

Record and Return To:

Name: Joseph Mangus  
Address: TITLEVEST AGENCY, LLC  
110 E. 42<sup>nd</sup> Street, 10<sup>th</sup> Floor  
New York, NY 10017  
TitleVest File No: 2455984-OK23

**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

**THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** (the “Agreement”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between Tulsa Development Authority, having an office at 1216 N. Lansing Avenue, Suite D, Tulsa, OK 74106 (“Lender”), and TPA III, LLC (including its successors and assigns), having a principal place of business at 1170 Peachtree Street, Suite 1650, Atlanta, GA 30309 (“Tenant”).

**RECITALS:**

A. Lender is the present owner and holder of a certain Mortgage s dated June 29, 2018, and recorded in the Tulsa County, Oklahoma Recorder’s Office at Document No. 2018059036 (the “Security Instrument”) given by Landlord (defined below) to Lender which encumbers the fee estate of Landlord in certain premises described in Exhibit A attached hereto (the “Property”) and which secures the payment of certain indebtedness owed by Landlord to Lender;

B. Tenant is the holder of a leasehold estate in a portion of the Property under and pursuant to the provisions of a certain Master Lease Agreement dated \_\_\_\_\_, 2019, between 403 Cheyenne, LLC, as grantor therein (“Landlord”), and Tenant, as grantee therein (the “Lease”); and

C. Landlord has assigned to Tenant the telecommunication lease(s) upon the Property pursuant to the Lease.

D. Tenant has agreed to subordinate the Lease to the Security Instrument and to the lien thereof, and Lender has agreed to grant non-disturbance to Tenant and its permitted subtenants and assigns under the Lease on the terms and conditions hereinafter set forth.

### **A G R E E M E N T :**

For good and valuable consideration, Tenant and Lender agree as follows:

1. **Subordination.** Tenant agrees that the Lease and all of the terms, covenants and provisions thereof and all Tenant's right, title and interest under the Lease are and shall at all times continue to be subject and subordinate in all respects to the Security Instrument and to the lien thereof, including, without limitation, all renewals, increases, modifications, spreaders, consolidations, replacements and extensions thereof and to all sums secured thereby with the same force and effect as if the Security Instrument had been executed, delivered and recorded prior to the execution and delivery of the Lease.

2. **Non-Disturbance.** Lender agrees that if any action or proceeding is commenced by Lender for the foreclosure of or otherwise to enforce the Security Instrument or the sale of the Property, Tenant and any of its permitted subtenants shall not be named as a party therein unless such joinder shall be required by law; provided, however, such joinder shall not result in the termination of the Lease or disturb the Tenant's or such subtenant's possession or use of the premises demised thereunder, and the sale of the Property in any such action or proceeding and the exercise by Lender of any of its other rights under the Security Instrument, including, but not limited to, Lender's seeking the appointment of a receiver or accepting a deed in lieu of foreclosure or otherwise succeeding to the rights of Landlord under the Lease, shall be made subject to all rights of Tenant and its permitted assigns under the Lease, provided that at the time of the commencement of any such action or proceeding or at the time of any such sale or exercise of any such other rights (a) the term of the Lease shall have commenced (or is due to commence on \_\_\_\_\_, 2019), pursuant to the provisions thereof, (b) Tenant or its permitted subtenants or assigns shall be in possession of the premises demised under the Lease (or will be taking possession within a reasonable time after the commencement of the Lease), (c) the Lease shall be in full force and effect, and (d) Tenant shall not be in default under any of the terms, covenants or conditions of the Lease or of this Agreement on Tenant's part to be observed or performed after having received notice and the expiration of any applicable grace period. Nothing set forth in this Agreement is intended to or shall impair, diminish or affect the rights of Landlord to enforce any obligation of Tenant under the Lease or to take such action as is available to Landlord thereunder or under applicable law by reason of any default under the Lease beyond any applicable periods of notice and grace.

3. **Attornment.** Lender and Tenant agree that if Lender shall succeed to the rights of Landlord under the Lease or shall become the owner of the Property by reason of the foreclosure of the Security Instrument or the acceptance of a deed or assignment in lieu of

foreclosure or otherwise, and the conditions set forth in Section 2 above have been met at the time Lender becomes such successor or owner of the Property, the Lease shall not be terminated or affected thereby but shall continue in full force and effect as a direct Lease between Lender and Tenant upon all of the terms, covenants and conditions set forth in the Lease, and in that event, Tenant agrees to attorn to Lender and Lender agrees to accept such attornment; provided, however, that the provisions of the Security Instrument shall govern with respect to the disposition of any casualty insurance proceeds or condemnation awards and Lender shall **not** be (a) liable for (i) Landlord's failure to perform any of its obligations under the Lease which have accrued prior to the date on which Lender shall become the owner of the Property, or succeeded to the rights of Landlord under the Lease, or (ii) any act or omission of Landlord, after such foreclosure or sale; (b) required to make any repairs to the Property or to the premises demised under the Lease required as a result of fire, or other casualty or by reason of condemnation unless obligated under the Lease to make such repairs, and shall have received sufficient casualty insurance proceeds or condemnation awards to finance the completion of such repairs; (c) required to make any capital improvements to the Property or to the premises demised under the Lease which Landlord may have agreed to make, but had not completed, or to perform or provide any services not related to possession or quiet enjoyment of the premises demised under the Lease (d) subject to any offsets, defenses, abatement or counterclaims which shall have accrued to Tenant against Landlord prior to the date upon which Lender shall become the owner of the Property or succeeded to the rights of Landlord under the Lease; (e) bound to make any payment to Tenant which was required under the Lease, or otherwise, to be made prior to the time Lender succeeded to Landlord's interest (f) bound by any agreement amending, modifying or terminating the Lease made without Lender's prior written consent prior to the time Lender succeeded to Landlord's interest; or (g) bound by any assignment of the Lease or sublease of the Property, or any portion thereof, made prior to the time Lender succeeded to Landlord's interest other than if pursuant to the provisions of the Lease.

4. **Notice to Tenant.** After notice is given to Tenant and Landlord by Lender that the Landlord is in default under the Security Instrument, Tenant shall thereafter pay to Lender, or as directed by the Lender, any monies which become due to Landlord under the Lease until further notice from Lender, and Landlord hereby expressly authorizes Tenant to make such payments to Lender and hereby agrees that Tenant's compliance with such notice from Lender shall not be deemed a violation of the Lease.

5. **Representations and Warranties.** Tenant hereby represents and warrants to Lender that as of the date hereof (a) Tenant is the owner and holder of the Tenant's interest under the Lease; (b) the Lease has not been modified or amended; (c) the Lease is in full force and effect and the term thereof commenced on \_\_\_\_\_, 2019 (or is due to commence on \_\_\_\_\_, 2019), pursuant to the provisions thereof; (d) neither Tenant nor, to the best of Tenant's knowledge, Landlord is in default under or in breach of any of the terms, covenants or provisions of the Lease, and Tenant, to the best of its knowledge, knows of no event which but for the passage of time or the giving of notice or both would constitute an event of default or breach by Tenant or Landlord under the Lease; (e) neither Tenant nor, to the best of Tenant's knowledge, Landlord has commenced any action or given or received any notice for the purpose of terminating the Lease; (f) all rents, additional rents and other sums currently due and payable under the Lease have been paid in full; (g) no action, whether voluntary or

otherwise, is pending against Tenant under the bankruptcy, insolvency or similar laws of the United States or any state thereof.

6. **Lender to Receive Notices.** Tenant shall provide Lender with copies of all written notices of default sent to Landlord pursuant to the Lease simultaneously with the transmission of such notices to the Landlord. Tenant shall notify Lender and Landlord of any default by Landlord under the Lease which would entitle Tenant to cancel the Lease and agrees that, notwithstanding any provisions of the Lease to the contrary, no notice of cancellation thereof shall be effective, unless Lender shall have received notice of default giving rise to such cancellation and shall have failed within a reasonable period for remedying such default (not to exceed sixty (60) days) after receipt of such notice to cure such default, or if such default cannot be cured within sixty (60) days, shall have failed within a reasonable period after receipt of such notice to commence and thereafter diligently pursue any action necessary to cure such default.

7. **Notices.** All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person or by facsimile transmission with receipt acknowledged by the recipient thereof, (ii) one (1) Business Day (hereinafter defined) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Tenant: TPA III, LLC  
1170 Peachtree Street, Suite 1650  
Atlanta, GA 30309  
Attention: Chief Executive Officer

With Copy to: TPA III, LLC  
1170 Peachtree Street, Suite 1650  
Atlanta, GA 30309  
Attention: Legal Counsel

If to Lender: Tulsa Development Authority  
1216 N. Lansing Avenue, Suite D  
Tulsa, OK 74106  
Attention: \_\_\_\_\_  
Facsimile No. \_\_\_\_\_

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Facsimile No. \_\_\_\_\_

or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Section 7, the term "Business Day" shall mean any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or is a day

on which banking institutions located in such state are authorized or required by law or other governmental action to close.

Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

8. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of Lender and Tenant, its permitted subtenants and their respective successors and assigns.

9. **Definitions.** The term "Lender" as used herein shall include: (a) the successors and assigns of Lender; (b) any nominee or designee of Lender; (c) any person, party or entity which shall by reason of a foreclosure of the Security Instrument or the acceptance of a deed or assignment in lieu of foreclosure or otherwise succeeds to the rights of Landlord under the Lease and/or becomes the owner of the Property. The term "Landlord" as used herein shall mean and include the present landlord under the Lease and such landlord's predecessors and successors in interest under the Lease but shall not mean or include Lender. The term "Property" as used herein shall mean the Property, the improvements now or hereafter located thereon and the estates therein encumbered by the Security Instrument. The term "Tenant" as used herein shall mean and include the present grantee under the Lease and its permitted successors in interest under the Lease.

10. **No Oral Modifications.** This Agreement may not be modified in any manner or terminated, except by an instrument in writing executed by the parties hereto.

11. **Governing Law.** This Agreement shall be deemed to be a contract entered into pursuant to the laws of the state where the Property is located and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the state where the Property is located.

12. **Inapplicable Provisions.** If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision.

13. **Duplicate Originals; Counterparts.** This Agreement may be executed in any number of duplicate originals, and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

14. **Number and Gender.** Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

15. **Transfer of Security Instrument.** Lender may sell, transfer and assign the Security Instrument, this Agreement and the other documents executed in connection therewith to one or more investors (as defined in the Security Instrument) in the secondary

mortgage market. In connection with such sale, Lender may retain or assign responsibility for servicing the loan, the Security Instrument, this Agreement and the other documents executed in connection therewith, or may delegate some or all of such responsibility and/or obligations to a servicer, on behalf of the investors. All references to Lender herein shall refer to and include any such servicer to the extent applicable.

**[Remainder of page intentionally left blank]**

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date on page one above.

LENDER: Tulsa Development Authority

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

STATE OF \_\_\_\_\_ }  
COUNTY \_\_\_\_\_ } ss.

On this \_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned notary public, personally appeared \_\_\_\_\_, and proved to me through satisfactory evidence of identification, which was personal knowledge/driver's license/passport/ \_\_\_\_\_ (circle one), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose, as \_\_\_\_\_ of Tulsa Development Authority.

{affix notary seal or stamp}

\_\_\_\_\_  
Notary Public  
My Commission Expires:

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date on page one above.

TENANT: TPA III, LLC

BY: \_\_\_\_\_  
NAME: Jesse M. Wellner  
TITLE: Chief Executive Officer

STATE OF GEORGIA  
  } ss.  
COUNTY OF FULTON

On this \_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned notary public, personally appeared Jesse M. Wellner, and proved to me through satisfactory evidence of identification, which was personal knowledge/driver's license/passport/ \_\_\_\_\_ (circle one), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as Chief Executive Officer of TPA III, LLC.

{affix notary seal or stamp}

\_\_\_\_\_  
Notary Public  
My Commission Expires:



The undersigned accepts and agrees to the provisions of Section 4 hereof:

**LANDLORD:** 403 Cheyenne, LLC

By: 403 Cheyenne Manager, LLC  
Its: Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Manager

STATE OF \_\_\_\_\_ }  
COUNTY \_\_\_\_\_ } ss.

On this \_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned notary public, personally appeared \_\_\_\_\_, and proved to me through satisfactory evidence of identification, which was personal knowledge/driver's license/passport/ \_\_\_\_\_ (circle one), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose, as Manager of 403 Cheyenne Manager, LLC, as Manager if of 403 Cheyenne, LLC.

{affix notary seal or stamp}

\_\_\_\_\_  
Notary Public  
My Commission Expires:

## EXHIBIT A

The land referred to herein below is situated in the County of Tulsa, State of Oklahoma, and described as follows:

The West Seventy (70) feet of Lot Eight (8), Block One Hundred Thirty-four (134), ORIGINAL TOWN, now CITY OF TULSA, Tulsa County, State of Oklahoma, according to the Recorded Plat No. 560, being more particularly described as follows, to-wit:

BEGINNING at the Northwesterly corner of said Lot 8; thence in a Southerly direction along the Westerly line of said Lot 8 a distance of 75 feet to the Southwesterly corner thereof; thence in an Easterly direction along the Southerly line of said Lot 8 a distance of 70 feet; thence in a Northerly direction and parallel with the Westerly line of said Lot 8 a distance of 75 feet to the Northerly line of said Lot 8; thence in a Westerly direction along the Northerly line of said Lot 8 a distance of 70 feet to the POINT OF BEGINNING

AND

The North Half (N/2) of Lot One (1), Block One Hundred Thirty-three (133), ORIGINAL TOWN, now CITY OF TULSA, Tulsa County, State of Oklahoma, according to the recorded Plat No. 560.

Tax ID: 00500-92-01-38690