

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

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT made as of June 1, 2000, by and between FORTIS BENEFITS INSURANCE COMPANY, a Minnesota corporation (hereinafter referred to as "Lender"), whose address is 500 Bielenberg Drive, Woodbury, Minnesota 55125, and **ES-O-EN Corp.** (hereinafter referred to as "Tenant"), whose address is **629 East 400 South, Salt Lake City, UT**, with reference to the following facts:

A. WILLIAMSEN SOUTH JORDAN, INC., a Utah corporation, whose address is 165 S. West Temple, Suite 300, Salt Lake City, UT 84101 (the "Landlord"), owns the real property known as NWC 400 South and 700 East, Salt Lake City, located in Salt Lake County, Utah (such real property, including all buildings, improvements, structures and fixtures located thereon, "Landlord's Premises"), as more particularly described in Schedule A.

B. Lender has made a loan to Landlord in the original principal amount of \$11,025,000.00 (the "Loan"), which Loan is secured by the Mortgage (as defined below).

C. Pursuant to the Lease (as defined below) Landlord demised to Tenant a portion of Landlord's Premise (the "Tenant's Premises").

D. Tenant and Lender desire to agree upon the relative priorities of their interests in Landlord's Premises and their rights and obligations if certain events occur.

NOW, THEREFORE, for good and sufficient consideration, Tenant and Lender agree:

1. **Definitions.** The following terms shall have the following meanings for purposes of this Agreement.

1.1 **Construction-Related Obligation.** A "Construction-Related Obligation" means any obligation of Landlord under the Lease to make, pay for, or reimburse Tenant for any alterations demolition, or other improvements or work at Landlord's Premises, including Tenant's Premises. "Construction-Related Obligations" shall not include: (a) reconstruction or repair following fire, casualty or condemnation; or (b) day-to-day maintenance and repairs.

1.2 **Foreclosure Event.** A "Foreclosure Event" means (a) foreclosure under the Mortgage; (b) any other exercise by Lender of rights and remedies (whether under the Mortgage or under applicable law, including bankruptcy law) as holder of the Loan and/or the Mortgage, as a result of which Successor Landlord becomes owner of Landlord's Premises; or (c) delivery by Landlord to Lender (or its designee or nominee)

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of a deed or other conveyance of Landlord's interest in Landlord's Premises in lieu of any of the foregoing.

1.3 Former Landlord. A "Former Landlord" means Landlord and any other party that was landlord under the Lease at any time before the occurrence of any attornment under this Agreement.

1.4 Lease. The "Lease" means a lease agreement dated April 15, 1994 entered into between Landlord and Tenant.

1.5 Mortgage. The "Mortgage" means the Deed of Trust and Security Agreement given by Landlord to or for the benefit of Lender to secure the Loan, as modified and/or amended from time to time.

1.6 Offset Right. An "Offset Right" means any right of Tenant to any offset, defense (other than one arising from actual payment and performance by Tenant pursuant to the terms of the Lease, which payment and performance would bind a Successor Landlord pursuant to the Lease as amended by this Agreement, provided that Tenant delivers notice to Lender promptly after exercising such right, which notice shall include the amount of such payment and offset) or counterclaim against Tenant's payment of Rent or performance of Tenant's other obligations under the Lease, arising (whether under the Lease or other applicable law) from Landlord's breach or default under the Lease.

1.7 Rent. The "Rent" means any fixed rent, base rent or additional rent under the Lease.

1.8 Successor Landlord. A "Successor Landlord" means any party that becomes owner of Landlord's Premises as the result of a Foreclosure Event.

1.9 Termination Right. A "Termination Right" means any right of Tenant to cancel or terminate the Lease or to claim a partial or total eviction arising (whether under the Lease or under applicable law) from Landlord's breach or default under the Lease.

2. Subordination. The Lease shall be, and shall at all times remain, subject and subordinate to the Mortgage, the lien imposed by the Mortgage, and all advances made under the Mortgage.

3. Nondisturbance, Recognition and Attornment.

3.1 No Exercise of Mortgage Remedies Against Tenant. Provided Tenant is not in default under the Lease that has continued beyond the expiration of applicable cure periods (an "Event of Default"), Lender shall not name or join Tenant as a defendant in any exercise of Lender's rights and remedies arising upon a default under the Mortgage unless applicable law requires Tenant to be made a party thereto as a condition

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to proceeding against Landlord or prosecuting such rights and remedies. In the latter case, Lender may join Tenant as a defendant in such action only for such purpose.

3.2 Nondisturbance and Attornment. If the Lease has not been terminated on account of an Event of Default by Tenant, then, when Successor Landlord takes title to Landlord's Premises: (a) Successor Landlord shall not terminate or disturb Tenant's possession of Tenant's Premises under the Lease, except in accordance with the terms of the Lease and this Agreement; (b) Successor Landlord shall be bound to Tenant under all the terms and conditions of the Lease (except as provided in this Agreement); (c) Tenant shall recognize and attorn to Successor Landlord as Tenant's direct landlord under the Lease as affected by this Agreement; and (d) the Lease shall continue in full force and effect as a direct lease, in accordance with its terms (except as provided in this Agreement), between Successor Landlord and Tenant.

4. Protection of Successor Landlord. Notwithstanding anything to the contrary in the Lease or the Mortgage, Successor Landlord shall not be liable for or bound by any of the following matters:

4.1 Claims Against Former Landlord. Any Offset Rights that Tenant may have against any Former Landlord relating to any event or occurrence before the date of attornment, including any claim for damages of any kind whatsoever as the result of any breach by Former Landlord that occurred before the date of attornment. The foregoing shall not limit Tenant's right to exercise against Successor Landlord any Offset Right otherwise available to Tenant because of events occurring after the date of attornment.

4.2 Prepayments. Any payment of Rent that Tenant may have made to Former Landlord more than thirty days before the date such Rent was first due and payable under the Lease with respect to any period after the date of attornment other than, and only to the extent that, the Lease expressly required such prepayment.

4.3 Payment; Security Deposit. Any obligation: (a) to pay Tenant any sum(s) that any Former Landlord owed to Tenant or (b) with respect to any security deposited with Former Landlord, unless such security was actually delivered to Lender. This paragraph is not intended to apply to Landlord's obligation to make any payment that constitutes a "Construction-Related Obligation."

4.4 Modification, Amendment, or Waiver. Any modification or amendment of the Lease, or any waiver of any terms of the Lease, made without Lender's written consent.

4.5 Surrender, Etc. Any consensual or negotiated surrender, cancellation, or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant, unless effected unilaterally by Tenant pursuant to the express terms of the Lease.

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4.6 Construction-Related Obligations. Any Construction-Related Obligation of Former Landlord.

5. Exculpation of Successor Landlord. Notwithstanding anything to the contrary in this Agreement or the Lease, upon any attornment pursuant to this Agreement the Lease shall be deemed to have been automatically amended to provide that Successor Landlord's obligations and liability under the Lease shall never extend beyond Successor Landlord's (or its successors' or assigns') interest, if any, in Landlord's Premises from time to time, including insurance and condemnation proceeds, Successor Landlord's interest in the Lease, and the proceeds from any sale or other disposition of Landlord's Premises by Successor Landlord (collectively, "Successor Landlord's Interest"). Tenant shall look exclusively to Successor Landlord's Interest (or that of its successors and assigns) for payment or discharge of any obligations of Successor Landlord under the Lease as affected by this Agreement. If Tenant obtains any money judgment against Successor Landlord with respect to the Lease or the relationship between Successor Landlord and Tenant, then Tenant shall look solely to Successor Landlord's Interest (or that of its successors and assigns) to collect such judgment. Tenant shall not collect or attempt to collect any such judgment out of any other assets of Successor Landlord.

6. Lender's Right to Cure.

6.1 Notice to Lender. Notwithstanding anything to the contrary in the Lease or this Agreement or the Lease, before exercising any Termination Right or Offset Right, Tenant shall provide Lender with notice of the breach or default by Landlord giving rise to same (the "Default Notice") and, thereafter, the opportunity to cure such breach or default as provided for below.

6.2. Lender's Cure Period. After Lender receives a Default Notice, Lender shall have a period of thirty (30) days beyond the time available to Landlord under the Lease in which to cure the breach or default by Landlord. Lender shall have no obligation to cure (and shall have no liability or obligation for not curing) any breach or default by Landlord, except to the extent that Lender agrees or undertakes otherwise in writing.

6.3 Extended Cure Period. In addition, as to any breach or default by Landlord the cure of which requires possession and control of Landlord's Premises, provided only that Lender undertakes to Tenant by written notice to Tenant within thirty days after receipt of the Default Notice to exercise reasonable efforts to cure or cause to be cured by a receiver such breach or default within the period permitted by this paragraph, Lender's cure period shall continue for such additional time (the "Extended Cure Period") as Lender may reasonably require to either (a) obtain possession and control of Landlord's Premise and thereafter cure the breach or default with reasonable diligence and continuity or (b) obtain the appointment of a receiver and give such receiver a reasonable period of time in which to cure the default.

7. Miscellaneous.

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7.1 Notices. All notices or other communications required or permitted under this Agreement shall be in writing and given by certified mail (return receipt requested) or by nationally recognized overnight courier service that regularly maintains records of items delivered. Each party's address is as set forth in the opening paragraph of this Agreement, subject to change by notice under this paragraph. Notices shall be effective the next business day after being sent by overnight courier service, and five business days after being sent by certified mail (return receipt requested). Notices to Lender shall be addressed to "Attention of General Counsel; Loan No. 16194", and a copy of any such notice shall be sent to Fortis Advisers, Inc., One Chase Manhattan Plaza, New York, New York 10005, Attn: Senior Vice President - Mortgages; Loan No. 16194.

7.2 Successors and Assigns. This Agreement shall bind and benefit the parties, their successors and assigns, any Successor Landlord, and its successors and assigns. If Lender assigns the Mortgage, then upon delivery to Tenant of written notice thereof accompanied by the assignee's written assumption of all obligations under this Agreement, all liability of the assignor shall terminate.

7.3 Entire Agreement. This Agreement constitutes the entire agreement between Lender and Tenant regarding the subordination of the Lease to the Mortgage and the rights and obligations of Tenant and Lender as to the subject matter of this Agreement.

7.4 Interaction with Lease and with Mortgage. If this Agreement conflicts with the Lease, then this Agreement shall govern as between the parties and any Successor Landlord, including upon any attornment pursuant to this Agreement. This Agreement supersedes, and constitutes full compliance with, any provisions in the Lease that provide for subordination of the Lease to, or for delivery of nondisturbance agreements by the holder of, the Mortgage. Lender confirms that Lender has consented to Landlord's entering into the Lease.

7.5 Lender's Rights and Obligations. Except as expressly provided for in this Agreement, Lender shall have no obligations to Tenant with respect to the Lease. If an attornment occurs pursuant to this Agreement, then all rights and obligations of Lender under this Agreement shall terminate, without thereby affecting in any way the rights and obligations of Successor Landlord provided for in this Agreement.

7.6 Interpretation: Governing Law. The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the internal laws of the state in which the Landlord's Premises are located.

7.7 Amendments. This Agreement may be amended, discharged or terminated, or any of its provisions waived, only by a written instrument executed by the party to be charged.

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7.8 Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

7.9 TRIAL BY JURY WAIVER. TENANT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR COUNTERCLAIM, WHETHER CONTRACT, TORT OR OTHERWISE ARISING IN CONNECTION WITH, OUT OF OR OTHERWISE RELATING TO THE LEASE, THIS AGREEMENT OR ANY ACTS OR OMISSIONS OF LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.

IN WITNESS WHEREOF, this Agreement has been duly executed by Lender and Tenant as of the Effective Date.

TENANT:

ES-O-EN Corp.

By: S. Carl Nichols
Name: S. Carl Nichols
Title: President

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ACKNOWLEDGMENT

STATE OF Idaho

COUNTY OF Ada

On this 12 day of Feb, 2001, before me, Mary Snyder a Notary Public of _____ County, _____ personally appeared S. Carl Nicolaysen known or identified to me to be the President of ES-O-EN CORP., a Oregon Corporation, and the officer who subscribed its name to the foregoing instrument, and acknowledged to me that he executed the same in the name of such corporation/partnership.

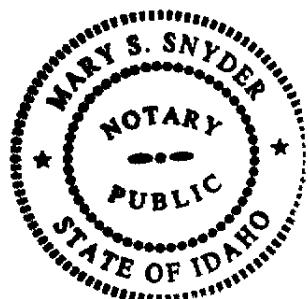
IN WITNESS WHEREOF, I have set my hand and affixed my official notarial stamp or seal, the day and year in this certificate first above written.

My Commission Expires:

Sept 7, 2006

Mary S. Snyder
Notary Public

[NOTARIAL SEAL]



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ATL01/10715868v3/s28

SNDA Agreement (37)
NWC 400 South and 700 East, Salt Lake City, UT

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LENDER:

**FORTIS BENEFITS INSURANCE
COMPANY, a Minnesota corporation**

By: John F. Sheehan
Name: John F. Sheehan
Title: Vice President

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ACKNOWLEDGMENT

STATE OF New York

COUNTY OF New York

On this 9th day of June, 2000, before me, Mary E. Glaccum, a Notary Public of New York County, New York, personally appeared John F. Sheehan, known or identified to me to be the Vice-President of FORTIS BENEFITS INSURANCE COMPANY, a Minnesota corporation, and the officer who subscribed the corporate name to the foregoing instrument, and acknowledged to me that he executed the same in the name of such corporation.

IN WITNESS WHEREOF, I have set my hand and affixed my official notarial stamp or seal, the day and year in this certificate first above written.

My Commission Expires:

7/26/01

Mary E. Glaccum
Notary Public

[NOTARIAL SEAL]

MARY E. GLACCUM
Notary Public, State of New York
No. 01GL6028339
Qualified in New York County
Commission Expires July 26, 2001

Schedule A

PARCEL 1:

BEGINNING at the Southeast corner of Lot 2, Block 39, Plat "B", Salt Lake City Survey; and running thence North 00°07'41" West 99.04 feet; thence North 89°52'25" East 33.01 feet; thence North 00°07'41" West 1.00 feet; thence North 89°52'26" East 132.00 feet to the West right of way line of 700 East Street; thence North 00°07'37" West along said right of way line 271.40 feet; thence North 00°07'41" West 6.25 feet; thence South 89°52'26" West 165.09 feet; thence North 00°07'41" West 2.00 feet; thence South 89°52'26" West 295.06 feet; thence South 00°16'09" West 166.70 feet; thence North 89°52'26" East 47.66 feet; thence South 00°07'41" East 213.00 feet to a point on the North right of way line of 400 South Street; thence North 89°52'26" East along said right of way line 248.62 feet to the point of BEGINNING.

Tax Sidwell No. 16-05-301-024

PARCEL 2:

BEGINNING at a point on the North line of 400 South Street, said point being South 89°52'29" West along said North line 29.33 feet from the Southwest corner of Lot 3, Block 39, Plat "B", Salt Lake City Survey; and running thence North 00°07'37" West 213.00 feet; thence North 89°52'29" East 110 feet 10 inches; thence South 00°07'33" East 213.00 feet to a point on the North line of said 400 South Street; thence South 89°52'29" West along said North line 110 feet 10 inches to the point of BEGINNING.

Tax Sidwell No. 16-06-428-023

Tax Sidwell No. 16-06-428-025

Said parcels being shown on that certain ALTA/ACSM Land Title Survey dated May 25, 2000, revised June 1, 2000, prepared by McNeil Engineering and Land Surveying, L.C.

7826515
02/22/2001 04:19 PM 29.00
Book - B426 Pg - 5650-5659
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
FOUNDERS TITLE
BY: RDJ, DEPUTY - WI 10 P.

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