

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2000 037973

2000 MAY 31 PM 1:14

MORRIS W. CARTEIR
RECORDER

Instrument prepared by and
Recording requested by and when
recorded return to:
SBA TOWERS, INC.
Attn: BTS Leasing Department
One Town Center Road, 3rd Floor
Boca Raton, Florida 33486
(561) 995-7670

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the Lake County Recorder!

**SUBORDINATION NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

THIS AGREEMENT (this "Agreement"), dated as of April 17, 2000 by SBA Towers, Inc., a Florida Corporation, having its principal office and place of business located at One Town Center Road, 3rd Floor, Boca Raton, FL 33486, and any users of the premises, ("Tenant"), and First National Bank having a principal office and place of business located at 14 Indiana Avenue, Valparaiso, Indiana 46384 ("Lender").

PRELIMINARY STATEMENT:

A. Lender and Roger Dale Sibb ("Landlord") entered into those certain Mortgages listed below recorded in of the Public Records of Lake County, Indiana encumbering that certain real property (the "Property") 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").

- Mortgage dated May 29, 1997 and recorded June 4, 1997, as Document No. 97035649.
- Mortgage dated June 8, 1998 and recorded June 12, 1998, as Document No. 98043925.

B. On March 13, 2000 Landlord and Tenant entered into a certain Option and Land Lease Agreement ("Lease") for that certain parcel of real property as more particularly described on Exhibit "A" attached hereto ("Premises"), which Premises is a portion of the Property.

20.00
E.P.
76151

C. Tenant desires that Lender recognize Tenant's rights under the Lease in the event of 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 and Tenant hereby agree as follows:

1. **Subordination.** Notwithstanding anything to the contrary set forth in the Lease, but subject to the express provisions of this Agreement, the Lease and the leasehold estate created thereby shall at all times remain subordinate and inferior to the Mortgage and the lien thereof, and to any and all renewals, modifications, consolidations, replacements and extensions thereof.

2. **Non-Disturbance.** Provided (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 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 thereunder. "Transfer" shall mean (a) the institution of any foreclosure, trustee's sale or other like proceeding, (b) the appointment of a receiver for the Landlord or the Property, (c) the exercise of rights to collect rents under the Mortgage 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. § 101 et seq. "Transferee" shall mean the Lender or any successor or assignee of Lender taking title to the Property in connection with a Transfer.

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. **Miscellaneous.**

(a) This Agreement shall inure to the benefit of the parties hereto, their successors and 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.

(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 from the non-prevailing party all reasonable attorneys' fees, costs and expenses incurred by the prevailing party.

(e) Any notices or communications 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 following 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 communications mailed in the U.S. mail shall be deemed to be served on the third business day following mailing, notices or communication served by hand or by overnight courier shall be deemed served upon receipt.

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



LENDER:

Witnesses

PAUL JANKOWSKI / Paul Jankowski

Witness / Print Name

Dawn Brutout / Dawn Brutout

Witness / Print Name

By: Patrick J. McKinley

Print Name: Patrick J. McKinley

Its: Vice President

Date: 4-14-00

[corporate seal]

Witnesses:

TENANT:
SBA TOWERS, INC.,
a Florida corporation

Edwina St. Vall EDWINA ST. VALL

Witness / Print Name:

Deborah L. Martinez

Witness / Print Name:

Deborah L. Martinez

By:

Edward G. Reach

Print Name:

Edward G. Reach

Its:

Director of Compliance

Date:

4/17/00

[corporate seal]

LENDER:

STATE OF

Indiana

COUNTY OF

Porter

The foregoing instrument was acknowledged before me this 14 day of April, 2000, by Patrick McGinley as Vice President of First National Bank, Valparaiso, on behalf of the corporation. He/She is personally known to me or has produced _____ as identification.

(AFFIX NOTARIAL SEAL)

Jeanne Watson

(OFFICIAL NOTARY SIGNATURE)

Notary Public - State of Indiana

Jeanne Watson

(Printed, Typed or Stamped name of Notary)

Commission Number: Expires Aug. 3, 2001

TENANT: SBA TOWERS, INC.

STATE OF Florida

COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 17th day of April,
2000 by Edward G. Roach as Director of Compliance of
SBA Towers, Inc a Florida Corporation, on behalf of the
corporation. He/She is personally known to me or has produced
_____ as identification.

(AFFIX NOTARIAL SEAL)

Caren Lesser

(OFFICIAL NOTARY SIGNATURE)

Notary Public - State of Florida

Caren Lesser

(Printed, Typed or Stamped name of Notary)



Commission Number: CC893819

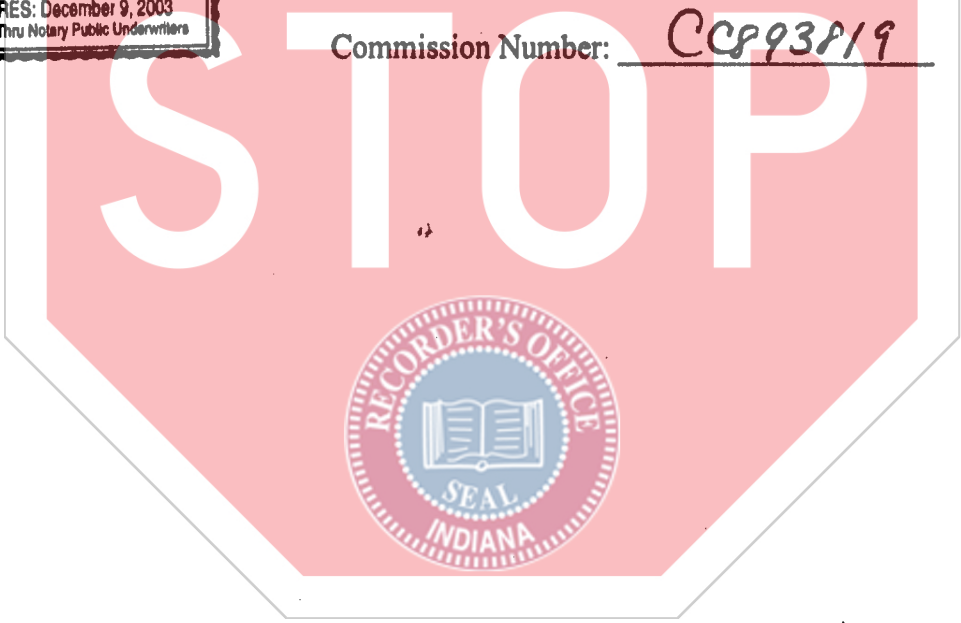


EXHIBIT "A"

Legal Descriptions

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Lease Area Part of the Southeast 1/4 of Section 20, Township 35 North, Range 7 West of the 2nd Principal Meridian in Lake County, Indiana, described as: Commencing at a point on the South right of way of US 30, 924.00 feet Westerly of the East line of said Section; thence South 00°16'47" East 212.91 feet parallel to the East line of said Southeast 1/4 to a point; thence South 89°43'13" West 1.00 feet TO THE PLACE OF BEGINNING OF THIS DESCRIPTION; thence South 00°16'47" East 55.00 feet to a point; thence South 89°43'13" West 60.00 feet to a point; thence North 00°16'47" West 55.00 feet to a point; thence North 89°43'13" East 60.00 to the place of beginning.

Utility/Access Easement A 12.00 feet wide access easement in that part of the Southeast 1/4 of Section 20, Township 35 North, Range 7 West of the 2nd Principal Meridian in Lake County, Indiana, described as: Commencing at a point on the South right of way of US 30, 924.00 feet Westerly of the East line of said Section; thence South 00°16'47" East 212.91 feet parallel to the East line of said Southeast 1/4; thence South 89°43'13" West 61.00 feet to a point; thence South 00°16'47" East 27.50 feet to a point; thence South 89°43'13" West 6.00 feet TO THE PLACE OF BEGINNING OF THIS CENTERLINE DESCRIPTION; thence North 00°16'47" West 34.52 feet to a point; thence North 23°05'27" West 101.14 feet to a point; thence North 00°00'11" East 104.66 feet to a point; thence South 89°36'58" East 80.70 feet to a point; thence North 00°16'47" West 9.22 feet to a point on the southerly right of way line of said U.S. Highway #30 for the place of ending of this centerline description.