

MTIC 79352-KR

This Instrument Prepared By:

Office Depot, Inc.  
2200 Old Germantown Road  
Delray Beach, Florida 33445  
Attention: Office of the General Counsel, Real Estate

2007-014344

Klamath County, Oregon



08/14/2007 03:30:33 PM

Fee: \$46.00

Upon Recordation Return to:

Office Depot, Inc.  
2200 Old Germantown Road  
Delray Beach, Florida 33445  
Attention: Lease Administration/ \_\_\_\_\_

SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN AGREEMENT – OD #2708

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN AGREEMENT ("Agreement") executed this 12<sup>th</sup> day of July, 2007, between WELLS FARGO BANK, NATIONAL ASSOCIATION (the "Bank"), appearing of record as MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a Delaware corporation ("MERS") (collectively, "Lender") and OFFICE DEPOT, INC., a Delaware corporation ("Tenant").

WITNESSETH:

WHEREAS, M. Eugene Dickerhoof, Noreen Dickerhoof, Darren E. Dickerhoof, and Matthew G. Dickerhoof, individual residents of Oregon, as tenants in common ("Landlord"), and Tenant are parties to that certain lease (the "Lease") dated March 28, 2007 relating to certain premises located in Klamath Falls, Oregon (the "Premises"), said Premises being more particularly described in the Lease and being situated on a portion of the real property described in EXHIBIT A attached hereto and made a part hereof; and

WHEREAS, Mortgagee has committed to make a or has made a mortgage loan to Landlord secured by a Mortgage dated of even date herewith ("Mortgage") covering the Premises;

NOW, THEREFORE, it is mutually agreed as follows:

1. To the extent that Tenant's rights and entitlements under the Lease are not diminished or otherwise affected, and except as provided in this Agreement, the Lease is and shall be subject and subordinate to the lien of the Mortgage and to all renewals, modifications, consolidations, replacements and extensions of the Mortgage.
2. In the event of a foreclosure of the Mortgage or should Mortgagee obtain title by deed in lieu thereof, or otherwise, Mortgagee, for itself, its successors or assigns (which shall include any persons acquiring title by voluntary deed, assignment or other disposition or transfer in lieu of foreclosure), agrees that Tenant may continue its occupancy of the Premises in accordance with the terms and provisions of the Lease, so long as Tenant is not in material default under the Lease beyond any applicable notice and cure period. Mortgagee agrees not to name Tenant as a party defendant in any foreclosure action.
3. Attornment: 1) Tenant agrees to attorn to: (a) Mortgagee when in possession of the Premises; (b) a receiver appointed in an action or proceeding to foreclose the Mortgage or otherwise; or (c) to any party acquiring title to the Premises as a result of foreclosure of the Mortgage or deed in lieu thereof. Tenant further covenants and agrees to execute and deliver, upon request of Mortgagee, or its assigns, an appropriate agreement of attornment, in form and content reasonably acceptable to Tenant and Mortgagee (but which shall not amend the terms of the Lease or otherwise diminish Tenant's rights thereunder) with any subsequent titleholder of the Premises; and 2) New Owner shall not be liable for any obligations of landlord arising under the Lease following any subsequent transfer of the title to the leased premises by New Owner.

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4. So long as the Mortgage on the Premises remains outstanding and unsatisfied, Tenant will use commercially reasonable efforts to deliver to Mortgagee a copy of all notices of default given to Landlord by Tenant. At any time before the rights of Landlord shall have been forfeited or adversely affected because of any default under the Lease as therein provided, Mortgagee shall have the right (but not the obligation) to cure such default within the same period of time as is allowed Landlord under the Lease.

5. If Mortgagee shall succeed to the interest of Landlord under the Lease, Mortgagee shall be bound to Tenant under all the terms, covenants and conditions of the Lease, and Tenant shall, from and after Mortgagee's succession to the interest of Landlord under the Lease, have the same remedies against Mortgagee for the breach of an agreement contained in the Lease that Tenant might have had under the Lease against Landlord if Mortgagee had not succeeded to the interest of Landlord; provided further, however, that Mortgagee shall not be:

(a) liable for any warranty, act or omission of any prior landlord (including Landlord), except those of a continuing nature; or

(b) subject to any offsets or defense which Tenant might have against any prior landlord (including Landlord), except (i) offsets specifically provided for in the Lease, or (ii) those which arose out of such Landlord's default under the Lease and accrued after Tenant has notified Mortgagee and given Mortgagee an opportunity to cure as provided in Paragraph 4 above; or

(c) bound by any rent or Additional Charges which Tenant might have paid for more than the current month to any prior landlord (including Landlord); or

(d) bound by any amendment or modification of the Lease or any collateral agreement made without Mortgagee's consent which would (i) reduce fixed minimum rent, or (ii) reduce any other monetary obligation of Tenant under the Lease.

6. Mortgagee consents to the application and disposition of casualty proceeds and condemnation awards in accordance with the Lease.

7. This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns (which shall include any persons acquiring title by voluntary deed, assignment or other disposition or transfer in lieu of foreclosure) of the parties.

8. Any notices under this Agreement may be delivered by hand or sent by commercial delivery services or United States Postal Service express mail, in either case for overnight delivery with proof of service, or sent by certified mail, return receipt requested, to the following addresses:

To Tenant:

Office Depot, Inc.  
2200 Old Germantown Road  
Delray Beach, Florida 33445  
Attention: Vice President, Real Estate  
Copy To: Office of the General Counsel, Real Estate

To Mortgagee:

Wells Fargo Bank, N.A.  
45 Fremont St., 9<sup>th</sup> Floor  
San Francisco, CA 94105  
Attention: ~~Nicole Nguyen~~

1320 Willow Pass Road  
Suite 300  
Concord, CA 94520

The notice shall be deemed to have been given on the date it was actually received.

9. This Agreement may be executed and delivered in counterparts for the convenience of the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date indicated below their respective signatures.

MORTGAGEE:

WELLS FARGO BANK, NATIONAL ASSOCIATION

By:

Print Name:

June Errington

Print Title:

Vice President

Date:

8-10-07

TENANT:

OFFICE DEPOT, INC., a Delaware corporation

By:

Print Name:

EDWARD COSTA

Print Title:

Vice President, Construction

Date:

7/10/07

Reviewed and approved as to form and legality  
by: Office Depot Legal Department

Attorney / Paralegal:

EAH

Date:

6/27/07

STATE OF

COUNTY OF

) SS:

)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that \_\_\_\_\_, whose name as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation, is signed to the foregoing instrument, who is known to me, acknowledged before me on 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 said corporation.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Notary Public

State of

My Commission expires:

STATE OF FLORIDA

)

) SS:

COUNTY OF PALM BEACH

)

I HEREBY CERTIFY that on this day before me, an officer duly authorized in the state and county named above to take acknowledgments, personally appeared Edward Costa as VP Construction of OFFICE DEPOT, INC., a Delaware corporation, to me known to be the person who signed the foregoing instrument as such officer and he/she acknowledged that the execution thereof was his/her free act and deed as such officer for the use and purposes therein expressed and that the instrument is the act and deed of said corporation.

WITNESS my hand and official seal this 10 day of July, 2007

Notary Public  
State of Florida

My Commission expires:



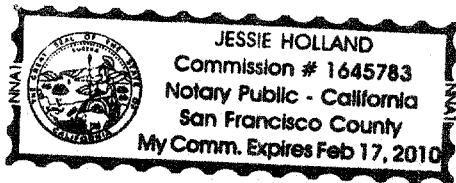
LINDA FEAGIN  
MY COMMISSION # DD 294421  
EXPIRES: February 26, 2008  
Provides Intra-budgetary Services

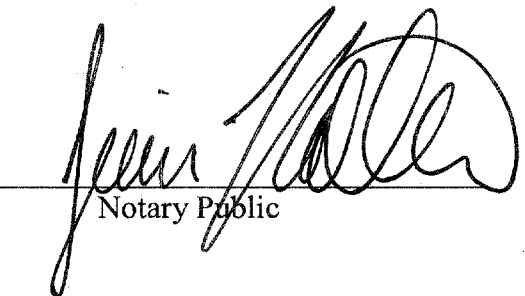
**CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT**

State of California                    )  
  ) SS.  
County of San Francisco            )

On August 10, 2007, before me, Jessie Holland, Notary Public, personally appeared June Errinton, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



  
\_\_\_\_\_  
Notary Public

Place Notary Seal above

**EXHIBIT A**  
**SHOPPING CENTER LEGAL DESCRIPTION**

Parcel 2 of Land Partition No. 48-05, said Land Partition being a replat of a portion of Lots 34 and 44 of Enterprise Tracts located in the West ½ of the NW ¼ of Section 3, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.