

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

WELLS FARGO BANK, NATIONAL
ASSOCIATION
Real Estate Group (AU #07572)
1512 Eureka Road, Suite 350
Roseville, CA 95661

Attn: Denise Latta
Loan No. 103649



W2245553

EN 2245553 PG 1 OF 9
ERNEST D ROWLEY, WEBER COUNTY RECORDER
01-MAR-07 1110 AM FEE \$30.00 DEP JPM
REC FOR: LANDMARK TITLE

**SUBORDINATION AGREEMENT; ACKNOWLEDGMENT OF LEASE ASSIGNMENT,
ESTOPPEL,
ATTORNMEN AND NON-DISTURBANCE AGREEMENT
(Lease To Deed of Trust)**

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE
PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF
SOME OTHER OR LATER SECURITY INSTRUMENT.

THIS SUBORDINATION AGREEMENT; ACKNOWLEDGMENT OF LEASE ASSIGNMENT, ESTOPPEL,
ATTORNMEN AND NON-DISTURBANCE AGREEMENT ("Agreement") is made as of February 23, 2007,
by and between BOYER OGDEN MALL, L.C., a Utah limited liability company ("Landlord"), VAN COTT,
BAGLEY, CORNWALL & McCARTHY, a Utah professional corporation ("Tenant") and WELLS FARGO
BANK, NATIONAL ASSOCIATION ("Lender").

RECITALS

- A. Pursuant to the terms and provisions of a Lease Agreement dated September, 2006 between Boyer Junction Office, L.C., as landlord and Tenant as tenant, as amended by a First Amendment to Lease Agreement dated November 27, 2006 ("Lease"), Boyer Junction Office, L.C. granted to Tenant a leasehold estate in and to a portion of the property described on Exhibit A attached hereto and incorporated herein by this reference (which property, together with all improvements now or hereafter located on the property, is defined as the "Property"). Landlord has succeeded to the interest of Boyer Junction Office, L.C. under the Lease.
- B. Landlord has executed, or proposes to execute, a deed of trust with absolute assignment of leases and rents, security agreement and fixture filing ("Deed of Trust") securing, among other things, a promissory note ("Note") in the principal sum of FOURTEEN MILLION THREE HUNDRED THOUSAND AND NO/100THS DOLLARS (\$14,300,000.00), of substantially even date herewith, in favor of Lender, which Note is payable with interest and upon the terms and conditions described therein ("Loan"). The Deed of Trust will encumber the Property.
- C. As a condition to making the Loan secured by the Deed of Trust, Lender requires that the Deed of Trust be unconditionally and at all times remain a lien on the Property, prior and superior to all the

rights of Tenant under the Lease and that Tenant specifically and unconditionally subordinate the Lease to the lien of the Deed of Trust.

D. Landlord and Tenant have agreed to the subordination, attornment and other agreements herein in favor of Lender.

NOW THEREFORE, for valuable consideration and to induce Lender to make the Loan, Landlord and Tenant hereby agree for the benefit of Lender as follows:

1. **SUBORDINATION.** Landlord and Tenant hereby agree that:

- 1.1 **Prior Lien.** The Deed of Trust securing the Note in favor of Lender, and any modifications, renewals or extensions thereof, shall unconditionally be and at all times remain a lien on the Property prior and superior to the Lease;
- 1.2 **Subordination.** Lender would not make the Loan without this agreement to subordinate; and
- 1.3 **Whole Agreement.** This Agreement shall be the whole agreement and only agreement with regard to the subordination of the Lease to the lien of the Deed of Trust and shall supersede, but only insofar as would affect the priority between the Deed of Trust and the Lease, any prior agreements as to such subordination, including, without limitation, those provisions, if any, contained in the Lease which provide for the subordination of the Lease to a deed or deeds of trust or to a mortgage or mortgages.

AND FURTHER, Tenant individually declares, agrees and acknowledges for the benefit of Lender, that:

- 1.4 **Use of Proceeds.** Lender, in making disbursements pursuant to the Note, the Deed of Trust or any loan agreements with respect to the Property, is under no obligation or duty to, nor has Lender represented that it will, see to the application of such proceeds by the person or persons to whom Lender disburses such proceeds, and any application or use of such proceeds for purposes other than those provided for in such agreement or agreements shall not defeat this agreement to subordinate in whole or in part;
- 1.5 **Waiver, Relinquishment and Subordination.** Tenant intentionally and unconditionally waives, relinquishes and subordinates all of Tenant's right, title and interest in and to the Property to the lien of the Deed of Trust and understands that in reliance upon, and in consideration of, this waiver, relinquishment and subordination, specific loans and advances are being and will be made by Lender and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination.

2. **ASSIGNMENT.** Tenant acknowledges and consents to the assignment of the Lease by Landlord in favor of Lender.

3. **ESTOPPEL.** Tenant acknowledges and represents that:

- 3.1 **Lease Effective.** The Lease has been duly executed and delivered by Tenant and, subject to the terms and conditions thereof, the Lease is in full force and effect, the obligations of Tenant thereunder are valid and binding and there have been no modifications or additions to the Lease, written or oral;
- 3.2 **No Default.** To the best of Tenant's knowledge, as of the date hereof: (i) there exists no breach, default, or event or condition which, with the giving of notice or the passage of time

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or both, would constitute a breach or default under the Lease; and (ii) there are no existing claims, defenses or offsets against rental due or to become due under the Lease;

- 3.3 **Entire Agreement.** The Lease constitutes the entire agreement between Landlord and Tenant with respect to the Property and Tenant claims no rights with respect to the Property other than as set forth in the Lease; and
- 3.4 **No Prepaid Rent.** No deposits or prepayments of rent have been made in connection with the Lease, except as follows: (if none, state "None") NONE
4. **ADDITIONAL AGREEMENTS.** Tenant covenants and agrees that, during all such times as Lender is the Beneficiary under the Deed of Trust:
- 4.1 **Modification, Termination and Cancellation.** Tenant will not consent to any modification, amendment, termination or cancellation of the Lease (in whole or in part) without Lender's prior written consent and will not make any payment to Landlord in consideration of any modification, termination or cancellation of the Lease (in whole or in part) without Lender's prior written consent;
- 4.2 **Notice of Default.** Tenant will notify Lender in writing concurrently with any notice given to Landlord of any default by Landlord under the Lease, and Tenant agrees that Lender has the right (but not the obligation) to cure any breach or default specified in such notice within the time periods set forth below and Tenant will not declare a default of the Lease, as to Lender, if Lender cures such default within fifteen (15) days from and after the expiration of the time period provided in the Lease for the cure thereof by Landlord; provided, however, that if such default cannot with diligence be cured by Lender within such fifteen (15) day period, the commencement of action by Lender within such fifteen (15) day period to remedy the same shall be deemed sufficient so long as Lender pursues such cure with diligence;
- 4.3 **No Advance Rents.** Tenant will make no payments or prepayments of rent more than one (1) month in advance of the time when the same become due under the Lease; and
- 4.4 **Assignment of Rents.** Upon receipt by Tenant of written notice from Lender that Lender has elected to terminate the license granted to Landlord to collect rents, as provided in the Deed of Trust, and directing the payment of rents by Tenant to Lender, Tenant shall comply with such direction to pay and shall not be required to determine whether Landlord is in default under the Loan and/or the Deed of Trust.
5. **ATTORNMEN T.** In the event of a foreclosure under the Deed of Trust, Tenant agrees for the benefit of Lender (including for this purpose any transferee of Lender or any transferee of Landlord's title in and to the Property by Lender's exercise of the remedy of sale by foreclosure under the Deed of Trust) as follows:
- 5.1 **Payment of Rent.** Tenant shall pay to Lender all rental payments required to be made by Tenant pursuant to the terms of the Lease for the duration of the term of the Lease;
- 5.2 **Continuation of Performance.** Tenant shall be bound to Lender in accordance with all of the provisions of the Lease for the balance of the term thereof, and Tenant hereby attorns to Lender as its landlord, such attornment to be effective and self-operative without the execution of any further instrument immediately upon Lender succeeding to Landlord's interest in the Lease and giving written notice thereof to Tenant;

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- 5.3 **No Offset.** Lender shall not be liable for, nor subject to, any offsets or defenses which Tenant may have by reason of any act or omission of Landlord under the Lease, nor for the return of any sums which Tenant may have paid to Landlord under the Lease as and for security deposits, advance rentals or otherwise, except to the extent that such sums are actually delivered by Landlord to Lender; and
- 5.4 **Subsequent Transfer.** If Lender, by succeeding to the interest of Landlord under the Lease, should become obligated to perform the covenants of Landlord thereunder, then, upon any further transfer of Landlord's interest by Lender, all of such obligations shall terminate as to Lender.
6. **NON-DISTURBANCE.** In the event of a foreclosure under the Deed of Trust, so long as there shall then exist no breach, default, or event of default on the part of Tenant under the Lease, Lender agrees for itself and its successors and assigns that the leasehold interest of Tenant under the Lease shall not be extinguished or terminated by reason of such foreclosure, but rather the Lease shall continue in full force and effect and Lender shall recognize and accept Tenant as tenant under the Lease subject to the terms and provisions of the Lease except as modified by this Agreement; provided, however, that Tenant and Lender agree that the following provisions of the Lease (if any) shall not be binding on Lender: any option to purchase with respect to the Property; any right of first refusal with respect to the Property; any provision regarding the use of insurance proceeds or condemnation proceeds with respect to the Property which is inconsistent with the terms of the Deed of Trust.
7. **MISCELLANEOUS.**
- 7.1 **Heirs, Successors, Assigns and Transferees.** The covenants herein shall be binding upon, and inure to the benefit of, the heirs, successors and assigns of the parties hereto; and
- 7.2 **Notices.** All notices or other communications required or permitted to be given pursuant to the provisions hereof shall be deemed served upon delivery or, if mailed, upon the first to occur of receipt or the expiration of three (3) days after deposit in United States Postal Service, certified mail, postage prepaid and addressed to the address of Tenant or Lender appearing below:

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"LANDLORD"

Boyer Ogden Mall, L.C.
c/o The Boyer Company, L.C.
90 South 400 West, Suite 200
Salt Lake City, Utah 84101

Attention: Brian Gochnour

"LENDER"

WELLS FARGO BANK, NATIONAL
ASSOCIATION
Real Estate Group (AU #07572)
1512 Eureka Road, Suite 350
Roseville, CA 95661

Attn: Denise Latta
Loan No. 103649

"TENANT"

Van Cott, Bagley, Cornwall & McCarthy
50 South Main Street, Suite 1600
Salt Lake City, Utah 84144

provided, however, any party shall have the right to change its address for notice hereunder by the giving of written notice thereof to the other party in the manner set forth in this Agreement; and

- 7.3 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute and be construed as one and the same instrument; and
- 7.4 **Remedies Cumulative.** All rights of Lender herein to collect rents on behalf of Landlord under the Lease are cumulative and shall be in addition to any and all other rights and remedies provided by law and by other agreements between Lender and Landlord or others; and
- 7.5 **Paragraph Headings.** Paragraph headings in this Agreement are for convenience only and are not to be construed as part of this Agreement or in any way limiting or applying the provisions hereof.

INCORPORATION. Exhibit A is attached hereto and incorporated herein by this reference.

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

IT IS RECOMMENDED THAT, PRIOR TO THE EXECUTION OF THIS AGREEMENT, THE PARTIES CONSULT WITH THEIR ATTORNEYS WITH RESPECT HERETO.

[Signature Pages to Follow]

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LANDLORD'S SIGNATURE PAGE:

"LANDLORD"

BOYER OGDEN MALL, L.C.,
a Utah limited liability company

By: The Boyer Company, L.C.,
a Utah limited liability company
Its Manager

By: [Signature]
H. Roger Boyer, Manager

STATE OF UTAH)
COUNTY OF Salt Lake)

The foregoing instrument was acknowledged before me this 22nd day of December, 2006, by H. Roger Boyer, Manager of The Boyer Company, L.C., a Utah limited liability company, Manager of Boyer Ogdan Mall, L.C., a Utah limited liability company.



[Signature]
NOTARY PUBLIC
Residing at: Salt Lake City

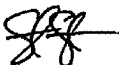
My commission expires:
8-20-07

Loan No. 103649

LENDER'S SIGNATURE PAGE:

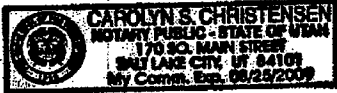
"LENDER"


WELLS FARGO BANK,
NATIONAL ASSOCIATION

By: 
Steve Strong, Vice President

STATE OF UTAH
COUNTY OF Salt Lake ss.

The foregoing instrument was acknowledged before me this 25th day of February, 2007, by Steve Strong,
Vice President of Wells Fargo Bank, National Association.




NOTARY PUBLIC
Residing at: Salt Lake County

My commission expires: 8/25/09

Loan No. 103649

TENANT'S SIGNATURE PAGE:

"TENANT"

VAN COTT, BAGLEY, CORNWALL & MCCARTHY,
a Utah professional corporation

By: 


Name: Stephen D. Swindle
Title: President

STATE OF UTAH

COUNTY OF SALT LAKE ss.

The foregoing instrument was acknowledged before me this 27th day of February, 2007, by Stephen D. Swindle, President of Van Cott, Bagley, Cornwall & McCarthy, a Utah professional corporation.




NOTARY PUBLIC
Residing at: _____

My commission expires:

DESCRIPTION OF PROPERTY

EXHIBIT A to Subordination Agreement; Acknowledgment of Lease Assignment, Estoppel, Attornment and Non-Disturbance Agreement dated as of February 23, 2007, executed by BOYER OGDEN MALL, L.C., a Utah limited liability company, as "Landlord", VAN COTT, BAGLEY, CORNWALL & MCCARTHY, a Utah professional corporation as "Tenant", and WELLS FARGO BANK, NATIONAL ASSOCIATION, as "Lender".

All that certain real property located in the County of Weber, State of Utah, described as follows:

PARCEL 1:

Lots 10A and 10B, OGDEN CITY ENTERTAINMENT SUBDIVISION - PHASE 2 (AMENDED), according to the official plat thereof, filed in Book 64 of Plats, at Page 78 of the Official Records of the Weber County Recorder.

AND

Lots 11A, 11B, and 11C, OGDEN CITY ENTERTAINMENT SUBDIVISION - PHASE 2 (AMENDED) LOT 11 2ND AMENDMENT, according to the official plat thereof, filed in Book 65 of Plats, at Page 56 of the Official Records of the Weber County Recorder.

PARCEL 2:

The non-exclusive rights for parking and for vehicular and pedestrian access, appurtenant to the interest of Boyer Ogden Mall, L.C., a Utah limited liability company, in PARCEL 1 above, pursuant to and created by that certain instrument entitled Parking License Agreement, the existence of which Parking License Agreement is disclosed by a Memorandum Of Parking License Agreement recorded March 1, 2007 as Entry No. 2245550 of the Official Records of the Weber County Recorder, in and to the following described property:

Lots 4 and 9, OGDEN CITY ENTERTAINMENT SUBDIVISION - PHASE 2 (AMENDED), according to the official plat thereof, filed in Book 64 of Plats, at Page 78 of the Official Records of the Weber County Recorder.

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SHOWN FOR REFERENCE ONLY:

- Tax Parcel No. 01-099-0001 ✓
- Tax Parcel No. 01-099-0005 ✓ 7
- Tax Parcel No. 01-099-0006 ✓
- Tax Parcel No. 01-099-0007 ✓
- Tax Parcel No. 01-099-0008 ✓ 2