

When recorded, mail to:

P&P
Douglas G. McClure
Conlin, McKenney & Philbrick, P.C.
350 South Main Street, Suite 400
Ann Arbor, MI 48104-2131

COUNTER LM B.E.
VERIFY DP D.E.
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INSTRUMENT NUMBER
2007-24872

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Douglas G. McClure
REGISTER OF DEEDS

SPACE ABOVE THIS LINE FOR RECORDER'S USE

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

This Subordination, Non-Disturbance and Attornment Agreement (this "Agreement") is entered into as of December 18, 2006 (the "Effective Date"), between FIRST NATIONAL BANK OF OMAHA, a national banking association having an address at 1620 Dodge Street, Omaha, Nebraska 68102 ("Mortgagee"), and BORDERS, INC., a Colorado corporation, whose address is 100 Phoenix Drive, Ann Arbor, MI 48108 Attention: Vice President - Development ("Tenant"), with reference to the following facts:

A. Papillion Development, LLC, a Nebraska limited liability company, having an address at 6263 North Scottsdale Road, Suite 330, Scottsdale, Arizona 85250 ("Landlord"), owns the real property located at Shadow Lake Towne Center, Papillion, Nebraska (such real property, including all buildings, improvements, structures and fixtures located thereon, "Landlord's Premises"), as more particularly described in Schedule A attached hereto.

B. Mortgagee has made a loan to Landlord in the amount of \$87,900,000.00 (the "Loan").

C. To secure the Loan, Landlord has encumbered Landlord's Premises by entering into that certain Deed of Trust, Security Agreement and Assignment of Rents and Leases dated as of August 4, 2006, in favor of Mortgagee (as amended, increased, renewed, extended, spread, consolidated, severed, restated, or otherwise changed from time to time, the "Mortgage") recorded on August 4, 2006, as Instrument No. 2006-26797 with the Sarpy County, State of Nebraska Registrar of Deeds (the "Land Records").

D. Pursuant to a Lease dated as of December 18, 2006, (the "Lease"), Landlord demised to Tenant a portion of Landlord's Premises ("Tenant's Premises").

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

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F. Tenant and Mortgagee 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 valuable consideration, Tenant and Mortgagee agree:

1. *Definitions.*

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

1.1 *Construction-Related Obligation.* A "*Construction-Related Obligation*" means any obligation of Landlord under the Lease to make, pay for, or reimburse Tenant for any alterations, demolition, or other improvements or work at Landlord's Premises, including Tenant's Premises. "Construction-Related Obligations" (a) shall include any obligation of Landlord to pay to Tenant a construction or improvement allowance, but (b) shall not include: (i) reconstruction or repair following fire, casualty or condemnation; or (ii) day-to-day maintenance and repairs.

1.2 *Foreclosure Event.* A "*Foreclosure Event*" means: (a) foreclosure under the Mortgage; (b) any other exercise by Mortgagee 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 Mortgagee (or its designee or nominee) of a deed or other conveyance of Landlord's interest in Landlord's Premises in lieu of the foregoing.

1.3 *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.

1.4 *Offset Right.* An "*Offset Right*" means any right or alleged right of Tenant to any offset, defense (other than 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.

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

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

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1.7 *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 lien imposed by the Mortgage, and all advances made under the Mortgage.

3. *Non-disturbance, 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"), Mortgagee shall not name or join Tenant as a defendant in any exercise of Mortgagee's rights and remedies 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 (at no cost to Tenant). In the latter case, Mortgagee may join Tenant as 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.

3.2 *Non-disturbance 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 of Tenant's Premises 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 3 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 3 in writing upon request by either of them.

4. *Protection of Successor Landlord.*

Notwithstanding anything to the contrary in the Lease or 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

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that occurred before the date of attornment. (The foregoing shall not limit (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, (b) Tenant's right to claim any offset, claim or counterclaim resulting from an audit of Landlord's business records, or (c) Successor Landlord's obligation to correct any conditions that existed as of the date of attornment and violate Successor Landlord's obligations as Landlord under the Lease.)

4.2 *Prepayments.* Any payment of Rent that Tenant may have made to Former Landlord more than thirty (30) days before the date such Rent was first due and payable under the Lease with respect to any period after the date of attornment except if, and only to the extent that, the Lease expressly required such a prepayment (e.g., Lease required escrows on account of additional rent) or permitted such a prepayment (e.g., prepayment of amortization of a construction or improvement allowance).

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 Mortgagee. This paragraph is not intended to apply to Landlord's obligation to make any payment that constitutes a "Construction-Related Obligation."

4.4 *Modification, Amendment or Waiver.* Any modification or amendment of the Lease, or any waiver of any terms of the Lease, made following the date of this Agreement without Mortgagee's written consent.

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.

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, 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 or assigns) to collect such judgment. Tenant shall not collect or attempt to collect any such judgment out of any other assets of Successor Landlord.

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6. *Mortgagee's Right to Cure.*

6.1 *Notice to Mortgagee.* Notwithstanding anything to the contrary in this Agreement or the Lease, before exercising any Termination Right or Offset Right, Tenant shall provide Mortgagee 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 *Mortgagee's Cure Period.* After Mortgagee receives a Default Notice, Mortgagee shall have a period of thirty (30) days beyond the time available to Landlord under the Lease in which to cure the breach or default by Landlord. Mortgagee 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 Mortgagee agrees or undertakes otherwise in writing.

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 Mortgagee undertakes to Tenant by written notice within thirty (30) 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, Mortgagee's cure period shall continue for such additional time (the "Extended Cure Period") as Mortgagee 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. *Confirmation of Facts.*

Tenant represents to Mortgagee and to any Successor Landlord, in each case as of the Effective Date:

7.1 *Due Authorization.* Tenant has full authority to enter into this Agreement, which has been duly authorized by all necessary actions.

8. *Miscellaneous.*

8.1 *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 services, and five (5) business days after being sent by certified mail (return receipt requested). Each party's address is as follows, subject to change by notice under this paragraph:

E

If to Tenant: Borders, Inc.
 100 Phoenix Drive
 Ann Arbor, MI 48108
 Attention: Vice President Development

If to Lender: First National Bank of Omaha
 1620 Dodge Street
 Omaha, Nebraska 68102

8.2 *Successors and Assigns.* This Agreement shall bind and benefit the parties, their successors and assigns, any Successor Landlord, and its successors and assigns. If Mortgagee 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 accruing thereafter shall terminate.

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

8.4 *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 non-disturbance agreements by the holder of, the Mortgage. Mortgagee confirms that Mortgagee has consented to Landlord's entering into the Lease.

8.5 *Mortgagee's Rights and Obligations.* Except as expressly provided for in this Agreement, Mortgagee shall have no obligations to Tenant with respect to the Lease. If an attornment occurs pursuant to this Agreement, then all rights and obligations of Mortgagee under this Agreement shall terminate, without thereby affecting in any way the rights and obligations of Successor Landlord provided for in this Agreement.

8.6 *Interpretation; Governing Law.* The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the internal laws of the State in which Tenant's Premises are located.

8.7 *Amendments.* This Agreement may be amended, discharged, or terminated, or any of its provisions waived, only by a written instrument executed by all parties thereto.

8.8 *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.

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8.9 *Mortgagee's Representation.* Mortgagee represents that Mortgagee has full authority to enter into this Agreement, and Mortgagee's entry into this Agreement has been duly authorized by all necessary actions.

8.10 *Effectiveness.* Tenant's subordination hereunder and the terms of this Agreement shall become null and void, and of no further force or effect, unless and until Tenant receives in its possession, delivered in accordance with the Notices requirement of this Agreement, within thirty (30) days following the date of Tenant's execution hereto, either a fully-executed and dated original of this Agreement or a photocopy of the fully-executed and dated original Agreement reflecting recording references, following recordation among the land records of the recording authority in which the Landlord's Premises is located.

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

MORTGAGEE:

FIRST NATIONAL BANK OF OMAHA

By: Eric W. Musgjere
Name: Eric W. Musgjere
Its: V.P.

TENANT:

BORDERS, INC.

By: Edward W. Wilhelm
Name: Edward W. Wilhelm
Its: Sr. Vice President

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CONSENT OF LANDLORD

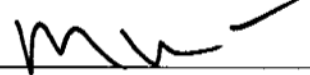
Landlord consents and agrees to the foregoing Agreement, which was entered into at Landlord's request. The foregoing Agreement shall not alter, waive or diminish any of Landlord's obligations under the Mortgage or the Lease. The above Agreement discharges any obligations of Mortgagee under the Mortgage and related loan documents to enter into a nondisturbance agreement with Tenant. Landlord is not a party to the above Agreement.

LANDLORD:

PAPILLION DEVELOPMENT, LLC
a Nebraska limited liability company

By: RED Papillion, LLC,
a Missouri limited liability company,
Its Manager

By: E & R Holdings, LLC, Its Manager

By: 
Michael L. Ebert, Manager

Date: December 18, 2006

M

ACKNOWLEDGMENTS

[Mortgagee Acknowledgment]

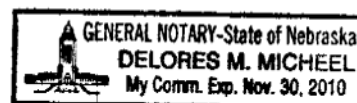
STATE OF NEBRASKA)

COUNTY OF Douglas) SS.

On January 8, 2007, before me, a Notary Public in and for said State, personally appeared Eric W. Musgjerd, the Vice President, of First National Bank of Omaha, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity on behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature DeLores M. Micheel (Seal)



My term expires: 11/30/2010

I

[Borders, Inc. Acknowledgment]

STATE OF MICHIGAN)
) SS.
COUNTY OF WASHTENAW)

On January 22nd, 2007, before me, a Notary Public in and for said State, personally appeared Edward W. Wilhelm, the Sr. VP of Borders, Inc., 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 signatures on the instrument the person, or the entity on behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature Linda D. McGeachy (Seal)

My term expires:

LINDA D. MCGEACHY
NOTARY PUBLIC LIVINGSTON CO., MI
MY COMMISSION EXPIRES Jun 29, 2007
Acting in Washtenaw



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[Landlord Acknowledgment]

STATE OF ARIZONA)

) SS.

COUNTY OF MARICOPA)

On December 18, 2006, before me, a Notary Public in and for said State, personally appeared Michael L. Ebert, the Manager of E&R Holdings, LLC, which is the Manager of RED Papillion, LLC, Manager of Papillion Development, LLC, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity on behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Amy McLaughry

(Seal)

My term expires:



200724872K

EXHIBIT A

Legal Description

Lots 2, 4, 7 through 12, inclusive, and 15 and Outlots A, B, D and E, Shadow Lake Towne Center, a Subdivision in Sarpy County, Nebraska.

Lots 1 and 2 and Outlots A, B and C, Shadow Lake Towne Center Replat 1, an Administrative Subdivision in Sarpy County, Nebraska.

Lots 1 and 2, Shadow Lake Towne Center Replat 2, an Administrative Subdivision in Sarpy County, Nebraska.

Together with easement rights to Lots 1, 3 and 14, Shadow Lake Towne Center, a subdivision in Sarpy County, pursuant to a certain Declaration of Reciprocal Easements, Covenants and Restrictions dated the 16th day of June, 2006, filed in the Sarpy County, Nebraska, Register of Deeds on June 20, 2006, as Instrument Number 2006-20802.