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Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
6/13/2016 13:54:13.28



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THIS PAGE INCLUDED FOR INDEXING

PAGE DOWN FOR BALANCE OF INSTRUMENT

RETURN TO: SBA Communications Corporation
8051 Congress Ave
Boca Raton, FL 33487

CHECK NUMBER S

1001623 and 1001830

Instrument prepared by
and when recorded return to:
Thomas Sharpe/Title Department
SBA Network Services, Inc.
8051 Congress Avenue
Boca Raton, Florida 33487-2797
(800) 487-7483 ext.7802

NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT ("Agreement"), dated this 26th day of October, 2015, by SBA TOWERS VI, LLC, a Delaware limited liability company, having its principal office and place of business located at 8051 Congress Avenue, Boca Raton, Florida 33487, and successors and/or assigns ("Tenant"), and AVG-CFM 204Q, LLC, a Delaware limited liability company, ("Landlord"), and Union Bank & Trust, whose address is 2720 South 177th Street, Omaha, Nebraska 68130, ("Lender").

PRELIMINARY STATEMENT:

- A. On November 2, 2006, ("Landlord") entered into that certain Deed of Trust in the amount of \$19,200,000.00, which was recorded November 3, 2006, as Document No. 2006126164 in the Register of Deeds, Douglas County, State of Nebraska, encumbering that certain real property (the "Property") as more particularly described on Exhibit "A" attached hereto described therein (such instrument and all amendments, modifications, renewals, substitutions, extensions, consolidations and replacements thereto and thereof, as applicable, are hereinafter collectively referred to as "Mortgage").
- B. On April 8th, 2017, Landlord and Tenant entered into that certain Option and Lease Agreement ("Lease"), whereby Landlord leased to Tenant a portion of the Property and granted easements for access and utilities.
- C. Tenant desires that Lender recognize Tenant's right under the Lease in the event of the foreclosure of Lender's lien or any other Transfer and Tenant is willing to agree to attorn to Lender or the purchaser at such foreclosure or other Transfer if Lender will recognize Tenant's right of possession under the Lease.

Therefore, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender hereby consents to the alterations, additions or improvements to the property, and Lender, Landlord and Tenant hereby agree as follows:

1. **Subordination.** Subject to the terms of this Agreement, the Lease is and shall be subject and subordinate, as set forth in this Agreement, to the lien of the Mortgage and to all renewals, modifications, consolidations, replacements and extensions of the Mortgage, to the full extent of amounts secured thereby and interest thereon.

2. **Non-Disturbance.** Provided that (a) Tenant complies with this Agreement; (b) Tenant is not in default under the terms of the Lease and no event has occurred which with the passage of time or the giving of notice or both, would constitute a default under the Lease; and (c) the Lease is in full force and effect, no default under the Mortgage and no proceeding to foreclose the same or other Transfer will disturb Tenant's possession under the Lease or any easement interest and the Lease will not be affected or cut off thereby, and notwithstanding any such foreclosure or other Transfer of the Property to Transferee, Transferee will recognize the Lease and will accept the Attornment of Tenant there under. "Transfer" shall mean (a) the institution of any foreclosure, trustee's sale or other like proceeding, (b) the appointment of a receiver for the Property, (c) the exercise of rights to collect rents under the Mortgage (or Deed of Trust) or an assignment of rents, (d) the recording by Lender or its successor or assignee of a deed in lieu of foreclosure for the Property, or (e) any transfer or abandonment of possession of the Property to Lender or its successor or assigns in connection with any proceedings affecting Landlord under the Bankruptcy Code, 11 U.S.C., 100 et seq. "Transferee" shall mean the Lender or any successor.
3. **Attornment.** Upon the Transfer of the Property to Transferee, whether through foreclosure, deed in lieu of foreclosure or otherwise, Tenant shall attorn to Transferee as the landlord under the Lease. Said attornment shall be effective and self-operative without the execution of any further instruments upon Transferee's succeeding to the interest of the landlord under the Lease. Tenant and Lender shall, however, confirm the provisions of this paragraph in writing upon request by either of them.
4. **Performance by Tenant.** Landlord hereby agrees that in the event that Tenant receives any notice from Lender to pay rent or other sums or render any other performance under the Lease to such Lender, Tenant may render performance in accordance with such notice without any duty of inquiry and despite any knowledge or notice to the contrary with the same force and effect as if such payment or performance were rendered to Landlord.
5. **Lender or Successor Landlord Liability.** Tenant shall have the same rights and remedies for a breach of the Lease against any successor landlord, including Lender in the event that Lender shall succeed to the interest of Landlord under the Lease, that Tenant might have had under the Lease against Landlord; provided, however, that Lender or any Successor Landlord shall not:
 - (a) be liable for any act or omission of any prior landlord (including the Landlord) under the Lease; or
 - (b) be subject to any offsets, abatements and/or defenses that Tenant might have against any prior landlord (including the Landlord); or
 - (c) be bound by any rent that Tenant might have paid for more than one month in advance or any other payment made in excess of the amounts provided in the Lease to any prior landlord (including the Landlord), except if such payments were required under the Lease; or
 - (d) be bound by any material amendment to the Lease affecting term or rent made without Lender's prior written consent; provided, however, that in the event Lender fails to disapprove in writing any proposed amendment within thirty (30) days after receipt thereof, then Lender shall be deemed to have consented to any such amendment.
7. **Notice of Lease Termination.** Before exercising any remedy to terminate the Lease due to a Landlord default under the Lease, Tenant shall give Lender notice of such default by Landlord. Lender shall have the same period of time provided Landlord under the Lease within which to

cure such default. The Lender's cure period shall commence to run upon receipt of Tenant's notice, and may run simultaneously with the Landlord's cure period.

7. **Further Assurances.** Tenant shall upon request by Lender, or any other Transferee, execute a written agreement in a form acceptable to Tenant, where under Tenant does attorn to Lender or any such subsequent Transferee and shall affirm Tenant's obligations under the Lease and agree to pay all rentals and charges then due or to become due as they become due to the Lender or such subsequent Transferee.
8. **Indemnification.** The Borrower and Tenant jointly and severally indemnify the Lender, its officers, shareholders, directors, employees, and attorneys from and against any loss, claim or expense (including attorneys' fees) caused by any act, action or omission of any party hereto relating to the Loan or to this Agreement or to the sale of the Loan or the transfer and assignment or the Mortgage. The Borrower and Tenant acknowledges and agrees that the Lender may hire and retain counsel of its own choosing in connection with any indemnified claim, and that the Borrower will be jointly and severally liable for reimbursement of the costs and expenses of such counsel.
9. **Notices.** From and after the date hereof, Lender shall send to Tenant a copy of any notice or statement of default by Landlord under the Mortgage (or Deed of Trust). Any notices given pursuant to the terms of this Agreement shall be deemed effectively made if sent by first class mail to the following addresses:

Lender:

Attn: Samantha Mosser, Regional President
Union Bank & Trust
2720 South 177th Street
Omaha, Nebraska 68130

Cc: Christine Higgins Wilcox, In-House Counsel
Union Bank & Trust
4243 Pioneer Woods Dr.
Lincoln, Nebraska 68506

Tenant:

Attn: Alyssa Houlihan
SBA Towers, V. LLC
8051 Congress Avenue
Boca Raton, FL 33487
Phone: (800) 487-7483

Landlord:

Attn: Terrance L. Fangman, Jr., CFM Realty Advisors
AVG-CFM 204Q, LLC
1823 Harney Street, Suite 301
Omaha, NE 68102

6. **Miscellaneous**

- (a) This Agreement shall inure to the benefit of the parties hereto, their successors and/or assigns; provided, however, that in the event of the assignment or transfer of the interest of Transferee, all

obligations and liabilities of Transferee under this Agreement shall terminate, and thereupon all such obligations and liabilities shall be the responsibility of the party to whom Transferee's interest is assigned or transferred. This Agreement serves as notice to Lender of the future option of any lease amendments, lease extensions, perpetual easements, fee simple purchase, lease area and easements within or of the entire property described in this Agreement. As consideration Tenant has the right to make a one-time lump payment and/or other additional revenue options instead of paying monthly rent to the Landlord without further notice to the Lender.

(b) This Agreement is the whole and only agreement between the parties hereto with regard to the subject matter hereof. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto.

(c) This Agreement shall be deemed to have been made in the state where the Property is located and the validity, interpretation and enforcement of this Agreement shall be determined in accordance with the laws of such state.

(d) In the event any legal action or proceeding is commenced to interpret or enforce the terms of, or obligations arising out of, this Agreement, or to recover damages for the breach thereof, the party prevailing in any such action or proceeding shall be entitled to recover attorneys' fees from the non-prevailing party.

(e) Any notices or communication required or permitted to be given or made hereunder shall be deemed to be so given or made when in writing and delivered in person or sent by United States registered or certified mail, postage prepaid, or by nationally recognized overnight courier service, directed to the parties at the addresses listed above or to such other address as such party may from time to time designate in writing to the other party. Notices or communication served by hand or by overnight courier shall be deemed served upon receipt.

7. **No Impairment of Mortgage Instrument.** Nothing contained in this Agreement shall in any way impair or affect the lien created by the Mortgage, except as specifically set forth herein.

IN WITNESS WHEREOF, this Agreement has been signed and delivered as of the date and year first above set forth.

LENDER:
Union Bank and Trust Company

By: Samantha Mosser

Print Name: Samantha Mosser

Its: Regional President

Date: 10/19/15

STATE OF NEBRASKA

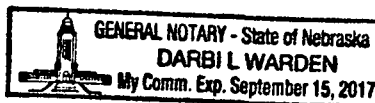
COUNTY OF Douglas

The foregoing instrument was acknowledged before me this 19 day of October, 2015 by Samantha Mosser, Regional President of **Union Bank & Trust** a Nebraska corporation, on behalf of the corporation.

Darbi L. Warden
Notary Public

Printed Name: Darbi L. Warden

My Commission Expires:
9-15-17



Witness:

[Handwritten Signature]

THOM SHARPE

Witness / Print Name

TENANT:

SBA TOWERS VI, LLC, a Delaware limited liability company

By:

Alyssa Houlihan, Vice President, Site Leasing

Date:

10-26-2015

Witness:

[Handwritten Signature]

Desiree Fleming

Witness / Print Name

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 26 day of October, 2015, by Alyssa Houlihan, as Vice President, Site Leasing on behalf of SBA Towers VI, LLC, a Delaware limited liability company. She is personally known to me.

(AFFIX NOTORIAL SEAL)

[Handwritten Signature]

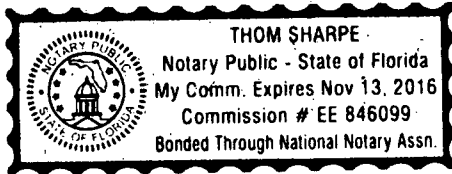
Sign Name

THOM SHARPE

Print Name

11-13-16

My commission Expires



Notary Registration No.

LANDLORD:

AVG-CFM 204Q, LLC,
a Delaware limited liability company

Witnesses:

By: *J. F. Carter*
Arnold Schlesinger, Manager
J. F. Carter

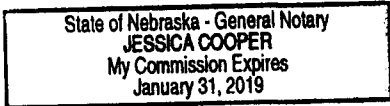
Nebraska
STATE OF ~~CALIFORNIA~~

Douglas
COUNTY OF ~~LOS ANGELES~~

Joseph F Carter

The foregoing instrument was acknowledged before me this 15 day of October, 2015, by ~~Arnold Schlesinger~~, as Manager, on behalf of AVG-CFM 204Q, LLC, a Delaware limited liability company. He is personally known to me.

(AFFIX NOTORIAL SEAL)



Jessica Cooper
Sign Name

Jessica Cooper
Print Name

Jan. 31, 2019
My commission Expires

Notary Registration No.

EXHIBIT "A"

Legal Description of the Mortgaged Property

All that certain real property located in the County of Douglas, State of Nebraska described as follows:

A tract of land located in the Northwest 1/4 of Section 12; and also the Northeast 1/4 of said Section 12; and also the Southeast 1/4 of said Section 12; all located in Township 14 North, Range 10 East of the 6th P.M., Douglas County, Nebraska, more particularly described as follows:

Beginning at the Southwest corner of said Southeast 1/4 of Section 12; thence N02°43'49"W (assumed bearing) along the West line of said Southeast 1/4 of Section 12, a distance of 2641.18 feet to the Northwest corner of said Southeast 1/4 of Section 12; thence S87°28'35"W along the South line of said Northwest 1/4 of Section 12, a distance of 1322.85 feet to the Southwest corner of the East 1/2 of said Northwest 1/4 of Section 12; thence N02°43'39"W along the west line of said East 1/2 of the Northwest 1/4 of Section 12, said line also being the East line of Lot 5, Dohse's Acres, a Subdivision located in said Northwest 1/4 of Section 12, and the Southerly extension thereof, a distance of 2593.53 feet to a point on the Southerly right of way line of "Q" Street, said point also being the Northeast corner of said Lot 5, Dohse's Acres; thence Easterly along said Southerly right of way line of "Q" Street on the following described courses; thence N81°31'35"E, a distance of 138.32 feet; thence N87°45'05"E, a distance of 1185.13 feet; thence N88°00'59"E, a distance of 1064.58 feet; thence N87°44'51"E, a distance of 600.10 feet; thence S02°15'40"E, a distance of 21.53 feet; thence S85°58'44"E, a distance of 359.77 feet; thence N87°28'59"E, a distance of 552.62 feet to the point of intersection of said Southerly right of way line of "Q" Street, and the Westerly right of way line of 204th Street; thence Southerly along said Westerly right of way line of 204th Street on the following described courses; thence S02°11'10"E, a distance of 780.54 feet; thence S04°29'01"W, a distance of 69.76 feet; thence S03°08'26"E, a distance of 361.79 feet; thence S03°32'38"W, a distance of 557.12 feet; thence S00°09'57"W, a distance of 246.41 feet; thence N87°05'16"E, a distance of 63.67 feet; thence S06°22'53"E, a distance of 516.37 feet; thence S04°32'29"W, a distance of 327.06 feet; thence S00°56'28"E, a distance of 1500.54 feet; thence S05°57'26"E, a distance of 824.89 feet to a point on the South line of said Southeast 1/4 of Section 12; thence S87°37'25"W along said South line of the Southeast 1/4 of Section 12, a distance of 2542.15 feet to the point of beginning,

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EXCEPTING THEREFROM THE FOLLOWING PARCELS:

A tract of land located in part of the East 1/2 of the Northwest 1/4 of Section 12, Township 14 North, Range 10 East of the 6th P.M., Douglas County, Nebraska, more particularly described as follows:

Site Name: Omaha 9
Site Number: NE16014-B

Beginning at the Southwest corner of said East 1/2 of the Northwest 1/4 of Section 12; thence N02°43'39"W (assumed bearing) along the West line of said East 1/2 of the Northwest 1/4 of Section 12, said line also being the East line of Lot 5, Dohse's Acres, a Subdivision located in the Northwest 1/4 of said Northwest 1/4 of Section 12, and the Southerly extension thereof, a distance of 2593.53 feet to a point on the South right of way line of "Q" Street; thence N81°31'35"E along said South right of way line of "Q" Street, a distance of 138.32 feet; thence N87°45'05"E along said South right of way line of "Q" Street, a distance of 1167.29 feet; thence S02°15'09"E, a distance of 20.80 feet; thence Southwesterly on a curve to the right with a radius of 957.50 feet, a distance of 173.30 feet, said curve having a long chord which bears S02°55'56"W, a distance of 173.06 feet; thence Southwesterly on a curve to the left with a radius of 923.19 feet, a distance of 49.99 feet, said curve having a long chord which bears S06°33'58"W a distance of 49.98 feet; thence S05°00'54"W a distance of 31.79 feet; thence Southwesterly on a curve to the right with a radius of 261.79 feet, a distance of 49.85 feet, said curve having a long chord which bears S10°28'13"W, a distance of 49.77 feet; thence Southwesterly on a curve to the right with a radius of 967.50 feet, a distance of 139.13 feet, said curve having a long chord which bears S20°02'42"W, a distance of 139.01 feet; thence S24°09'53"W, a distance of 657.98 feet; thence S27°12'41"W, a distance of 49.05 feet; thence Southwesterly on a curve to the right with a radius of 80.00 feet; a distance of 13.17 feet, said curve having a long chord which bears S31°55'34"W, a distance of 13.15 feet, thence Southwesterly on a curve to the left with a radius of 132.00 feet, a distance of 57.49 feet, said curve having a long chord which bears S24°09'53"W, a distance of 57.03 feet; thence Southwesterly on a curve to the right with a radius of 80.00 feet, a distance of 13.17 feet, said curve having a long chord which bears S16°24'12"W a distance of 13.15 feet; thence S21°07'05"W, a distance of 49.05 feet; thence S24°09'53"W, a distance of 401.51 feet; thence Southerly on a curve to the left with a radius of 1096.66 feet, a distance of 493.83 feet, said curve having a long chord which bears S11°15'52"W, a distance of 489.67 feet; thence S01°38'10"E, a distance of 401.13 feet; thence Southerly on a curve to the left with a radius of 632.50 feet, a distance of 168.05 feet, said curve having a long chord which bears S09°14'51"E, a distance of 167.56 feet to a point on the South line of said East 1/2 of the Northwest 1/4 of Section 12; thence S87°28'35"W along said South line of the East 1/2 of the Northwest 1/4 of Section 12, a distance of 541.99 feet to the point of beginning.

A tract of land located in the North 1/2 of Section 12, Township 14 North, Range 10 East of the 6th P.M., Douglas County, Nebraska, more particularly described as follows:

Commencing at the Northwest corner of the Northeast 1/4 of said Section 12; thence S02°43'50" (assumed bearing) along the West line of said Northeast 1/4 of Section 12, a distance of 226.54 feet; thence N87°16'10"E, a distance of 52.42 feet to the point of beginning; thence S36°20'23"E, a distance of 96.30 feet; thence S47°27'25"E, a distance of 369.59 feet; thence S29°10'18"E, a distance of 424.01 feet; thence S25°24'24"E, a distance of 297.13 feet; thence S32°45'59"E, a distance of 71.80 feet; thence Southeasterly on a curve to the right with a radius of 335.00 feet, a distance of 11.58 feet, said curve having a long chord which bears S79°00'15"E, a distance of 11.58 feet; thence Easterly on a curve to the left with a radius of 242.75 feet, a distance of 98.05 feet, said

Site Name: Omaha 9

Site Number: NE16014-B

curve having a long chord which bears S89°35'05"E, a distance of 97.38 feet; thence N78°50'39"E, a distance of 32.70 feet; thence N35°51'05"E, a distance of 7.31 feet; thence Southeasterly on a curve to the left with a radius of 535.55 feet, a distance of 432.74 feet, said curve having a long chord which bears S30°01'20"E, a distance of 421.07 feet; thence Southerly on a curve to the right with a radius of 265.00 feet, a distance of 281.70 feet, said curve having a long chord which bears S22°43'04"E, a distance of 268.62 feet; thence S07°44'06"W, a distance of 23.80 feet; thence S50°46'50"W, a distance of 7.31 feet; thence westerly on a curve to the left with a radius of 550.00 feet, a distance of 242.02 feet, said curve having a long chord which bears S80°57'33"W, a distance of 240.08 feet; thence S68°21'10"W, a distance of 66.80 feet; thence Southwesterly on a curve to the left with a radius of 632.50 feet, a distance of 455.06 feet, said curve having a long chord which bears S47°44'30"W, a distance of 445.31 feet; thence Southwesterly on a curve to the right with a radius of 80.00 feet, a distance of 62.69 feet, said curve having a long chord which bears S49°34'52"W, a distance of 61.10 feet; thence Southwesterly on a curve to the left with a radius of 97.50 feet, a distance of 39.43 feet, said curve having a long chord which bears S60°26'47"W, a distance of 39.16 feet; thence Southwesterly on a curve to the right with a radius of 45.00 feet, a distance of 61.22 feet, said curve having a long chord which bears S87°50'05"W, a distance of 56.61 feet; thence Northwesterly on a curve to the right with a radius of 175.00 feet, a distance of 101.86 feet, said curve having a long chord which bears N36°31'02"W, a distance of 100.43 feet; thence N19°50'34"W, a distance of 160.03 feet; thence S70°09'26"W, a distance of 50.00 feet; thence N19°50'34"W, a distance of 18.88 feet; thence S60°17'14"W, a distance of 181.03 feet; thence S47°54'55"W, a distance of 184.47 feet; thence S66°08'08"W, a distance of 129.89 feet; thence S84°21'22"W, a distance of 155.67 feet; thence N70°23'22"W, a distance of 151.54 feet; thence N84°24'59"W, a distance of 160.39 feet; thence N01°38'10"W, a distance of 157.83 feet; thence N01°38'10"W, a distance of 50.00 feet; thence S88°21'50"W, a distance of 29.70 feet; thence N45°52'20"W, a distance of 6.98 feet; thence Northwesterly on a curve to the right with a radius of 1031.66 feet, a distance of 434.56 feet, said curve having a long chord which bears N12°05'51"E, a distance of 431.36 feet; thence N24°09'53"E, a distance of 401.51 feet; thence N27°12'39"E, a distance of 49.05 feet; thence Northwesterly on a curve to the right with a radius of 80.00 feet, a distance of 13.17 feet, said curve having a long chord which bears N31°55'34"E, a distance of 13.15 feet; thence Northwesterly on a curve to the left with a radius of 132.00 feet, a distance of 57.49 feet, said curve having a long chord which bears N24°09'53"E, a distance of 57.03 feet; thence Northeasterly on a curve to the right with a radius of 80.00 feet, a distance of 13.17 feet, said curve having a long chord which bears N16°24'12"E, a distance of 13.15 feet; thence N21°07'07"E, a distance of 49.05 feet; thence N24°09'53"E, a distance of 657.98 feet; thence Northwesterly on a curve to the left with a radius of 1032.50 feet, a distance of 148.48 feet, said curve having a long chord which bears N20°02'42"E, a distance of 148.35 feet; thence Northwesterly on a curve to the right with a radius of 1231.33 feet, a distance of 49.99 feet, said curve having a long chord which bears N17°05'18"E, a distance of 49.48 feet; thence N18°15'05"E, a distance of 41.94 feet; thence Northwesterly on a curve to the left with a radius of 281.95 feet, a distance of 49.87 feet, said curve having a long chord which bears N13°11'04"E, a distance of 49.80 feet; thence Northwesterly on a curve to the left with a radius of 1042.50 feet, a distance of 22.68

Site Name: Omaha 9

Site Number: NE16014-B

feet, said curve having a long chord which bears N07°29'39"E, a distance of 22.68 feet to the point of beginning.

Site Name: Omaha 9
Site Number: NE16014-B