

UNOFFICIAL COPY



Doc#: 0921629074 Fee: \$50.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 08/04/2009 04:43 PM Pg: 1 of 8

Property of Cook County Clerk's Office

SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT
BY AND BETWEEN
U.S. BANK NATIONAL BANKING ASSOCIATION,
METRO COMMONS, LLC,
AND
STAPLES THE OFFICE SUPERSTORE EAST, INC.

UNOFFICIAL COPY

AFTER RECORDING RETURN TO:

Staples, Inc.
 500 Staples Drive
 P.O. Box 9271
 Framingham, MA 01701-9271
 Attention: Real Estate Legal Department

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT
 (Mortgage)

THIS AGREEMENT is made as of 6/20, 2008, by and among U.S. BANK NATIONAL ASSOCIATION ("Lender"), METRO COMMONS, LLC ("Landlord"), and STAPLES THE OFFICE SUPERSTORE EAST, INC., a Delaware corporation ("Tenant").

Reference is made to a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing ("Mortgage") from Landlord to Lender, dated June 10, 2008 filed for record on the 11th day of June, 2008, in the office of the Recorder in and for Cook County, Illinois and recorded as security for loans from Lender to Landlord and Landlord's affiliate in the aggregate principal amount of \$47,440,000, the proceeds of which may be used to pay certain of the costs of construction the Premises.

Reference is made to a lease ("Lease") dated April 8, 2008, between Landlord and Tenant, demising premises located at 180 S. Mannheim Road, Hillside, Illinois, which premises is situated within the property covered by said Mortgage.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the mutual promises contained herein, the parties agree as follows:

1. Lender hereby consents to the Lease and all of the provisions thereof.
2. Subject to the terms hereof, the Lease is and shall be subject and subordinate at all times to the lien of the Mortgage and to all renewals, replacements and extensions of the Mortgage to the full extent of the principal sum secured thereby and interest thereon so that at all times, the Mortgage shall be and remain a lien on the property prior and superior to the Lease for all purposes.
3. Tenant agrees that if the holder of said Mortgage, or any person claiming under said holder (whether by a foreclosure, deed in lieu of foreclosure or otherwise), shall succeed to the interest of Landlord in said Lease, Tenant will recognize, and attorn to, said holder, or such other person, as its landlord under the terms of said Lease. Upon request, Tenant shall execute and deliver an instrument acknowledging such attornment.

UNOFFICIAL COPY

4. Lender agrees that, in the event of foreclosure or other right asserted under said Mortgage by the holder thereof, said Lease and the rights of Tenant thereunder shall continue in full force and effect and shall not be terminated or disturbed (whether by a foreclosure, deed in lieu of foreclosure or otherwise), except for default continuing after notice and beyond any applicable grace period and otherwise in accordance with the provisions of said Lease.

5. In the event Lender succeeds to the interest of Landlord under the Lease, Tenant will have the same remedies against Lender for any default under the Lease; provided, however, that Lender shall not be:

(i) liable for any act or omission of any prior landlord (including Landlord) under the Lease, except for non-monetary defaults of a continuing nature, which occurred prior to the date Lender acquired title to the property;

(ii) subject to any off-sets or abatements against Base Rent or other charges which Tenant may have against any prior landlord (including Landlord), except for the exercise of rights expressly set forth in the Lease;

(iii) bound by any Base Rent or other charges which Tenant might have paid for more than the current month to any prior landlord (including Landlord), except as expressly required under the Lease;

(iv) liable for any security deposits given by Tenant to Landlord except to the extent actually received by Lender;

(v) liable under any covenant or warranty in the Lease with regard to the initial construction of the premises, including any initial tenant improvements thereto, nor for any delays in completion of construction, nor for any implied warranty relating to the initial construction of the premises, including any initial tenant improvements thereto; or

(vi) bound by any amendment or modification of the Lease made without its consent, which consent shall not be unreasonably withheld or delayed; or

Nothing herein contained shall impose any obligations upon Lender to perform any of the obligations of Landlord under the Lease, unless and until Lender shall become owner or mortgagee in possession of the Premises.

6. In the event Lender elects, in its sole discretion, not to complete the construction of the project in accordance with the terms of the Lease, Lender shall be entitled to terminate the Lease immediately upon delivering to Tenant a written notice of termination, and Tenant shall, within ten (10) days after request, execute and deliver to Lender a recordable termination of the Lease acknowledging such termination by Lender.

UNOFFICIAL COPY

Tenant shall only look to the estate and property of Lender in the land and the project for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) requiring the payment of money in the event of any default by Lender as the landlord under the Lease, and no other property or assets of Lender shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to the Lease.

7. Tenant agrees to provide Lender with a copy of any notice of default Tenant may send to Landlord pursuant to the terms of the Lease. Tenant agrees that Lender shall have the same opportunity and the same period of time to cure any default of Landlord as provided Landlord pursuant to the terms of the Lease. Unless changed by written notice to Tenant, Lender's notice address is as follows:

U.S. Bank National Association
209 South LaSalle Street, Suite 410
Chicago, IL 60604
Attention: Emad Murrar

All notices between Lender and Tenant shall be sent in the manner set forth under the Lease.

8. Landlord agrees that, except as expressly provided herein, this Agreement does not constitute a waiver by Lender of any of its rights under the Mortgage or related documents, and that the Mortgage and any related documents remain in full force and effect and shall be complied with in all respects by Landlord.

9. No material modification, amendment, waiver or release of any provision of this Agreement or of any right, obligation, claim or cause of action arising hereunder shall be valid or effective unless in writing and signed by the parties.

The benefits and burdens of this Agreement shall inure to and bind the successors and assigns of the respective parties hereto.

UNOFFICIAL COPY

IN WITNESS WHEREOF, each party has caused this instrument to be executed under seal by its duly authorized representative.

MORTGAGEE:
U.S. BANK NATIONAL ASSOCIATION

Witnessed By:

[Signature]

By: [Signature]
its **Trevor B. Cain**
Vice President

LANDLORD:
METRO COMMONS, LLC

Witnessed By:

[Signature]

By: [Signature]
its **Exec. Vice President**

TENANT:
STAPLES THE OFFICE SUPERSTORE
EAST, INC.

Witnessed By:

[Signature]

By: [Signature]
its **PAUL VAN CAMP**
Vice President, Property Management



UNOFFICIAL COPY

ACKNOWLEDGMENTS

STATE OF Illinois)
COUNTY OF Cook)

JUNE 17, ²⁰⁰⁹~~2008~~

Then appeared before me TREVOR B. CAIN, a resident of Chicago, IL and VICE President of U.S. Bank National Association and acknowledged that he signed and delivered the foregoing instrument on behalf of such corporation, pursuant to authority given by its Board of Directors, as his free act and deed and as the free and act and deed of such corporation.

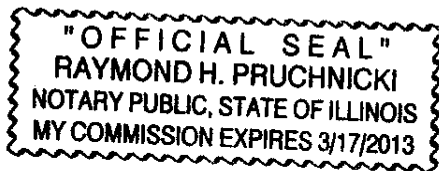


Linda J. Matheny
Name: LINDA J. MATHENY
Notary Public
My Commission Expires: 5/6/2010 ~~2008~~ with

STATE OF Illinois)
COUNTY OF Cook)

6/17, 2008

Then appeared before me Daniel - Shepard, a resident of Illinois and EVP of Metro Commons, LLC and acknowledged that he signed and delivered the foregoing instrument on behalf of such corporation, pursuant to authority given by its Board of Directors, as his free act and deed and as the free and act and deed of such corporation.



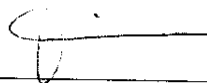
Raymond H. Pruchnicki
Name: Raymond H. Pruchnicki
Notary Public
My Commission Expires:

UNOFFICIAL COPY

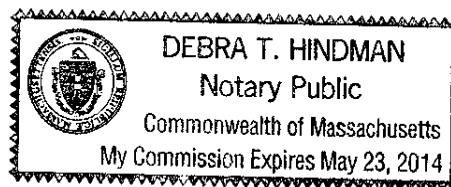
COMMONWEALTH OF MASSACHUSETTS)
COUNTY OF MIDDLESEX)

22 June, 2008

Then appeared before me Paul Van Camp, a resident of Southbridge, MA and Vice President - Property Management of Staples the Office Superstore East, Inc. and acknowledged that he signed and delivered the foregoing instrument on behalf of such corporation, pursuant to authority given by its Board of Directors, as his free act and deed and as the free and act and deed of such corporation.



Name: Debra T. Hindman
Notary Public
My Commission Expires: 05/23/2014



Property of Cook County Clerk's Office

UNOFFICIAL COPY

Legal Description

Lot 3 in Metro Commons, being a subdivision of part of the Southeast $\frac{1}{4}$ of Section 17, Township 39 North, Range 12 East of the Third Principal Meridian, in Cook County, Illinois.

PIN: 15-17-404-043

Property of Cook County Clerk's Office

