

W.E.

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DK P BK 135 PG 269
DESOTO COUNTY, MS
W.E. DAVIS, CH CLERK

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

Jay H. Lindy
Burch, Porter & Johnson, PLLC
130 North Court Avenue
Memphis, Tennessee 38103
901-524-5000

12/15/09 10:51:54
DK T BK 3,115 PG 54
DESOTO COUNTY, MS
W.E. DAVIS, CH CLERK

PREPARED BY:

Jay H. Lindy
Burch, Porter & Johnson, PLLC
130 North Court Avenue
Memphis, Tennessee 38103
901-524-5000

CONSENT, NONDISTURBANCE AND ATTORNMENT AGREEMENT

This Consent, Nondisturbance and Attornment Agreement (this "Agreement"), dated this 19th day of November, 2009 by and between **TV6-W, LLC, a Delaware limited liability company**, with a notice address of 4091 Viscount Avenue, Memphis, Tennessee 38118 (hereinafter "TV6") and **Wells Fargo Home Mortgage** whose address is MAC X3802-03A, 8480 Stagecoach Circle, Frederick, MD 21701 (hereinafter "Lender").

RECITALS:

WHEREAS, Tower Ventures V, LLC is in possession of certain property (the "Property") more specifically described on Exhibit A attached hereto, pursuant to that certain Land Lease Agreement dated April 2, 2007 by and between Tower Ventures V, LLC, as the original tenant, and Mark J. Matz and Sara K. Matz (hereinafter "Matz") as the original landlord, notice of the Lease is recorded in the **Public Records of DeSoto County, Mississippi in Book 121 Page 570**, as it may have been amended and/or assigned (the "Lease");

WHEREAS, TV6 is purchasing from Matz a perpetual easement ("Easement") over the Property and an assignment (the "Assignment") of Matz's interest in the Lease;

WHEREAS, the Property is part of a parcel which is encumbered by one or more mortgages, deeds of trust, deeds to secure debt or similar security agreements (collectively, the "Security Instrument") from Matz in favor of Lender, notice of which is recorded in the **Public Records of DeSoto County, Mississippi in Book 2396 Page 200 and in Book 2447 Page 1**.

WHEREAS, the parties desire to establish certain rights, safeguards, obligations and priorities with regard to their respective interests by means of this Agreement and are willing to so agree on the terms and conditions hereafter provided;

7

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged and for other good and valuable consideration, the parties, intending to be legally bound hereby, covenant and agree as follows:

1. Consent. Lender consents to the Easement and Assignment.
2. Nondisturbance. So long as the Easement is in full force and effect and Matz is not in material default of any of its terms, obligations, covenants or conditions under the Easement, Lender agrees for itself and its successors in interest and for any other person acquiring title to the Property through a conveyance (an "**Acquiring Party**"), that the right of possession of the Property and all other rights of Matz under the Easement and Assignment shall remain in full force and effect and shall not be affected or disturbed by Lender in the exercise of its rights under the Security Instrument during the term of the Easement, by reason of a Conveyance as defined herein. For purposes of this agreement, a "**Conveyance**" shall mean any of the following, including, but not limited to, any exercise by Lender of its rights under the Security Instrument, including a foreclosure, sheriff's or trustee's sale under the power of sale contained in the Security Instrument, the termination of any superior lease of the Property and any other transfer, sale or conveyance of the Matz's interest in the Property under peril of foreclosure, including, without limitation to the generality of the foregoing, an assignment or sale in lieu of foreclosure. Lender or any Acquiring Party and Matz agree that any Conveyance shall be made subject to the Easement, the Assignment and the rights of Crown under the Easement and the Assignment and the parties shall be bound to one another and have the same remedies against one another for any breach of the Easement and the Assignment as such parties had before the Conveyance; provided however, that Lender or any Acquiring Party shall not be liable for any act or omission of any prior land owner. Lender will not join any land owner as a party in any action or proceeding to foreclose unless such joinder is necessary to foreclose on the Security Instrument and then only for such purpose and not for the purpose of terminating the Easement or voiding the Assignment.
3. Attornment. Upon receipt by TV6 of notice to attorn from Lender or any Acquiring Party, along with reasonable supporting documentation, the parties agree to not seek to terminate the Easement or void the Assignment, to remain bound by the Easement and the Assignment and TV6 agrees to attorn to, accept and recognize Lender or any Acquiring Party as the land owner under the Easement pursuant to the provisions expressly set forth therein for the term of the Easement. The parties agree, however, to execute and deliver, at any time and from time to time, upon the request of another party any reasonable instrument which may be necessary or appropriate to evidence such attornment.
4. Limitation. This Agreement shall not apply to any equipment, trade fixtures or other personal property now or hereafter located on or affixed to the Property or any portion thereof regardless of the manner in which same are attached or affixed to the Property and Lender hereby expressly waives any interest in same, agrees that the same do not constitute realty and acknowledges that TV6 is authorized to remove said personal property.
5. Binding Effect. This Agreement will be binding upon and will inure to the benefit of the successors and assigns of the parties hereto or any person or entity which acquires title to or

the right to possession of the Property whether directly or indirectly through Lender and to any assignees, licensees, agents, subeasement holders, tenants or subtenants of TV6.

6. Notices. All notices which are required or permitted to be given or served hereunder shall be in writing and shall be deemed to have been given or served (a) by hand delivery on the date of hand delivery; (b) one business day after delivery to an overnight courier for next business day delivery or (c) three days after deposit in United States Mail via certified mail, return receipt requested to the address given above. Any party hereto may change the address set forth above from time to time by serving written notice of the change upon the other parties hereto.

7. Counterparts. This Agreement may be executed in separate and multiple counterparts, each of which shall be deemed an original but all of which taken together shall be deemed to constitute one and the same instrument.

8. Governing Law. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State where the Property are located.

IN WITNESS WHEREOF, the parties have hereunder set their hands and seals as of the date first set forth above.

[Signature pages follow.]

TV6-W, LLC

By:

William Orgel, President



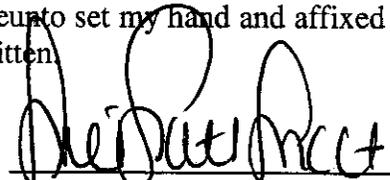
ACKNOWLEDGMENT

STATE OF TENNESSEE

COUNTY OF SHELBY

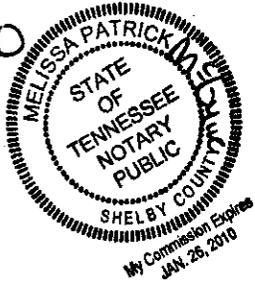
On this the 19th day of November, 2009, before me, the subscriber, a Notary Public in and for said State and County, personally appeared William Orgel the President of **TV6-W, LLC**, and in due form of law acknowledged that he is authorized on behalf of said company to execute all documents pertaining hereto and acknowledged to me that he executed the same as his voluntary act and deed on behalf of said company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal in said State and County on the day and year last above written.



Notary Public

My Commission Expires: 1-26-2010



Wells Fargo Bank, N.A.

By: *Lorna L. Slaughter*
 Print Name: Lorna L. Slaughter
 Print Title: Vice President

ACKNOWLEDGMENT

On this the 7th day of December, 2009, before me, the subscriber, a Notary Public in and for said State and County, personally appeared Lorna L. Slaughter the Vice President of **Wells Fargo Bank, N.A.**, and in due form of law acknowledged that he is authorized on behalf of said company to execute all documents pertaining hereto and acknowledged to me that he executed the same as his voluntary act and deed on behalf of said Bank.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal in said State and County on the day and year last above written.

Steven David Hoke
 Notary Public
 Steven David Hoke

My Commission Expires:5/4/2013



My Comm. Exp. 5/4/2013

Mark J. Matz
Mark J. Matz
Sara K. Matz
Sara K. Matz

ACKNOWLEDGMENT

STATE OF Tennessee
COUNTY OF Shelby

On this 19th day of November, 2009, before me a Notary Public in and for the State of Tennessee, personally appeared Mark J. Matz, known (or proved to me on the basis of satisfactory evidence) to be the person, who executed the within and foregoing instrument, and acknowledged the said instrument to the free and voluntary act and deed for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

Witness my hand, at office, this 19th day of November, 2009.

Melissa Patrick Matz
Notary Public

My Commission Expires: 1-26-2010



STATE OF Tennessee
COUNTY OF Shelby

On this 19th day of November, 2009, before me a Notary Public in and for the State of Tennessee, personally appeared Sara K. Matz known (or proved to me on the basis of satisfactory evidence) to be the person, who executed the within and foregoing instrument, and acknowledged the said instrument to the free and voluntary act and deed for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

Witness my hand, at office, this 19th day of November, 2009.

Melissa Patrick Matz
Notary Public

My Commission Expires:

1-26-2010



Exhibit A

Description of a Proposed Lease Parcel on part of the Mark J. Matz and wife, Sara K. Matz property recorded in Book 349, Page 456 and being located in the southwest corner of Section 17, Township 1 South, Range 5 West, DeSoto County, Mississippi:

Commencing at a found rebar at the southwest corner of the Allan C. Dunstan and wife, Alison Dunstan property recorded in Book 332, Page 455, said point being located 656.65 feet north of the southwest corner of Section 17, Township 1 South, Range 5 West as measured along the west line of said Section 17; thence south 87 degrees 44 minutes 35 seconds east with the south line of said property recorded in Book 332, Page 455, 1665.17 feet to a point; thence south 02 degrees 15 minutes 25 seconds west across the Mark J. Matz and wife, Sara K. Matz property recorded in Book 349, Page 456, 83.22 feet to a set 1/2" rebar with plastic cap and the Point of Beginning; thence across said property recorded in Book 349, Page 456 the following calls: south 06 degrees 55 minutes 23 seconds east, 81.18 feet to a set 1/2" rebar with plastic cap; south 83 degrees 04 minutes 35 seconds west, 24.58 feet to a set 1/2" rebar with plastic cap; north 32 degrees 52 minutes 51 seconds west, 90.29 feet to a set 1/2" rebar with plastic cap; north 83 degrees 04 minutes 35 seconds east, 64.10 feet to the point of beginning and containing 3,600 square feet of land.

Description of a Proposed 20' Wide Access and Utility Easement on part of the Mark J. Matz and wife, Sara K. Matz property recorded in Book 349, Page 456 and being located in the southwest corner of Section 17, Township 1 South, Range 5 West, DeSoto County, Mississippi:

Beginning at a found rebar at the southwest corner of the Allen C. Dunstan and wife, Alison Dunstan property recorded in Book 332, Page 455, said point being located 656.65 feet north of the southwest corner of Section 17, Township 1 South, Range 5 West as measured along the west line of said Section 17; thence south 87 degrees 44 minutes 35 seconds east with the south line of said property recorded in Book 332, Page 455, 1373.63 feet to a point; thence south 70 degrees 07 minutes 49 seconds east across the Mark J. Matz and wife, Sara K. Matz property recorded in Book 349, Page 456, 285.44 feet to a point in the north line of the Proposed Lease Parcel described hereon; thence south 83 degrees 04 minutes 35 seconds west across said property recorded in Book 349, Page 456 and with the north line of said Proposed Lease Parcel, 44.37 feet to a set 1/2" rebar with plastic cap; thence westwardly continuing across said property recorded in Book 349, Page 456 the following calls: north 70 degrees 07 minutes 49 seconds west, 242.73 feet; north 87 degrees 44 minutes 35 seconds west, 1370.46 feet to a point in the east line of the Industrial Developments International, Inc. property recorded in Book 504, Page 356; thence north 02 degrees 03 minutes 33 seconds east with the east line of said property recorded in Book 504, Page 356 and with the west line of said Section 17, 20.00 feet to the point of beginning and containing 32,723 square feet or 0.75 acres of land.