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KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 12/19/2016 01:46 PM PG: 1 OF 9

This document was prepared by  
and after recording should be  
returned to:

Justin M. Newman  
Thompson Coburn LLP  
55 East Monroe Street  
37<sup>th</sup> Floor  
Chicago, IL 60603

212604

**Address of Property:**

1750 S. Elmhurst Road  
Des Plaines, IL 60016

**Permanent Index No.:**

08-26-201-031-0000  
08-26-201-015-0000  
08-26-201-030-0000

## SUBORDINATION OF CONSULTING AGREEMENT

THIS SUBORDINATION OF CONSULTING AGREEMENT ("Subordination") is executed effective as of December 16, 2016, by ASBURY HEALTHCARE LLC, an Illinois limited liability company ("Consultant"), and ASBURY COURT, L.L.C., an Illinois limited liability company ("Operator") to MB FINANCIAL BANK, N.A. bank whose address is 6111 N. River Road, Rosemont, IL 60018 ("Lender").

### WITNESSETH

WHEREAS, DESPLAINES PROPERTY, L.L.C., an Illinois limited liability company ("Owner") is the owner of certain real property incorporated by reference for all purposes, and the improvements and appurtenances thereto (collectively, the "Property") located in Des Plaines, Illinois and described on Exhibit A attached hereto; and

WHEREAS, Operator and Consultant have executed a Consulting Services Agreement ("Consulting Agreement"), providing for Consultant's consultation with regard to the Property; and

WHEREAS, Owner has requested Lender to lend Owner the amount of Eight Million Two Hundred Eighty One Thousand Four Hundred Eighty Two Dollars and No Cents (\$8,281,482.00) (referred to herein as the "Loan") evidenced by a Note ("Note") and secured by a Junior Mortgage ("Junior Mortgage") from Owner to Lender, covering certain collateral ; and

WHEREAS, Lender is unwilling to make the Loan unless Consultant subordinates its right under the Consulting Agreement to Lender's rights under said Junior Mortgage and all other documents evidencing, securing or pertaining to the Loan (collectively, the "Security Documents").

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NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Consultant and Operator agree as follows:

1. Benefit. That Lender's making of the Loan provides direct benefits to Consultant, as the managing agent of the Property.

2. Termination. Upon the occurrence and during the continuance of an Event of Default (as defined in the Junior Mortgage) under the terms of any of the Security Documents, Lender shall have the unfettered right to immediately terminate the Consulting Agreement as to the Property and all management rights of Consultant thereunder as to the Property, including (without limitation) the right to demand or receive after such termination, any payment for management services or the like performed after such termination; provided that Consultant shall retain all rights to proceed against Borrower for any fees and payments remaining due and payable under the Consulting Agreement.

3. Lien; Subordination. Consultant hereby acknowledges and agrees that it has no liens, security interest or any right, title or interest in and to the Property by virtue of the Consulting Agreement, its past, present or future activities and performance of services to or for the benefit of the Property, or otherwise. If and to the extent that Consultant does, or may in the future, have any such liens, security interests, rights, titles or interests in and to the Property, then Consultant does hereby expressly subordinate and make second, junior and inferior any and all rights, titles and interests of Consultant in and to the Property to all liens, security interests, rights, titles and interests of the Security Documents, and Consultant agrees that all liens, security interests, rights, titles and interests of the Security Documents shall be unconditionally first, prior and superior to any and all liens, security interests, rights, titles and interests of Consultant in and to the Property. Consultant further agrees that any and all liens, security interests, rights, title and interests of Consultant in and to the Property shall be and remain expressly subject and subordinate to the liens, security interests, right, titles and interests of the Security Documents and any renewal, extension or refinancing thereof.

4. Subordination of Payment. Consultant does hereby, to the extent and in the manner set forth herein, expressly subordinate and make junior and inferior its rights to receive payments under the Consulting Agreement with respect to the Property, to the full and complete repayment of the Note and Loan and all obligations secured by the Security Documents provided Consultant shall be entitled to receive all such payments earned by Consultant prior to termination hereunder and to retain all such payments received by Consultant prior to termination of the Consulting Agreement hereunder.

5. Receipt of Payment. In the event Consultant shall receive any payment on account of the Consulting Agreement which Consultant is not entitled to receive under the provisions of this Subordination, Consultant will hold any amount so received in trust for Lender and will forthwith turn over such payment to Lender to be applied on the Note and Loan. In the event Lender demands that such sums shall be paid to Lender and applied on the Note and Loan, Operator hereby agrees that such sums so paid to Consultant shall not be deemed to have been a payment under the Consulting Agreement, and the obligations under the Consulting Agreement

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shall not have been reduced or discharged, in whole or in part, by the initial payment of such sum by Operator to, or receipt of such sum by Consultant.

6. Amendment. Consultant agrees not to amend, terminate or substitute, in any manner, the Consulting Agreement, without prior written consent of the Lender.

7. Assignment. Operator does hereby collaterally assign to Lender all of Operator's rights under the Consulting Agreement as concerning the Property. Upon any Event of Default not timely cured by Owner or Operator under the Note or Security Documents, Lender may elect to take over, as of any date subsequent to such Event of Default, Operator's rights under the Consulting Agreement as concern the Property subject to any provisions regarding notice of default and opportunity to cure contained in the Note or Security Documents. If Lender elects to take over Operator's rights under the Consulting Agreement, then Consultant agrees to act for Lender as the Operator under such Consulting Agreement; provided, however, (a) Consultant agrees that Lender shall not be liable for any of Operator's obligations or liabilities under the Consulting Agreement prior to the time that Lender takes over Operator's rights thereunder and (b) Consultant shall be compensated by Lender in accordance with the terms of the Consulting Agreement subsequent to the time that Lender takes over Operator's rights thereunder.

8. Notices. All notices hereunder shall be given at the following addresses:

If	to	Asbury Healthcare LLC
Consultant:		8170 McCormick Boulevard, Suite 104
		Skokie, IL 60076

If to Owner or		Desplaines Property, L.L.C.
Operator:		Asbury Court, L.L.C.
		8170 McCormick Boulevard, Suite 104
		Skokie, IL 60076

If to Lender:	Donald J. Clark
	MB Financial Bank, N.A.
	6401 North Lincoln Avenue
	Lincolnwood, IL 60712
	Fax: (847) 745-3435

Any party may change its address for notice hereunder to any other location within the continental United States by giving thirty (30) days prior notice thereof to the other parties in accordance with this paragraph. All notices given hereunder shall be in writing and shall be considered properly given if mailed by first class United States Mail, postage prepaid, registered or certified with return receipt requested, or by delivering same in person to the intended addressee, or by delivery by a third party commercial delivery service with evidence of receipt. Any notice mailed as above provided shall be effective three (3) days after its deposit in the custody of the United States Postal Service; notices given by personal delivery shall be effective upon receipt by the addressee; and notice given by commercial delivery service shall be effective upon receipt thereof at the office of the addressee.

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9. **WAIVER OF JURY TRIAL. CONSULTANT AND OWNER, AND LENDER (BY ITS ACCEPTANCE HEREOF) WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH CONSULTANT OR OWNER AND LENDER MAY BE PARTIES, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY PERTAINING TO, THIS AGREEMENT. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS AGREEMENT, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY OWNER AND CONSULTANT AND OWNER AND CONSULTANT HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. OWNER AND CONSULTANT FURTHER REPRESENT AND WARRANT THAT THEY HAVE BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAVE HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL, AND THAT THEY HAVE HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL. OWNER AND CONSULTANT AND LENDER AGREE AND CONSENT THAT ANY OF THEM MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS DOCUMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF EACH OF THEM TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.**

*[Remainder of page is blank; signature appears on next page.]*

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EXECUTED as of the date first above written.

**CONSULTANT:**

**ASBURY HEALTHCARE LLC, an Illinois  
limited liability company**

By:   
Name: Michael Zahtz  
Title: Manager

**OPERATOR:**

**ASBURY COURT, L.L.C., an Illinois  
limited liability company**

By: \_\_\_\_\_  
Name: Moshe Kahn  
Title: Manager

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

EXECUTED as of the date first above written.

**CONSULTANT:**

**ASBURY HEALTHCARE LLC, an Illinois  
limited liability company**

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

Name: Michael Zahtz

Title: Manager

**OPERATOR:**

**ASBURY COURT, L.L.C., an Illinois  
limited liability company**

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

Name: Moshe Kahn

Title: Manager

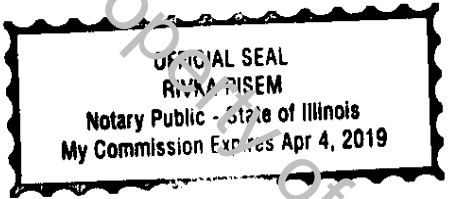
Property of Cook County Clerk's Office

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STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF COOK     )

I, the undersigned, a Notary Public in and for the County and State aforesaid, hereby certify that **MICHAEL ZAHTZ**, the Manager of **ASBURY HEALTHCARE LLC**, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act and as the free and voluntary act of **ASBURY HEALTHCARE LLC** for the uses and purposes therein set forth.

Given under my hand and notarial seal this 12 day of December, 2016.



[Signature]  
Notary Public

STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF COOK     )

I, the undersigned, a Notary Public in and for the County and State aforesaid, hereby certify that **MOSHE KAHN**, the Manager of **ASBURY COURT, L.L.C.**, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act and as the free and voluntary act of **ASBURY COURT, L.L.C.** for the uses and purposes therein set forth.

Given under my hand and notarial seal this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public

# UNOFFICIAL COPY

STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF COOK     )

I, the undersigned, a Notary Public in and for the County and State aforesaid, hereby certify that **MICHAEL ZAHTZ**, the Manager of **ASBURY HEALTHCARE LLC**, an **Illinois limited liability company**, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act and as the free and voluntary act of **ASBURY HEALTHCARE LLC** for the uses and purposes therein set forth.

Given under my hand and notarial seal this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public

STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF COOK     )

I, the undersigned, a Notary Public in and for the County and State aforesaid, hereby certify that **MOSHE KAHN**, the Manager of **ASBURY COURT, L.L.C.**, an **Illinois limited liability company**, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act and as the free and voluntary act of **ASBURY COURT, L.L.C.** for the uses and purposes therein set forth.

Given under my hand and notarial seal this 12 day of December, 2016.



*[Signature]*  
\_\_\_\_\_  
Notary Public



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## EXHIBIT A

### Legal Description

#### PARCEL 1:

LOT 2 IN ROYAL COURT INN PLAT OF RESUBDIVISION OF LOTS 1, 3 AND 4 IN ROYAL COURT SUBDIVISION OF PART OF THE NORTH HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT RECORDED SEPTEMBER 19, 1996 AS DOCUMENT 96716993, IN COOK COUNTY, ILLINOIS.

(EXCEPTING THEREFROM THAT PORTION DESCRIBED AS FOLLOWS:

THAT PART OF LOT 2 IN ROYAL COURT INN PLAT OF RESUBDIVISION AFORESAID, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 2; THENCE SOUTH 00 DEGREES 51 MINUTES 59 SECONDS EAST, ALONG THE EAST LINE OF SAID LOT 2, 60.11 FEET TO A SOUTHEAST CORNER OF SAID LOT 2; THENCE SOUTH 89 DEGREES 08 MINUTES 01 SECONDS WEST, ALONG A SOUTH LINE OF SAID LOT 2, 10.00 FEET TO A JOG IN THE SOUTH LINE OF SAID LOT 2; THENCE SOUTH 11 DEGREES 47 MINUTES 56 SECONDS WEST, ALONG A SOUTH LINE OF SAID LOT 2, 45.61 FEET; THENCE NORTH 00 DEGREES 51 MINUTES 59 SECONDS WEST, 79.20 FEET; THENCE NORTH 89 DEGREES 08 MINUTES 01 SECONDS EAST, 13.74 FEET; THENCE NORTH 00 DEGREES 51 MINUTES 09 SECONDS WEST 25.40 FEET TO THE NORTH LINE OF SAID LOT 2; THENCE NORTH 88 DEGREES 57 MINUTES 07 SECONDS EAST 6.25 FEET TO THE POINT OF BEGINNING).

#### PARCEL 2:

EASEMENT FOR THE BENEFIT OF PARCEL 1 AS GRANTED IN THE INSTRUMENT FILED WITH THE REGISTRAR OF TITLES AS DOCUMENT NUMBER LR2179712 FOR THE USE OF ANY ROADWAY LOCATED ON THE 98 FOOT STRIP OF LAND LYING WEST OF AND ADJOINING LAND FOR INGRESS AND EGRESS.

#### PARCEL 3:

A PERPETUAL NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND PARKING ESTABLISHED BY EASEMENT RECORDED NOVEMBER 14, 1994 AS DOCUMENT 94964269 OVER AND ACROSS PARCEL 1 AS DELINEATED ON EXHIBIT C OF AFORESAID EASEMENT.

Permanent Index Nos.: 08-26-201-031-0000, 08-26-201-015-0000 and  
08-26-201-030-0000

Address of Property: 1750 S. Elmhurst Road  
Des Plaines, IL 60016