


**SUBORDINATION, NON-DISTURBANCE  
AND ATTORNMENT AGREEMENT**

  
20040512000251130 Pg 1/6 26.00  
Shelby Cnty Judge of Probate, AL  
05/12/2004 02:03:00 FILED/CERTIFIED

**THIS AGREEMENT** is made as of April 29, 2004, by and among Regions Bank, a state banking corporation (the "Lender"), J.C. Hogan Enterprises, L.L.C., an Alabama Limited Liability Company (the "Landlord") and Issis & Sons, Inc., a corporation, (the "Tenant").

Recitals

- A. The Tenant has entered into a lease dated EFFECTIVE MAY 1, 2004 (the "Lease") with the Landlord for certain premises located in Alabaster, Alabama, more particularly described on Exhibit A attached hereto and made a part hereof (the "Premises").
- B. The Lender is the mortgagee under a certain mortgage, security agreement and assignment of rents and leases (the "Mortgage") covering the Premises, which Mortgage contains an assignment of all rents and leases related to the Premises, including the Lease.
- C. The parties hereto desire to have the Lease made subject and subordinate to the Mortgage and to establish certain rights of quiet and peaceful possession for the benefit of the Tenant, all in the manner hereinafter provided.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of their respective covenants herein made, the parties hereto agree as follows:

1. The Tenant, for itself, its successors and assigns, hereby covenants and agrees that the Lease shall be and the same is hereby made subordinate to the Mortgage and to any extensions, renewals, consolidations and modifications thereof, replacements therefor and supplements thereto with the same force and effect as if the Mortgage and such extensions, renewals, consolidations and modifications thereof, replacements therefor and supplements prior to the execution, acknowledgment and delivery of the Lease; provided, however, that foreclosure of the Mortgage shall not, as provided below, extinguish or terminate the Lease. The Tenant warrants that, as of the date hereof, the Lease is in force and effect in accordance with its terms and the Landlord is not in default under the lease, and no event has occurred which, subjects only to the passage of time, will become a

- default under the Lease.
2. Subject to the observance and performance by the Tenant of all of the terms, covenants and conditions on the part of the Tenant to be observed and performed under the Lease, so long as the Tenant is not in default in the observance or performance of any of such terms, covenants or conditions under the Lease, the Lender, for itself, its successors and assigns and for any purchaser of the Premises on foreclosure of the Mortgage, hereby covenants and agrees with the Tenant, its successors and assigns, that in the exercise and enforcement of any of the rights of the Lender, under the Mortgage, including foreclosure thereof, the right of peaceful and quiet possession of the Tenant in and to the Premises under the Lease shall not be disturbed or affected in any way thereby.
  3. The Tenant for itself, its successors and assigns, hereby covenants and agrees with the Lender, its successors and assigns, to make full and complete attornment:
    - (a) to the Lender, its successors or assigns, in the event of the exercise of the right to collect rent under the Mortgage; and
    - (b) to the Lender, its successors or assigns, or to the purchaser or grantee otherwise of the Premises and such purchaser's or grantee's successors and assigns, as the case may be, in the event of a foreclosure sale under the Mortgage or of a conveyance thereof in lieu of foreclosure or in extinguishment of the indebtedness secured thereby; such attornment to be for the balance of the term of the Lease, including any extension now provided thereunder, if so extended, and shall be upon the same terms, covenants and conditions as provided in the Lease so as to establish direct privity of estate and contract between the Tenant and such party, to whom the Tenant shall attorn as aforesaid, and the Tenant, notwithstanding that the Tenant may not then be in possession of the Premises under the Lease and except that no such party to whom the Tenant shall attorn as aforesaid shall be (i) liable for any then existing default on the part of the Landlord under the Lease, (ii) subject to any defense or claim for any damage arising from any default by the Landlord as an offset against rent accruing thereafter; (iii) bound by any rent or additional rent which the Tenant might have paid for more than the current month to the Landlord; (iv) bound by any agreement or modification made without the Lender's written consent; or (v) in any way responsible for any deposit or security that was delivered to the Landlord but that was not subsequently delivered to the Lender.
  4. The term "Lease" as used herein shall be deemed to be the Lease as originally executed and as the same may be amended or modified by written agreements hereafter made, from time to time, by and between the Landlord and the Tenant and their respective successors and assigns.
  5. This agreement may not be altered, amended or modified except by written instrument

signed by all parties hereto. All of the terms, covenants, and conditions herein shall run with the land and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

6. The term "successor" as used herein shall be deemed to include, but shall not be limited to, the heirs, executors, administrators and other personal representatives of the parties hereto and of any other party hereafter acquiring the estate in the Premises of any party hereto or any interest therein.
7. The Tenant agrees that no amendment or modification of the Lease will be effective without Lender's prior written consent and that Tenant will give Lender written notice of and a reasonable time (but in no event less than 30 days) in which to cure any default by the Landlord under the Lease

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives as of the day and year first above written.

Regions Bank  
(Lender)

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

*R. A. Musgrave*  
*SVP*

J.C. Hogan Enterprises, L.L.C.  
(Landlord)

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

*J. C. Hogan*  
**PRESIDENT  
MEMBER**

Issis & Sons, Inc.  
(Tenant)

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

*Jim Issis*  
*President*



STATE OF ALABAMA )  
COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that R.A. MONTGOMERY, whose name as SR. VICE PRESIDENT of Regions Bank, is signed to the foregoing Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said Agreement, she/he, as such officer and with full authority, executed the same voluntarily for and as the act of said banking corporation.

Given under my hand and official seal this the 29<sup>th</sup> day of APRIL, 2004.



Patricia S. Dooley  
Notary Public  
My Commission Expires: \_\_\_\_\_

STATE OF ALABAMA )  
Shelby COUNTY )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Jerry Hogan, whose name as Jerry Hogan Member of J.C. Hogan Enterprises, L.L.C., an Alabama Limited Liability Company, is signed to the foregoing Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said Agreement, she/he, as such Member and with full authority, executed the same voluntarily for and as the act of said Limited Liability Company.

Given under my hand and official seal this the 29<sup>th</sup> day of April, 2004.

Carol Hastings  
Notary Public  
My Commission Expires: 5-6-06

STATE OF ALABAMA )  
Shelby COUNTY )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Steve Issis, whose name as President of Issis & Sons, Inc., a corporation is signed to the foregoing instrument, and who is known to me, acknowledged before me this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of the corporation.

Given under my hand and official seal this 29<sup>th</sup> day of April, 2004.

Frank A. Sheets  
Notary Public  
My Commission Exp. \_\_\_\_\_

**MY COMMISSION EXPIRES 8-1-2004**

## EXHIBIT A

A parcel of land situated in the Southwest Quarter of the Southeast Quarter of Section 12, Township 21 South, Range 3 West, Huntsville Meridian, Shelby County, Alabama being more particularly described as follows:

Commence at the Northwest Corner of the Southwest Quarter of the Southeast Quarter of Section 12, Township 21 South, Range 3 West, Huntsville Meridian, Shelby County, Alabama; thence run South 00 degrees 11' 00" East along the west line of said quarter section for a distance of 425.00 feet; thence leaving said west line run thence North 23 degrees 53' 00" East for a distance of 446.23 feet; thence run South 88 degrees 39' 21" East for a distance of 363.46 feet to the westerly right-of-way of U.S. Interstate #65 (right-of-way width varies); thence run South 25 degrees 48' 27" East along said right-of-way for a distance of 110.50 feet to a curve to the left with a radius of 11,180.31 feet, a delta angle of 1 degree 51' 59", a chord bearing of South 26 degrees 44' 27" East for a distance of 364.18 feet; thence run in a southerly direction along said right-of-way line and along the arc of said curve for a distance of 364.19 feet; thence leaving said right-of-way line run South 62 degrees 19' 34" west for a distance of 26.86 feet to the center of an existing pole for a billboard and to the POINT OF BEGINNING of "the Premises" formed by a circle around said pole centered at the said POINT OF BEGINNING with a radius of 25 feet, said premises consisting of that area contained within this circle centered at the said POINT OF BEGINNING and whose limit is defined by the said radius length.

Together with a non-exclusive easement for ingress, egress and utilities over and across that real property described on Exhibit A-1 attached hereto and incorporated by reference herein.

Notwithstanding the foregoing easement grant, it is expressly understood that Lessee shall have the right to use the existing driveway on the real property containing the premises from Shelby County Highway 26 to premises so long as said driveway exists and such right is not terminated by Lessor or its successors or assigns. Notwithstanding any such termination, Lessee shall be able to use for the entire term of this lease the easement described on Exhibit A-1 attached hereto and incorporated by reference herein said easement being a non-exclusive easement running with the land and running with this lease.

The premises and the easement together with the driveway herein are visually depicted on Exhibit ~~A-1~~ attached hereto and incorporated by reference herein.

**A-1**



FOR SUDA

BETWEEN

# HOGAN AND ISSIS AND REECTIONS

41

- PARCEL 1  
10.09 ACRES

EXISTING  
DRIVEWAY (X)

5. SKIN ELEMENT  
50. DIAMETER

EXISTING 20' UTILITY  
EASEMENT (8)

NOT TO SCALE

⑧ BOTH THE EXISTING  
DRIVEWAY AND  
D.O. UTILITY EXISTENCE  
CONTINUE IN A  
SOUTHEASTERN DIRECTION  
TO STATEBY COUNTRY  
HIGHWAY 26

$$\begin{aligned}\Delta &= 1.5159'' \\ L &= 364.19' \\ R &= 111.80.31' \\ \angle PRD &= 364.19' \end{aligned}$$

25 RADII  
FOR EASE

