

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2017 083649

2017 DEC 11 AM 11:12

MICHAEL B. BROWN
RECORDER

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*This document prepared by:
After recording return to:*

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the Lake County Recorder!**

KEYBANK NATIONAL ASSOCIATION
Attn: KCB NOORE Servicing
11501 Outlook Street, Suite 300
Overland Park, KS 66211

STOP

**SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT
(Project Commonly Known as "Hebron Venture, LLC")**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("*Agreement*") is made as of November 28, 2017, by and between KEYBANK NATIONAL ASSOCIATION, its successors, participants, and assigns ("*Beneficiary*"), whose address is Attn: KCB NOORE Servicing, 11501 Outlook Street, Suite 300, Overland Park, KS 66211, and NEUROBEHAVIORAL HOSPITAL LLC, an Indiana limited liability company, whose address is 112 W. Jefferson Blvd., Suite 600, South Bend, IN 46601 ("*Tenant*").

RECITALS

A. Tenant leases the property located in Lake County, Indiana, more particularly described on EXHIBIT A attached hereto (the "*Property*") pursuant to the provisions of a certain lease dated July 5, 2017 between Hamstra Builders, an Indiana Corporation, as landlord, and Tenant, as tenant (as amended, supplemented, or extended, the "*Lease*"). The portion of the Property leased by Tenant is referred to herein as the "*Leased Property*."

②

HOLD FOR MERIDIAN TITLE CORP

17-34729

\$25100

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B. Hebron Venture, LLC, an Indiana limited liability company ("**Borrower**") is the landlord under the Lease or has acquired the original landlord's interest as landlord under the Lease.

C. Lender is making or has made a loan to Borrower evidenced or to be evidenced by a promissory note made by Borrower to the order of Lender (the "**Note**") and secured or to be secured by a Mortgage, Assignment of Leases and Rents, Assignment of Contracts, Security Agreement, and Fixture Filing (the "**Security Instrument**") granted by Borrower to or for the benefit of Lender recorded against the Property. The Note, Security Instrument, and all other documents evidencing, governing, or securing the Loan are collectively referred to herein as the "**Loan Documents**."

D. Tenant has agreed to subordinate the Lease to the lien of the Security Instrument, and Lender has agreed not to disturb Tenant's tenancy under the Lease on the terms and conditions set forth below.

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

1. **SUBORDINATION.** The Lease and all of the terms, covenants and provisions thereof and all rights, remedies, and options of Tenant thereunder, including, without limitation, any rights to payment following a default by Borrower under the Lease or casualty or condemnation with respect to the Property, are and shall at all times continue to be subject and subordinate in all respects to the terms, covenants and provisions of the Security Instrument and to the lien thereof, including, without limitation, all renewals, increases, modifications, spreading agreements, consolidations, replacements and extensions thereof and to all sums secured thereby and advances made thereunder with the same force and effect as if the Security Instrument had been executed, delivered and recorded prior to the execution and delivery of the Lease.

2. **NON-DISTURBANCE.** If any action or proceeding is commenced by Lender for the foreclosure of the Security Instrument or the sale of the Property, Tenant shall not be named as a party therein unless Tenant is in default under the Lease at the time such action or proceeding is commenced or unless joinder is required by law. As long as Tenant is not in default under any of the terms, covenants or conditions of the Lease or of this Agreement beyond any applicable cure period both at the time of the commencement of any such action or proceeding and at the time of any foreclosure sale or the exercise of any other rights or remedies of Lender under the Security Instrument, (a) such joinder shall not result in the termination of the Lease or disturb the Tenant's possession or use of the Leased Property, and (b) the sale of the Property in any such action or proceeding and the exercise by Lender of any of its other rights under the Loan Documents shall be made subject to all rights of Tenant under the Lease, as expressly modified by this Agreement.

3. **ATTORNTMENT.**

3.1 If (a) Lender or any other purchaser of the Property becomes the owner of the Property by reason of the foreclosure of the Security Instrument or the acceptance of a deed or assignment in lieu of foreclosure or by reason of any other enforcement of the Security

Instrument (Lender or such other purchaser being hereinafter referred to as "**Purchaser**"), and (b) there was no default by Tenant permitting Purchaser to terminate the Lease in connection with its foreclosure action in accordance with Section 2 above, then upon Purchaser's acquisition of the Property, the Lease shall not be terminated or affected by Purchaser's acquisition, but shall continue in full force and effect as a direct lease between Purchaser and Tenant upon all of the terms, covenants and conditions set forth in the Lease. Tenant agrees to attorn to Purchaser, and Purchaser, by virtue of acquiring the Property, shall be deemed to have agreed to accept such attornment.

3.2 Subject to the observance and performance by Tenant of all the terms, covenants and conditions of the Lease, and subject to Purchaser's termination right in Section 2 above, Purchaser shall recognize the leasehold estate of Tenant for the remaining balance of the term with the same force and effect as if Purchaser were the lessor under the Lease; *provided, however,* that Purchaser shall not be:

3.2.1 liable for the failure of any prior landlord (any such prior landlord, including Borrower and Borrower's successors-in-interest, being hereinafter referred to as a "**Prior Landlord**") to perform any of its obligations under the Lease that accrued prior to the date on which Purchaser became the owner of the Property, but this limitation of liability does not limit Purchaser's obligations under the Lease to correct any conditions that (i) existed as of the date Purchaser became the owner of the Property, (ii) violate Purchaser's obligations as landlord under the Lease, and (iii) Purchaser received written notice of such condition and had the opportunity to cure the same pursuant to the terms and conditions of Section 5 of this Agreement;

3.2.2 subject to any offsets or other monetary obligations, defenses, abatement, or counterclaims that have accrued in favor of Tenant against any Prior Landlord prior to Purchaser's acquisition of the Property;

3.2.3 liable for the return of security deposits, if any, paid by Tenant to any Prior Landlord in accordance with the Lease unless Purchaser actually receives such security deposits from a Prior Landlord;

3.2.4 except with respect to the initial deposit of \$553,240.00 made by Tenant to Borrower on or before November 30, 2017 pursuant to the Addendum 1 and Addendum 2 to the Lease as prepayment of the base rent for the first six (6) months of the Lease following the commencement date of such rent obligation, bound by any payment of rents, additional rents or other sums Tenant may have prepaid more than one (1) month in advance to any Prior Landlord unless such sums are actually received by Purchaser;

3.2.5 responsible for the making of repairs in or to the Property in the case of damage or destruction to the Property or any part thereof due to fire or other casualty or by reason of condemnation prior to the date on which Purchaser became the owner of the property;

3.2.6 bound by any representations or warranties of any Prior Landlord; or

3.2.7 bound by any indemnity or defense obligations of any Prior Landlord.

In the event that any liability of Purchaser arises pursuant to this Agreement or under the Lease, such liability shall be limited and restricted to Purchaser's interest in the Property and shall in no event exceed such interest.

4. **NOTICE TO TENANT.** After notice is given to Tenant by Lender that Borrower is in default under the Loan Documents and that the amounts due from Tenant under the Lease should be paid to Lender pursuant to the terms of the Security Instrument, Tenant shall thereafter pay directly to Lender or as otherwise directed by Lender, all rents and other amounts due or to become due to Borrower under the Lease, and Borrower hereby expressly authorizes Tenant to make such payments to Lender and hereby releases and discharges Tenant from any liability to Borrower on account of any such payments. Purchaser shall defend, indemnify, and hold Tenant harmless from and against any and all claims arising out of Tenant's reliance on any such notice from Purchaser.

5. **NOTICE TO LENDER AND OPPORTUNITY TO CURE.** Tenant agrees to notify Lender by certified mail, return receipt requested, with postage prepaid, of any default of Borrower under the Lease that would entitle Tenant to cancel or terminate the Lease. Tenant further agrees that, notwithstanding any provisions of the Lease, no cancellation or termination of the Lease, shall be effective unless Lender has failed, within thirty (30) days after the mailing of such notice, to cure the default and thereafter diligently prosecute such cure to completion. Notwithstanding the foregoing, Lender shall have no obligation to cure any default by Borrower except as specifically provided in Section 3.2.1 upon Lender's acquisition of the Property.

6. **NOTICES.** Any notice, demand, request, or other communication that any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed properly given (a) if hand delivered, when delivered; (b) if mailed by United States Certified Mail (postage prepaid, return receipt requested), three Business Days after mailing; (c) if by Federal Express or other nationally recognized overnight courier service, on the next Business Day after delivered to such courier service for delivery on the next Business Day; or (d) if by e-mail transmission, on the day of transmission so long as a copy is sent on the same day by Federal Express or other nationally recognized overnight courier, to the addresses set forth below, or at such other address as the party to be served with notice has furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice:

If to Tenant:

Neurobehavioral Hospital LLC
112 W. Jefferson Blvd., Suite 600
South Bend, IN 46601
Attention: Dr. Cameron Gilbert

If to Lender:

KeyBank National Association
Attn: KCB NOORE Servicing
11501 Outlook Street, Suite 300
Overland Park, KS 66211
Reference: Hebron Venture, LLC

For purposes of this Section 6, the term “*Business Day*” means any day other than Saturday or Sunday on which commercial banks are required or authorized to be open in Cleveland, Ohio or Kansas City, Missouri.

7. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon and inure to the benefit of Lender, Tenant and Purchaser and their respective successors and assigns.

8. **GOVERNING LAW.** This Agreement shall be construed in accordance with and governed by the laws of the state of Indiana, without regard to that state’s choice of law rules.

9. **AUTHORITY.** The individuals signing this Agreement represent and warrant that they are authorized to do so on behalf of the parties for whom they are signing.

10. **MISCELLANEOUS.** This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto. If any provision of this Agreement is finally adjudicated to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement.

[Signatures Appear On Following Pages]



Executed as of the date of this Agreement.

TENANT:

NEUROBEHAVIORAL HOSPITAL LLC,
an Indiana limited liability company

By: _____

Name: Dr. Cameron Gilbert
Title: Managing Member/CEO

Document is
LENDER:
NOT OFFICIAL!
KEYBANK NATIONAL ASSOCIATION,
This Document is the property of
the Lake County Recorder!

By: _____

Name: Kathy Ann Reinhardt
Title: Senior Vice President

The undersigned hereby joins in the execution of this Agreement in order to evidence its acceptance of, and agreement to be bound by, Section 4 of the Agreement.

BORROWER:

HEBRON VENTURE, LLC,
an Indiana limited liability company

By: _____

Name: Greg Hamstra
Title: Manager

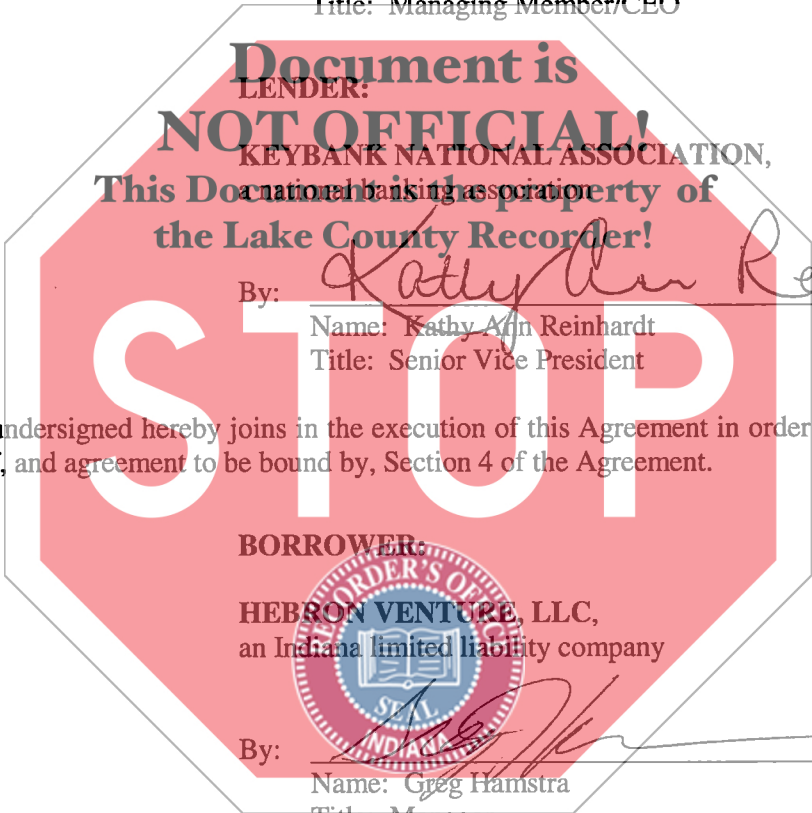


Executed as of the date of this Agreement.

TENANT:

NEUROBEHAVIORAL HOSPITAL LLC,
an Indiana limited liability company

By: _____
Name: Dr. Cameron Gilbert
Title: Managing Member/CEO



LENDER:
NOT OFFICIAL!
KEYBANK NATIONAL ASSOCIATION,
a national banking association
**This Document is the property of
the Lake County Recorder!**

By: Kathy Ann Reinhardt
Name: Kathy Ann Reinhardt
Title: Senior Vice President

The undersigned hereby joins in the execution of this Agreement in order to evidence its acceptance of, and agreement to be bound by, Section 4 of the Agreement.

BORROWER:
HEBRON VENTURE, LLC,
an Indiana limited liability company

By: _____
Name: Greg Hamstra
Title: Manager

STATE OF Indiana)
)
COUNTY OF Starke)

SS:

The foregoing instrument was acknowledged before me this 29th day of November 2017, by Dr. Cameron Gilbert, the Managing Member/CEO of said NEUROBEHAVIORAL HOSPITAL LLC, an Indiana limited liability company. He is personally known to me or has produced a State of Indiana driver's license as identification.



Sign Name: Jessica Wakefield
Notary Public

Print Name: Jessica Wakefield

Serial No. (if any): _____

[NOTARIAL SEAL]

My Commission Expires: April 22, 2022



STATE OF INDIANA)
)
COUNTY OF _____)

SS:

The foregoing instrument was acknowledged before me this _____ day of November, 2017, by Kathy Ann Reinhardt, Senior Vice President, on behalf of KeyBank National Association. She is personally known to me or has produced a State of _____ driver's license as identification.

Sign Name: _____
Notary Public

Print Name: _____

Serial No. (if any): _____

[NOTARIAL SEAL]

My Commission Expires: _____

STATE OF _____)
)
COUNTY OF _____)

SS:

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by Dr. Cameron Gilbert, the Managing Member/CEO of said NEUROBEHAVIORAL HOSPITAL LLC, an Indiana limited liability company. He is personally known to me or has produced a State of _____ driver's license as identification.



Sign Name: _____
Notary Public

Print Name: _____

Serial No. (if any): _____

[NOTARIAL SEAL]

My Commission Expires: _____

STATE OF INDIANA)
)
COUNTY OF St. Joseph)

SS:

The foregoing instrument was acknowledged before me this 28 day of November, 2017, by Kathy Ann Reinhardt, Senior Vice President, on behalf of KeyBank National Association. She is personally known to me or has produced a State of Indiana driver's license as identification.



KAREN S. GROVE
Notary Public
State of Indiana
My Commission Expires
October 12, 2024

Sign Name: Karen S. Grove
Notary Public

Print Name: Karen S. Grove

Serial No. (if any): _____

[NOTARIAL SEAL]

My Commission Expires: Oct 12, 2024

STATE OF Indiana)
)
COUNTY OF Jasper)

SS:

The foregoing instrument was acknowledged before me this 28th day of November, 2017, by Greg Hamstra, Manager, on behalf of Hebron Venture, LLC, an Indiana limited liability company. He is personally known to me or has produced a State of _____ driver's license as identification.

Sign Name: Tammy R. Overby
Notary Public

Print Name: Tammy R. Overby

Serial No. (if any): 627221

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My Commission Expires: 2-14-24

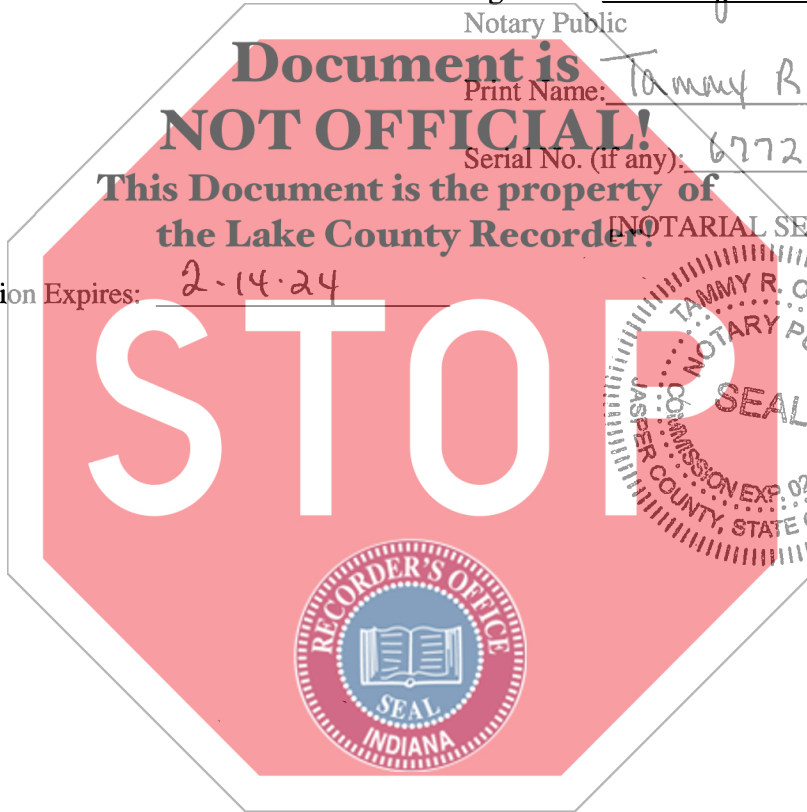


EXHIBIT "A"

The North 440 feet of the East 594.5 feet of the Northeast 1/4 of Section 33, Township 35 North, Range 8 West of the Second Principal Meridian, in Lake County, Indiana.

EXCEPT THEREFROM THE FOLLOWING: That part of the East 1/2 of the Northeast 1/4 of Section 33, Township 35 North, Range 8 West of the Second Principal Meridian, being bounded and described as follows: Beginning at the Northeast corner of said Section 33; thence on an assumed bearing of North 89° 37' 05" West, along the North line of said Section 33, a distance of 228.622 meters (750.07 feet) to the West line of the East 228.600 meters (750.00 feet); thence South 00° 24' 38" East, a distance of 16.740 meters (54.92) along said West line; thence South 89° 25' 37" East, a distance of 47.134 meters (154.64 feet); thence North 00° 34' 23" East, a distance of 4.000 meters (13.12 feet); thence South 89° 25' 37" East, a distance of 151.582 meters (497.32 feet); thence South 58° 46' 49" East, a distance of 19.373 meters (63.56 feet) to the West line of Indiana Route 53 (Broadway Avenue); thence North 89° 35' 22" East, a distance of 13.350 meters (43.80 feet) to the East line of said Section 33; thence North 00° 24' 38" West, a distance of 23.150 meters (75.95 feet), along the East line to the point of beginning.

ALSO EXCEPTING: That part of the State of Indiana, in and to Instrument No. 2010-056997, in the Office of the Recorder of Lake County, Indiana.

