

# UNOFFICIAL COPY



Doc#: 0409931020  
Eugene "Gene" Moore Fee: \$66.00  
Cook County Recorder of Deeds  
Date: 04/08/2004 09:56 AM Pg: 1 of 7

## SUBORDINATION, NON-DISTURBANCE, AND ATTORNMEN AGREEMENT

THIS AGREEMENT is made and entered into as of the 28th day of January, 2004, by and between General Electric Capital Corporation, a Delaware corporation ("Mortgagee"), and Office Max, Inc., an Ohio corporation ("Lessee").

### RECITALS:

as Document No. 0403439068

, Assignment of Rents and Leases, Security Agreement and Fixture Filing

A. Mortgagee is making a loan of up to \$26,550,000 (the "Loan") to Jupiter Acquisition Corporation, an Illinois corporation, or its Assignee, ("Borrower"), for the purpose of financing Borrower's acquisition and development of or refinancing of the Burbank Station Shopping Center, located in Burbank, Illinois, and described in Exhibit A attached hereto and incorporated herein by reference (said real property and improvements being herein called the "Project"), such Loan being secured by a ~~RM~~ Mortgage, ~~first in lien on the real property~~ dated January 28, 2004 and recorded in ~~Volume XXXXX of XXXX~~, et seq., of the ~~XXXXXXXXXXXX~~ Records of Cook County, Illinois (the "Mortgage"), constituting a lien or encumbrance on the Project; and

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B. Lessee is the holder of a leasehold estate in and to Anchor B of the Project, consisting of approximately 23,500 usable square feet of space (the "Demised Premises"), under that Lease Agreement (the "Lease") dated September 1, 1994, executed by Borrower, as Lessor (Borrower being sometimes hereinafter called "Lessor"), and Lessee, as Tenant; and

C. Lessee and Mortgagee desire to confirm their understandings with respect to the Lease and the Mortgage.

### AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, Lessee and Mortgagee agree and covenant as follows:

1. Non-Disturbance. Mortgagee agrees that it will not disturb the possession of Lessee under the Lease upon any judicial or non-judicial foreclosure of the Mortgage or upon acquiring title to the Project by deed-in-lieu of foreclosure, or otherwise, if the Lease is in full force and effect and Lessee is not then in default under the Lease, and that Mortgagee will accept the attornment of Lessee thereafter so long as Lessee is not in default under the Lease.

2. Attornment. If the interests of Lessor in and to the Demised Premises are owned by Mortgagee by reason of any deed-in-lieu of foreclosure, judicial foreclosure, sale pursuant to any power of sale or other proceedings brought by it or by any other manner, including, but not limited to, Mortgagee's exercise of its rights under any assignment of leases and rents, and Mortgagee succeeds to the interest of Lessor under the Lease, Lessee shall be bound to Mortgagee under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any extension thereof duly exercised by Lessee with the same force and effect as if Mortgagee were the Lessor under the Lease; and Lessee does hereby attorn to Mortgagee, as its lessor, said attornment to be effective and self-operative, without the execution of any further instruments on the part of any of the parties hereto, immediately upon Mortgagee's succeeding to the interest of Lessor under the Lease; provided, however, that Lessee shall be under no obligation to pay rent to Mortgagee until Lessee receives written notice from Mortgagee that Mortgagee has succeeded to the interest of the Lessor under the Lease or otherwise has the right to receive such rents. The respective rights and obligations of Lessee and Mortgagee upon such attornment, to the extent of the then remaining balance of the term of the Lease, shall be and are the same as now set forth therein, it being the intention of the parties hereto for this purpose to incorporate the Lease in this Agreement by reference, with the same force and effect as if set forth in full herein.

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1 of 5

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3. Mortgagee's Obligations. If Mortgagee shall succeed to the interest of Lessor under the Lease, Mortgagee, subject to the last sentence of this Paragraph 3, shall be bound to Lessee under all of the terms, covenants and conditions of the Lease; provided, however, that Mortgagee shall not be:

- a) Liable for any act or omission of any prior lessor (including Lessor); *or, except for any acts or omissions of a continuing nature (except affirmative defenses)*
- b) Subject to the offsets or defenses which Lessee might have against any prior lessor (including Lessor); *or, except for offsets or defenses of a continuing nature*
- c) Bound by any rent or additional rent or advance rent which Lessee might have paid for more than the current month to any prior lessor (including Lessor), and all such rent shall remain due and owing, notwithstanding such advance payment; or
- d) Bound by any security or advance rental deposit made by Lessee which is not delivered or paid over to Mortgagee and with respect to which Lessee shall look solely to Lessor for refund or reimbursement; or
- e) Bound by any <sup>material</sup> termination, amendment or modification of the Lease made without its consent and written approval, *which consent shall not be unreasonably withheld*

Neither General Electric Capital Corporation nor any other party who from time to time shall be included in the definition of Mortgagee hereunder, shall have any liability or responsibility under or pursuant to the terms of this Agreement after it ceases to own an interest in the Project. Nothing in this Agreement shall be construed to require Mortgagee to see to the application of the proceeds of the Loan, and Lessee's agreements set forth herein shall not be impaired on account of any modification of the documents evidencing and securing the Loan. Lessee acknowledges that Mortgagee is obligated only to Borrower to make the Loan only upon the terms and subject to the conditions set forth in the Loan Agreement between Mortgagee and Borrower pertaining to the Loan. Lessee further acknowledges and agrees that neither Mortgagee nor any purchaser of the Project at foreclosure sale or any grantee of the Project named in a deed-in-lieu of foreclosure, nor any heir, legal representative, successor, or assignee of Mortgagee or any such purchaser or grantee, has or shall have any personal liability for the obligations of Lessor under the Lease, provided, however, that the Lessee may exercise any other right or remedy provided thereby or by law in the event of any failure by Lessor to perform any such material obligation.

4. Subordination. The Lease and all rights of Lessee thereunder are subject and subordinate to the Mortgage and to any deeds of trust, mortgages, ground leases or other instruments of security which do now or may hereafter cover the Project or any interest of Lessor therein (collectively, the "Prior Encumbrances") and to any and all advances made on the security thereof and to any and all increases, renewals, modifications, consolidations, replacements and extensions of the Mortgage or of any of the Prior Encumbrances. This provision is acknowledged by Lessee to be self-operative and no further instrument shall be required to effect such subordination of the Lease. Lessee shall, however, upon demand at any time or times execute, acknowledge and deliver to Mortgagee any and all instruments and certificates that ~~in Mortgagee's judgment~~ may be necessary or proper to confirm or evidence such subordination. ~~If Lessee shall fail or neglect to execute, acknowledge and deliver any such instrument or certificate, Mortgagee may, in addition to any other remedies Mortgagee may have, as agent and attorney-in-fact of Lessee, execute, acknowledge and deliver the same and Lessee hereby irrevocably appoints Mortgagee as Lessee's agent and attorney-in-fact for such purpose. However, notwithstanding the generality of the foregoing provisions of this paragraph, Lessee agrees that Mortgagee shall have the right at any time to subordinate the Mortgage, and any such other Mortgagee or ground lessor shall have the right at any time to subordinate any such Prior Encumbrances, to the Lease on such terms and subject to such conditions as Mortgagee, or any such other Mortgagee or ground lessor, may deem appropriate in its discretion.~~

5. New Lease. Upon the written request of either Mortgagee or Lessee to the other given at the time of any foreclosure, trustee's sale or conveyance in lieu thereof, the parties agree to execute a lease of the Demised Premises upon the same terms and conditions as the Lease between Lessor and Lessee, which lease shall cover any un-expired term of the Lease existing prior to such foreclosure, trustee's sale or conveyance in lieu of foreclosure.

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*Provided lessee receives a fully executed copy of this agreement*

6. Notice. Lessee agrees to give written notice to Mortgagee of any default by Lessor or Borrower under the Lease not less than thirty (30) days prior to terminating the Lease or exercising any other right or remedy thereunder or provided by law. Lessee further agrees that it shall not terminate the Lease or exercise any such right or remedy provided such default is cured within such thirty (30) days; provided, however, that if such default cannot by its nature be cured within thirty (30) days, then Lessee shall not terminate the Lease or exercise any such right or remedy, provided the curing of such default is commenced within such thirty (30) days and is diligently prosecuted thereafter. Such notices shall be delivered by certified mail, return receipt requested to:

GE Capital Corporation  
c/o GEMSA Loan Services  
1500 City West Blvd., Suite 200  
Houston TX 77042  
Attention: Access Portfolio Manager

*not to exceed sixty (60) days*

7. Mortgagee. The term "Mortgagee" shall be deemed to include General Electric Capital Corporation and any of its successors and assigns, including anyone who shall have succeeded to Lessor's interest in and to the Lease and the Project by, through or under judicial foreclosure or sale under any power or other proceedings brought pursuant to the Mortgage, or deed in lieu of such foreclosure or proceedings, or otherwise.

8. Estoppel. Lessee hereby certifies, represents and warrants to Mortgagee that:

- a) That the Lease is a valid lease and in full force and effect. That there is no existing default in any of the terms and conditions thereof and no event has occurred which, with the passing of time or giving of notice or both, would constitute an event of default;
- b) That the Lease has not been amended, modified, supplemented, extended, renewed or assigned, and represents the entire agreement of the parties;
- c) That, except as provided in the Lease, Lessee is entitled to no rent concessions or abatements;
- d) That Lessee shall not pay rental under the Lease for more than one (1) month in advance. Lessee agrees that Lessee shall, upon written notice by Mortgagee, pay to Mortgagee, when due, all rental under the Lease;
- e) That all obligations and conditions under the Lease to be performed to date have been satisfied, free of defenses and set-offs; and
- f) That Lessee has not received written notice of any claim, litigation or proceedings, pending or threatened, against or relating to Lessee, or with respect to the Demised Premises which would affect its performance under the Lease. Lessee has not received written notice of any violations of any federal, state, county or municipal statutes, laws, codes, ordinances, rules, regulations, orders, decrees or directives relating to the use or condition of the Demised Premises or Lessee's operations thereon.

9. Modification and Successors. This Agreement may not be modified orally or in any manner other than by an agreement, in writing, signed by the parties hereto and their respective successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns.

10. Counterparts. 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.

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

**MORTGAGEE:**

General Electric Capital Corporation,  
a Delaware corporation

By: Paul Young  
Name: Paul Young  
Title: Authorized Signatory

**LESSEE:**

Office Max, Inc., an Ohio corporation

By: Greg A. Darus  
Name: Greg A. Darus  
Title: Vice President, Real Estate

Property of Cook County Clerk's Office

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STATE OF District of Columbia  
COUNTY OF District of Columbia

This instrument was acknowledged before me on this 26<sup>th</sup> day of February, 2004, by Paul Young Authorized Signatory of General Electric Capital Corporation, a Delaware corporation, on behalf of said corporation.

(SEAL)

Notary Public in and for the State of District of Columbia  
Deborah A. Head

Print name of notary: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**Deborah A. Head**  
Notary Public, District of Columbia  
My Commission Expires 05-14-2007

STATE OF Ohio §  
COUNTY OF Cuyahoga §

This instrument was acknowledged before me on this 14<sup>th</sup> day of January, 2004, by Breg A. Davis, VP, Real Estate of Office Max, Inc., an Ohio corporation, on behalf of said corporation.

(SEAL)



**YOLONDA R. DAVIS**  
Notary Public  
State of Ohio  
Recorded in Cuyahoga County  
My Commission Expires 11-24-2007

Notary Public in and for the State of Ohio  
Yolonda R. Davis

Print name of notary: Yolonda R. Davis

My Commission Expires: 11-24-07

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## EXHIBIT A

### LEGAL DESCRIPTION OF THE PROPERTY

#### PARCEL A:

THAT PART OF THE SOUTH 6/12 OF THE NORTH 8/12 OF THE SOUTH 60 ACRES OF THE EAST ½ OF THE SOUTHEAST ¼ OF SECTION 28, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTH OF THE NORTH RIGHT OF WAY LINE OF 78<sup>TH</sup> STREET, (EXCEPTING THEREFROM THE WEST 33.00 FEET TAKEN FOR LAVERGNE AVENUE) AND (EXCEPT THE EAST 60.00 FEET TAKEN FOR CICERO AVENUE), IN COOK COUNTY, ILLINOIS.

#### LESS AND EXCEPT THE FOLLOWING OUTLOT:

THAT PART OF THE SOUTH 1/7 OF THE NORTH 7/12 AND THE SOUTH 1/8 OF THE NORTH 8/12 OF THE SOUTH 60 ACRES OF THE EAST ½ OF THE SOUTHEAST ¼ OF 7 SECTION 28, DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTH LINE OF 78<sup>TH</sup> STREET, (BEING 33.00 FEET NORTH OF THE CENTER LINE) AND THE WEST LINE OF CICERO AVENUE, (BEING 60.00 FEET WEST OF THE CENTER LINE); THENCE NORTH 89 DEGREES, 54 MINUTES, 56 SECONDS WEST ALONG SAID NORTH LINE OF 78<sup>TH</sup> STREET, A DISTANCE OF 212.00 FEET; THENCE NORTH 00 DEGREES, 08 MINUTES, 56 SECONDS WEST PARALLEL TO THE WEST LINE OF CICERO AVENUE, A DISTANCE OF 180.00 FEET; THENCE SOUTH 89 DEGREES, 54 MINUTES, 56 SECONDS EAST, A DISTANCE OF 212.00 FEET TO THE WEST LINE OF CICERO AVENUE, THENCE SOUTH 00 DEGREE, 08 MINUTES, 56 SECONDS EAST, A DISTANCE OF 180.00 FEET TO THE POINT OF BEGINNING, ALL IN SECTION 28, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, BEING SPECIFICALLY DESCRIBED AS:

LOT 1 IN BURBANK STATION, A SUBDIVISION OF THE EAST ½ OF THE SOUTHEAST ¼ OF SECTION 28, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 29, 1994 AS DOCUMENT 94672782, IN COOK COUNTY, ILLINOIS;

#### LESS AND EXCEPT

THAT PORTION CONVEYED TO THE ILLINOIS DEPARTMENT OF TRANSPORTATION BY DEED FROM BURBANK JOINT VENTURE, A MICHIGAN GENERAL PARTNERSHIP DATED SEPTEMBER 29, 1998 AND RECORDED NOVEMBER 17, 1989 AS DOCUMENT 08036669, IN COOK COUNTY, ILLINOIS.

#### LESS AND EXCEPT

THE NORTH 120.00 FEET OF THE SOUTH 1/3 OF THE NORTH 3/12 OF THE SOUTH 60 ACRES OF THE EAST OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 38



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NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

**PARCEL B 2:**

THE NORTH 33 FEET OF THE WEST 130 FEET (EXCEPT THE WEST 33 FEET THEREOF) OF THE SOUTH 1/3 OF THE NORTH 3/12 OF THE SOUTH 60 ACRES OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ADDRESS OF PROPERTY: 7750, 7770, 7780, 7712, 7716 and 7720 SOUTH CICERO AVENUE, BURBANK, ILLINOIS

TAX PARCELS: 19-28-401-055-0000  
19-28-412-037-0000  
19-28-412-038-0000  
19-28-412-039-0000  
19-28-412-040-0000

TA # NO3-7590  
RECORD AND RETURN TO:  
TITLE ASSOCIATES INC.  
825 THIRD AVENUE  
NEW YORK, NY 10022  
L. WILLIAMS

Property of Cook County Clerk's Office