

FILED SARPY CO. NE.
INSTRUMENT NUMBER
2005-29875

2005 AUG 19 A 8:16 8

Sharon J. Lawling
REGISTER OF DEEDS

COUNTER JS C.E. JS
VERIFY ah D.E. ah
PROOF ah
FEES \$ 50.50
CHECK# _____
CHG FNT CASH _____
REFUND _____ CREDIT _____
SHORT _____ NCR _____

**RECORDING REQUESTED
BY AND WHEN RECORDED
RETURN TO:**

Richard M. Foster, Esq.
Greenwald, Pauly, Foster & Miller
A Professional corporation
1299 Ocean Avenue
Suite 400
Santa Monica, CA 90401-1007

SUBORDINATION, NONDISTURBANCE, AND ATTORNMENMENT AGREEMENT

THIS SUBORDINATION, NONDISTURBANCE, AND ATTORNMENMENT AGREEMENT ("Agreement") is entered into as of this 17 day of August, 2005, by and among First National Bank of Omaha ("Lender"), Harold E. Sears and Phyllis G. Sears, Co-Trustees of the Harold E. and Phyllis G. Sears Living Trust u/t/d 4/11/95, Wakeley Enterprises, L.L.C., Jerome L. Heinrichs and Patricia A. Heinrichs, Trustees, or their successors in trust, under Jerome L. Heinrichs Living Trust, dated April 28, 2004, and any amendments thereto, Thomas W. Schleisman, Trustee, Gregory Schleisman Family Trust, and Edward A. Bedel, an individual (collectively "Landlord"), and O'Hagin's Inc., a California corporation ("Tenant").

RECITALS

A. Landlord and Tenant have entered into that certain Business Property Lease (the "Lease") with an effective date of August 1, 2005 ("Lease"), concerning certain premises (the "Premises") located on certain real property legally described in Exhibit "A" attached hereto and by this reference, incorporated herein.

B. Lender is the beneficiary of those certain Deeds of Trusts (collectively, the "Deeds of Trust"), designated as follows:

- Deed of Trust dated June 30, 2005, filed on July 5, 2005 in the official records of Sarpy County, Nebraska as Instrument No. 2005-22328
- Deed of Trust dated June 29, 2005, filed on July 5, 2005 in the official records of Sarpy County, Nebraska as Instrument No. 2005-22325
- Deed of Trust dated June 29, 2005, filed on July 5, 2005 in the official records of Sarpy County, Nebraska as Instrument No. 2005-22323
- Deed of Trust dated June 30, 2005, filed on July 5, 2005 in the official records of Sarpy County, Nebraska as Instrument No. 2005-22312

which secure various notes payable to Lender in the combined original principal amount of SEVEN HUNDRED TWENTY TWO THOUSAND FIVE HUNDRED and No/100 Dollars (\$722,500).

A

C. On the terms and conditions in this Agreement, the parties desire to confirm that Tenant's leasehold interest in the Premises is subordinate to the lien of the Deeds of Trust and to assure Tenant possession of the Premises and all other rights under the Lease for the entire term of the Lease (including any extensions and renewals), even though Lender may foreclose the lien of the Deeds of Trusts, or any of them, before expiration of the Lease.

THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, the parties agree as follows:

1. **SUBORDINATION**

Subject to the provisions of this Agreement and the rights of Tenant under this Agreement, the Lease is subject and subordinate to the lien of the Deeds of Trust and to any renewals, modifications, consolidations, replacements and extensions of the Deeds of Trust to the full extent of the principal sum secured by the Deeds of Trust including any interest.

2. **NONDISTURBANCE**

Tenant's possession of the Premises and Tenant's rights and privileges under the Lease shall not be disturbed, diminished or interfered with by Lender during the term of the Lease and any extensions or renewals. Lender will not join Tenant as a party for the purpose of terminating or otherwise affecting Tenant's interest under the Lease, in any action of foreclosure or other proceeding brought by Lender to enforce any rights arising under any of the Deeds of Trust. Lender may, however, join Tenant as a party if joinder is necessary under any statute or law to secure the remedies available to Lender under any of the Deeds of Trust, but joinder shall be for that purpose only and not for the purpose of terminating the Lease or affecting Tenant's right to possession of the Premises or other rights under the Lease.

3. **ATTORNMEN**

If Landlord's interest in the Premises is transferred to and owned by Lender or any successor of Lender because of foreclosure, sale under a private power contained in any of the Deeds of Trust, other proceedings brought by Lender, or by any other manner, Lender shall succeed to Landlord's interest under the Lease, and Tenant shall be bound to Lender and Lender shall be bound to Tenant under all of the terms, covenants, and conditions of the Lease for the balance of the remaining term, including any extensions or renewals, with the same effect as if Lender were Landlord under the Lease. Tenant agrees to attorn to Lender, with the attornment being effective and self-operable immediately upon Lender succeeding to the interest of Landlord under the Lease, all without the execution by the parties of any further instruments. However, Tenant shall not be obligated to pay rent to Lender until Tenant receives written notice from Lender that Lender has succeeded to Landlord's interest under the Lease and directing where rent should be mailed, together with evidence satisfactory to Tenant demonstrating that Lender has succeeded to Landlord's interest under the Lease. The respective rights and obligations of Tenant and Lender upon attornment, to the extent of the then remaining balance of the term of the Lease, shall be the same as in the Lease, which is incorporated by reference in

this Agreement. Neither Lender nor any other party who from time to time shall be included in the definition of Lender shall have any liability or responsibility under or pursuant to the terms of this Agreement after it ceases to own an interest in the Premises.

4. **DEFINITIONS.**

The term "Lender" or any similar term shall include Lender, the trustee under any deed of trust affecting the Demised Premises, and any agents, heirs, successors, or assigns, including any party that succeeds to Landlord's interest by foreclosure of any of the Deeds of Trust, by a deed in lieu of foreclosure, by a sale under a private power contained in any of the Deeds of Trust, or by any other proceeding. The term "Deeds of Trust" or any similar term shall include the Deeds of Trust and any amendments or addenda. The term "Landlord" shall include Landlord and the successors and assigns of Landlord. The term "Tenant" shall include Tenant and the successors, assigns, and sublessees of Tenant. The term "Lease" shall include the Lease and all amendments, addenda, extensions, and renewals.

5. **MODIFICATION.**

This Agreement may not be modified other than by an agreement in writing signed by the parties or by their respective successors in interest.

6. **ATTORNEY FEES.**

If any party commences any action against any other party based on this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, expenses, and costs of suit.

7. **NOTICES.**

In this Agreement, whenever it is required or permitted that notice and demand be given by any party to another party, that notice or demand shall be given in writing and forwarded by certified mail, addressed as follows:

For Landlord:

c/o Investors Realty
11301 Davenport Street
Omaha, Nebraska 68154

For Tenant:

O'Hagin's, Inc., a California corporation
210 Classic Court
Rohnert Park, California 94928

For Lender:

First National Bank of Omaha
11404 West Dodge Road
Omaha, NE 68154

Any party may change an address given for notice by giving written notice of that change by certified mail to all other parties.

8. **SUCCESSORS**

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

9. **HEADINGS**

The paragraph headings used herein are for convenience only and are not a part of this Agreement and shall not be used in construing it.

10. **COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which is an original, but all of which shall constitute one and the same instrument.

D

IN WITNESS WHEREOF, this Agreement has been executed as of the date written below.

X Harold E. Sears

Harold E. Sears, Co-Trustee of the Harold E.
and Phyllis G. Sears Living Trust u/t/d 4/11/95

X Phyllis G. Sears

Phyllis G. Sears, Co-Trustee of the Harold E.
and Phyllis G. Sears Living Trust u/t/d 4/11/95

Wakeley Enterprise, L.L.C.

By: Lee Ehlers

Lee Ehlers

Its: Managing Member

Jerome L. Heinrichs

Jerome L. Heinrichs, Trustee Jerome L. Heinrichs
Living Trust, Dated April 28, 2004

Patricia A. Heinrichs

Patricia A. Heinrichs, Trustee Jerome L. Heinrichs
Living Trust, Dated April 28, 2004

Thomas W. Schleisman, Trustee

Thomas W. Schleisman, Trustee
Gregory Schleisman Family Trust

Edward A. Bedel

Edward A. Bedel, an individual

LENDER

FIRST NATIONAL BANK OF
OMAHA

By: John J. [Signature]

Its: Vice President

TENANT:

O'HAGIN'S, INC.,
a California corporation

By: DAVID MUTTER

DAVID MUTTER

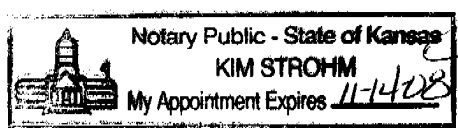
Its: President



E

X STATE OF Kansas)
COUNTY OF Shawnee) ss:

The foregoing instrument was acknowledged before me this 9 day of August 2005, by Harold E. Sears and Phyllis G. Sears, Co-Trustees of the Harold E. and Phyllis G. Sears Living Trust u/t/d 4/11/95.



[Signature]
Notary Public

STATE OF Nebraska)
COUNTY OF Douglas) ss:

The foregoing instrument was acknowledged before me this 16 day of August 2005, by Lee Ehlers, Managing Member, of Wakeley Enterprises, L.L.C., a Nebraska limited liability company, on behalf of such a limited liability company.



[Signature]
Notary Public

STATE OF Nebraska)
COUNTY OF Douglas) ss:

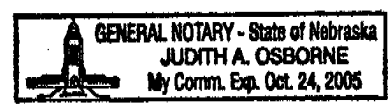
The foregoing instrument was acknowledged before me this 16th day of August 2005, by Jerome L. Heinrichs and Patricia A. Heinrichs, Trustees of the Jerome L. Heinrichs Living Trust dated April 28, 2004, on behalf of such Living Trust.



[Signature]
Notary Public

STATE OF Nebraska)
COUNTY OF Douglas) ss:

The foregoing instrument was acknowledged before me this 18th day of August 2005, by Thomas W. Schleisman, Trustee of the Gregory Schleisman Family Trust, on behalf of such Family Trust.

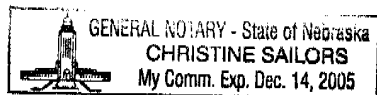


[Signature]
Notary Public

F

STATE OF Nebraska)
COUNTY OF Douglas) ss:

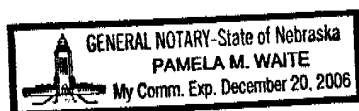
The foregoing instrument was acknowledged before me this 17th day of August 2005, by Edward A. Bedel.



Christine Sailors
Notary Public

STATE OF NEBRASKA)
COUNTY OF Douglas) ss:

The foregoing instrument was acknowledged before me this 15 day of August 2005, by Joel C. Jensen, Vice President, of First National Bank of Omaha on behalf of such Bank.



Pamela M. Waite
Notary Public

STATE OF _____)
COUNTY OF _____) ss:

The foregoing instrument was acknowledged before me this _____ day of _____ 2005, by David Mutter, President, of O'Hagin's Inc., a California corporation, on behalf of such corporation.

Notary Public

G

IN WITNESS WHEREOF, this Agreement has been executed as of the date written below.

Harold E. Sears, Co-Trustee of the Harold E.
and Phyllis G. Sears Living Trust u/t/d 4/11/95

Phyllis G. Sears, Co-Trustee of the Harold E.
and Phyllis G. Sears Living Trust u/t/d 4/11/95

Wakeley Enterprise, L.L.C.

By: _____

Its: Managing Member

Jerome L. Heinrichs, Trustee Jerome L. Heinrichs
Living Trust, Dated April 28, 2004

Patricia A. Heinrichs, Trustee Jerome L. Heinrichs
Living Trust, Dated April 28, 2004

Thomas W. Schleisman, Trustee
Gregory Schleisman Family Trust

Edward A. Bedel, an individual

LENDER

FIRST NATIONAL BANK OF
OMAHA

By: _____
Its: _____

TENANT:

O'HAGIN'S, INC.,
a California corporation

By: David S. Mutter
DAVID MUTTER 3/11/05
Its: President

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

Sonoma

} ss.

On

8/11/05

Date

before me,

Barbara McGoldrick, Notary

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

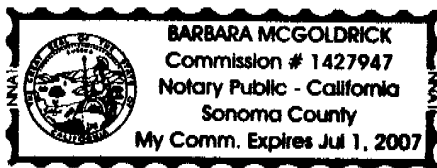
personally appeared

David Mutter

Name(s) of Signer(s)

☒ personally known to me

☐ proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Barbara McGoldrick
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document:

Subordination, Nondisturbance & Attornment

Document Date:

Number of Pages:

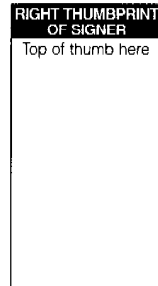
Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer

Signer's Name:

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____



2005-29875 I

EXHIBIT 'A'

Lot 6, Papio Valley 2 Business Park, a Subdivision in Sarpy County, Nebraska.