

2014-512417
09/25/2014 10:29 AM
TOTAL FEES: 25.00
BY: MA
PG #: 10
RECORDED AS PRESENTED

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD
GINA PIMENTEL
RECORDER

PREPARED BY AND RETURN TO:

American Tower Corporation
Attn: Emily Lacy, Esq., Land Management
10 Presidential Way
Woburn, MA 01801
ATC Site No: 304551
ATC Site Name: Gary West
Tax Parcel ID Number(s): 45-08-06-177-003.000-004

SUBORDINATION AND NON-DISTURBANCE AGREEMENT

This Subordination and Non-Disturbance Agreement ("**SNDA**") is made effective as of the latter signature date hereof (the "**Effective Date**") by and between **Marquette Bank** (the "**Lender**"), **American Tower Asset Sub II, LLC**, a Delaware limited liability company (the "**Grantee**") (Lender and Grantee being collectively referred to herein as the "**Parties**").

RECITALS

WHEREAS, Lender has extended financing and/or credit, and may hereafter extend financing and/or credit to, **A.R.E Incorporated, an Indiana corporation d/b/a Wayne's** (the "**Grantor**"), secured in whole or in part, by the following mortgage(s):

Mortgage and Security Agreement in the amount of \$720,000.00 dated June 13, 2008 and recorded on June 20, 2008 as Document Number 2008045045, as affected by *Assignment of Rents* by and between A.R.E Incorporated and Marquette Bank dated June 13, 2008 and recorded on June 20, 2008 as Document Number 2008045046

as the same may have been modified from time to time (all documents being collectively referred to as the "**Mortgage**") encumbering certain property owned by Grantor as more fully described in **Exhibit A** attached hereto (the "**Parent Parcel**"); and

WHEREAS, Grantor and Grantee have entered into that certain **EASEMENT AND ASSIGNMENT AGREEMENT** dated October 19th, 2019, and recorded with the records of Lake County in Book

Site No: 304551
Site Name: Gary West

NOT AN OFFICIAL DOCUMENT

_____, Page _____ (or as Document Number _____) (as the same may be amended or modified from time to time, the "**Easement**"), pursuant to which Grantor has granted, bargained, sold, transferred and conveyed to Grantee, its successors and/or assigns, perpetual exclusive and non-exclusive easements over, across, in, and under a portion of the Parent Parcel, all as more particularly described in the Easement; and

WHEREAS, Lender has required that the Easement be made subordinate to the lien of the Mortgage and Grantee has required that its rights under the Easement not be disturbed as a result of foreclosure or other exercise of Lender's remedies under the Mortgage.

NOW, THEREFORE, in consideration of the mutual promise and covenants contained herein, and other good and satisfactory consideration, the receipt of sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. **Subordination of Interests.** The Easement and all of Grantee's right, title and interests thereunder shall be subordinate to the lien of the Mortgage.
2. **Consent.** Lender hereby consents to the Easement and agrees that: (i) the Easement and all of Grantee's right, title and interests thereunder shall not be terminated, diminished, disturbed or affected in any manner by Lender's foreclosure of the Mortgage or a transfer to Lender by a deed-in-lieu of foreclosure or otherwise; and (ii) Grantee shall not be named as a defendant in any foreclosure action or proceeding except to the extent required pursuant to applicable law. If requested by Grantee, Lender (or its transferee by deed-in-lieu of foreclosure or otherwise) shall enter into a new easement agreement following any such foreclosure or other succession event on the same terms, and with no additional consideration, as the Easement for the purposes of confirming that the Easement continues in full force and effect regardless of applicable law.
3. **Grantee's Personal Property.** Lender acknowledges that provisions of the Mortgage and/or any related documents shall not apply to any equipment owned or leased by Grantee which is now or may hereafter be placed on the Parent Parcel and Grantee is authorized to remove said equipment in accordance with the terms of the Easement.
4. **Binding Effect.** This SNDA shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, personal representatives, successors and assigns.
5. **Notices.** All notices must be in writing and shall be valid upon receipt when delivered by hand, by nationally recognized courier service, or by First Class United States Mail, certified, return receipt requested to the addresses set forth below:

To Grantee: American Tower Asset Sub II, LLC
c/o American Tower
10 Presidential Way
Woburn, MA 01801

To Lender: Marquette Bank
Attn: Credit Administration Dept.
10000 W. 151st Street
Orland Park, IL 60462

NOT AN OFFICIAL DOCUMENT

_____, Page _____ (or as Document Number _____) (as the same may be amended or modified from time to time, the "**Easement**"), pursuant to which Grantor has granted, bargained, sold, transferred and conveyed to Grantee, its successors and/or assigns, perpetual exclusive and non-exclusive easements over, across, in, and under a portion of the Parent Parcel, all as more particularly described in the Easement; and

WHEREAS, Lender has required that the Easement be made subordinate to the lien of the Mortgage and Grantee has required that its rights under the Easement not be disturbed as a result of foreclosure or other exercise of Lender's remedies under the Mortgage.

NOW, THEREFORE, in consideration of the mutual promise and covenants contained herein, and other good and satisfactory consideration, the receipt of sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. **Subordination of Interests.** The Easement and all of Grantee's right, title and interests thereunder shall be subordinate to the lien of the Mortgage.
2. **Consent.** Lender hereby consents to the Easement and agrees that: (i) the Easement and all of Grantee's right, title and interests thereunder shall not be terminated, diminished, disturbed or affected in any manner by Lender's foreclosure of the Mortgage or a transfer to Lender by a deed-in-lieu of foreclosure or otherwise; and (ii) Grantee shall not be named as a defendant in any foreclosure action or proceeding except to the extent required pursuant to applicable law. If requested by Grantee, Lender (or its transferee by deed-in-lieu of foreclosure or otherwise) shall enter into a new easement agreement following any such foreclosure or other succession event on the same terms, and with no additional consideration, as the Easement for the purposes of confirming that the Easement continues in full force and effect regardless of applicable law.
3. **Grantee's Personal Property.** Lender acknowledges that provisions of the Mortgage and/or any related documents shall not apply to any equipment owned or leased by Grantee which is now or may hereafter be placed on the Parent Parcel and Grantee is authorized to remove said equipment in accordance with the terms of the Easement.
4. **Binding Effect.** This SNDA shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, personal representatives, successors and assigns.
5. **Notices.** All notices must be in writing and shall be valid upon receipt when delivered by hand, by nationally recognized courier service, or by First Class United States Mail, certified, return receipt requested to the addresses set forth below:

To Grantee: American Tower Asset Sub II, LLC
c/o American Tower
10 Presidential Way
Woburn, MA 01801

To Lender: Marquette Bank
Attn: Credit Administration Dept.
10000 W. 151st Street
Orland Park, IL 60462

NOT AN OFFICIAL DOCUMENT

With a copy to: American Tower Asset Sub II, LLC
c/o American Tower
116 Huntington Avenue
Boston, MA 02116

Lender or Grantee, by thirty (30) days prior written notice to the other in the manner provided herein, may designate one or more different notice addresses from those set forth above. Refusal to accept delivery of any notice or the inability to deliver any notice because of a changed address for which no notice was given as required herein, shall be deemed to be receipt of any such notice

6. Governing Law. This SNDA shall be governed by and construed and interpreted in accordance with the laws of the State or Commonwealth in which the Parent Parcel is located.
7. Captions. The captions and headings used in this SNDA are for convenience only and do not in any way restrict, modify or amplify the terms of this SNDA.
8. Counterparts. This SNDA may be executed in several counterparts, each of which when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument, even though all Parties are not signatories to the original or the same counterpart.

[END OF DOCUMENT – SIGNATURE PAGES AND EXHIBITS TO FOLLOW]

NOT AN OFFICIAL DOCUMENT

IN WITNESS WHEREOF, the Parties hereto have executed this SNDA under seal as of the day and year set forth below.

LENDER:

Marquette Bank

Signature: [Signature]

By: Dan Robinson

Its: Vice President

Date: 9-25-19

WITNESSES:

Signature: [Signature]

Print Name: Kristin K. Keuch, AVP

Signature: [Signature]

Print Name: Frances Brashers VP

Acknowledgment

State/Commonwealth of Illinois)

) ss:

County of Will

On this the 25th day of September, 2019, before me, the undersigned Notary Public, personally appeared Dan Robinson, 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 which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature: [Signature]

Notary Public

My Commission Expires: 7-26-22



{Seal}

NOT AN OFFICIAL DOCUMENT

With a copy to: American Tower Asset Sub II, LLC
c/o American Tower
116 Huntington Avenue
Boston, MA 02116

Lender or Grantee, by thirty (30) days prior written notice to the other in the manner provided herein, may designate one or more different notice addresses from those set forth above. Refusal to accept delivery of any notice or the inability to deliver any notice because of a changed address for which no notice was given as required herein, shall be deemed to be receipt of any such notice

6. Governing Law. This SNDA shall be governed by and construed and interpreted in accordance with the laws of the State or Commonwealth in which the Parent Parcel is located.
7. Captions. The captions and headings used in this SNDA are for convenience only and do not in any way restrict, modify or amplify the terms of this SNDA.
8. Counterparts. This SNDA may be executed in several counterparts, each of which when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument, even though all Parties are not signatories to the original or the same counterpart.

[END OF DOCUMENT – SIGNATURE PAGES AND EXHIBITS TO FOLLOW]

NOT AN OFFICIAL DOCUMENT

GRANTEE:

WITNESSES:

American Tower Asset Sub II, LLC
a Delaware limited liability company

Signature: *Carol Maxime*
By: Carol Maxime
Its: _____
Date: Senior Counsel, US Tower
10/9/19

Signature: *Susana Gallo*
Print Name: Susana Gallo

Signature: *Anton DiDonato*
Print Name: Anton DiDonato

Property of Lakes County Recorder

Acknowledgment

Commonwealth of Massachusetts

County of Middlesex

On this the 9 day of October 2019, before me, the undersigned Notary Public, personally appeared Carol Maxime, 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 which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[Signature]

Notary Public
My Commission Expires: _____

{Seal}



RICHARD P. PALERMO
Notary Public
Commonwealth of Massachusetts
My Commission Expires
May 25, 2023

Attachments:

Exhibit A – Parent Parcel

NOT AN OFFICIAL DOCUMENT

Exhibit A

PARENT PARCEL

A FRACTIONAL PART OF THE NORTH ONE-HALF (1/2) OF SECTION SIX (6), TOWNSHIP THIRTY-SIX (36) NORTH, RANGE EIGHT (8) WEST OF THE SECOND PRINCIPAL MERIDIAN IN GARY, LAKE COUNTY, INDIANA, DESCRIBED AS FOLLOWS: ALL THAT PART OF SAID SECTION BOUNDED ON THE SOUTH BY THE NORTH LINE OF UNITED STATES HIGHWAY 12; ON THE NORTH BY THE SOUTH LINE OF A 60 FOOT STRIP OF LAND CONVEYED BY JEROME REALTY CORPORATION TO CHICAGO SOUTH SHORE AND SOUTH BEND RAILROAD BY WARRANTY DEED DATED NOVEMBER 20, 1946 AND RECORDED IN DEED RECORD 768, PAGE 112, IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA; ON THE EAST BY A LINE AT RIGHT ANGLES TO THE CENTER LINE OF SAID UNITED STATES HIGHWAY 12 AT A DISTANCE OF 2052.8 FEET WEST OF THE INTERSECTION OF SAID CENTER LINE OF UNITED STATES HIGHWAY 12 WITH THE CENTER LINE OF INDUSTRIAL HIGHWAY AS THE SAME WAS OPENED BY THE BOARD OF PUBLIC WORKS OF THE CITY OF GARY BY CONFIRMATORY RESOLUTION #3158 ADOPTED APRIL 17, 1922 IN MISCELLANEOUS RECORD 120, PAGE 193 IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA; AND ON THE WEST BY A LINE PARALLEL WITH AND 200 FEET WEST OF THE AFORESAID EAST BOUNDARY LINE, IN LAKE COUNTY, INDIANA.

Property Address: 4010 West 4th Avenue, Gary Indiana
Tax Id. No. 45-08-06-177-003.000-004

NOT AN OFFICIAL DOCUMENT

Exhibit A


PARENT PARCEL

A FRACTIONAL PART OF THE NORTH ONE-HALF (N 1/2) OF SECTION SIX (6), TOWNSHIP THIRTY-SIX (36) NORTH, RANGE EIGHT (8) WEST OF THE SECOND PRINCIPAL MERIDIAN IN GARY, LAKE COUNTY, INDIANA, DESCRIBED AS FOLLOWS: ALL THAT PART OF SAID SECTION BOUNDED ON THE SOUTH BY THE NORTH LINE OF UNITED STATES HIGHWAY 12; ON THE NORTH BY THE SOUTH LINE OF A 60 FOOT STRIP OF LAND CONVEYED BY JEROME REALTY CORPORATION TO CHICAGO SOUTH SHORE AND SOUTH BEND RAILROAD BY WARRANTY DEED DATED NOVEMBER 20, 1946 AND RECORDED IN DEED RECORD 768, PAGE 112, IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA; ON THE EAST BY A LINE AT RIGHT ANGLES TO THE CENTER LINE OF SAID UNITED STATES HIGHWAY 12 AT A DISTANCE OF 2052.8 FEET WEST OF THE INTERSECTION OF SAID CENTER LINE OF UNITED STATES HIGHWAY 12 WITH THE CENTER LINE OF INDUSTRIAL HIGHWAY AS THE SAME WAS OPENED BY THE BOARD OF PUBLIC WORKS OF THE CITY OF GARY BY CONFIRMATORY RESOLUTION #3168 ADOPTED APRIL 17, 1922 IN MISCELLANEOUS RECORD 120, PAGE 193 IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA; AND ON THE WEST BY A LINE PARALLEL WITH AND 200 FEET WEST OF THE AFORESAID EAST BOUNDARY LINE. IN LAKE COUNTY, INDIANA.

Property Address: 4010 West 4th Avenue, Gary Indiana
Tax Id. No.: 45-08-06-177-003.000-004

NOT AN OFFICIAL DOCUMENT

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law.



A handwritten signature in black ink, appearing to read 'Jess Barstow', is written over a horizontal line. The signature is stylized with large loops and flourishes.

Affiant – Jess Barstow

Property of Lake County Recorder