

Prepared by, after recording
Return to:
M. CATER
FIDELITY NATIONAL TITLE
7130 GLEN FOREST DRIVE #300
RICHMOND, VA 23226

12630002
10/04/2017 11:30 AM \$26.00
Book - 10605 Pg - 6296-6304
ADAM GARDINER
RECORDER, SALT LAKE COUNTY, UTAH
FIDELITY NATIONAL TITLE
7130 GLEN FOREST SR #300
RICHMOND VA 23226-9902
BY: CBA, DEPUTY - MA 9 P.

Grantor: West Jordan Gateway, LLC
Grantee: Landmark Infrastructure Holding Company LLC
Legal Description: Official legal description attached as Exhibit 1
Tax Serial No.: 27-02-302-006 and 27-02-302-003
State: Utah County: Salt Lake

NON-DISTURBANCE
AND ATTORNMENT AGREEMENT AND
PARTIAL RELEASE OF ASSIGNMENT OF LEASES AND RENTS

THIS AGREEMENT (this "Agreement") is made as of the 19th day of September, 2017, by and among University First Federal Credit Union, a corporation organized and existing under the laws of the State of Utah and the United States, whose address is 13347 S. Market Center Drive, Riverton, UT 84065 (hereinafter referred to as "Lender"), Landmark Infrastructure Holding Company LLC, a Delaware limited liability company (hereinafter referred to as "Landmark"), whose address is P.O. Box 3429, 2141 Rosecrans Avenue, Suite 2100, El Segundo, CA 90245, and West Jordan Gateway, LLC, a Utah limited liability company, whose address is 9067 South 1300 W., Suite 105, West Jordan, UT 84088 (hereinafter referred to as "Site Owner").

WITNESSETH:

WHEREAS, Lender has made a loan to Site Owner (such loan and any renewal, substitution, extension or replacement thereof being hereinafter collectively called the "Loan") in an amount up to One Million Three Hundred Thousand and No/100 Dollars (\$1,300,000.00), which is secured by, *inter alia*, that certain Trust Deed with Assignment of Rents to Secure Credit Agreement, by Site Owner, as trustor, in favor of Lender, as beneficiary, dated December 26, 2011, and recorded on December 28, 2011, as Entry Number 11304826, in Book 9977, at Pages 9851-9855 (such Trust Deed with Assignment of Rents to Secure Credit Agreement and any and all other security interests encumbering the Site Owner's Property, as hereinafter defined, securing the Loan and any renewal, substitution, amendment, extension or replacement thereof being hereinafter collectively referred to as the "Mortgage"), upon the tract of land described in **Exhibit "A"** hereto (the "Site Owner's Property"); and

WHEREAS, a portion of the Site Owner's Property (the "Communication Site") is subject to an Easement and Assignment of Lease by and between Site Owner and Landmark dated as of December 1, 2016, pursuant to which Site Owner granted to Landmark an easement for utilities, access and other purposes more fully described therein (the "Communication Easement"), and has assigned to Landmark all right, title and interest in and to the Leases set forth on Exhibit "B" hereto (the "Assigned Leases"); and

RECORDING ORDER 23236018
1 (2) 3 4 5 Ent 12630002 BK 10605 PG 6296

WHEREAS, the parties hereto desire to enter into this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt, adequacy and sufficiency of which is hereby acknowledged by the parties hereto, Lender, Landmark and Site Owner agree as follows:

1. Non-Disturbance. So long as the Communication Easement is not terminated, Landmark's use, possession or enjoyment of the Communication Site, including the collection of rents by Landmark, pursuant to the Assigned Leases, shall not be interfered with nor shall the easement granted by the Communication Easement be affected in any other manner, in any exercise of any power of sale in the Mortgage, or by foreclosure or any action or proceeding instituted under or in connection with the Mortgage, except that the person or entity acquiring the interest of the Site Owner under the Communication Easement as a result of any such action or proceeding, and the successors and assigns thereof (hereinafter referred to as the "Purchaser") shall not be (a) liable for any act or omission of any prior site owner under the Communication Easement; or (b) subject to any offsets or defenses which Landmark under the Communication Easement might have against the prior site owner under the Communication Easement; or (c) bound by any amendment or modification to the Communication Easement made without Lender's prior written consent. Lender and Site Owner specifically acknowledge that Landmark shall have the exclusive right to collect any and all rents due by tenant(s) under the Assigned Leases (each, a "Tenant") and, by execution of this instrument, all Assigned Leases are specifically released from the Mortgage, and any and all other security interests executed in connection with the aforesaid or otherwise securing the Loan.

2. Landmark Not to Be Joined in Foreclosure. So long as the Communication Easement is not terminated, Lender will not join Landmark as a party defendant in any action or proceeding foreclosing the Mortgage unless such joinder is necessary to foreclose the Mortgage and then only for such purpose and not for the purpose of terminating the Communication Easement, and in such event Lender shall reimburse Landmark for all reasonable expenses incurred by Landmark in connection therewith.

3. Attornment. In the event of the exercise of the power of sale in the Mortgage, or in the event of foreclosure of the Mortgage, or in event of a conveyance of the Site Owner's Property in lieu of foreclosure, Landmark agrees to attorn to and accept the Purchaser as the site owner for the balance then remaining of the term of the Communication Easement, subject to all terms and conditions of said Communication Easement and the terms of this Agreement. Said attornment shall be effective and self-operative without the execution of any further instruments upon the succession by Purchaser to the interest of Site Owner under the Communication Easement. The respective rights and obligations of Landmark and Lender upon such attornment, shall be and are the same as now set forth in the Communication Easement.

4. Tenant's Tower, Building and Equipment. Lender hereby acknowledges and agrees that the Mortgage does not apply to Tenant's Tower(s), Building(s) and Equipment and that removal of said Tower(s), Building(s) and Equipment is governed by the terms of the Communication Easement and the Assigned Lease.

5. As to Site Owner and Landmark. As between Site Owner and Landmark, Site Owner and Landmark covenant and agree that nothing contained herein nor anything done pursuant to the provisions hereof shall be deemed or construed to modify the Communication Easement.

6. As to Site Owner and Lender. As between Site Owner and Lender, Site Owner and Lender covenant and agree that nothing contained herein nor anything done pursuant to the provisions hereof shall be deemed or construed to modify the Mortgage.

7. Successors and Assigns. This Agreement and each and every covenant, agreement and other provision hereof shall be binding upon the parties and their respective heirs, administrators, representatives, successors and assigns, including without limitation each and every holder of the Communication Easement or any other person having an interest therein and any purchaser of the Site Owner's Property, including without limitation at or after a foreclosure sale or conveyance in lieu of foreclosure.

8. Title of Paragraphs. The titles of the paragraphs of this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

9. Governing Law. This Agreement shall be interpreted and governed by the laws of the State in which the Site Owner's Property is located.

10. Notices. All notices or other communications made pursuant hereto shall be in writing addressed to the parties at their respective addresses set forth below and shall be deemed properly delivered, given or served as follows:

(a) The next business day when deposited with FedEx or other overnight delivery service with all delivery charges paid or accounted for, provided such notice is deposited with the courier service in time for delivery by no later than 5:00 p.m. on the next business day; or

(b) On the date transmitted if sent by facsimile; provided such notice is sent transmitted to the recipient by 5:00 p.m. on a business day, otherwise it shall be deemed delivered or sent on the next business day; or

(c) Two business days after being mailed by certified or registered mail, postage prepaid.

All such notices shall be addressed to the parties as follows:

For Lender:

University First Federal Credit Union
13347 S. Market Center Drive
Riverton, UT 84065
Attention: _____
Facsimile: _____

For Site Owner:

West Jordan Gateway, LLC
9067 South 1300 W., Suite 105
West Jordan, UT 84088
Attention: _____
Facsimile: _____

For Landmark:

Landmark Infrastructure Holding Company LLC
P.O. Box 3429
2141 Rosecrans Avenue, Suite 2100
El Segundo, CA 90245

Any party may change its address for the purposes of this Section by giving five days prior written notice of such change to the other parties in the manner provided in this Section.

11. Counterparts. This Agreement may be signed in multiple counterparts, each of is an original, but all of which comprise one Agreement.

[NO MORE TEXT ON THIS PAGE - SIGNATURES TO FOLLOW ON NEXT PAGE]

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

“LENDER”:

University First Federal Credit Union,
a corporation organized and existing under the laws
of the State of Utah and the United States

By: *Joseph J. Backweg*
Print Name: Joseph J. Backweg
Title: CEO

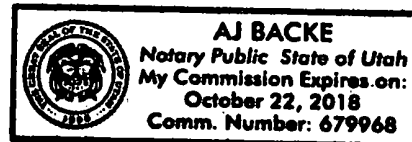
STATE OF Utah)
) ss.
COUNTY OF Salt Lake)

On Nov. 4, 2016, before me, A. J. Backe, notary public, personally appeared Joseph Backweg, 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 signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

AJ Backe
Signature of Notary Public

(Seal)



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

“SITE OWNER”:

West Jordan Gateway, LLC,
a Utah limited liability company

By: CW Management Corp.
Its: Manager

By: Wayne L. Niederhauser

Print Name: Vice President

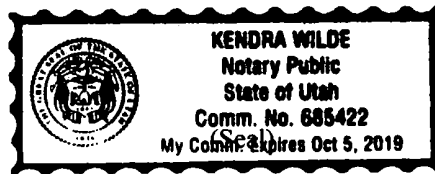
Title: *Wayne L. Niederhauser*

STATE OF Utah)
) ss.
COUNTY OF Salt Lake)

On Nov 11, 2016, before me, Wayne L. Niederhauser, notary public, personally appeared **Wayne L. Niederhauser**, personally known to me (or proved to me on the basis of satisfactory evidence) 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 signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Kendra Wilde
Signature of Notary Public



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

“LANDMARK”:

Landmark Infrastructure Holding Company LLC,
a Delaware limited liability company

By: 

Print Name: Daniel R. Parsons

Title: Authorized Signatory

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

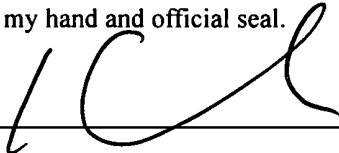
State of California

County of Los Angeles)

On 9-19-2017 before me, Kamilah Edwards, Notary Public
(insert name and title of the officer)

personally appeared Daniel R. Parsons, who 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~~ they executed the same in ~~his~~ their authorized capacity(ies), and that by ~~his~~ her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.
Signature 

(Seal)

Prepared by:
LANDMARK INFRASTRUCTURE
HOLDING COMPANY LLC
2141 ROSECRANS AVENUE
SUITE 2100
EL SEGUNDO, CA 90245
ATTN: LEGAL DEPT.

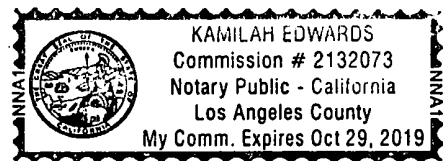


EXHIBIT "A"
to
NON-DISTURBANCE
AND ATTORNMENT AGREEMENT

Legal Description

PARCEL 1:

All Common Area located within Building 1, of WEST JORDAN GATEWAY OFFICE CONDOMINIUM PHASE 1, AMENDED according to the Record of Survey Plat recorded in Book 98-6P at Page 158, in the office of the Salt Lake County Recorder and in the Declaration for Condominium and Covenants, Conditions and Restrictions for West Jordan Gateway Office Condominiums, a commercial condominium development, recorded April 30, 1999 as Entry No. 7338875 in Book 8272 at Page 8945 and amended in that Second Amendment to the Declaration of Condominium as recorded March 26, 2002 as Entry No. 8186081 in Book 8580 at Page 4421 and in the Amendment to Declaration of Condominium recorded December 11, 2009 as Entry No. 10857836 in Book 9787 at Page 8875 and in the Declaration of Condominium including Declarations of Covenants, Conditions and Restrictions from Building No. 1 West Jordan Gateway Office Condominium Phase 1, Amended recorded December 23, 2011 as Entry No. 11302250 in Book 9976 at Page 8704 of official records.

PARCEL 2:

Unit 100, Building 1, of WEST JORDAN GATEWAY OFFICE CONDOMINIUM PHASE 1, AMENDED according to the Record of Survey Plat recorded in Book 98-6P at Page 158, in the office of the Salt Lake County Recorder and in the Declaration for Condominium and Covenants, Conditions and Restrictions for West Jordan Gateway Office Condominiums, a commercial condominium development, recorded April 30, 1999 as Entry No. 7338875 in Book 8272 at Page 8945 and amended in that Second Amendment to the Declaration of Condominium as recorded March 26, 2002 as Entry No. 8186081 in Book 8580 at Page 4421 and in the Amendment to Declaration of Condominium recorded December 11, 2009 as Entry No. 10857836 in Book 9787 at Page 8875 and in the Declaration of Condominium including Declarations of Covenants, Conditions and Restrictions from Building No. 1 West Jordan Gateway Office Condominium Phase 1, Amended recorded December 23, 2011 as Entry No. 11302250 in Book 9976 at Page 8704 of official records.

EXHIBIT "B"
TO NON-DISTURBANCE
AND ATTORNMENT AGREEMENT

Description of Assigned Lease

That certain Option and Lease Agreement dated May 7, 1999, by and between West Jordan Gateway LLC, a Utah limited liability company, predecessor in interest to WJG 9071 Office Condominium Owners Association, Inc., a Utah non-profit corporation, who erroneously acquired title as WJG 9071 Office Condominium Association, a Utah non-profit corporation, and West Jordan Gateway, LLC, a Utah limited liability company ("Landlord"), whose address is c/o West Jordan Gateway, LLC, 9067 South 1300 W., Suite 105, West Jordan, UT 84088, and New Cingular Wireless Services of Utah, LLC, which was the successor by merger to AT&T Wireless Services of Utah, Inc., a Nevada corporation, predecessor in interest to New Cingular Wireless PCS, LLC, a Delaware limited liability company ("Tenant"), whose address is of 575 Morosgo Drive NE, Suite 13F, West Tower, Atlanta, GA 30324, as amended by Lease Amendment dated December 9, 2003, and as further amended by Second Amendment to Option and Lease Agreement dated April 28, 2017, for the property located at 9071 South 1300 West, West Jordan, UT 84088, for which a Memorandum of Agreement, is duly recorded on June 22, 2017, in Book 10570, at Pages 2278-2284.