



**SUBORDINATION, NONDISTURBANCE  
AND ATTORNMENT AGREEMENT**

RECORDING REQUESTED BY, AND  
WHEN RECORDED RETURN TO:

FedEx Kinko's Office and Print Services, Inc. - Corporate Office  
Legal Department  
Three Galleria Tower  
13155 Noel Road, Suite 1600  
Dallas, Texas 75240

E# 2333767 PG 1 OF 5  
ERNEST D ROWLEY, WEBER COUNTY RECORDER  
09-APR-08 3:29 PM FEE \$24.00 DEP SC  
REC FOR: LANDMARK TITLE COMPANY  
ELECTRONICALLY RECORDED

This **SUBORDINATION, NONDISTURBANCE, AND ATTORNMENT AGREEMENT** (this "Agreement") made and entered into this 7<sup>th</sup> day of January, 2007, by and among **FEDEX KINKO'S OFFICE AND PRINT SERVICES, INC.**, a Texas corporation ("Tenant"), whose address is Three Galleria Tower, 13155 Noel Road, Suite 1600, Dallas, Texas 75240, Wells Fargo Bank, National Association ("Lender"), whose address is 1512 Eureka Road, Suite 150, Roseville, CA 95651, and **BOYER OGDEN MALL, L.C.**, a Utah limited liability company ("Borrower"), whose address is 90 South 400 West, Suite 200, Salt Lake City, UT 84101.

**RECITALS:**

A. Lender has agreed to make or has made a mortgage loan ("Loan") to Borrower in the amount of (\$14,300,000), to be secured by a deed to secure debt (the "Security Deed") on the real property (the "Property") legally described in Exhibit A attached hereto; and

B. Tenant is the present lessee under a Lease Agreement (the "Lease") dated December 20, 2007, for the premises located at NWC of 24<sup>th</sup> Street and Washington, Ogden, Utah (the "Premises") which is situated on the Property; and

C. Lender requires that Tenant subordinate the Lease and its interest in the Premises in all respects to the security title of the Security Deed and that Tenant attorn to Lender, and acknowledge that the Lease is in full force and effect as of the date hereof; and

D. In return, Lender is agreeable to not disturbing Tenant's possession of the Premises covered by the Lease so long as Tenant is not in default under the Lease beyond any applicable notice and cure periods.

**NOW, THEREFORE**, the parties hereby agree as follows:

1. **Subordination.** So long as Tenant's occupancy is not disturbed as provided in Paragraph 2 below, the rights of Tenant in, to, and under the Lease, and the Premises are hereby subjected and subordinated, and shall remain in all respects and for all purposes subject and subordinate, to the security title of the Security Deed, and to any and all renewals, modifications, and extensions thereof, and any and all other instruments held by Lender as security for the Loan.

2. **Tenant Not to be Disturbed.** So long as Tenant is not in default (beyond any period given Tenant by the terms of the Lease to cure such default) in the payment of minimum rent or additional rent ("Rent") or in the performance of any of the terms, covenants, or conditions of the Lease on Tenant's part to be performed, (a) Tenant's possession of the Premises, or any extension or renewal rights therefor in the Lease, shall not be diminished or interfered with by Lender, and Tenant's occupancy of the Premises shall not be disturbed by Lender during the Term of the Lease or any such extensions or renewals thereof, and (b) Lender will not join Tenant as a party defendant in any action or proceeding foreclosing the Security Deed unless such joinder is necessary to foreclose the Security Deed and then only for such purpose and not for the purpose of terminating the Lease.

2-JE 44489

3. Tenant to Attorn to Lender. If Lender shall become the owner of the Property or the Premises, or the Property or the Premises shall be sold by reason of foreclosure or other proceedings brought to enforce the Security Deed, or the Property or the Premises shall be transferred by deed in lieu of foreclosure, the Lease shall continue in full force and effect as a direct lease between the then owner of the Premises and Tenant, and Tenant hereby attorns to Lender or any other such owner as its lessor, said attornment to be effective and self-operative without the execution of any further instruments; provided, however, that Lender or such other owner shall not be (a) liable for any default of any landlord under the Lease (including Borrower), except that Lender agrees to cure any default of landlord (including Borrower) that is continuing as of the date Lender forecloses the Property or the Premises within thirty (30) days from the date Tenant delivers written notice to Lender of such continuing default, unless such default is of such a nature to reasonably require more than thirty (30) days to cure and then Lender shall be permitted such additional time as is reasonably necessary to effect such cure, provided Lender diligently and continuously proceeds to cure such default; (b) subject to any offsets or defenses which have accrued prior to the date of foreclosure, unless Tenant shall have delivered to Lender written notice of the default which gave rise to such offset or defense and permitted Lender the same right to cure such default as permitted Borrower, as landlord, under the Lease; (c) bound by any Rent that Tenant may have paid under the Lease more than one month in advance; and (d) responsible for the return of any security deposit delivered to Borrower, as landlord, under the Lease and not subsequently received by Lender. Tenant shall be under no obligation to pay Rent to Lender or any such other owner until Tenant receives written notice from Lender or any such other owner that it has succeeded to Borrower's interest under the Lease. Such notice shall be binding upon Borrower, as well, and Borrower hereby agrees that Borrower shall release Tenant from any obligation to make payments to Borrower during such period that Tenant is making payments to Lender as a result of such notice.

4. Purchase Option. Any option or rights contained in the Lease, or otherwise, to acquire any or all of the Property or the Premises are hereby made subject and subordinate to the rights of Lender under the Security Deed and any acquisition of any or all of the Property or the Premises made by Tenant during the Term of the Security Deed shall be made subordinate and subject to the Security Deed.

5. Lender's Option to Cure Borrower's Default. Tenant agrees that Borrower shall not be in default under the Lease unless written notice specifying such default is given to Lender. Tenant agrees that Lender shall have the right to cure such default on behalf of Borrower within thirty (30) days after the receipt of such notice. Tenant further agrees not to invoke any of its remedies under the Lease until said thirty (30) days have elapsed, or during any period that Lender is proceeding to cure such default with due diligence to completion. Notwithstanding the foregoing, nothing herein shall preclude Tenant from maintaining or repairing the Premises.

6. Rental Payment. Until such time as Tenant is otherwise notified in writing by Lender, it shall make all rental payments under the Lease to Borrower as provided therein.

7. Successors and Assigns. This Agreement and each and every covenant, agreement, and other provision hereof shall be binding upon and shall inure to the benefit of the parties hereto, and their heirs, administrators, representatives, successors, and assigns.

8. Effectiveness of Agreement. This Agreement shall become effective upon the execution and delivery by and to each party hereto.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be executed as of the date first above.

Lender:

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: *Ben Bliss*  
Name: Ben Bliss  
Title: AVP

Tenant:

FEDEX KINKO'S OFFICE AND PRINT SERVICES, INC.  
a Texas corporation

*[Signature]*  
By: Norman E. McLeod  
Title: VP Real Estate and Development

Borrower:

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

By: THE BOYER COMPANY, L.C.,  
Its: Manager

*[Signature]*  
By: STANLEY B. OSTEN  
Its: Manager

Date: 12/20, 2006 7

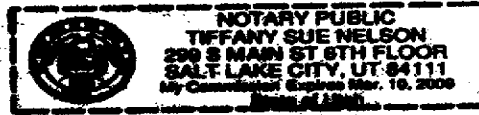
STATE OF ~~TEXAS~~ Utah  
COUNTY OF ~~DALLAS~~ Salt Lake }

SS:

On Jan. 09, before me, the undersigned, a Notary Public in and for said State, personally appeared Ben Bliss, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on this instrument, the entity upon behalf of which he acted, executed the instrument.

WITNESS my hand and official seal.

[Signature]  
Notary Public



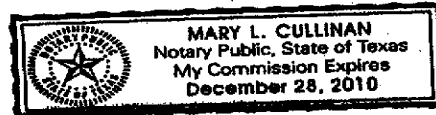
STATE OF Texas  
COUNTY OF Dallas }

SS:

On December 6, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared Norman E. McLeod of VP Real Estate and Development of FedEx Kwikos Office and Print Services Inc., personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on this instrument, the entity upon behalf of which he/she acted, executed the instrument.

WITNESS my hand and official seal.

[Signature: Mary L. Cullinan]  
Notary Public



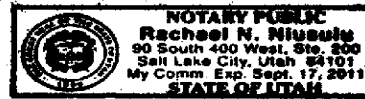
STATE OF Utah  
COUNTY OF Salt Lake }

SS:

On December 20, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared Steven B. Ostler of Manager of The Paper Company, L.C., personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on this instrument, the entity upon behalf of which he/she acted, executed the instrument.

WITNESS my hand and official seal.

[Signature: Rachael N. Nisus]  
Notary Public



**DESCRIPTION OF THE PROPERTY**

**EXHIBIT A** To Subordination, Nondisturbance And Attornment Agreement by and among FEDEX KINKO'S OFFICE AND PRINT SERVICES, INC., a Texas corporation ("Tenant"), and WELLS FARGO BANK, NATIONAL ASSOCIATION ("Lender"), and BOYER OGDEN MALL, L.C., a Utah limited liability company ("Borrower"), dated as of January 9, 2008.

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.

+++

**SHOWN FOR REFERENCE ONLY:**

- Tax Parcel No. 01-099-0001 ✓
- Tax Parcel No. 01-099-0005 ✓
- Tax Parcel No. 01-099-0006 ✓
- Tax Parcel No. 01-099-0007 ✓
- Tax Parcel No. 01-100-0001 ✓
- Tax Parcel No. 01-100-0002 ✓
- Tax Parcel No. 01-100-0003 ✓