

SUBORDINATION, NONDISTURBANCE AND ATTORNMEN AGREEMENT

This **SUBORDINATION, NONDISTURBANCE, AND ATTORNMEN AGREEMENT** (this "Agreement") is entered into as of July 2, 2007 (the "Effective Date"), between, Bear Stearns Commercial Mortgage, Inc., a New York corporation together with its successors and assigns ("Lender") whose address is 383 Madison Ave. New York, NY 10179 and OfficeMax North America, Inc., whose address is 263 Shuman Blvd. Naperville, IL 60563 ("Tenant"), with reference to the following facts:

A. Acadia Merrillville Realty, L.P., whose address is 1311 Mamaroneck Avenue Suite 260, White Plains, NY 10605 (Landlord), owns the real property located in Merrillville, IN having such real property, including all buildings, improvements, structures and fixtures located thereon ("Leased Premises"), as more particularly described in Schedule A.

B. Lender has made a loan to Purchaser in the original principal amount of \$ 26,250,000.00 (the "Loan").

C. To secure the Loan, Purchaser has encumbered Landlord's Premises by entering into that certain Mortgage and Security Agreement dated July 2, 2007 in favor of Lender (as amended, increased, renewed, extended, spread, consolidated, severed, restated, or otherwise changed from time to time, the "Mortgage") recorded on 2007 086574, in Volume , Page , in the Official Records of the County of LAKE, State of INDIANA (the "Land Records").

D. Pursuant to a Lease dated as of August 2, 1993 (the "Lease"), Landlord demised to Tenant a portion of Landlord's Premises ("Tenant's Premises"). Tenant's Premises commonly known as OfficeMax #0218

E. A memorandum of the Lease is to be recorded in the Land Records prior to the recording of this Agreement.

F. Tenant and Lender desire to agree upon the relative priorities of their interests in Landlord's Premises and their rights and obligations if certain events occur.

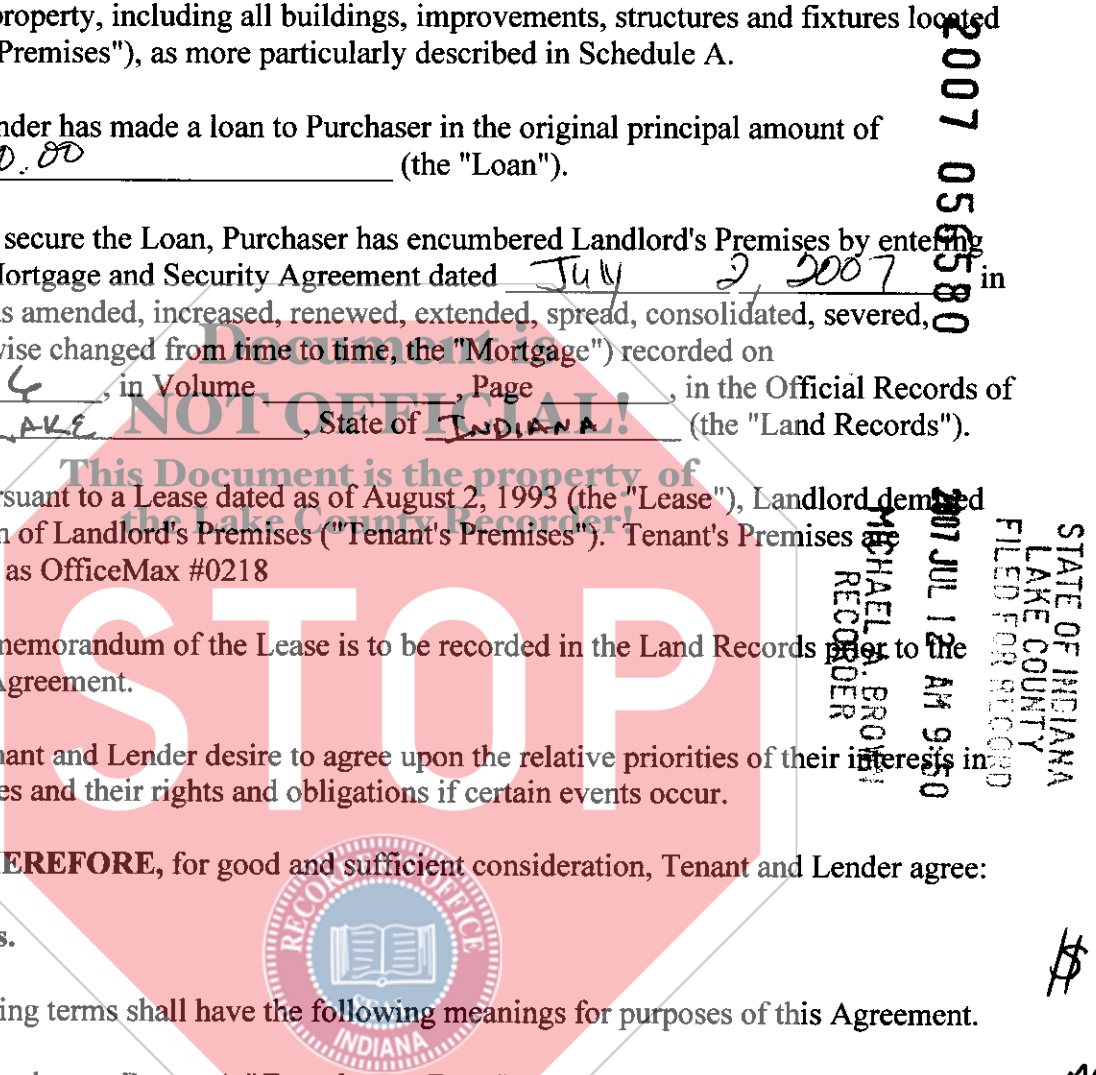
NOW, THEREFORE, for good and sufficient consideration, Tenant and Lender agree:

1. **Definitions.**

The following terms shall have the following meanings for purposes of this Agreement.

1.1 *Foreclosure Event.* A "Foreclosure Event" means: (a) foreclosure under the Mortgage; (b) any other exercise by Lender of rights and remedies (whether under the Mortgage or under applicable law, including bankruptcy law) as holder of the Loan and/or the Mortgage, as a result of which Successor Landlord becomes owner of Landlord's Premises; or (c) delivery by Landlord to Lender (or its designee or nominee) of a deed or other conveyance of Landlord's interest in Landlord's Premises in lieu of any of the foregoing.

**MERIDIAN TITLE CORPORATION
HAS MADE AN ACCOMODATION
RECORDING OF THIS DOCUMENT**



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MICHAEL A. BROOKS
RECORDER

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1.2 *Former Landlord.* A "Former Landlord" means Landlord and any other party that was landlord under the Lease at any time before the occurrence of any attornment under this Agreement.

1.3 *Offset Right.* An "Offset Right" means any right or alleged right of Tenant to any offset, defense (other than an affirmative defense or one arising from actual payment and performance, which payment and performance would bind a Successor Landlord pursuant to this Agreement), claim, counterclaim, reduction, deduction, or abatement against Tenant's payment of Rent or performance of Tenant's other obligations under the Lease, arising (whether under the Lease or other applicable law) from Landlord's breach or default under the Lease.

1.4 *Rent.* The "Rent" means any fixed rent, base rent or additional rent under the Lease.

1.5 *Successor Landlord.* A "Successor Landlord" means any party that becomes owner of Landlord's Premises as the result of a Foreclosure Event.

1.6 *Termination Right.* A "Termination Right" means any right of Tenant to cancel or terminate the Lease or to claim a partial or total eviction arising (whether under the Lease or under applicable law) from Landlord's breach or default under the Lease.

2. **Subordination.**

The Lease shall be, and shall at all times remain, subject and subordinate to the Mortgage, the lien imposed by the Mortgage, and all advances made under the Mortgage.

3. **Nondisturbance, Recognition and Attornment.**

3.1 *No Exercise of Mortgage Remedies Against Tenant.* So long as the Lease has not been terminated on account of Tenant's default that has continued beyond applicable cure periods (an "Event of Default"), Lender shall not name or join Tenant as a defendant in any exercise of Lender's rights and remedies arising upon a default under the Mortgage unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or prosecuting such rights and remedies. In the latter case, Lender may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease or otherwise adversely affect Tenant's rights under the Lease or this Agreement in such action. If Lender joins Tenant in such action, Landlord, by executing the Consent hereinafter set forth, agrees to indemnify, defend and hold Tenant harmless from and against any loss, cost or expense incurred or suffered by Tenant, including without limitation, legal fees, in being a party to or arising from such action.

3.2 *Nondisturbance and Attornment.* If the Lease has not been terminated on account of an Event of Default by Tenant, then, when Successor Landlord takes title to Landlord's Premises: (a) Successor Landlord shall not terminate or disturb Tenant's possession or quiet enjoyment of Tenant's Premises or rights under the Lease, except in accordance with the terms of the Lease and this Agreement; (b) Successor Landlord shall be bound to Tenant under all the

terms and conditions of the Lease (except as provided in this Agreement); (c) Tenant shall recognize and attorn to Successor Landlord as Tenant's direct landlord under the Lease as affected by this Agreement; and (d) the Lease shall continue in full force and effect as a direct lease, in accordance with its terms (except as provided in this Agreement), between Successor Landlord and Tenant.

3.3 *Further Documentation.* The provisions of this Article shall be effective and self-operative without any need for Successor Landlord or Tenant to execute any further documents. Tenant and Successor Landlord shall, however, confirm the provisions of this Article in writing upon request by either of them.

3.4 *Insurance and Condemnation Proceeds.* Lender agrees that notwithstanding anything to the contrary in the Mortgage, and provided the Lease has not been terminated on account of an Event of Default by Tenant, all insurance proceeds and condemnation awards relating to the Tenant's Premises or the Landlord's Premises shall be applicable in accordance with and as otherwise provided in the Lease.

3.5 *Consent to Lease.* Lender hereby consents to the Lease and all of the terms and conditions thereof.

4. **Protection of Successor Landlord.**

Notwithstanding anything to the contrary in this Lease or the Mortgage, Successor Landlord shall not be liable for or bound by any of the following matters:

4.1 *Claims Against Former Landlord.* Any Offset Right that Tenant may have against any Former Landlord relating to any event or occurrence before the date of attornment, including any claim for damages of any kind whatsoever as the result of any breach by Former Landlord that occurred before the date of attornment. (The foregoing shall not limit either (a) Tenant's right to exercise against Successor Landlord any Offset Right otherwise available to Tenant because of events occurring after the date of attornment or (b) Successor Landlord's obligation to perform the obligations of Landlord under the Lease from and after the date of attornment or to correct any conditions that existed as of the date of attornment and violate Successor Landlord's obligation as landlord under the Lease.)

4.2 *Prepayments.* Any payment of Rent that Tenant may have made to Former Landlord more than thirty days before the date such Rent was first due and payable under the Lease with respect to any period after the date of attornment other than, and only to the extent that, the Lease expressly required such a prepayment.

4.3 *Payment; Security Deposit.* Any obligation: (a) to pay Tenant any sum(s) that any Former Landlord owed to Tenant or (b) with respect to any security deposited with Former Landlord, unless such security was actually delivered to Lender.

4.4 *Modification, Amendment, or Waiver.* Any modification or amendment of the Lease, or any waiver of any terms of the Lease, made without Lender's written consent (which

consent shall not be unreasonably withheld) which materially and adversely affects Lender's rights, duties or obligations under this Agreement.

4.5 *Surrender, Etc.* Any consensual or negotiated surrender, cancellation, or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant, unless effected unilaterally by Tenant pursuant to the express terms of the Lease or which results because of a default by Landlord under the Lease.

5. **Exculpation of Successor Landlord.**

Notwithstanding anything to the contrary in this Agreement or the Lease, upon any attornment pursuant to this Agreement the Lease shall be deemed to have been automatically amended to provide that Successor Landlord's obligations and liability under the Lease shall never extend beyond Successor Landlord's (or its successors' or assigns') interest, if any, in Landlord's Premises from time to time, including insurance and condemnation proceeds, Successor Landlord's interest in the Lease, the rents and other income received or receivable from the ownership or operation of Landlord's Premises, and the proceeds from any sale or other disposition of Landlord's Premises by Successor Landlord (collectively, "*Successor Landlord's Interest*"). Tenant shall look exclusively to Successor Landlord's Interest (or that of its successors and assigns) for payment or discharge of any obligations of Successor Landlord under the Lease as affected by this Agreement. If Tenant obtains any money judgment against Successor Landlord with respect to the Lease or the relationship between Successor Landlord and Tenant, then Tenant shall look solely to Successor Landlord's Interest (or that of its successors and assigns) to collect such judgment. Tenant shall not collect or attempt to collect any such judgment out of any other assets of Successor Landlord.

6. **Lender's Right to Cure.**

6.1 *Notice to Lender.* Notwithstanding anything to the contrary in the Lease or this Agreement or the Lease, before exercising any Termination Right or Offset Right, **and provided Tenant received a fully executed counterpart of this Agreement containing Lender's correct notice address,** Tenant shall provide Lender with notice of the breach or default by Landlord giving rise to same (the "*Default Notice*") and, thereafter, the opportunity to cure such breach or default as provided for below.

6.2 *Lender's Cure Period.* After Lender receives a Default Notice, Lender shall have a period of thirty days under the Lease in which to cure the breach or default by Landlord. Lender shall have no obligation to cure (and shall have no liability or obligation for not curing) any breach or default by Landlord, except to the extent that Lender agrees or undertakes otherwise in writing. The foregoing shall not limit Tenant's right to exercise self help remedies to cure a default by Landlord under the Lease if permitted by the Lease or if necessary to prevent imminent danger of damage or injury to persons or property or if necessary to permit the full use and occupancy by Tenant of the Tenant's Premises.

6.3 *Extended Cure Period.* In addition, as to any breach or default by Landlord the cure of which requires possession and control of Landlord's Premises, provided only that Lender undertakes to Tenant by written notice to Tenant within thirty days after receipt of the Default Notice to exercise reasonable efforts to cure or cause to be cured by a receiver such breach or default within the period permitted by this paragraph, Lender's cure period shall continue for such additional time not exceeding thirty (30) days (the "*Extended Cure Period*") as Lender may reasonably require to either (a) obtain possession and control of Landlord's Premises and thereafter cure the breach or default with reasonable diligence and continuity or (b) obtain the appointment of a receiver and give such receiver a reasonable period of time in which to cure the default.

7. **Miscellaneous.**

7.1 *Notices.* All notices or other communications required or permitted under this Agreement shall be in writing and given by certified mail (return receipt requested) or by nationally recognized overnight courier service that regularly maintains records of items delivered. Notices shall be effective the next business day after being sent by overnight courier service, and three business days after being sent by certified mail (return receipt requested). Unless and until notice of a change of address is given under this Agreement, notices or other communications shall be given to Lender and Tenant, respectively, at the following address:

Lender: Bear Stearns Commercial Mortgage
383 Madison Ave.
New York, NY 10179
Attn: J. Christopher Hoeffel

Tenant: OfficeMax North America, Inc.
263 Shuman Blvd
Naperville, IL 60563
Attention: Vice President of Real Estate

with a copy to: OfficeMax North America, Inc.
263 Shuman Blvd
Naperville, IL 60563
Attention: General Counsel

7.2 *Successors and Assigns.* This Agreement shall bind and benefit the parties their successors and assigns, any Successor Landlord, and its successors and assigns. If Lender assigns the Mortgage, then upon delivery to Tenant of written notice thereof accompanied by the assignee's written assumption of all obligations under this Agreement, all liability of the assignor shall terminate for obligations thereafter accruing under this Agreement.

7.3 *Entire Agreement.* This Agreement constitutes the entire agreement between Lender and Tenant regarding the subordination of the Lease to the Mortgage and the rights and obligations of Tenant and Lender as to the subject matter of this Agreement.

7.4 *Interaction with Lease and with Mortgage.* If this Agreement conflicts with the Lease, then this Agreement shall govern as between the parties and any Successor Landlord, including upon any attornment pursuant to this Agreement. This Agreement supersedes, and constitutes full compliance with, any provisions in the Lease that provide for subordination of the Lease to, or for delivery of nondisturbance agreements by the holder of this Mortgage. Lender confirms that Lender has consented to Landlord's entering into the Lease.

7.5 *Lender's Rights and Obligations.* Except as expressly provided for in this Agreement, Lender shall have no obligation to Tenant with respect to the Lease.

7.6 *Interpretation; Governing Law.* The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the internal laws of the State of IN, including its principles of conflict of laws.

7.7 *Amendments.* This Agreement may be amended, discharged or terminated, or any of its provisions waived, only by a written instrument executed by the party to be charged.

7.8 *Execution.* This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

7.9 *Lender's Representation.* Lender represents that Lender has full authority to enter into this Agreement, that the execution hereof has been duly authorized by its Board of Directors and Lender's entry into this Agreement has been duly authorized by all necessary actions. Lender agrees to keep a copy of this Agreement in its permanent mortgage records with respect to the Loan.

7.10 This Subordination, Non-Disturbance and Attornment Agreement ("SNDA") and all agreements and representations made herein are issued in anticipation of, and in order to facilitate, the Proposed Landlord's proposed purchase of the Leased Premises, and therefore, this SNDA and all agreements and representations made herein are strictly contingent upon closing of the sale of the Leased Premises to the Proposed Landlord."

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IN WITNESS WHEREOF, this Agreement has been duly executed by Lender and Tenant as of the Effective Date.

WITNESS:

LENDER: Bear Stearns Commercial Mortgage, Inc., a New York Corporation

Alaina Ferraioli
Alaina Ferraioli
Print Name

By: Adam Ansaldi
Its: Adam Ansaldi
Managing Director/Principal

Print Name

WITNESS:

TENANT:

OfficeMax North America, Inc.

Sheree A. Tolbert
Sheree A. Tolbert
Print Name

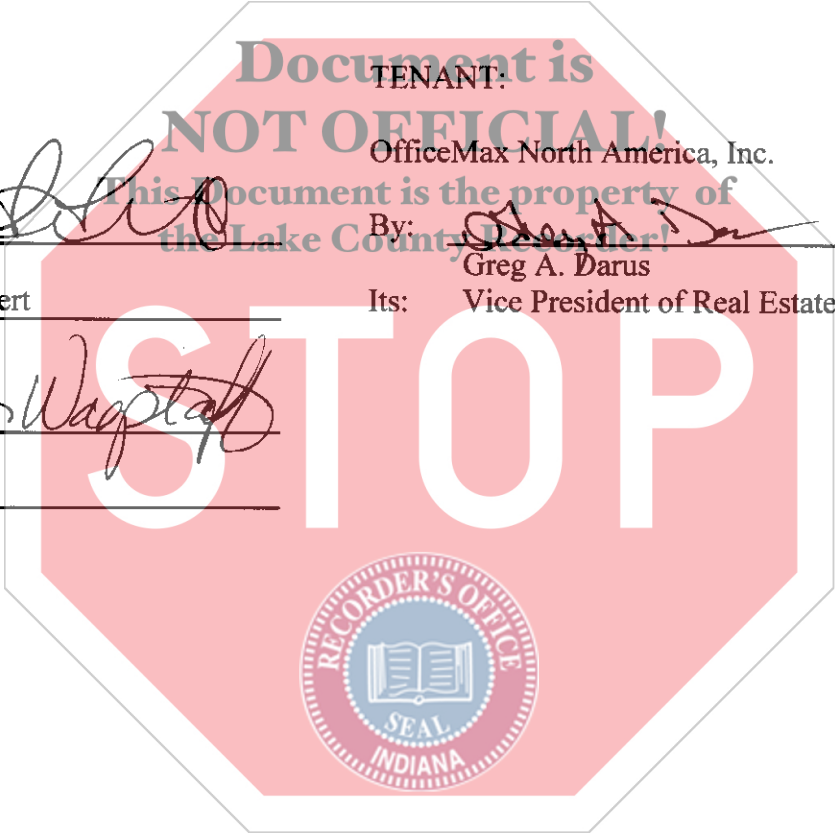
By: Greg A. Darus
Its: Greg A. Darus
Vice President of Real Estate

Print Name

Amy Wagstaff
Amy Wagstaff
Print Name

Attachments

- Acknowledgments
- Landlord's Consent
- Schedule A = Description of Landlord's Premises



ACKNOWLEDGMENTS

STATE OF New York)
COUNTY OF New York) SS

On the 2ND day of JULY, 2007, before me personally came Adam Ansaloni, to me known, who, being by me duly sworn, did depose and say that he/she is the Managing Director, of the corporation described in and which executed the foregoing instrument; and that he/she signed his/her name thereto by authority of the board of directors and said corporation and that the execution thereof is his/her free act and deed individually and as officer of said corporation and the free act and deed of said corporation.

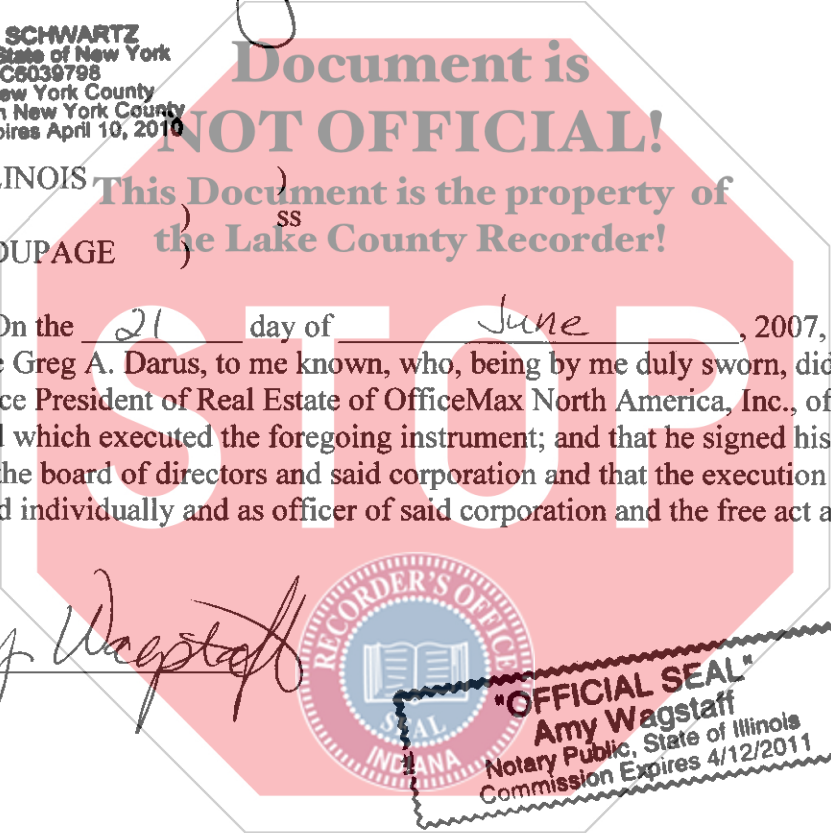
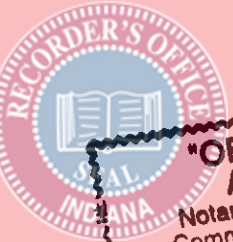
Nadine A. Schwartz
Notary Public

NADINE A. SCHWARTZ
Notary Public, State of New York
No. 01SC6039798
Qualified in New York County
Certificate filed in New York County
Commission Expires April 10, 2010

STATE OF ILLINOIS)
COUNTY OF DUPAGE) SS

On the 21 day of June, 2007, before me personally came Greg A. Darus, to me known, who, being by me duly sworn, did depose and say that he is the Vice President of Real Estate of OfficeMax North America, Inc., of the corporation described in and which executed the foregoing instrument; and that he signed his name thereto by authority of the board of directors and said corporation and that the execution thereof is his free act and deed individually and as officer of said corporation and the free act and deed of said corporation.

Amy Wagstaff
Notary Public



LANDLORD'S CONSENT

Landlord consents and agrees to the foregoing Agreement (including, without limitation, the provisions of Section 3.1), which was entered into at Landlord's request. The foregoing Agreement shall not alter, waive or diminish any of Landlord's obligations under the Mortgage or the Lease. The above Agreement discharges any obligations of Lender under the Mortgage and related loan documents to enter into a nondisturbance agreement with Tenant and the obligations of Tenant to enter into a subordination agreement with Lender.

WITNESSES:

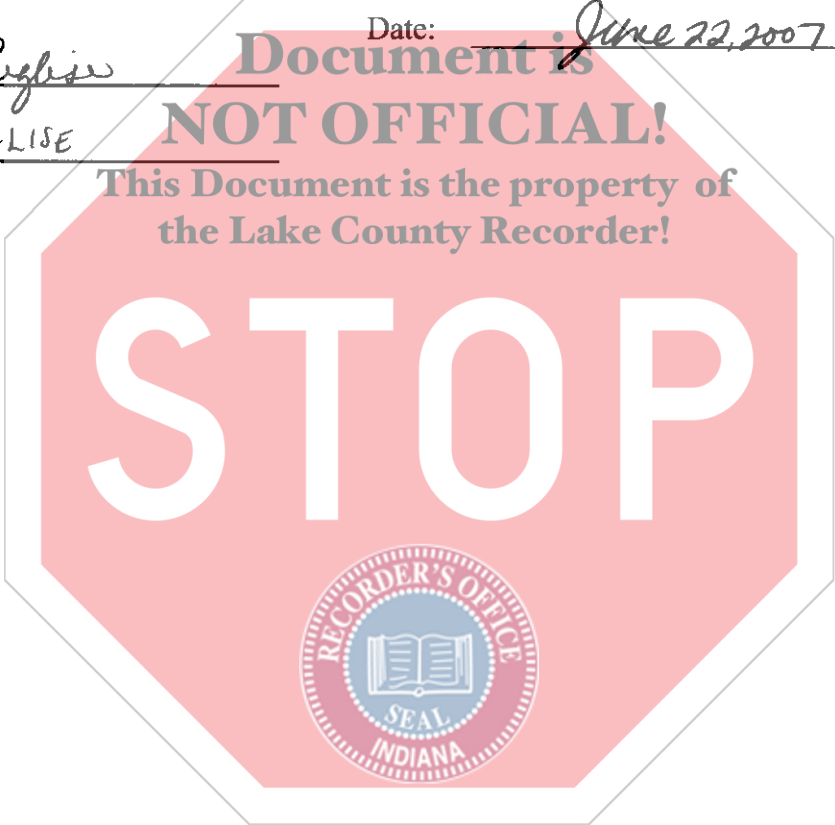
LANDLORD: Acadia Merrillville Realty, L.P.,
By: Acadia Merrillville Realty Inc., its
general partner

Debra Kubler-Jones
Debra Keibler-Jones
Print Name

By: 
Its: **Robert Masters**
Senior Vice President

Elisa Puglise
Elisa PUGLISE
Print Name

Date: June 22, 2007



SCHEDULE A

Description of Landlord's Premises

(To be attached by Landlord)



SCHEDULE A

The Property

PARCEL 1: Part of the North half of Section 23, Township 35 North, Range 8 West of the Second Principal Meridian, in Lake County, Indiana, lying Southwesterly of the 100 foot right of way of the Chesapeake and Ohio Railroad and North of the 200 foot right of way of U.S. Highway 30, more particularly described as follows: Commencing at the Northwest corner of said Section 23; thence South 02 degrees 42 minutes 00 seconds East along the West line of said Section 23, a distance of 1,258.66 feet to the point of beginning of this described parcel; thence North 87 degrees 18 minutes 00 seconds East, 721.33 feet, more or less, to the South line of said 100 foot wide Chesapeake and Ohio Railroad right of way; thence South 62 degrees 42 minutes 00 seconds East along said South right of way, 819.41 feet to a point 1,652.33 feet, South 62 degrees 42 minutes 00 seconds East, from the West line of said Section 23 and measured along the South line of said railroad right of way; thence South 27 degrees 18 minutes 00 seconds West, 354.33 feet; thence North 62 degrees 42 minutes 00 seconds West, 36.92 feet; thence South 27 degrees 18 minutes 00 seconds West, 614.54 feet, more or less, to the Northerly right of way line of U.S. Highway 30; thence Westerly along the Northerly line of said highway, 44.97 feet; thence North 01 degrees 35 minutes 00 seconds West, 43.06 feet; thence North 88 degrees 25 minutes 00 seconds East, 17.0 feet; thence North 01 degrees 35 minutes 00 seconds West, 150 feet; thence South 88 degrees 25 minutes 00 seconds West, 326.65 feet; thence South 01 degrees 35 minutes 00 seconds East, 193.56 feet to the Northerly right of way of U.S. Highway 30; thence Westerly, along the Northerly line of said highway, 210 feet to the East line of the American Oil property described in deed recorded on April 12, 1965, in Deed Record 1288, page 199; thence North 02 degrees 42 minutes 00 seconds West, 191.812 feet along said East line; thence South 87 degrees 18 minutes 00 seconds West, 350 feet to a point on the West line of said Section 23, that is 2,387.90 feet South of the Northwest corner of said Section 23; thence North 02 degrees 42 minutes 00 seconds West, 1,029.24 feet to the point of beginning, EXCEPTING THEREFROM Warranty Deed recorded December 14, 1994, as Document No. 94083963, in the Office of the Recorder of Lake County, Indiana, to the State of Indiana. EXCEPTING FROM PARCEL 1 THE FOLLOWING: A part of the North ½ of Section 23, Township 35 North, Range B West, Lake County, Indiana, described as follows: Commencing at the Northwest corner of said section; thence South 00 degrees 41 minutes 26 seconds East, 1,258.64 feet (1,258.66 feet by Instrument No. 94013477) along the West line of said Section to the Northwest corner of the Grantor's land; thence North 89 degrees 18 minutes 34 seconds East, 40.00 feet along the North line of the Grantor's land to the East boundary of Mississippi Street and the point of beginning of this description; thence continuing North 89 degrees 18 minutes 34 seconds East, 15.00 feet along said North line; thence South 00 degrees 41 minutes 26 seconds East, 501.05 feet; thence South 89 degrees 18 minutes 34 seconds West, 5.00 feet; thence South 00 degrees 41 minutes 26 seconds East, 210.12 feet to the Eastern Boundary of said Mississippi Street; thence North 10 degrees 09 minutes 11 seconds West, 60.83 feet along the boundary of said Mississippi Street; thence North 00 degrees 41 minutes 26 seconds West, 651.17 feet along said boundary to the point of beginning.

PARCEL 2: Non-exclusive right to use for ingress and egress the existing access along and adjacent to the Southeast corner of Parcel 1 above, to and from U.S. Highway 30, as created in the Declaration of Easements, Covenants and Conditions recorded January 30, 1979, as Document No. 513561, upon the terms and provisions therein provided and the amendments and agreements thereto.