

FILED SARPY COUNTY NEBRASKA
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Lloyd J. Dowling

REGISTER OF DEEDS



COUNTER ah C.E. LM
VERIFY ah D.E. P
PROOF LM
FEES \$ 41.50
CHECK# 13109
CHG _____ CASH _____
REFUND _____ CREDIT _____
SHORT 50 NCR _____

NON-DISTURBANCE AGREEMENT

TIBURON GOLF CLUB, LLC, Mortgagor/Landlord

and

AMERICAN NATIONAL BANK, Mortgagee

and

FIDELITY TOWER PARTNERS, LLC, Tenant

Leased Premises: 10302 South 168th Street

Town: Omaha

County: Sarpy

Parcel No. 011167750

**PREPARED BY AND WHEN
RECORDED RETURN TO:**

Todd Bowman
Tarpon Towers, LLC
1001 Third Avenue West
Suite 420
Bradenton, FL 34205
(941) 757-5010

RIP
(C)

A

**PREPARED BY AND WHEN
RECORDED RETURN TO:**
Fidelity Tower Partners, LLC
1001 Third Avenue West, Suite 420
Bradenton, FL 34205

NON-DISTURBANCE AGREEMENT

THIS NON-DISTURBANCE AGREEMENT ("Agreement"), made and entered into as of 11 day of May, 2011, by and among Tiburon Golf Club, LLC having an address of 10302 S. 168th Street, Omaha, NE 68136 (hereinafter the "Mortgagor/Landlord"), American National Bank, with an address of 8990 W. Dodge Road, Omaha, NE 68114 (hereinafter the "Mortgagee") and Fidelity Tower Partners, LLC a Delaware limited liability company having an address of 1001 Third Ave. West, Suite 420, Bradenton, FL 34205 (hereinafter the "Tenant").

WITNESSETH:

WHEREAS, Mortgagee has provided to Mortgagor/Landlord loan(s) secured by deeds of trust and security agreements dated April 2, 2004 which was recorded on April 12, 2004 at O.R. as Instrument number 2004-12375 and modified by a Modification of Deed of Trust on August 29, 2007 which was recorded on September 19, 2007 at O.R. as Instrument number 2007-28856, and security agreements dated May 25, 2005 which was recorded on July 22, 2005 at O.R. as Instrument number 2005-25597 and modified by a Modification of Deed of Trust on August 29, 2007 which was recorded on October 22, 2007 at O.R. as Instrument number 2007-32013 and security agreements dated March 22, 2006 which was recorded on April 10, 2006 at O.R. as Instrument number 2006-11813 and modified by a Modification of Deed of Trust on August 29, 2007 which was recorded on September 19, 2007 at O.R. as Instrument number 2007-28857 by the Register of Deeds, Sarpy County, Nebraska (these mortgages hereinafter collectively the "Mortgage") to or for the benefit of Mortgagee secured by a fee simple interest in certain real property more fully described on the legal description which is attached hereto, made a part hereof, and labeled **Exhibit "A"** and all improvements thereon and appurtenances thereto (the "Property"); and

WHEREAS, Mortgagor/Landlord and Tenant are parties to that certain Land Lease Agreement entered into as of July 1, 2010, including any amendments or modifications thereto and evidenced by that certain Land Lease Agreement (hereinafter collectively the "Lease") for a lease to Tenant of a portion of the Property for use as a wireless communications facility including a tower and infrastructure

appurtenant thereto including easements for access and utilities (hereinafter the "Premises") which legal descriptions of the Premises are attached hereto, made a part hereof, and labeled as **Exhibit 'B'**.

NOW, THEREFORE, in consideration of the mutual promises and covenants of the parties hereto, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do mutually covenant and agree as follows:

1. Non-Disturbance. So long as Tenant is not in default (after the expiration of all periods afforded to Tenant during which Tenant has the right to cure any default), in the payment of rent, additional rent or other sums or charges now or hereafter payable under the Lease, or in the performance of any of the terms, covenants or conditions of the Lease, Tenant shall not, by reason of foreclosure of the Mortgage, acceptance of a deed in lieu of foreclosure, or the exercise of any remedy provided in the Mortgage, be disturbed in Tenant's use, occupancy and quiet enjoyment of the Premises during the term of the Lease or any extension thereof set forth in the Lease, and Tenant shall have the right to exercise all renewal terms set forth in the Lease in accordance with the terms of the Lease. Conditioned upon and subject to the foregoing, Mortgagor/Landlord and Tenant do hereby completely and unconditionally subordinate the Lease, all rights and options thereunder and all amendments thereof, to the lien of the Mortgage and all terms and provisions thereof.

2. Binding Effect. In the event of attornment, Mortgagee shall have the same remedies by entry, action, or otherwise, as the Mortgagor/Landlord would have had in the event of a default by Tenant in the payment of rent or in the performance of any term, condition or agreement contained in the Lease. Likewise, in the event that Mortgagee breaches any term, covenant, condition or agreement of the Lease, Tenant shall have the same remedies against Mortgagee. It is understood that Mortgagee shall not be:

(a) liable for any act or omission of any prior landlord (including Mortgagor/Landlord) except that Mortgagee shall be bound by any right of Tenant expressly set forth in the Lease to any offset, deduction or abatement against Tenant's payment of rent or other sums under the Lease arising from Mortgagor/Landlord's breach or default under the Lease, if Tenant provides written notice of said breach to Mortgagee at the time the breach occurs; or

(b) bound by any rent which Tenant might have paid to any prior landlord (including Mortgagor/Landlord) without Mortgagee's knowledge for more than thirty (30) days before the date such rent was first due and payable under the Lease except to the extent the Lease expressly requires such prepayment; or

(c) bound by any amendment or modification of the Lease made without its knowledge, except for amendments or modifications made in connection with the exercise of rights, options or elections expressly set forth in the Lease.

3. Governing Law. This Agreement shall be governed by, and construed in accordance with the laws of the state in which the Premises are located.

4. Amendment. This Agreement may not be changed, amended or modified in any manner other than by an agreement in writing specifically referring to this Agreement and executed by the parties hereto.

5. Counterparts. This Agreement may be executed in counterparts, each being deemed an original and all being deemed one and the same.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written

MORTGAGOR/LANDLORD:

Tiburon Golf Club, LLC
A limited liability company

By: [Signature]
Name: Robert W. Hill
Title: Manager
Date: 4-27-11

Witnesses:
[Signature]
Name: Sheryl A. Bick

[Signature]
Name: Ernie KMC

MORTGAGEE:

American National Bank

By: [Signature]
Name: Brian Andersen
Title: Vice President
Date: 4/27/11

Witnesses:
[Signature]
Name: Sheryl A. Bick

[Signature]
Name: Ernie KMC

TENANT:

Fidelity Tower Partners, LLC
a Delaware limited liability company

By: [Signature]
Name: ~~Neil Wiser~~ Brett Bussels
Title: ~~President and Manager~~ Authorized officer
Date: 5/11/11

Witnesses:
[Signature]
Name: Curtis Miller

[Signature]
Name: Revia Beracz

[NOTARY BLOCKS APPEAR ON NEXT PAGE]

D

NOTARY BLOCKS

MORTGAGOR/LANDLORD:

STATE OF NEBRASKA
COUNTY OF ~~SARPY~~ Douglas

On this, the 27th day of April, 2011, before me, the undersigned officer, personally appeared Robert W. Hill who acknowledged himself/herself to be the Manager of Tiburon Golf Club, LLC, a limited liability company, and that his/her name is subscribed to the foregoing document as such officer, and that he/she executed the foregoing document for the uses and purposes therein expressed.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Haleigh Taylor
Notary Public
My Commission Expires: 3/18/15

(Notary Seal)



MORTGAGEE:

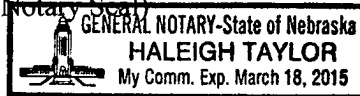
STATE OF Nebraska
COUNTY OF Douglas

On this, the 27th day of April, 2011, before me, the undersigned officer, personally appeared Brian Andersen who acknowledged himself/herself to be the Vice President of American National Bank, and that his/her name is subscribed to the foregoing document as such officer, and that he/she executed the foregoing document for the uses and purposes therein expressed.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Haleigh Taylor
Notary Public
My Commission Expires: 3/18/15

(Notary Seal)



[NOTARY BLOCKS CONTINUE ON NEXT PAGE]

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TENANT:

STATE OF Florida

COUNTY OF Manatee

On this, the 11 day of May, 2011, before me, the undersigned officer, personally appeared Beth Suggs who acknowledged himself to be the Authorized Officer of Fidelity Tower Partners, LLC, and that his name is subscribed to the foregoing document as such officer, and that he executed the foregoing document on behalf of such corporation for the uses and purposes therein expressed.

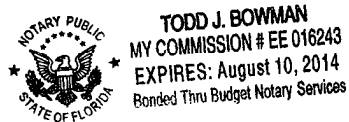
IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Notary Public

My Commission Expires: 8-10-11

(Notary Seal)



F

EXHIBIT A

PROPERTY

That part of Lots 400 and Lot C, Tiburon, a Subdivision in Sarpy County, Nebraska; to be determined by an accurate survey.

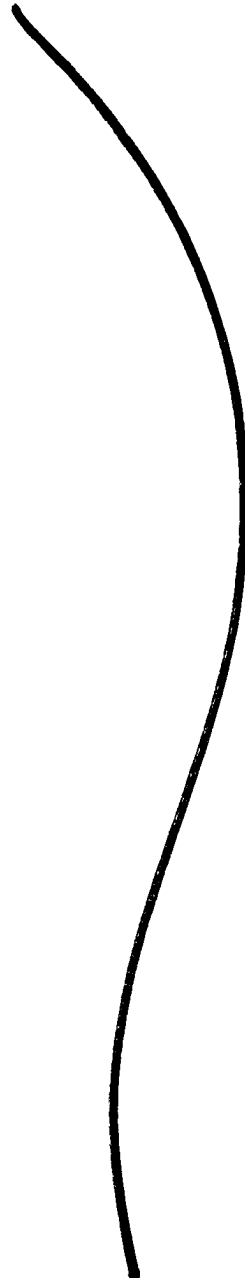


EXHIBIT B**PREMISES**

A 50 foot by 50 foot Lease Area and a 20 foot wide Access/Utility Easement, situated in the Northeast Quarter of Section 28, Township 14 North, Range 11 East, in Sarpy County, Nebraska, more particularly described as follows:

COMMENCING at the East Quarter Corner of said Section 28 (Fnd. Mag Nail); thence along the East line of said Northeast Quarter North $02^{\circ}44'30''$ West, a distance of 901.83 feet; thence leaving said East line South $87^{\circ}15'30''$ West, a distance of 825.00 feet to the POINT OF BEGINNING of said Lease Area; thence South $03^{\circ}27'06''$ West, a distance of 50.00 feet; thence North $86^{\circ}32'54''$ West, a distance of 50.00 feet; thence North $03^{\circ}27'06''$ West, a distance of 50.00 feet; thence South $86^{\circ}32'54''$ East, a distance of 50.00 feet to the POINT OF BEGINNING. Containing 2,500 square feet.

AND a 20 foot wide Access/Utility Easement, lying 10.00 feet on each side of the following described centerline:

COMMENCING at the East Quarter Corner of said Section 28 (Fnd. Mag Nail); thence along the East line of said Northeast Quarter North $02^{\circ}44'30''$ West, a distance of 1209.49 feet; thence leaving said East line South $87^{\circ}15'30''$ West, a distance of 35.00 feet to the West Right of Way line of S 168th Street and the POINT OF BEGINNING of said centerline; thence South $76^{\circ}24'14''$ West, a distance of 191.27 feet; thence South $57^{\circ}18'54''$ West, a distance of 298.45 feet; thence South $76^{\circ}55'41''$ West, a distance of 405.03 feet; thence South $03^{\circ}27'06''$ West, a distance of 78.75 feet to the POINT OF TERMINATION.