



W2433884

E# 2433884 PG 1 OF 7
ERNEST D ROWLEY, WEBER COUNTY RECORDER
09-SEP-09 208 PM FEE \$31.00 DEP LF
REC FOR: LANDMARK TITLE COMPANY
ELECTRONICALLY RECORDED

When recorded, mail to:

Brian D. Cunningham, Esq.
SNELL & WILMER L.L.P.
Gateway Tower West
15 West South Temple, Suite 1200
Salt Lake City, Utah 84101

Tax Parcel ID No. ~~15-062-0053~~ and ~~15-062-0100~~
15-495-0001 through 15-495-0003
12-233-0001 through 12-233-0007

**SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement") is made and entered into as of this 27th day of August, 2009, by and among the United States of America acting by and through the **GENERAL SERVICES ADMINISTRATION** (the "Tenant"), having an address at GSA, Public Buildings Service, Mountain Plains Service Center, P.O. Box 25546, One Denver Federal Center, Building 41, Room 240, Denver, Colorado 80225-0546, **BOYER GSA WAREHOUSE, L.C.**, a Utah limited liability company ("Landlord"), whose address is 90 South 400 West, Suite 200, Salt Lake City, Utah 84101, and **KEYBANK NATIONAL ASSOCIATION**, a national banking association ("Lender"), having an address at KeyBank Tower, 36 South State Street, 25th Floor, Salt Lake City, Utah 84111 (the Tenant, the Landlord, and the Lender are sometimes also referred to in this Agreement collectively as "Parties" or individually as a "Party").

RECITALS:

A. Lender has made a loan or is about to make a construction loan to Landlord evidenced or to be evidenced by a promissory note made by Borrower to the order of Lender (the "Note") and secured or to be secured by a Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the "Deed of Trust") granted by Landlord to or for the benefit of Lender, which will be recorded in the official records of Weber County, Utah, encumbering, among other things, the property described on **Exhibit A** attached hereto and made a part hereof and all improvements thereon (the "Property").

B. Landlord and Tenant have entered into that certain U.S. Government Lease for Real Property No. LUT14357 (together with all documents and agreements described in Paragraph 7 of U.S. Government Lease for Real Property No. LUT14357, and all amendments, options, extensions, and renewals referred to herein as the "Lease"), pursuant to which Landlord has leased a portion of the Property to Tenant.

C. Tenant, Landlord, and Lender desire to enter into this Agreement in order to benefit from the promises that are set forth in this Agreement.

NOW THEREFORE, for and in consideration of the foregoing and of the mutual covenants and promises herein contained, the Parties agree as follows:

1. *Subordination.* In accordance with Paragraph 4 of the General Clauses of the Lease (48 C.F.R. 552.270-23), the Tenant acknowledges that the Lease is subordinate to the lien of Lender on the Real Property; the Lender likewise acknowledges that such subordination shall not operate to affect adversely any right of the Tenant under the Lease.

2. *Attornment.* If the Lender forecloses the Loan and acquires title to the Real Property, or acquires title to the Real Property by deed in lieu of foreclosure, or in any other manner succeeds to the interest of the Landlord under the Lease, or if the Lender shall take possession of the Leased Premises, the Tenant shall attorn to the Lender as its Landlord under all of the terms, covenants, and conditions of the Lease for the balance of the term thereof remaining and any extensions thereof which may be effected in accordance with any option therefore as set forth in the Lease, with the same force and effect as if the Lender were the Landlord under the Lease. Such attornment shall be effective and self-operative immediately upon the Lender's succeeding to the interest of the Landlord, whereupon the Tenant shall recognize the Lender, or any person claiming by through or under the Lender (immediate or remote), as the Landlord under the Lease without the execution of any further instruments on the part of any of the Parties hereto. The Lease shall at all times continue in full force and effect, and the respective rights and obligations of the Tenant and the Lender upon such attornment shall be governed by the Lease. However, the Tenant agrees to execute, acknowledge, and or deliver to Lender any certificate or other instrument that Lender reasonably requests to confirm such attornment. Likewise, the Lender agrees to execute a Novation Agreement in the form required by FAR Subpart 42.12.

3. *Nondisturbance.* So long as no default by the Tenant has occurred and is continuing, which default under the terms of the Lease would give the Landlord (or the Lender as successor in interest to the Lease) the right to terminate the Lease, Lender will not disturb the Tenant's quiet enjoyment or possession of the demised premises.

4. *Assignment of Rental Stream.* In accordance with Paragraph 26 of the General Clauses of the Lease (48 C.F.R. 52.232-23) the Landlord may assign its rights to be paid to the Lender. Following such assignment, to be made in accordance with the Assignment of Claims Act, as amended, 31 USC 3727, and following the execution of a Supplemental Lease Agreement changing the named Payee in the Lease, the Tenant shall pay all rent and all additional rent to the Lender. Such assignment shall not be deemed to (a) cause the Lender to succeed to or to assume any obligations or responsibilities as the landlord under the Lease, all of which shall continue to be performed and discharged solely by the Landlord, or (b) relieve Landlord of any obligations under the Lease. Tenant's compliance with the assignment of rent shall not be deemed to violate the Lease, and Landlord hereby agrees that Tenant shall be entitled to full credit under the Lease for any Rent paid to Lender under an assignment of claims

to the same extent as if such Rent were paid directly to the Landlord. Landlord shall look solely to the Lender with respect to any claims Landlord may have on account of an incorrect or wrongful assignment of claims payment.

5. *Advanced payments.* No prepayment of rent or additional rent due under the Lease of more than one month in advance shall be made by the Tenant to any party.

6. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their respective participants, successors, and assigns.

7. No provision of this Agreement may be modified, waived or terminated except in accordance with a written instrument executed by the Party against whom enforcement of such modification, waiver, or termination is sought.

8. This Agreement may be signed in counterparts, all of which taken together shall constitute one and the same instrument, and each of the Parties hereto may execute this Agreement by signing any such counterpart.

9. If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remaining terms and provisions hereof shall not be affected thereby, but each term and provision hereof shall be valid and enforceable to the fullest extent permitted by law. However, nothing contained in this Agreement shall be deemed or construed to constitute a waiver of any right of the United States of America as a sovereign.

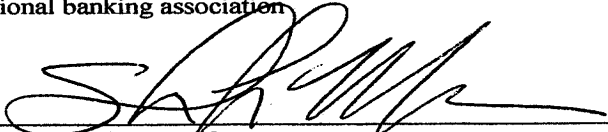
10. The laws of the United States of America and, to the extent that there is no applicable or controlling federal law, the laws of the State of Utah, shall govern the interpretation, construction, and validity of this Agreement, regardless of any principles of choice or conflicts of laws.

[Signature page follows]

IN WITNESS WHEREOF, each of the undersigned has caused its duly authorized representative to execute this Agreement as of the day and year first written above.

LENDER:

KEYBANK NATIONAL ASSOCIATION
a national banking association

By: 
Name: Sheri L. McCann
Title: Senior Closing Officer

TENANT:

UNITED STATES OF AMERICA, acting by and through the
General Services Administration


By: 
Name: Michael A. Gawell
Title: Contracting Officer

LANDLORD:

BOYER GSA WAREHOUSE, L.C.
a Utah limited liability company

BY: BOYER PROJECT COMPANY, L.C.
a Utah limited liability company, its manager

By: THE BOYER COMPANY, L.C.
a Utah limited liability company, its manager

By: 
Name: Debra M. Glenn
Title: Manager

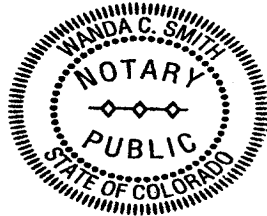
ACKNOWLEDGMENTS

STATE OF COLORADO)
: ss.
City and County of Denver)

The foregoing instrument was acknowledged before me this 2nd day of ~~August~~ ^{September} 2009, by Michael A. Gawell, a contracting officer, of United States of America, acting through the General Services Administration.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal]



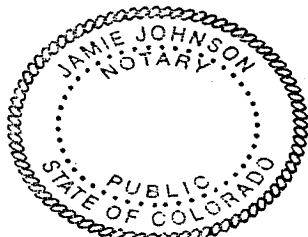
Wanda C. Smith
NOTARY PUBLIC

STATE OF COLORADO)
: ss.
City and County of Denver)

The foregoing instrument was acknowledged before me this 27 day of August, 2009, by **SHERI L. McCANN**, a Senior Closing Officer of **KEYBANK NATIONAL ASSOCIATION**, a national banking association, on behalf of such association.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal]



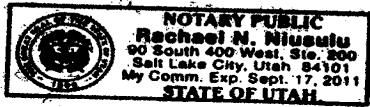
My Commission Expires April 4, 2011

Jamie Johnson
NOTARY PUBLIC

STATE OF UTAH)
 : ss.
County of SALT LAKE)

The foregoing instrument was acknowledged before me this 20th day of August, 2009, by Dennis M. Glenn the Manager of THE BOYER COMPANY, a Utah limited liability company, which is the manager of BOYER PROJECT COMPANY, L.C, a Utah limited liability company and the manager of BOYER GSA WAREHOUSE, L.C., a Utah limited liability company, for and on behalf of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Rachael Niussulu
NOTARY PUBLIC

[Seal]

EXHIBIT A
PROPERTY DESCRIPTION

The following real property is located in Weber County, State of Utah, to wit:

PARCEL 1:

Lots 1, 2, and 3, **BOYER TWELFTH STREET SUBDIVISION**, according to the official plat thereof, filed July 30, 2009 as Entry No. 2427157, in Book 70 of Plats, at Page 28 in the office of the Weber County Recorder, Weber County, Utah.

PARCEL 2:

The nonexclusive easement, appurtenant to PARCEL 1 described above, for ingress and egress by vehicular and pedestrian traffic upon, over and across the ingress and egress access lanes and drive aisles as they may be changed from time to time within the following described tract, as created by and provided for in that certain Cross Access And Easement Agreement recorded April 21, 2009 as Entry No. 2406042 in the office of the Weber County Recorder:

A part of the West half of Section 19, Township 6 North, Range 1 West, and the East half of Section 24, Township 6 North, Range 2 West, Salt Lake Base and Meridian, U.S. Survey: Beginning at a point on the South right-of-way line of 12th Street, said point being 1057.75 feet North from the Weber County brass cap monument of the West Quarter corner of said Section 19 (Basis of Bearings established using a line bearing South 65°43'26" East between the existing monument and the tower on Mount Ogden Peak) as established in November of 1995, previously monumented at a location South 6°51'27" West 57.82 feet; and running thence South 88°44'13" East 404.62 feet to a line as called for in Boundary Line Agreement recorded September 9, 1989 as Entry No. 1089984, in Book 1568, at Page 1323 in the office of the Weber County Recorder; thence two (2) courses along an old existing fence as called for in said Agreement as follows: South 0°59'24" West 683.98 feet and South 0°36'17" West 478.01 feet to the Northerly right-of-way line of the Central Pacific Railroad Company; thence North 78°14'54" West 509.33 feet along said right-of-way to a point 111.00 feet West of said West Quarter corner of Section 19; thence North 1069.49 feet to the South right-of-way line of 12th Street; thence South 88°44'13" East 111.03 feet along said right-of-way to the point of beginning.