Sullivan County Clerk's Office on November 30th, 1908, in Liber 156 of Deeds at page 286.

Excepting and reserving from the premises described above all of the land that lies westerly of the center of Sunset Lake Road.

The intention of this description is to convey a portion of the premises as described above that lies Easterly of the center of Sunset Lake Road with the exception of the following described premises:

All of that tract or parcel of land situate in the Town of Liberty, Sullivan County, New York, and being a part of the Lake Liberty farm and bounded and described as follows: Beginning on the division line of subdivision #1 of lot #9 in the Fourth allotment of Great Lot #3 of the Hardenburgh Patent at a corner in the fence marked by a pile of stones about 30 feet easterly from the travelled highway, and runs thence South 61 degrees 30 minutes East 1210 feet to a stake and stones on the southerly side of a stone wall; thence South 28 degrees 30 minutes west 330 feet to a stake and stones between a brook and a farm road on a line with a stone wall; thence North 65 degrees West 1210 feet to the west line of subdivision #1 aforesaid; thence North 28 degrees 30 minutes East 390 feet to the place of beginning, containing 10 acres of land and being a part of the land which Alexander S. McNally by deed dated September 15th, 1909 conveyed to Max Seiken. Deed recorded in Deed book No. 159 at page 289 in the Sullivan County Clerk's Office.

Being a portion of the premises described in a deed from the Workmen's Circle to the County of Sullivan dated, June 30, 1955 and recorded in the Sullivan County Clerk's Office in Liber 517 of deeds at page 268 on July 1, 1955.