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Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
4/14/2010 10:40:29.32



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Upon filing return to:

H. Daniel Smith
Smith, Gardner, Slusky,
Lazer, Pohren & Rogers, LLP
8712 West Dodge Road
Suite 400
Omaha, NE 68114
(402) 392-0101
(402) 392-1011

SUBORDINATION, NONDISTURBANCE AND ATTORNMENMENT AGREEMENT

THIS AGREEMENT is dated as of April 14, 2010 by and among **MUTUAL OF OMAHA BANK**, a federally chartered savings bank, its successors and assigns ("Lender"), **SCOTT ENTERPRISES, INC.**, a Nebraska Corporation, ("Tenant"), and **RAINWOOD TWO, L.L.C.**, a Nebraska limited liability company ("Landlord" or "Borrower").

RECITALS:

Lender, Tenant and Landlord acknowledge the following:

- A. Landlord owns the property legally described in Exhibit A attached hereto ("Property").
- B. Landlord has leased a portion of the Property to Tenant ("Premises") pursuant to a lease dated the 15th day of October, 2009 and all amendments, supplements and additions thereto ("Lease").
- C. Lender has agreed to make a first mortgage loan ("Loan") to Landlord, repayment of which is to be secured by a Deed of Trust, Construction Security Agreement, Security Agreement, Assignment of Leases and Rents and Fixture Filing Statement ("Mortgage") on the Property.
- D. As a condition precedent to Lender's disbursement of the Loan proceeds, Lender has required that Tenant subordinate the Lease and Tenant's interest in the Premises in all respects to the lien of the Mortgage.

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E. In return, Lender is agreeable to not disturbing the Tenant's possession of the Property.

F. Lender is disbursing the Loan proceeds in reliance upon the agreements contained in this instrument, but for which it would not disburse the Loan.

AGREEMENT

NOW, THEREFORE, in consideration of the Recitals and the mutual agreements which follow, Lender, Tenant and Landlord agree as follows:

1. **Subordination.** Tenant agrees that the Lease, terms, covenants and provisions thereof including all of the rights of Tenant in, to or under the Lease, are, and shall at all times continue to be, subject to and subordinate in all respects to the lien of the Mortgage and to all renewals, modifications, supplements, replacements and extensions thereof, and to the rights and interest of the holder of the Mortgage, as fully and with the same force and effect as if the Mortgage had been executed, delivered and recorded, and the indebtedness secured thereby had been fully disbursed prior to the execution and delivery of the Lease or possession of the Property by Tenant, or its predecessors in interest.

2. **Nondisturbance.** So long as Tenant is not in default under the Lease (beyond any period given Tenant to cure such default), Lender agrees that Tenant's possession of the Premises and Tenant's other rights and privileges under the Lease or any extensions or renewals thereof, shall not be diminished, disturbed or interfered with by Lender, and if any action or proceeding is commenced by Lender for the foreclosure of the Mortgage and/or the sale of the Property, Tenant shall not be named as a party defendant therein unless required by law or if the Tenant fails to comply with the terms of this Section. Should Lender become the owner of the Property, or should the Property be sold by reason of foreclosure, or other proceedings brought to enforce the Mortgage, or should the Property be transferred by deed in lieu of foreclosure, or should any portion of the Property be sold under a trustee's sale, the Lease will continue in full force and effect as a direct lease between the Lender and/or the succeeding owner of the Premises, as the case may be, and the Tenant, upon and subject to all of the terms, covenants and conditions of the Lease for the balance of its term as it may be extended, and Lender, or any successor owner of the Premises, will be bound by all of the terms of the Lease. Lender agrees that so long as the Lease is in full force and effect, no proper exercise by Tenant of its rights under the Lease shall constitute a default under the Mortgage or require Lender's consent, and that any conflict between the terms of the Lease and the terms of the Mortgage shall be resolved in favor of the Lease.

3. **Attornment.** Tenant agrees that the institution of any action or other proceedings by Lender under the Mortgage in order to realize upon Landlord's interest in the Property shall not result in the cancellation or termination of the Lease or Tenant's obligations thereunder. If Lender shall become the owner of the Property by reason of

the foreclosure of the Mortgage or the acceptance of a deed in lieu of foreclosure or otherwise: (a) the Lease shall not be terminated, or otherwise affected thereby except as specified herein; (b) Tenant shall attorn to Lender and recognize Lender as its landlord under the Lease for the unexpired term of the Lease, subject to all of the terms and conditions of the Lease, except as specified herein, said attornment to be effective and self-operative immediately upon Lender succeeding to the interest of the Landlord under the Lease without the execution of any further instruments on the part of any of the parties hereto; and (c) Tenant shall be bound to Lender under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any extensions or renewals thereof which may be effected in accordance with any option therefor in the Lease, with the same force and effect as if Lender were the Landlord under the Lease; provided, however, that Tenant shall be under no obligation to pay rent to Lender until Tenant receives written notice from Lender that it has succeeded to the interest of Landlord under the Lease. The respective rights and obligations of Tenant and Lender upon such attornment, to the extent of the then remaining balance of the term of the Lease and any such extensions and renewals, shall be and are the same as now set forth therein.

4. **Lender Not Bound By Certain Acts of Landlord.** If the Lender shall succeed to the interest of Landlord under the Lease, Lender shall not be: (a) responsible or liable for, or obligated to cure, any defaults by Landlord under the Lease, or any act or omission of any prior landlord (including Landlord) (provided that, and subject to subparagraphs (f) and (g) below, the foregoing shall not be deemed to relieve Lender or any other party from the obligation to perform any obligation of the Landlord under the Lease which remains unperformed beyond any applicable cure period at the time the Lender or any other party succeeds to the interest of Landlord under the Lease); (b) subject to any claims, defenses or offsets under the Lease or against any prior landlord (including Landlord) which arose or existed prior to the time Lender obtains possession of the Property (provided that, and subject to subparagraphs (f) and (g) below, the foregoing shall not be deemed to relieve Lender or any other party from the obligation to perform any obligation of the Landlord under the Lease which remains unperformed beyond any applicable cure period at the time the Lender or any other party succeeds to the interest of Landlord under the Lease); (c) bound by any rent paid more than thirty (30) days in advance; (d) liable for the return of any security deposit paid to any prior landlord, including Landlord, unless Lender has actually received the same; (e) bound by any amendment or modification of the Lease made without its prior written consent (Lender agrees not to unreasonably withhold or delay its consent to any proposed amendment or modification which does not materially and adversely affect Lender's security); (f) bound by any provisions of the Lease regarding the commencement or completion of any construction (provided; however, that Lender will be bound by construction obligations upon the expiration of 180 days from the date Lender comes into fee title of the Property, and further provided that if Lender sells the Property prior to the expiration of the 180-day period, then any purchaser thereof must be bound by said construction obligations at the time of purchase); and (g) bound by any provisions of the Lease which provided for warranties of construction from the Landlord or other parties to Tenant (provided, however, that Lender will be bound by any such warranties of

construction in the Lease after expiration of 180 days from the date Lender comes into fee title of the Property, and further provided that if Lender sells the Property prior to the expiration of the 180-day period, then any purchaser thereof must be bound by said construction warranties at the time of purchase). Nothing in this Section shall be deemed a waiver of any rights or remedies that Tenant may possess or claim personally against Landlord for any defaults or acts of Landlord.

5. **Right To Cure Landlord's Default.** Notwithstanding any provisions of the Lease to the contrary, no notice of cancellation or termination of the Lease by Tenant shall be effective unless Lender shall have first received notice of the default giving rise to such cancellation and shall have failed, for a period of thirty (30) days after receipt thereof, to cure such default. Tenant will forward to Lender copies of any statement, notice, claim or demand given or made by Tenant to Landlord, in all cases by the same method as the statement, notice, claim or demand was given or made to Landlord.

6. **Assignment of Lease.** Tenant acknowledges that Landlord is assigning the Lease and rents thereunder to Lender as security for the Note given by Landlord to Lender. Tenant agrees that upon receipt of a written notice from Lender, it will thereafter pay to Lender directly all rent and other amounts due or to become due from time to time under the Lease. The Tenant shall have the right to rely upon the notice from Lender and shall pay such rents and other amounts to Lender without any obligation or right to determine the actual existence of the right of Lender to receive such rents and other amounts, notwithstanding any notice from or claim of Landlord to the contrary. Landlord shall have no right or claim against Tenant for any such rents and other amounts so paid by Tenant to Lender and Landlord waives and releases any such claims. Landlord and Lender agree that Tenant shall be credited under the Lease for any payments sent to Lender pursuant to such written notice. In the event that Tenant makes such payment(s) to Lender as provided for in this Section, Landlord agrees not to commence any action (at law or in equity) against Tenant to recover: (a) the proceeds of said payment(s); or (b) possession of the Premises.

7. **Casualty and Condemnation.** Lender agrees that so long as the Lease is in full force and effect, if the Premises shall be damaged or destroyed by fire or other casualty, or taken by condemnation, and such event does not result in the termination of the Lease by Landlord or Tenant pursuant to any right reserved therein by either such party, then notwithstanding any contrary provision contained in the Mortgage, Lender will make the proceeds of insurance, or condemnation award, available for the purpose of repairing and restoring the Premises, as the case may be, subject to such reasonable procedures with respect thereto as Lender may impose.

8. **Notices.** Any notice required or permitted to be given by any party hereto to any other party under the terms of this Agreement, or documents related hereto, shall be deemed to have been given (i) three (3) days after the date the same is deposited in the United States Mail, registered or certified, return receipt requested, postage prepaid, (ii) on the date the same is forwarded by telefacsimile with proof of transmission, or (iii) one (1) day following deposit with a reputable overnight courier providing a receipt for

overnight delivery, addressed as follows:

If to Borrower:	Rainwood Two, L.L.C. 10547 Bondesson Circle Omaha, Nebraska 68122 Attn: Scott Seaton
If to Lender:	Mutual of Omaha Bank 17041 Lakeside Hills Plaza Omaha, Nebraska 68130 Attn: Steve Sorensen
with copy to:	Smith, Gardner, Slusky, Lazer, Pohren & Rogers, LLP 8712 West Dodge Road Suite 400 Omaha, NE 68114 Attn: H. Daniel Smith
If to Tenant:	Scott Enterprises, Inc. 10547 Bondesson Circle Omaha, Nebraska 68122 Attn: Scott Seaton

9. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the respective heirs, personal representatives, successors and assigns of Lender, Tenant and Landlord and any person or entity that takes title to the Property by virtue of a foreclosure sale or otherwise. This Agreement shall not modify or in any way affect Landlord's obligations under the Lease.

10. **Amendment.** This Agreement may be amended only by a written agreement signed by Lender, Landlord and Tenant.

11. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.

12. **Counterparts.** This Agreement may be executed in counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart. Lender, Landlord and Tenant agree that facsimile executed copies of this Agreement shall be binding. Original copies of this Agreement shall be circulated and signed by Lender, Landlord and Tenant as soon as practicable after closing of the loan.

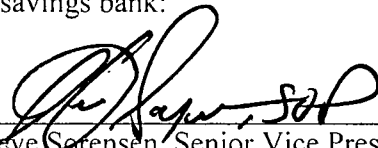
13. **Tenant Financing.** Tenant shall have the absolute right from time to time during the term of the Lease and without Landlord's or Lender's further approval written or otherwise, to collaterally assign or to grant and assign a mortgage or other security

interest in Tenant's interest in the Lease and all of Tenant's property to Tenant's lenders in connection with Tenant's financing arrangements. Lender agrees to execute such confirmation certificates and other documents as Tenant's lenders may reasonably request in connection with any such financing provided the same are in a form acceptable to Lender.

14. **Entire Agreement.** This Agreement contains the entire agreement between the parties respecting the subject matter contained herein and supersedes all prior or contemporaneous written or oral agreements and negotiations between the parties.

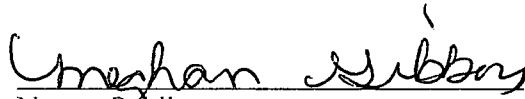
LENDER:

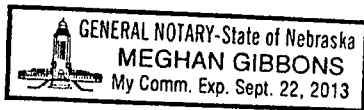
MUTUAL OF OMAHA BANK, a federally chartered savings bank:

By 
Steve Sorensen, Senior Vice President

STATE OF NEBRASKA)
)
) ss.
COUNTY OF DOUGLAS)


The foregoing instrument was acknowledged before me this 13 day of April, 2010, by Steve Sorensen, personally known to me to be the person 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 entity upon behalf of which he acted, executed the instrument. He is the Senior Vice President of Mutual of Omaha Bank, a federally chartered savings bank, for and on behalf of said Mutual of Omaha Bank, and he acknowledged, signed and delivered the instrument as his free and voluntary act, for the uses and purposes therein set forth.


Notary Public



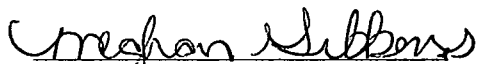
TENANT:

SCOTT ENTERPRISES, INC.:

By 
Its Pres.

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

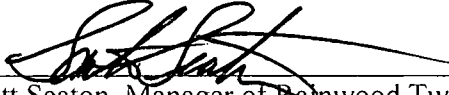
The foregoing instrument was acknowledged before me this 13 day of April, 2010, by Scott Seaton, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the entity upon behalf of which he acted, executed the instrument. He is the President of Scott Enterprises, Inc., a Nebraska Corporation, for and on behalf of said Scott Enterprises, Inc., and he acknowledged, signed and delivered the instrument as his free and voluntary act, for the uses and purposes therein set forth.


Notary Public



LANDLORD:

RAINWOOD TWO, L.L.C., a Nebraska limited liability company:

By: 
Scott Seaton, Manager of Rainwood Two, L.L.C.

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 13 day of April, 2010, by Scott Seaton, personally known to me to be the person 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 entity upon behalf of which he acted, executed the instrument. He is the Manager of Rainwood Two, L.L.C., for and on behalf of said Rainwood Two, L.L.C., and he acknowledged, signed and delivered the instrument as his free and voluntary act, for the uses and purposes therein set forth.

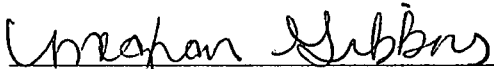

Notary Public



Exhibit A
Legal Description

Lot 7, Rainwood Pointe, a subdivision in Douglas County, Nebraska.