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RECORDING REQUESTED BY:

The Prudential Insurance Company of America

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1999-03-08 11:04:19

Cook County Recorder

39.50

AND WHEN RECORDED MAIL TO:

David A. Lapins, Esq.
Sonnenschein Nath & Rosenthal
8000 Sear's Tower
Chicago, Illinois 60606

PRUDENTIAL LOAN NO. 6-102-261

SUBORDINATION, ATTORNMEN AND NON-DISTURBANCE AGREEMENT

This Subordination, Attornment and Non-Disturbance Agreement (the "Agreement") is made and entered into as of the 7th day of January, 1999, by and among OfficeMax, Inc., an Ohio corporation ("Tenant"), The Broadway L.L.C., an Illinois limited liability company ("Landlord", or "Borrower") and The Prudential Insurance Company of America, a New Jersey corporation ("Lender").

WHEREAS, Lender has made a loan (the "Loan") to Borrower evidenced by a note (the "Note") secured by a mortgage (the "Mortgage"), dated 2/1/99 and recorded among the records of the office of the Cook County, Illinois Recorder of Deeds constituting a first lien upon the land described in Exhibit "A" attached hereto and made a part hereof and the improvements thereon, as well as all of Landlord's right, title interest, estate and claim now owned or hereafter acquired in, to or relating to the items described in (i) through (ix) in the recitals of the Mortgage (collectively, the "Property") and

WHEREAS, Landlord and Tenant have entered into a certain lease dated November 20, 1998, which lease provides for the direct payment of rents from Tenant to Landlord for the use and occupancy of the store located at Broadway and Surf, Chicago Illinois, (the "Premises") by Tenant, as more fully set forth in the lease (hereafter, the lease and all present and future amendments and modifications thereto, and extensions thereof, shall be referred to as the "Lease"); and

WHEREAS, Lender wishes to obtain from Tenant certain assurances that Tenant will attorn to the purchaser at a foreclosure sale in the event of a foreclosure or to the holder of the Note and Mortgage in the event of such holder's exercise of its rights under the Note and Mortgage; and

WHEREAS, Tenant wishes to obtain from Lender certain assurances that so long as Tenant is not in default of Tenant's obligations to Landlord under the Lease beyond any applicable cure period, that Tenant shall not be disturbed in its peaceful possession of the Premises as a result of actions taken by Lender pursuant to its rights under the Mortgage; and

WHEREAS, Tenant and Lender are both willing to provide such assurances to each other upon and subject to the terms and conditions of this Agreement; and

WHEREAS, a Memorandum of the Lease shall be recorded in the land records prior to the recording of this Agreement

I.R.

Near North National Title
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arising here a default under the Mortgage unless required by law

and lender shall not name or join Tenant as a defendant in any exercise of Mortgage's rights and remedies

NOW, THEREFORE, in consideration of the above, the mutual promises hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto mutually agree as follows:

1. Subordination and Attornment. The Lease and all of the rights of Tenant thereunder shall be and are hereby declared to be and at all times hereafter shall be and remain subject and subordinate in all respects to the Mortgage and to all renewals, modifications, consolidations, replacements and extensions thereof and all of the rights of the Lender thereunder and all other documents securing the Note. Notwithstanding such subordination, Tenant hereby agrees that the Lease shall not terminate in the event of a foreclosure of the Mortgage whether judicial or nonjudicial or any other proceedings brought to enforce the Mortgage or by deed in lieu of foreclosure and Tenant further agrees to attorn to and to recognize Lender (as mortgagee in possession or otherwise), or the purchaser at such foreclosure sale, as Tenant's landlord for the balance of the term of the Lease, in accordance with the terms and provisions thereof, ~~but subject, nevertheless, to the provisions of this Agreement, which Agreement shall be controlling in the event of any conflict.~~

2. Tenant's Representations and Warranties. Tenant hereby represents and warrants to Lender that it has not subordinated the Lease or any of its rights thereunder to any lien or mortgage other than the Mortgage and that it will not subordinate the Lease or its rights thereunder to any lien or mortgage without the prior written consent of Lender, *which such consent shall not be withheld or delayed unreasonably*

3. Lender's Notice and Cure Rights. Tenant agrees with Lender that, from and after the date hereof until payment in full of the indebtedness under the Note, Tenant will not terminate the Lease nor discontinue or abate the rent as a result of a default by Landlord under the Lease, without first giving the Lender notice and an opportunity, at Lender's option, to cure such default, provided such default is capable of being cured by Lender. In the event such default by Landlord under the Lease is not susceptible to cure by the Lender, Tenant may, at its option, exercise all its rights under the Lease (including, without limitation, the right to terminate the Lease or discontinue or abate rent). Notwithstanding the foregoing, Tenant shall not terminate the Lease nor discontinue or abate rent as a result of a default by Landlord under the Lease if (a) the Lender is diligently in the process of foreclosing on the Property and (b) the continuation of such default by Landlord under the Lease during the time period required for foreclosure does not (i) unreasonably interfere with the Tenant's use and enjoyment of the Premises under the terms of the Lease nor (ii) impose any additional obligations on the Tenant not contained in the Lease and (iii) the period required for foreclosure by Lender does not exceed 180 days. Tenant and Landlord also agree that, at the request of Lender, the rent payments due under the Lease commencing thirty (30) days after notice from Lender shall be paid directly to Lender and any such payments to the Lender shall be credited against the rent due under the Lease as if made to the Landlord. Tenant shall not be required to investigate the propriety of such request or whether such request is in keeping with the Loan Documents between Landlord and Lender and shall be entitled to comply with such request despite any knowledge or notice that such request is improper. Tenant agrees that prior to exercising any of its rights and remedies under the Lease in the event of any default by Landlord thereunder, including any rights of offset, defense or self-help provisions contained in the Lease, Tenant shall give written notice to Lender of the occurrence of default by Landlord specifying, with reasonable clarity, the events constituting such default, and shall give Lender thirty (30) calendar days after the date of receipt of such notice to undertake to cure such default, provided however, such thirty (30) day period shall be extended (but by no more than an additional sixty (60) days) provided that Lender is proceeding diligently to cure such default.

4. Non-Disturbance. So long as Tenant is not in default under the Lease beyond the applicable notice and cure period provided in the Lease, then Lender agrees with Tenant that in the

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event the interest of Landlord is acquired by Lender, or Lender acquires title to the Property or comes into possession of said Property by reason of foreclosure or enforcement of the Mortgage or the Note, or by a conveyance in lieu thereof, or by any other means, Tenant's possession of the Premises and Tenant's rights, privileges and obligations under the Lease shall not be disturbed, diminished or interfered with by Lender or any party claiming through Lender during the term of the Lease, including any extensions thereof permitted to Tenant, and the Lease shall continue in full force and effect and shall not be terminated except in accordance with the terms of the Lease. ~~In the event Tenant defaults under the Lease or this Agreement, the obligations of Lender hereunder shall, at Lender's election, become null and void and Lender may proceed to extinguish the Lease and all of Tenant's rights and interests in and to the Premises through foreclosure of the Mortgage.~~

Immediately upon the acquisition by Lender of possession or title to the Property by reason of foreclosure or enforcement of the Mortgage or the Note, or by a conveyance in lieu thereof, or as a result of any other means, Tenant agrees to be bound to Lender under all of the terms, covenants, and conditions of the Lease for the balance of the term thereof, including any extensions thereof permitted to Tenant, with the same force and effect as if Lender were the landlord under the Lease, and Tenant does hereby attorn to Lender as its landlord, said attornment to be effective and self-operative without the execution of any other instruments on the part of either party hereto.

Lender further agrees that if it obtains possession or title to the Property during the Lease term, Lender shall be bound to Tenant under all of the terms, covenants, and conditions of the Lease and Tenant shall, from and after the occurrence of the events set forth above, have the same remedies that Tenant might have had under the Lease against Landlord; provided, however, that Lender shall not be:

- a. liable to Tenant for damages for any act or omissions of Landlord or any prior landlord occurring prior to Lender obtaining possession or title to the Property; or
- b. subject to any offsets, claims or defenses which Tenant might have against Landlord or against any prior landlord which arise prior to the date Lender obtains possession or title to the Property; or
- c. bound by any rent or additional rent or deposit, rental security or any other sums which Tenant may have paid to Landlord or any other landlord more than thirty (30) days in advance; or
- d. bound by any amendment or modification of the Lease made without Lender's prior written consent; or
- e. bound to Tenant for any obligations accruing subsequent to the date upon which the Lender transfers its interest in the Property to any third party; or
- ~~f. obligated or liable to Tenant with respect to the construction and completion of the initial improvements in the Premises for Tenant's use, enjoyment or occupancy; or~~
- g. obligated or liable to Tenant for any moving, relocation or refurbishment allowance or any payment or allowance for improvements to the Premises or any part thereof; or

which mutually and adversely affects the rights, duties & obligations of Lender under this Agreement

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h. bound under any provision of the Lease which may give rise to liabilities, duties or responsibilities of Lender for any matters relating to hazardous materials or the environment, except due to acts of Lender, its employees, contractors or agents; or

i. liable for the payment of any leasing commissions or other expenses for which Landlord or any prior landlord incurred the obligation to pay; or

j. bound or liable to Tenant under any oral ~~or written~~ notice given by Tenant to Landlord or any prior landlord.

5. Obligations of Succeeding Owner. Tenant hereby agrees that any entity or person which at any time hereafter becomes the Landlord under the Lease, including, without limitation, Lender, as a result of Lender's exercise of its rights under the Mortgage, or a purchaser from Lender, shall be liable only for the performance of the obligations of the Landlord under the Lease which arise and accrue during the period of such entity's or person's ownership of the Property with respect to matters which accrued during such person's or entity's ownership of the Property.

6. Notices. All notices or other written communications required or permitted to be given pursuant to this Agreement shall be in writing, and shall be deemed to have been properly given (i) upon delivery, if delivered in person or by facsimile transmission with receipt acknowledged, (ii) one business day after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three business days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, addressed as follows:

If to Borrower: The Broadway L.L.C.
 c/o Hiffman Shaffer Associates, Inc.
 180 North Wacker Drive, Suite 500
 Chicago, Illinois 60606
 Attention: Melissa Piolet

If to Tenant: OfficeMax, Inc.
 3605 Warrensville Center Road
 Shaker Heights, Ohio 44122-5203
 Attention: Senior Vice President of Real Estate

If to Lender: The Prudential Insurance Company of America
 2 Ravinia Drive, Suite 1400
 Atlanta, Georgia 30346-2110

The Prudential Insurance Company of America
2 Ravinia Drive, Suite 1400
Atlanta, Georgia 30346-2110
Attention: Regional Counsel, Real Estate Operations

or addressed as such party may from time to time designate in a writing to the other parties hereto and delivered in accordance with the provisions of this Section 6.

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7. Miscellaneous. This Agreement may not be amended or modified in any manner other than by an agreement in writing, signed by the parties hereto or their respective successors in interest, and this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The words "foreclosure" and "foreclosure sale" as used herein shall be deemed to include the acquisition of Landlord's estate in the Property by voluntary deed, assignment or other conveyance or transfer in lieu of foreclosure; and the word "Lender" shall include the Lender herein specifically named and any of its successors and assigns, including anyone who shall have succeeded to Landlord's interest in the Property or acquired possession thereof by, through or under foreclosure of the Mortgage, or by any other manner of enforcement of the Mortgage, or the Note or other obligation secured thereby.

~~8. Conflicts with Lease. This Agreement shall supersede, as between Tenant and Lender, all of the terms and provisions of the Lease which are inconsistent with this Agreement, but shall not affect any obligations or liabilities of Borrower, as landlord, under the Lease.~~

~~9. Automatic Amendment of Lease. If any proceedings are brought for the foreclosure of the Mortgage or if Lender shall succeed to the interest of Landlord under the Lease in any manner or way, Tenant agrees that the Lease at such time shall be automatically amended without the necessity of executing any other instrument or agreement as follows, notwithstanding any provision to the contrary contained in the Lease: Section 31 and Exhibits C and G shall not be binding upon Lender.~~

10. Proceeds of Casualty or Condemnation. The interest of Tenant under the Lease in and to any proceeds of insurance arising from any casualty to the premises or the Property and all interest of Tenant in and to any award for the taking of the Property or the Premises under the power of eminent domain or any payment in lieu of such taking shall be as provided in the Lease.

11. Governing Law; Venue. This Agreement shall be construed in accordance with the laws of the State of Illinois and any litigation arising out of this Agreement shall be brought in the courts of the State of Illinois or in the courts of the United States for the Northern District of the State of Illinois and all parties hereto consent to the venue of such courts.

12. Effect of Agreement. Landlord joins in the execution and delivery of this Agreement for the purpose of evidencing its consent to the terms and provisions hereof, and as between Landlord and Tenant, nothing herein contained shall be deemed to alter or modify the Lease. As between Lender and Landlord, nothing contained herein shall be deemed to alter or modify the terms and conditions of the Note, the Mortgage, or any other document or agreement regarding the mortgage loan made by Lender to Borrower.

13. Construction. All capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Mortgage.

14. WAIVER OF TRIAL BY JURY: ALL PARTIES HERETO HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN, THE LOAN DOCUMENTS, INCLUDING, WITHOUT LIMITATION, THIS AGREEMENT, OR ANY ACTS OR OMISSIONS OF LENDER ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be properly executed and sealed by their duly authorized representatives as of the date first above written.

WITNESS:

Barbara Renstrom
Barbara Renstrom

TENANT:

OFFICEMAX, INC.

By: *Mark L. Keschl* (SEAL)
Title: **Mark L. Keschl**
Senior Vice President of Real Estate

WITNESS:

LANDLORD:

THE BROADWAY L.L.C.

By: *Richard Hulwa* (SEAL)
Title: _____

ATTEST:

P. Mandouk
Assistant Secretary
Diamonds membrides

LENDER:

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

By: *David M. Durning* (SEAL)
Vice President
David M. Durning

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STATE OF OHIO)
) SS.
COUNTY OF CUYAHOGA)

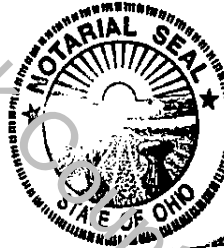
I, BARBARA RENSTROM, a Notary Public in and for said County, in the State aforesaid,
DO HEREBY CERTIFY that the foregoing instrument was acknowledged before me this ___ day of
January, 1999 by MARK W. KOSKA as SENIOR VICE PRESIDENT of OfficeMax, Inc., an Ohio corporation, on behalf of
OF REAL ESTATE
said corporation.

GIVEN under my hand and Notarial Seal this 7th day of January, 1999.

Notary Public

Barbara Renstrom

My Commission Expires:



Barbara Renstrom
Notary Public-State of Ohio
Residence-Summit County
My Commission Expires May 22, 2002

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Desiree Marie Banks, a Notary Public in and for said County, in the State aforesaid,

DO HEREBY CERTIFY that the foregoing instrument was acknowledged before me this 3 day of February by Richard Helweg, the Managing Member of The Broadway L.L.C. on behalf of said limited liability company.

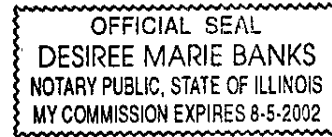
GIVEN under my hand and Notarial Seal this 3 day of February, ¹⁹⁹⁹~~1998~~.

Desiree Marie Banks

Notary Public

My Commission Expires:

8/5/2002



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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Diane L. Targatz, a Notary Public in and for said County, in the State aforesaid,
DO HEREBY CERTIFY that the foregoing instrument was acknowledged before me this 25 day of
February by David M. D'Amico, as a Vice President of The Prudential Insurance Company of America,
a New Jersey corporation, on behalf of said corporation.

GIVEN under my hand and Notarial Seal this 25 day of February 1998.

Diane L. Targatz

Notary Public

My Commission Expires:



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EXHIBIT A

Legal Description

PARCEL 1:

THE NORTH 77 FEET OF THE EAST 15 FEET OF LOT 23 AND THE NORTH 77 FEET OF LOTS 24 AND 25 IN THE SUBDIVISION OF LOTS 4, 5 AND THE SOUTH 1/2 OF LOT 3 IN THE BICKERDIKE AND STEELE'S SUBDIVISION OF PART OF THE WEST 1/2 OF THE NORTH WEST 1/4 OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THE EAST 15 FEET OF LOT 23 (EXCEPT THE NORTH 77 FEET THEREOF) ALSO THE SOUTH 55 1/2 FEET OF LOTS 24 AND 25, ALSO THAT PART OF THE VACATED ALLEY WHICH LIES SOUTH OF THE EAST 15 FEET OF SAID LOT 23, AS SAID ALLEY IS SHOWN AND ALL THE ABOVE PREMISES LYING AND BEING IN SUBDIVISION OF LOTS 4 AND 5 AND THE SOUTH HALF OF LOT 3 IN BICKERDIKE AND STEELE'S SUBDIVISION OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

LOTS 1 TO 6, BOTH INCLUSIVE, IN DYERS SUBDIVISION OF THAT PORTION OF LOTS 6, 7 AND 8 WHICH LIES WESTERLY OF LAKE SHORE PLANK ROAD IN STEELS AND BICKERDIKE SUBDIVISION OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Address: 2828 North Broadway, Chicago, Illinois

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