

When recorded, return to:

KeyBank National Association
Attn: Craig R. Hackett
Key Bank Tower, Suite 1909
50 South Main Street
Salt Lake City, Utah 84144

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**SUBORDINATION, NON-DISTURBANCE,
ATTORNMEN, AND ESTOPPEL AGREEMENT**

This Agreement is made and entered into this ____ day of October, 1997, by and among WASATCH ORTHOPEDIC CLINIC, P.C., ("Tenant"); BOYER-OGDEN MEDICAL ASSOCIATES, LTD., a Utah limited partnership ("Landlord"); and KEYBANK NATIONAL ASSOCIATION, Salt Lake City, Utah, a national banking association ("Lender").

RECITALS

A. On or about August 27, 1997, Tenant and Landlord entered into an agreement titled "Lease Agreement" (the "Lease") wherein and whereby Landlord agreed to lease to Tenant, and Tenant agreed to rent from Landlord, certain space (the "Premises") in an office building located at approximately 5405 South 500 East, Ogden, Weber County, Utah, and more fully described in Exhibit A attached hereto and incorporated herein by this reference.

B. As collateral security for the performance by Landlord of certain obligations and indebtedness which it may now or hereafter owe to Lender (collectively, the "Indebtedness"), Landlord has assigned to Lender, and/or granted Lender a security interest in, the Premises and the Lease, including an assignment of rents thereunder.

C. As a condition precedent to extending credit to Landlord, Lender has required, among other things, that Tenant execute this Agreement.

D. Tenant and Lender desire to establish and confirm certain rights, obligations and priorities with respect to their respective interests by means of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the parties agree as follows:

1. **Incorporation of Recitals.** All of the terms and representations set forth in the above Recitals are hereby incorporated by this reference.

2. **Subordination.** Tenant hereby subordinates the Lease and its leasehold interest in the Premises to and in favor of Lender and any deed of trust, mortgage, security agreement, assignment of lease, or similar document given Lender to secure all or any part of the Indebtedness,

E# 1569176 BK1951 PG694
DOUG CROFTS, WEBER COUNTY RECORDER
26-AUG-98 9:03 AM FEE \$22.00 DEP NB
REC FOR: DURHAM, EVANS, JONES, PINEGAR

together with all renewals, modifications, and extensions thereof (collectively, the "*Mortgage*"). The effect of this subordination shall be the same as if the Mortgage were executed, delivered, and recorded prior in time to, and without notice of, the Lease.

3. **Non-Disturbance of Lease.** So long as no default has occurred under the Lease and continued to exist for such period of time (after notice, if any, required by the terms of the Lease) as would (a) entitle Landlord to terminate the Lease, or (b) cause, without any further action of Landlord, the termination of the Lease, or (c) entitle Landlord to dispossess Tenant thereunder, Lender agrees that the Lease shall not be terminated nor shall Tenant's use, possession, or enjoyment of the Premises be interfered with by Lender nor shall the leasehold estate granted by the Lease be affected by Lender in any other manner in or as a result of any foreclosure or other action or proceeding instituted under or in connection with the Mortgage. Lender shall not name Tenant as a party in any foreclosure action, except as may be necessary under applicable law.

4. **Attornment to Lender.** If the interest of Landlord in the Premises or under the Lease shall be transferred to a purchaser (such purchaser, which may also be Lender, being hereinafter referred to as the "*Purchaser*") by reason of a judicial foreclosure or the exercise of the power of sale or other proceedings for enforcement of any Mortgage, or by reason of a deed-in-lieu of foreclosure, then Tenant shall be bound to the Purchaser under all of the terms, conditions, and covenants contained in the Lease for the balance of the term thereof, together with all extensions or renewals as may be effected in accordance with the terms of the Lease, to the same extent, and with the same force and effect as if the Purchaser were the landlord under the Lease. Tenant does hereby attorn to the Purchaser, as its landlord, with said attornment to be effective and self-operative without the execution of any further instruments upon the Premises or under the Lease. The respective rights and duties of the Purchaser upon such attornment, to the extent of the then remaining balance of the term of the Lease and any extensions or renewals thereof, shall be and are the same as now set forth in the Lease except as may be otherwise expressly provided herein.

5. **Duties of Purchaser.** Upon acquiring title to the Property or the Lease and for such period as it holds such title, the Purchaser shall be obligated to perform and honor all of the terms and provisions of the Lease; *provided, however*, the Purchaser shall not be: (a) liable for any act or omission of Landlord or its successors prior to the Purchaser's acquisition of title; (b) bound by any payment of rent which Tenant might have paid to Landlord for more than one month in advance of the then current month but which has not been delivered to the Purchaser; (c) subject to any claims, liens, offsets or defenses which Tenant might have against Landlord or its successors; (d) liable for any monetary damage sustained by Tenant prior to Purchaser's acquisition of title; (e) liable for any security or rental deposit paid by Tenant to Landlord, unless such deposit has been transferred by Landlord to Purchaser; or (f) bound by any amendment or modification to the Lease made without its prior written consent. Purchaser shall not be liable to Tenant for any security deposit unless Landlord specifically transfers the security deposit to Purchaser.

6. **Estoppel.** Tenant represents, warrants, and certifies to Lender that:

(a) Tenant is the holder of the leasehold interest under the Lease. The Lease has not been modified, changed, altered, or amended in any respect except as may be described above. The Lease sets forth the entire understanding between Tenant and Landlord with respect to the general subject matter thereof and supersedes all prior negotiations, understandings, and agreements with respect thereto.

(b) To the best of Tenant's knowledge, no condition exists or event has occurred which presently constitutes, or with the giving of notice or the lapse of time or both could constitute, an event of default under the terms of the Lease. Tenant is not presently entitled to any lien, credit, offset, or reduction in rent.

Premises currently under construction
(c) ~~Tenant has accepted the Premises and all improvements thereto which Landlord is required to make under the terms of the Lease, and presently occupies the same.~~ *llc*

(d) ~~The rent has been paid to and including October 1, 1997.~~ There have been no prepayments of rent or more than one (1) month.

(e) There are no actions or proceedings, whether voluntary or otherwise, pending or threatened against Tenant under the bankruptcy laws of the United States or under any other laws providing relief to debtors.

(f) Tenant ratifies the Lease in all respects.

(g) Upon notice by Lender, Tenant will pay all rental payments or other monies due Landlord under the Lease, however the same may be designated, directly to Lender at such place as Lender may direct, and will not assert against Lender any setoff, defense, or counterclaim which Tenant may claim against Landlord.

7. **Termination of Lease.** Tenant and Landlord agree with Lender that neither shall seek to terminate the Lease by reason of any act or omission of the other until written notice is given to Lender, by registered or certified mail, return receipt requested, setting forth the grounds upon which such termination is sought. Such notice shall be given to Lender at KeyBank Tower, Suite 1909, 50 South Main Street, Salt Lake City, Utah, 84144 at least thirty (30) days before the effective date of any termination. During such thirty (30) day period, Lender shall have the right, but not the obligation, to remedy or cure such default; *provided, however,* such period may be extended for a reasonable period of time provided that corrective action is instituted by or on behalf of Lender and is diligently pursued until such default is corrected.

8. **General Provisions.** This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns, including, but not limited to, the Purchaser as such term is defined above. This Agreement shall be construed and interpreted in accordance with the laws of the State of Utah and may be amended only in writing executed by all the parties. This Agreement may be executed in several counterparts and all so executed shall

constitute one agreement, binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first written above.

TENANT: WASATCH ORTHOPEDIC CLINIC, P.C.

By: [Signature]
Title: Principal

LANDLORD: BOYER-OGDEN MEDICAL ASSOCIATES, LTD.

By: THE BOYER COMPANY, L.C., a limited liability company and its General Partner

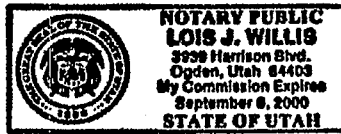
By: [Signature]
Ken C. Gardner
Its Manager and President

LENDER: KEYBANK NATIONAL ASSOCIATION

By: [Signature]
Title: [Signature]

TENANT'S ACKNOWLEDGMENT

STATE OF UTAH)
) :ss.
COUNTY OF Weber) 4th



On the 25 day of October, ^{November 1991} 1997, personally appeared before me Jack W. Cregland, the Vice President of Wasatch Orthopedic Clinic, P.C., who duly acknowledged to me that he signed the foregoing instrument.

My Commission Expires: 9/6/2000

[Signature]
Notary Public
Residing at: McKay - Dec Hospital

Subordination, Non-disturbance, Attornment

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Boyer-Ogden Medical Associates, Ltd.

EE 1569176 BK1951 PG697

LANDLORD'S ACKNOWLEDGMENT

STATE OF UTAH)
)
:ss.
COUNTY OF SALT LAKE)

On the 26 day of ~~October~~^{Nov}, 1997, personally appeared before me Kem C. Gardner, the Manager and President of The Boyer Company, L.C. a Utah limited liability company and the general partner of Boyer-Ogden Medical Associates, Ltd., a limited partnership, who duly acknowledged to me that he signed the foregoing instrument.

My Commission Expires:
10-11-99

Kem C. Gardner
Notary Public
Residing at: 24 S. 500 E, SLC

LENDER'S ACKNOWLEDGMENT

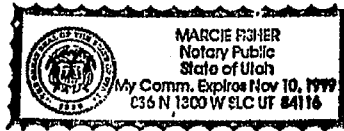
STATE OF UTAH)
)
:ss.
COUNTY OF SALT LAKE)

On the 3 day of ~~October~~^{December}, 1997, personally appeared before me Craig R. Hackett, the Senior Vice President of KeyBank National Association, a national banking association, who duly acknowledged to me that he signed the foregoing instrument.

My Commission Expires:
11-10-99

Marcie Fisher
Notary Public
Residing at: SLC, Utah

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Subordination, Non-disturbance, Attornment

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Boyer-Ogden Medical Associates, Ltd.

E# 1569176 BK1951 PG698

EXHIBIT A

The following real property is located in Weber County, Utah:

PARCEL 1 ("PHASE 1"):

A part of the Southeast Quarter of Section 17, Township 5 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey, more particularly described as follows:

07-053-0054

BEGINNING at a point 1265.67 feet North 02°00' East along the East line of said Section 17, and 354.61 feet North 89°34'00" West from the Southeast corner of said Section 17, Township 5 North, Range 1 West, Salt Lake Base and Meridian, and running thence South 72°24'35" West 5.00 feet; thence South 17°35'25" East 23.39 feet; thence North 72°24'35" East 35.00 feet; thence North 17°35'25" West 25.00 feet; thence North 72°24'35" East 150.63 feet; thence North 0°26'00" East 77.52 feet; thence South 72°24'35" West 23.32 feet; thence North 17°35'25" West 28.68 feet; thence North 89°34'00" West 67.63 feet; thence South 0°26'00" West 21.37 feet; thence South 72°24'35" West 59.28 feet; thence South 17°34'00" East 3.87 feet; thence South 72°24'35" West 51.08 feet to a point North 17°35'25" West from the Northeast corner of the existing MRI building; thence South 17°35'25" East 100.75 feet, more or less, along the Easterly wall of said MRI Building to the point of BEGINNING.

PARCEL 2 ("PHASE 2"):

A part of the Southeast Quarter of Section 17, Township 5 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey, more particularly described as follows:

pt 07-053-0028

BEGINNING at a point 1569.33 feet North 0°26'00" East along the East line of said Section 17 and 183.35 feet North 89°34'00" West from the Southeast corner of said Section 17, Township 5 North, Range 1 West, Salt Lake Base and Meridian, and running thence South 0°26'00" West 168.72 feet; thence South 72°24'35" West 23.32 feet; thence North 17°35'25" West 28.68 feet; thence North 89°34'00" West 67.63 feet; thence North 0°26'00" East 148.66 to a point 15.0 feet South 0°26'00" West from the South line of 5350 South Street; thence South 89°34'00" East 98.68 feet parallel to said 5350 South Street to the point of BEGINNING.

PARCEL 3 ("EXPANSION PARCEL"):

A parcel of land located in Section 17, Township 5 North, Range 1 West, Salt Lake Base and Meridian, more particularly described as follows:

pt 07-053-0028

BEGINNING at a point 1420.67 feet North 0°26'00" East along the East Section line and North 89°34'00" West 282.02 feet from the Southeast corner of Section 17, Township 5 North, Range 1 West, Salt Lake Base and Meridian, and running thence South 0°26'00" West 21.37 feet; thence South 72°24'35" West 59.28 feet; thence South 17°34'00" East 3.87 feet; thence South 72°24'35" West 26.35 feet; thence North 17°50'10" West 39.76 feet; thence North 72°08'25" East 97.63 feet to the West line of "Phase 2" described in that certain Memorandum of Ground Lease recorded September 11, 1989 as Entry No. 1088540 in Book 1567 at Page 1416 of the Official Records of the Weber County Recorder; thence South 00°26'00" West 16.85 feet to the point of BEGINNING.