



MISC 2011054855



JUN 29 2011 12:03 P 10

Fee amount: 51.00  
FB: 47-36767  
COMP: AH

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
06/29/2011 12:03:47.00



2011054855

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First Nebraska Title  
2425 South 120<sup>th</sup> Street  
Omaha, NE 68144

File #: 11-112713

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SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

**NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN THE LEASEHOLD ESTATE IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.**

THIS AGREEMENT is dated as of the 1<sup>st</sup> day of April, 2011, between The State Life Insurance Company, an Indiana corporation with a principal address of One American Square, P.O. Box 368, Indianapolis, Indiana 46206-0368 (hereinafter called the "Lender"), Fifty Joint Venture LLC, a Nebraska limited liability company, successor to Fifty Joint Venture, a Nebraska general partnership, with an address at c/o PDM, 111 No. 102<sup>nd</sup> Court, Suite 325, Omaha, Nebraska 68114 (the "Landlord"), and Regis Corp., a Minnesota corporation, successor in interest to Markay, Inc. with an address of Regis Corporation, 7201 Metro Boulevard, Minneapolis, MN 55493-2103 Attn: Legal Department (the "Tenant").

WITNESSETH:

WHEREAS, Tenant is the tenant under a certain lease dated as of February 11, 2009 and recorded at n/a, as the same may have been or may be amended (the "Lease"), with Landlord or its predecessor in interest, covering all or a portion of Conveyed Property known as 4216 South 50<sup>th</sup> Street, Omaha, Nebraska 68117, more particularly described as follows, to wit:

SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE

together with all improvements of any type now or hereafter located thereon (hereinafter collectively called the "Conveyed Property"); and

WHEREAS, pursuant to Lender's certain loan commitment letter numbered 3206701, Lender has agreed to make a loan to Landlord in the original principal amount of Three Million Two Hundred Fifty Thousand and 00/100 Dollars (\$3,250,000.00) which will be secured by, among other things, a Deed of Trust on the Conveyed Property from Landlord to Lender (the "Deed of Trust") and an Absolute Assignment of Rents and Leases (the "Assignment") from Landlord to Lender, provided that Tenant shall subordinate the Tenant's interest in the Lease and in the Conveyed Property as hereinafter provided.

NOW, THEREFORE, in consideration of the Conveyed Property and of the sum of One Dollar (\$1.00) by each party in hand paid to the other, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

1. The Lease, and all rights, options, liens or charges created thereby, is hereby made and shall be subject and subordinate to the lien of the Deed of Trust and the security interest created thereby insofar as it affects the Conveyed Property and to all renewals, modifications, consolidations, replacements and extension thereof. Notwithstanding the foregoing, Tenant agrees that Lender may at any time, at its election, execute and record in the Office of the County Recorder of Douglas County, Nebraska a notice of subordination reciting that the Lease shall be superior to the Deed of Trust. From and after the recordation of such notice of subordination, the Deed of Trust shall be subordinate to the Lease and the Lease shall not be extinguished by any foreclosure of the Deed of Trust or sale thereunder.

2. Tenant agrees that it will attorn to and recognize Lender upon breach or default by Landlord under the Deed of Trust, any purchaser at a foreclosure or other sale under the Deed of Trust, any transferee who acquires the Conveyed Property by deed in lieu of foreclosure, and the successors and assigns of such purchasers, as its landlord for the unexpired balance (and extensions, if exercised) of the term of the Lease, upon the same terms and conditions set forth in the Lease.

3. So long as Tenant is not in default beyond any cure period provided for in the Lease, in the payment of rent or in the performance of any of the terms, conditions, covenants or conditions of the Lease on Tenant's part to be performed, Tenant's possession of the Conveyed Property and Tenant's rights and privileges under the Lease, or any renewals, modifications or extensions thereof which may be effected in accordance with any option granted in the Lease, shall not be diminished or interfered with by Lender, and Tenant's occupancy of the Leased Conveyed Property shall not be disturbed by Lender during the term of the Lease or any such renewals, modifications, or extensions thereof.

4. If it should become necessary to exercise remedies under the Deed of Trust, or if Lender shall otherwise take control of the Conveyed Property or succeed to the interest of Landlord under the Lease, Lender shall not terminate the Lease nor join Tenant in summary proceedings so long as Tenant is not then currently in default under any of the terms, covenants or conditions of the Lease.

5. Tenant shall have no right to appear in any foreclosure proceedings brought under the Deed of Trust.

6. Notwithstanding anything in the Lease to the contrary, Tenant agrees that it shall notify Lender in writing of the occurrence of any default by Landlord under the Lease. Tenant further agrees that if Landlord shall have failed to cure such default within the time provided for in the Lease (including applicable grace periods), Tenant shall permit Lender an additional reasonable period of time in which to cure such default, ~~including time to foreclose the Deed of Trust if necessary to cure such default~~, prior to Tenant exercising any of its rights or remedies for such default.

7. If Lender shall become owner of the Conveyed Property by reason of foreclosure or otherwise, or Lender succeeds to the interests of Landlord under the Lease, then, during the period of Lender's ownership of such interest, but not thereafter, Lender shall be bound to Tenant under all the

terms, covenants and conditions of the Lease, and during the period of Lender's ownership of Landlord's interests in the Lease, Tenant shall have the same remedies against Lender for the breach of an agreement contained in the Lease that Tenant would have had against the Landlord if Lender had not become such owner or had not succeeded to Landlord's interest therein;

PROVIDED, HOWEVER, Lender shall not be:

- (a) liable for any act or omission of any prior landlord (including Landlord);
- (b) liable for the return of any security deposits (except such as have been delivered to it);
- (c) subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord);
- (d) bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord (including Landlord);
- (e) bound by any <sup>future</sup> amendment, termination or modification of the Lease made without its consent;
- (f) ~~bound by the consent of any prior landlord (including Landlord) to any assignment or sublease of Tenant's interest in the Lease made without also obtaining Lender's prior written consent; or -~~
- (g) personally liable for any default under the Lease or any covenant on its part to be performed thereunder as landlord, it being acknowledged that Tenant's sole remedy in the event of such default shall be to proceed against Lender's interest in the Conveyed Property.

8. Tenant hereby acknowledges that the entire interest of Landlord in and to the Lease, and all sums due thereunder, is being assigned to Lender pursuant to the terms of the Assignment. Tenant further acknowledges and agrees:

- (a) that the Lease cannot be terminated by Landlord (either directly or by the exercise of any option which could lead to termination) or modified in any of its terms, or consent be given to the release of any party having liability thereon by Landlord, without the prior written consent of Lender, and without such consent no rent may be collected or accepted by Landlord more than one month in advance;
- (b) whether or not Lender shall have taken possession of the Conveyed Property, Tenant shall pay all rent and other sums due under the Lease (including, without limitation, termination fees) to Lender at its address hereinafter set forth or to such other address as Lender shall specify; and

- (c) that any notices to be sent by Tenant to Lender shall be delivered in hand by recognized national overnight express courier service, or by registered or certified U.S. mail, postage prepaid, addressed to Lender at One American Square, Post Office Box 368, Indianapolis, Indiana 46206-0368, Attention Loan #3206701. Any notices to be sent by Lender to Tenant shall be delivered in hand by recognized national overnight express courier service, or by registered or certified mail at the following address:

Regis Corporation  
Attention: Legal Department  
7201 Metro Boulevard  
Minneapolis, MN 55439-2103

9. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

10. By execution hereof, Landlord consents to the execution hereby by Tenant and agrees that such execution is not and shall not be or cause a default under the Lease.

11. See next page.

[SIGNATURES CONTAINED ON THE FOLLOWING PAGES]

11 Notwithstanding anything to the contrary herein, if Landlord's actions cause Landlord to be in violation of the Lease and Landlord and Tenant have a specific remedy in the Lease agreed upon, Tenant shall not be required to delay the enforcements of such remedy against Landlord.

Notwithstanding anything to the contrary herein:

- (i) Tenant shall not be obligated hereunder until Tenant receives a fully executed copy of the Agreement.
- (ii) This Agreement shall terminate upon the earlier of the expiration (or termination) of the Lease or the release and discharge of the note.
- (iii) Tenant reserves its rights to any and all claims or causes of action against such prior Landlord for prior losses or damages and against the successor Landlord for all losses or damages arising prior to, from and after the date that such successor Landlord takes title to the Property. Additionally, the foregoing shall not relieve Lender or any other party succeeding to the interest of Landlord as a result of any foreclosure of the obligation to remedy or cure conditions at the Premises which constitute a Landlord default under the Lease and which continue at the time of such succession or acquisition.
- (iv) The subordination of the Lease to the {Mortgage/Deed of Trust} will not be construed to give Lender, or its successors and assigns, any interest in casualty insurance maintained by Tenant or proceeds which Tenant is entitled under the Lease, nor will it be construed to modify any of the provisions of the Lease or the parties' obligations under the Lease.







"LANDLORD"

Fifty Joint Venture LLC

By: [Signature]  
(signature)  
SALVADORE CARTA  
(printed name)

Its: Vice-President  
(title)

STATE OF NEBRASKA )  
) SS  
COUNTY OF DOUGLAS )

On this 31st day of January in the year of 2011, before me Dee Muesel a Notary Public of said State, duly commissioned and sworn, personally appeared SALVADORE CARTA, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as the Vice-President of Fifty Joint Venture LLC, a Nebraska limited liability company and acknowledged to me that limited liability company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the say and year in this certificate first above written.



Dee Muesel  
Notary Public (signature)

Dee L Muesel  
Printed name

My Commission Expires: 7/30/2013

My County of Residence: Douglas

This Document Prepared By:

Tonya L. Lengar  
Attorney at Law  
American United Life Insurance Company  
Post Office Box 368  
Indianapolis, Indiana 46206-0368  
(317) 285-1877

EXHIBIT "A"

LEGAL DESCRIPTION

Lots 1 and 4, Spring Valley Plaza, an addition to the City of Omaha, Douglas County, Nebraska, together with rights of ingress and egress, as contained in the declaration recorded June 14, 1991 in Book 967 at Page 23 of the miscellaneous records of Douglas County, Nebraska.