



200501250134

Skagit County Auditor

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AFTER RECORDING MAIL TO:

Name Greenberg, Traurig, LLP
Address 2450 Colorado Ave., Ste. 400E
City/State Santa Monica, CA. 90404
Attn: Angela Crowder

Document Title(s): (or transactions contained therein)

1. Subordination Agreement
- 2.
- 3.
- 4.

Reference Number(s) of Documents assigned or released:

☐ Additional numbers on page _____ of document

Grantor(s): (Last name first, then first name and initials)

1. FedEX Ground Package
- 2.
- 3.
- 4.
5. ☐ Additional names on page _____ of document

Grantee(s): (Last name first, then first name and initials)

1. Bear Stearns Commercial Mortgage, Inc.
- 2.
- 3.
- 4.
5. ☐ Additional names on page _____ of document

Abbreviated Legal Description as follows: (i.e. lot/block/plat or section/township/range/quarter/quarter)

Section 34, Township 35, Range 3; Ptn. E 1/2 - SE 1/4

☐ Complete legal description is on page _____ of document

Assessor's Property Tax Parcel / Account Number(s):

P121434 & P121435

**First American Title
Insurance Company****FIRST AMERICAN TITLE CO.**82623*(this space for title company use only)*

NOTE: The auditor/recorder will rely on the information on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement") is made as of the 30th day of December, 2004 by and between BEAR STEARNS COMMERCIAL MORTGAGE, INC., having an address at 383 Madison Ave, New York NY 10179 ("Lender") and FEDEX GROUND PACKAGE SYSTEM, INC., having an address at 11784 Bay Ridge Road, Burlington, Washington ("Tenant").

RECITALS:

- A. Tenant is the holder of a leasehold estate in a portion of the property known as FedEx Ground facility, located at 11784 Bay Ridge Road, Burlington, Washington, as more particularly described on Schedule A (the "Property") under and pursuant to the provisions of a certain lease dated March 31, 2004 between 6th and Vermont Investment Company, LLC as landlord ("Landlord") and Tenant or its predecessor in interest, as tenant (as amended through the date hereof, the "Lease");
- B. The Property is or is to be encumbered by one or more mortgages, deeds or trust, deeds to secure debt or similar security agreements (collectively, the "Security Instrument") from Landlord, or its successor in interest, in favor of Lender; and
- C. Tenant has agreed to subordinate the Lease to the Security Instrument and to the lien thereof and Lender has agreed to grant non-disturbance to Tenant under the Lease on the terms and conditions hereinafter set forth.

AGREEMENT:

NOW THEREFORE, the parties hereto mutually agree as follows:

- 1. Subordination. The Lease shall be subject and subordinate in all respects to the lien and terms of the Security Instrument, to any and all advances to be made thereunder and to all renewals, modifications, consolidations, replacements and extensions thereof.
- 2. Nondisturbance. So long as Tenant is not in default (beyond applicable notice and cure periods) of any of its obligations and covenants pursuant to the Lease, Lender agrees for itself and its successors in interest and for any other person acquiring title to the Property through a foreclosure (an "Acquiring Party"), that Tenant's possession of the premises as described in the Lease will not be disturbed during the term of the Lease, as said term may be extended pursuant to the terms of the Lease or as said terms may be expanded as specified in the Lease or as said terms may be



expanded by Amendment, by reason of foreclosure. For purposes of this agreement, a "foreclosure" shall include (but not be limited to) a sheriff's or trustee's sale under the power of sale contained in the Security Instrument, the termination of any superior lease of the Property and any other transfer of the Landlord's interest in the Property under peril of foreclosure, including, without limitation to the generality of the foregoing, an assignment or sale in lieu of foreclosure.

3. Attornment. Tenant agrees to attorn to, accept and recognize any Acquiring Party as the landlord under the Lease pursuant to the provisions expressly set forth therein for the then remaining balance of the term of the Lease, and any extensions thereof as made pursuant to the Lease. The foregoing provision shall be self-operative and shall not require the execution of any further instrument or agreement by Tenant as a condition to its effectiveness. Tenant agrees, however, to execute and deliver, at any time and from time to time, upon the request of the Lender or any Acquiring Party any reasonable instrument which may be necessary or appropriate to evidence such attornment.
4. No Liability. Notwithstanding anything to the contrary contained herein or in the Lease, it is specifically understood and agreed that neither the Lender, any receiver nor any Acquiring Party shall be:
 - (a) liable for any act, omission, negligence or default of any prior landlord (other than to cure defaults of a continuing nature with any respect to the maintenance or repair of the demised premises or the Property); provided, however, that any Acquiring Party shall be liable and responsible for the performance of all covenants and obligations of landlord under the Lease accruing from and after the date that it takes title to the Property; or
 - (b) except as set forth in (a), above, liable for any failure of any prior landlord to construct any improvements; or
 - (c) bound by any rent or additional rent which is payable on a monthly basis and which Tenant might have paid for more than one (1) month in advance to any prior landlord; or
 - (d) be liable to Tenant hereunder or under the terms of the Lease beyond its interest in the Property; or
 - (e) liable or responsible for or with respect to the retention, application and/or return to the Tenant of any security deposit paid to Borrower or any prior Landlord, unless and until Lender or such Acquiring Party has actually received for its own account as landlord the full amount of such security deposit.



Notwithstanding the foregoing, Tenant reserves its rights to any and all claims or causes of action against such prior landlord for prior losses or damages and against the successor landlord for all losses or damages arising from and after the date that such successor landlord takes title to the Property.

5. Rent. Tenant has notice that the Lease and the rents and all other sums due thereunder have been assigned to Lender as security for the loan secured by the Security Instrument. In the event Lender notifies Tenant in writing of the occurrence of a default under the Security Instrument and demands that Tenant pay its rents and all other sums due or to become due under the Lease directly to Lender or as otherwise authorized in writing by Lender, Landlord hereby irrevocably authorizes Tenant to make the foregoing payments to Lender upon such notice and demand.
6. Lender to Receive Notices. Tenant shall notify Lender of any default by Landlord under the Lease which would entitle Tenant to cancel the Lease, and agrees that, notwithstanding any provisions of the Lease to the contrary, no notice of cancellation thereof shall be effective unless Tenant shall have provided Lender notice of default giving rise to such cancellation and Lender shall have failed within sixty (60) days after receipt of such notice to cure such default, or if such default cannot be cured within sixty (60) days, Lender shall have failed within sixty (60) days after Tenant provided such notice to commence and thereafter diligently pursue any action necessary to cure such default.
7. Notices. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person with receipt acknowledged by the recipient thereof, (ii) one (1) Business Day (hereinafter defined) after having been deposited for overnight delivery with any reputable overnight courier service, preferably FedEx, or (iii) three (3) 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, return receipt requested, addressed to the receiving party at its address set forth above, and:

If to the Tenant, to
the attention of:

Attention: Real Estate Department
FEDEX GROUND PACKAGE SYSTEM, INC.
1000 FedEx Drive
Moon Township, Pennsylvania 15108
FAX #: (412) 859-2655

and

Supervisor, General Accounting



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FEDEX GROUND PACKAGE SYSTEM, INC.

1000 FedEx Drive
Moon Township, Pennsylvania 15108
FAX #: (412) 269-9527

if to the Lender:
to the attention of: Bear Stearns Commercial Mortgage, Inc.
its successors and/or assigns
383 Madison Avenue
New York, NY 10179
Attn: J. Christopher Hoeffel

or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Paragraph 7, the term "Business Day" shall mean any day other than Saturday, Sunday, or any other day on which banks are required or authorized to close in New York, New York.

Either party by written notice to the other may designate additional or different addresses for subsequent notices or communications.

8. Successors. The obligations and rights of the parties pursuant to this Agreement shall bind and inure to the benefit of the successors, assigns, heirs and legal representatives of the respective parties. In addition, Tenant acknowledges that all references herein to Landlord shall mean the owner of the landlord's interest in the Lease, even if said owner shall be different than the Landlord named in the Recitals.
9. Duplicate Originals; Counterparts. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.



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IN WITNESS WHEREOF, Lender and Tenant have duly executed this Agreement as of the date first above written.

LENDER:

**BEAR STEARNS COMMERCIAL MORTGAGE
INC., a ~~Delaware~~ corporation**

New York

BY: *Michael A. Forastiere*

Name: MICHAEL A. FORASTIERE
Managing Director

Title: _____

Tenant:

FedEx Ground Package System, Inc.

BY: *Will F. Connor* *ccs*

Name: William F. Connor

Title: Senior Manager, Real Estate



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IN WITNESS WHEREOF, Lender and Tenant have duly executed this Agreement as of the date first above written.

LENDER:

**BEAR STEARNS COMMERCIAL MORTGAGE
INC., a Delaware corporation**

BY: _____

Name: _____

Title: _____

Tenant:

FedEx Ground Package System, Inc.

BY: William F. Connor CCS

Name: William F. Connor

Title: Senior Manager, Real Estate



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