

APN: 1420-06-502-016
RECORDING REQUESTED BY
U.S. BANK NATIONAL ASSOCIATION

WHEN RECORDED MAIL TO
U.S. Bank National Association
229 Kingsbury Grade
Stateline, NV 89449

DOC # 809615
09/24/2012 10:32AM Deputy: PK
OFFICIAL RECORD
Requested By:
Northern Nevada Title CC
Douglas County - NV
Karen Ellison - Recorder
Page: 1 of 8 Fee: \$46.00
BK-912 PG-5499 RPTT: 0.00



DO1098252 TO

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

COPY



SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Subordination, Non-Disturbance and Attornment Agreement ("Agreement") is made as of this 26 day of July, 2012 by and among U. S. Bank National Association ("Lender"), Ubiquitel Operating Company, a Delaware company ("Tenant"), and Clear Creek Plaza, LLC, a Nevada limited liability company, successor in interest to Edgar S. Roberts ("Landlord").

RECITALS

A. Tenant and Landlord have entered into a certain retail lease dated as of June 30, 2004 ("Lease") with respect to certain premises known as 3790 Hwy 395 Suite 304, Carson City, NV ("Premises"), which premises are part of the property described in Exhibit "A" attached hereto and by this reference made a part hereof ("Property");

B. Tenant acknowledges that Lender has made a loan to Landlord, which is secured by, among other things, a Mortgage (the "Mortgage") and other security instruments encumbering the Property; and

C. Tenant, Lender and Landlord agree that the Lease shall be subject and subordinate to the Mortgage; provided that Tenant's occupancy of the Premises and its rights under the Lease are not disturbed.

AGREEMENTS

NOW THEREFORE, in consideration of the promises and mutual covenants hereinafter contained, the parties hereto mutually covenant and agree as follows:

1. The Lease and any extensions, renewals, replacements or modifications thereof, and all of the right, title and interest of the Tenant in and to said Premises are and shall be subject and subordinate to the Mortgage and to all of the terms and conditions contained therein, and to any renewals, modifications, replacements, consolidations and extensions thereof. Said Mortgage shall not cover or encumber and shall not be construed as subjecting to the lien thereof any of Tenant's trade fixtures, equipment or other personal property at any time placed on the Property.

2. Lender consents to the Lease and in the event of foreclosure of said Mortgage or in the event Lender or any other party (an "Acquiring Party") comes into possession or acquires title to the Property as a result of the enforcement or foreclosure of the Mortgage, Lender agrees for itself, its successor or assigns and any Acquiring Party that Tenant's possession of the Premises and Tenant's rights under the Lease shall not be disturbed for any reason whatsoever. Additionally, Tenant shall not be added as a party to any foreclosure proceedings.



3. Tenant, Landlord and Lender agree that if the interests of Landlord in the Property shall be transferred to and owned by Lender or an Acquiring Party by reason of the enforcement or foreclosure of the Mortgage, Tenant and Lender or the Acquiring Party, as the case may be, shall be bound to each other under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any extensions or renewals thereof, with the same force and effect as if Lender or the Acquiring Party were the landlord under the Lease, and Tenant shall attorn to Lender or the Acquiring Party as its landlord, said attornment to be effective and self-operative immediately upon Lender or the Acquiring Party succeeding to the interest of the Landlord in the Property and without the execution of any further instruments on the part of any of the parties hereto.

4. Tenant agrees with Lender that if Lender or the Acquiring Party, as the case may be, shall succeed to the interest of the Landlord under the Lease, then Lender or the Acquiring Party shall not be (a) liable for any action or omission of Landlord or any prior landlord under the Lease that is not a continuing obligation under the Lease; (b) subject to any pre-existing offsets or defenses which Tenant is asserting against Landlord or any prior landlord, except for any such pre-existing offsets or defenses which arise after the execution of this Agreement; (c) bound by any rent or additional rent which Tenant might have paid beyond forty-five days (45) to Landlord or any prior landlord, which Lender or the Acquiring Party does not receive; (d) bound by any security deposit which Tenant may have paid to Landlord or any prior landlord, unless such security deposit is made available to Lender or the Acquiring Party, or (e) bound by any material amendment or modification of the Lease made without Lender's consent which shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything herein to the contrary, Landlord shall be solely responsible for obtaining Lender's prior written consent to any change, modification or amendment to the Lease. Tenant reserves its rights to any and all claims or causes of action against such prior landlord for prior losses or damages and against the successor landlord for all losses or damages arising from and after the date that such successor landlord takes title to the Property

5. Tenant agrees that it shall give Lender the same notice it provides Landlord of any default by Landlord under the Lease and shall give Lender the same period of time to cure the default as Landlord receives under the Lease. Lender's cure period shall be co-terminous with Landlord's cure period.

6. Any notices herein required or permitted to be given to or served upon either party shall be in writing. Any such notice shall be sufficiently given or served, if served personally or if sent by certified mail or by any nationally recognized overnight carrier to Lender, Tenant and Landlord at the respective address listed below:



**Lender: U.S. Bank National Association
229 Kingsbury Grade
Stateline, NV 89449**

**Tenant: Ubiquitel Operating Company
6391 Sprint Parkway
MS: KSOPHT0101-Z2040
Overland Park, KS 66251**

**Landlord: Clear Creek Plaza, LLC
P. O. Box 1882
Carson City, NV 89702**

Any party may designate any other address for notices upon written notice to the other parties at the above addresses.

7. This Agreement shall bind and inure to the benefit of the parties hereto and their successors and assigns.

8. This Agreement shall not be modified or amended except by a written document signed by all parties hereto.

9. If there is any conflict in the terms, conditions, or obligations ascribed in this Agreement and the Lease (and any executed amendments or documents, if applicable), the Lease shall prevail.

10. The individual executing this Agreement on behalf of Tenant hereby represents that it has the full right and authority to execute and deliver this Agreement and that such person signing on behalf of Tenant is authorized by Tenant to do so.

[Signatures appear on the following page.]



IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of the day and year first above written.

Lender:

U.S. Bank National Association

By: *C. Scherr*
Name: *CRAIG B. SCHERR*
Title: *Commercial Relationship Manager*

Tenant:

Ubiquitel Operating Company, a Delaware company
By: CB Richard Ellis, Inc., as its
Authorized Signatory

By: *Tammy Arnold*
Name: *Tammy Arnold*
Title: *Transaction Manager*

Landlord:

Clear Creek Plaza, LLC,
a Nevada limited liability company

By: *Edgar S. Roberts*
Name: *Edgar S. Roberts - Sacramento*
Title: *as atty in fact*



Landlord Acknowledgment

STATE OF Nevada)
) SS
COUNTY OF Carson)

The undersigned, a Notary Public in and of the aforementioned state and county, does hereby certify that Edgar S. Roberts as landlord of Clear Creek Plaza, LLC, personally came before me this day and acknowledged the due execution of the foregoing instrument for the purposes stated therein.

WITNESS my hand and notarial seal this 22 day of August, 2012

Heather Castillo

Notary Public

Name: Heather Castillo





EXHIBIT "A"

LEGAL DESCRIPTION

All that certain real property situated in the County of Douglas, State of Nevada, described as follows:

PARCEL 1:

A parcel of land located within the West one-half of Government Lot 2 of Section 6 and within Government Lots 7 and 14, westerly U.S. Highway 395 of Section 6, Township 14 North, Range 20 East, M.D.B.&M., more particularly described as follows:

COMMENCING at the North one-sixteenth corner (CC N 1/16) of said Section 6, a found 5/8" rebar with aluminum cap PLS 3519, shown as the Southwest corner of 13-210-04 on the Amended Record of Survey for Douglas County #32 recorded July 11, 2000 in the office of Recorder, Douglas County, Nevada as Document No. 405561; thence along the westerly line of said West one-half of Government Lot 2, North 00°15'54" East, 833.43 feet to the point of beginning; thence continuing along said westerly line, North 00°15'54" East, 82.34 feet; thence North 78°12'09" East, 1,348.97 feet; thence along the easterly line of said West one-half of Government Lot 2, South 00°21'09" West, 186.13 feet; thence along the northerly line of said Government Lot 7, North 89°35'11" East, 329.99 feet to the Northeast corner of said Government Lot 7; thence along the East line of said Government Lot 7, South 00°19'55" West, 15.71 feet to a point on the westerly right-of-way of U.S. Highway 395; thence along said westerly right-of-way, South 07°48'25" West, 358.78 feet; thence North 89°44'06" West, 288.78 feet; thence along the arc of a curve to the left having a radius of 24.50 feet, central angle of 90°00'00", and an arc length of 38.48 feet; thence non-tangent to the preceding course, North 00°15'54" East, 170.04 feet; thence along the arc of a curve to the left having a radius of 55.50 feet, central angle of 90°00'00", and arc length of 87.18 feet; thence North 89°44'06" West, 820.50 feet; thence North 00°15'54" East, 8.33 feet; thence North 89°44'06" West, 340.00 feet; thence South 00°15'54" West, 18.50 feet; thence along the arc of a curve to the right having a radius of 1.50 feet, central angle of 90°00'00" and arc length of 2.38 feet; thence North 89°44'06" West, 291.00 feet to the point of beginning.

PARCEL 2:

A 40' roadway easement as set forth in deeds recorded as Document Numbers 2457, in Book 876, Page 640, on August 13, 1976 and 132063, in Book 386, Page 1063, on March 12, 1988, Official Records of Douglas County, State of Nevada.

Together with all rights for cross access and parking as set forth in that certain "Easements with Covenants and Restrictions Affecting Said Land ("ECR"), recorded on February 12, 2001, in Book 201, Page 2028, as Document Number 508581.

Excepting therefrom any portion of the above easements located within Parcel 1 above.

NOTE: Legal description previously contained in Document No. 700189 recorded May 1, 2007 in Book 507, Page 211, Official Records of Douglas County, State of Nevada.