

UNOFFICIAL COPY



Recording requested by and when
Recorded return to:

Winston & Strawn LLP
35 West Wacker Drive
Chicago, Illinois 60601
Attention: James C. Lukas

Doc#: 1319822017 Fee: \$64.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 07/17/2013 10:15 AM Pg: 1 of 14

07-15-13 10:15 AM

Space above this line for Recorder's use

LEASE SUBORDINATION, NON-DISTURBANCE OF POSSESSION AND ATTORNMENT AGREEMENT

This Lease Subordination, Non-Disturbance of Possession and Attornment Agreement (hereinafter, the "Subordination, Non-Disturbance and Attornment Agreement" or "Agreement") is made as of the 26th day of June, 2013, among ANTLER BAR REAL ESTATE LLC, a Delaware limited liability company having a place of business at 227 W. Monroe Street, Suite 4000, Chicago, Illinois 60606 (the "Lender"), TORBURN ARLINGTON HEIGHTS, LLC, an Illinois limited liability company, (hereinafter, the "Landlord" or "Borrower"), and NOKIA SIEMENS NETWORKS US LLC, a Delaware limited liability company, (hereinafter, the "Tenant").

Introductory Provisions

A. Lender is relying on this Agreement as an inducement to Lender in making and maintaining a loan (hereinafter, the "Loan") secured by, among other things, a certain Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of June 26, 2013 (hereinafter, as amended, modified, supplemented or restated from time to time, the "Mortgage") given by Borrower covering property commonly known as 1455 Shure Drive, Arlington Heights, Illinois, more particularly described on Exhibit A hereto (hereinafter, the "Property"). The Mortgage provides for an assignment of leases and rents from Borrower to Lender with respect to the Property (the "Assignment").

B. Tenant is the tenant under that certain lease (hereinafter, the "Lease") dated June 26, 2013, made with Landlord, covering certain premises (hereinafter, the "Premises") at the Property as more particularly described in the Lease.

FAK 3/21

6-26-13

UNOFFICIAL COPY

C. Lender requires, as a condition to the making and maintaining of the Loan, that the Mortgage be and remain superior to the Lease and that its rights under the Assignment be recognized.

D. Tenant requires as a condition to the Lease being subordinate to the Mortgage that its rights under the Lease be recognized.

E. Lender, Landlord, and Tenant desire to confirm their understanding with respect to the Mortgage and the Lease.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements contained herein, and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, and with the understanding by Tenant that Lender shall rely hereon in making and maintaining the Loan, the Lender, the Landlord, and the Tenant agree as follows:

1. Subordination. The Lease and the rights of Tenant thereunder are subordinate and inferior to the lien of the Mortgage and any amendment, renewal, substitution, extension or replacement thereof and each advance made thereunder as though the Mortgage, and each such amendment, renewal, substitution, extension or replacement were executed and recorded, and the advance made, before the execution of the Lease; provided, however, that the subordination of the Lease to the Mortgage should not be construed to constitute Tenant's consent or agreement to any term, condition, or provision of the Mortgage or any related loan document which is inconsistent with or purports to modify, alter, or amend the Lease.
2. Non-Disturbance. So long as Tenant is not in default (beyond any period expressed in the Lease within which Tenant may cure such default) in the payment of rent or in the performance or observance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed or observed, (i) Tenant's occupancy of the Premises shall not be disturbed by Lender in the exercise of any of its rights under the Mortgage during the term of the Lease, or any extension or renewal thereof made in accordance with the terms of the Lease, and (ii) Lender will not join Tenant as a party defendant in any action or proceeding for the purpose of terminating Tenant's interest and estate under the Lease because of any default under the Mortgage.
3. Attornment and Certificates. In the event Lender succeeds to the interest of Borrower as Landlord under the Lease, or if the Property or the Premises are sold pursuant to the power of sale under the Mortgage, Tenant shall attorn to Lender, or a purchaser upon any such foreclosure sale, and shall recognize Lender, or such purchaser, thereafter as the Landlord under the Lease. Such attornment shall be effective and self-operative without the execution of any further instrument. Tenant agrees, however, to execute and deliver at any time and from time to time, upon the request of any holder(s) of any of the indebtedness or other obligations secured by the Mortgage, or upon request of any such purchaser, (a) any instrument or certificate which, in the reasonable judgment of such holder(s), or such purchaser, may be necessary or appropriate in any such foreclosure proceeding or otherwise to evidence such attornment, and (b) an instrument or certificate

UNOFFICIAL COPY

regarding the status of the Lease, consisting of statements, if true (and if not true, specifying in what respect), (i) that the Lease is in full force and effect, (ii) the date through which rentals have been paid, (iii) the duration and date of the commencement of the term of the Lease, (iv) the nature of any amendments or modifications to the Lease, (v) that no default, or state of facts, which with the passage of time, or notice, or both, would constitute a default, exists on the part of either party to the Lease, and (vi) the dates on which payments of additional rent, if any, are due under the Lease.

4. Limitations. If Lender exercises any of its rights under the Assignment or the Mortgage, or if Lender shall succeed to the interest of Landlord under the Lease in any manner, or if any purchaser acquires the Property, or the Premises, upon or after any foreclosure of the Mortgage, or any deed in lieu thereof, Lender or such purchaser, as the case may be, shall have the same remedies by entry, action or otherwise in the event of any default by Tenant (beyond any period expressed in the Lease within which Tenant may cure such default) in the payment of rent or in the performance or observance of any of the terms, covenants and conditions of the Lease on Tenant's part to be paid, performed or observed that the Landlord had or would have had if Lender or such purchaser had not succeeded to the interest of the present Landlord. From and after any such attornment, Lender or such purchaser shall be bound to Tenant under all the terms, covenants and conditions of the Lease, and Tenant shall, from and after such attornment to Lender, or to such purchaser, have the same remedies against Lender, or such purchaser, for the breach of an agreement contained in the Lease that Tenant might have had under the Lease against Landlord, if Lender or such purchaser had not succeeded to the interest of Landlord; provided, however, that Lender or such purchaser shall only be bound during the period of its ownership, and that in the case of the exercise by Lender of its rights under the Mortgage, or the Assignment, or any combination thereof, or a foreclosure, or deed in lieu of foreclosure, all Tenant claims shall be satisfied only out of the interest, if any, of Lender, or such purchaser, in the Property, and Lender and such purchaser shall not be (a) liable for any act or omission of any prior landlord (including the Landlord) unless the same accrue or are continuing on or after the date Lender takes possession of or title to the Property or Lender receives written notice of same from Tenant and opportunity to cure pursuant to Section 6 below; or (b) liable for or incur any obligation with respect to the construction of the Property or any improvements of the Premises or the Property; or (c) subject to any offsets or defenses which Tenant might have against any prior landlord (including the Landlord) unless the same accrue or are continuing on or after the date Lender takes possession of or title to the Property or Lender receives written notice of same from Tenant and opportunity to cure pursuant to Section 6 below; or (d) bound by any rent or additional rent which Tenant might have paid for more than the then current rental period to any prior landlord (including the Landlord); or (e) except as provided in Section 11 below, bound by any amendment or modification of the Lease, made without Lender's prior written consent; (f) except any assignment or sublet permitted under the Lease as to which Landlord's consent is not required, bound by any assignment or sublet, made without Lender's prior written consent; or (g) bound by or responsible for any security deposit not actually received by Lender; or (h) liable for or incur any obligation with respect to any breach of warranties or representations of any nature under the Lease or otherwise including without limitation any warranties or representations respecting use, compliance with zoning, landlord's title, landlord's authority, habitability and/or

UNOFFICIAL COPY

fitness for any purpose, or possession; (i) liable for consequential damages or (j) liable for any tenant allowances.

5. Rights Reserved. Nothing herein contained is intended, nor shall it be construed, to abridge or adversely affect any right or remedy of : (a) the Landlord under the Lease, or any subsequent Landlord, against the Tenant in the event of any default by Tenant (beyond any period expressed in the Lease within which Tenant may cure such default) in the payment of rent or in the performance or observance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed or observed; or (b) the Tenant under the Lease against the original or any prior Landlord in the event of any default by the original Landlord to pursue claims against such original or prior Landlord whether or not such claim is barred against Lender or a subsequent purchaser.

6. Notice and Right to Cure. Tenant agrees to provide Lender with a copy of each notice of default under the Lease, at the same time as Tenant provides Landlord with such notice, and that in the event of any default or failure by the Landlord under the Lease, Tenant will take no action to terminate the Lease unless the default or failure remains uncured for the same cure period provided in the Lease running contemporaneously with Landlord's cure period thereunder, after written notice thereof shall have been given, postage prepaid, to Landlord at Landlord's address, and to Lender at the address provided in Section 7 below. Lender shall have no obligation to cure any default or failure under the Lease.

7. Notices. Any notice or communication required or permitted hereunder shall be in writing, and shall be given or delivered: (i) by United States mail, registered or certified, postage fully prepaid, return receipt requested, or (ii) by recognized courier service or recognized overnight delivery service; and in any event addressed to the party for which it is intended at its address set forth below:

To Lender:

Antler Bar Real Estate LLC
 227 W. Monroe Street, Suite 4000
 Chicago, Illinois 60606
 Attn: Matthew Halbower

with copies by regular mail or such hand delivery or facsimile transmission to:

Winston & Strawn LLP
 35 W. Wacker Drive
 Chicago, Illinois 60601
 Attn: James Lukas

If to the Landlord:

Torburn Arlington Heights, LLC
 c/o Torburn Partners, Inc.

UNOFFICIAL COPY

1033 Skokie Blvd., Suite 150
Northbrook, Illinois 60062
Attn: Michael K. Burns

with copies by regular mail or such hand delivery or facsimile transmission to:

The Selig Law Firm, P.C.
1622 Willow Road, Suite 206
Northfield, Illinois 60093
Attn: Randal J. Selig

If to Tenant:

Nokia Siemens Networks US LLC
6000 Connection Drive
Mail Drop 1-3-660
Irving, Texas 75039
Attn: Head of Real Estate NAM

and

Nokia Siemens Networks US LLC
6000 Connection Drive
Mail Drop 1-3-660
Irving, Texas 75039
Attn: Legal Department

with a copy to:

Hunton & Williams LLP
1445 Ross Avenue, Suite 3700
Dallas, Texas 75202
Attn: Mark Vowell

other address as such party may have previously specified by notice given or delivered in accordance with the foregoing. Any such notice shall be deemed to have been given and received on the date delivered or tendered for delivery during normal business hours as herein provided.

- 8. No Oral Change. This Agreement may not be modified orally or in any manner than by an agreement in writing signed by the parties hereto or their respective successors in interest.
- 9. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective heirs, personal representatives, successors and

UNOFFICIAL COPY

assigns, and any purchaser or purchasers at foreclosure of the Property or any portion thereof, and their respective heirs, personal representatives, successors and assigns.

10. Payment of Rent To Lender. Tenant acknowledges that it has notice that the Lease and the rent and all sums due thereunder have been assigned to Lender as part of the security for the obligations secured by the mortgage. In the event Lender notifies Tenant of a default under the Loan and demands that Tenant pay its rent and all other sums due under the Lease to Lender, Tenant agrees that it will honor such demand and pay its rent and all other sums due under the Lease to Lender, or Lender's designated Lender, until otherwise notified in writing by Lender. Borrower unconditionally authorizes and directs Tenant to make rental payments directly to Lender following receipt of such notice and further agrees that Tenant may rely upon such notice without any obligation to further inquire as to whether or not any default exists under the Mortgage, and that Borrower shall have no right or claim against Tenant for or by reason of any payments of rent or other charges made by Tenant to Lender following receipt of such notice.
11. No Amendment or Cancellation of Lease. So long as the Mortgage remains undischarged of record, Tenant agrees that it will not, without the prior written consent of Lender: (i) modify the Lease or any extensions or renewals thereof in such a way as to reduce rent, accelerate rent payment or shorten the original term; (ii) terminate the Lease, except as expressly provided by its terms; (iii) tender or accept a surrender of the Lease or make a prepayment in excess of one (1) month of any rent thereunder; or (iv) subordinate or knowingly permit subordination of the Lease to any lien subordinate to the Mortgage, except for those liens that are superior to the Mortgage by law, if any. Any such purported action without such consent shall be void as against Lender.
12. Options. With respect to any options for additional space provided to Tenant under the Lease, Lender agrees to recognize the same if Tenant is entitled thereto under the Lease after the date on which Lender succeeds as Landlord under the Lease by virtue of foreclosure or deed in lieu of foreclosure or Lender takes possession of the Premises; provided, however, Lender shall not be responsible for any acts of any prior landlord under the lease, or the act of any tenant, subtenant or other party which prevents Lender from complying with the provisions hereof and Tenant shall have no right to cancel the Lease or to make any claims against Lender on account thereof.
13. Proceeds. Without limiting Tenant's other rights and remedies, and subject to applicable law, proceeds received by Landlord or Tenant (or Lender to the extent such proceeds are received by Lender) from insurance, eminent domain, condemnation and the like shall be applied as required or permitted by the provisions of the Lease.
14. Captions. Captions and headings of sections are not parts of this Agreement and shall not be deemed to affect the meaning or construction of any of the provisions of this Agreement.
15. Counterparts. This Agreement may be executed in several counterparts each of which when executed and delivered is an original, but all of which together shall constitute one instrument.

UNOFFICIAL COPY

16. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.
17. Parties Bound. The provisions of this Agreement shall be binding upon and inure to the benefit of Tenant, Lender, and Borrower and their respective successors and assigns; provided, however, reference to successors and assigns of Tenant shall not constitute a consent by Landlord or Borrower to an assignment or sublet by Tenant, but has reference only to those instances in which such consent is not required pursuant to the Lease or for which such consent has been given.

[SIGNATURE PAGE FOLLOWS]

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

LENDER:

ANTLER BAR REAL ESTATE LLC

By: Matthew Halbower
Name: Matthew Halbower
Title: Sole Member

TENANT:

NOKIA SIEMENS NETWORKS US LLC

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

LANDLORD / BORROWER:

TORBURN ARLINGTON HEIGHTS, LLC

By: Torburn Partners, Inc., its sole member

By: _____
Name: _____
Title: _____

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS

COUNTY OF COOK, ss.

June 24, 2013

On this date June 24, 2013, before me, the undersigned notary public, personally appeared Matthew Halbower, the sole member of ANTLER BAR REAL ESTATE LLC, proved to me through satisfactory evidence of identification, which was personal knowledge, 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.

S. Fukushima
Samantha Fukushima, Notary Public
My Commission Expires: November 8, 2016



Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

LENDER:

ANTLER BAR REAL ESTATE LLC

By: _____

Name: Matthew Halbower

Title: Sole Member

TENANT:

NOKIA SIEMENS NETWORKS US LLC

By: _____

Name: Rick Cocker

Title: President

By: _____

Name: Robert CANAVAN

Title: VP Head of Real Estate

LANDLORD / BORROWER:

TORBURN ARLINGTON HEIGHTS, LLC

By: Torburn Partners, Inc., its sole member

By: _____

Name: _____

Title: _____

Property of COOK County Clerk's Office

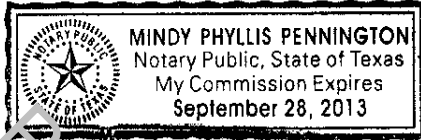
UNOFFICIAL COPY

STATE OF Texas

Dallas, ss.

June 25, 2013

Then personally appeared before me Ricky Cooper, a President of NOKIA SIEMENS NETWORKS US LLC, and acknowledged the foregoing to be such person's free act and deed and the free act and deed and of said Limned Liability Company.



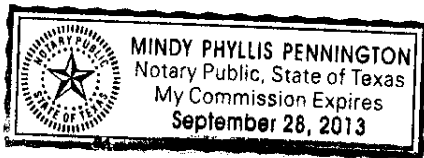
Mindy P. Pennington
Notary Public
My Commission Expires: 9-28-13

STATE OF Texas

Dallas, ss.

June 25, 2013

Then personally appeared before me Robert Cannon, a UNM Head of Real Estate of NOKIA SIEMENS NETWORKS US LLC, and acknowledged the foregoing to be such person's free act and deed and the free act and deed and of said Limned Liability Company.



Mindy P. Pennington
Notary Public
My Commission Expires: 9-28-13

Property of COOK County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

LENDER:

ANTLER BAR REAL ESTATE LLC

By: _____

Name: Matthew Halbower

Title: Sole Member

TENANT:

NOKIA SIEMENS NETWORKS US LLC

By: _____

Name: _____

Title: _____

By: _____

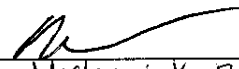
Name: _____

Title: _____

LANDLORD / BORROWER:

TORBURN ARLINGTON HEIGHTS, LLC

By: Torburn Partners, Inc., its sole member

By:  _____

Name: Michael K. Burns

Title: President

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS

COUNTY OF COOK, ss.

June 27, 2013

Then personally appeared before me Michael K. Burns, the President of Torburn Partners, Inc., the sole member of TORBURN ARLINGTON HEIGHTS, LLC and acknowledged the foregoing to be such person's free act and deed and the free act and deed and of said limited liability company.

E. Page Barker

E. Page Barker, Notary Public
My Commission Expires: 9/26/16



City of Cook County Clerk's Office

UNOFFICIAL COPYEXHIBIT A**LEGAL DESCRIPTION:**

PARCEL 1: THAT PART OF LOT 1 IN ARLINGTON INDUSTRIAL & RESEARCH CENTER-UNIT NUMBER 6, BEING A SUBDIVISION OF SECTION 7, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED ON AUGUST 22, 1972 AS DOCUMENT NUMBER 22024211, IN THE RECORDER OF DEEDS OF COOK COUNTY, ILLINOIS, SAID PARTS LYING SOUTH OF A LINE DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 1; THENCE NORTH 11 DEGREES 17 MINUTES 16 SECONDS EAST, 36.44 FEET; THENCE NORTH 89 DEGREES 53 MINUTES 08 SECONDS EAST, 2145.54 FEET; THENCE NORTH 00 DEGREES 04 MINUTES 09 SECONDS EAST, 372.77 FEET; THENCE NORTH 89 DEGREES 53 MINUTES 30 SECONDS EAST, 72.20 FEET TO THE EAST LINE OF LOT 1 AFORESAID;

ALSO THAT PART OF THE SOUTH 969.60 FEET OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING ON THE NORTH LINE OF SAID SOUTH 969.60 FEET, 820.00 FEET EAST OF THE EAST LINE OF FRONTAGE ROAD, AT THE NORTHEAST CORNER OF ARLINGTON RIDGE WEST, RECORDED AS DOCUMENT NUMBER 25290181; THENCE SOUTHERLY ALONG THE EAST LINE OF SAID ARLINGTON RIDGE WEST AND THE SOUTHERLY EXTENSION THEREOF, 637.61 FEET; THENCE EASTERLY PARALLEL WITH THE NORTH LINE OF SAID SOUTH 969.60 FEET, 1373.86 FEET TO A POINT ON THE WESTERLY LINE OF C/S SUBDIVISION, RECORDED AS DOCUMENT NUMBER 25851185; THENCE NORTHERLY ALONG THE WESTERLY LINE OF SAID C/S SUBDIVISION 627.23 FEET TO THE NORTH LINE OF SAID SOUTH 969.60 FEET OF THE NORTHWEST QUARTER; THENCE WESTERLY ALONG THE NORTH LINE OF SAID SOUTH 969.60 FEET, 1353.18 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS,

PARCEL 2: NON-EXCLUSIVE EASEMENTS FOR INGRESS AND EGRESS OVER AND UPON ROADWAY NORTH OF AND ADJOINING SUBJECT LAND FOR INGRESS AND EGRESS FOR THE BENEFIT OF PARCEL 1 AND FOR USE OF FIRE PROTECTION SYSTEM, FOR USE OF FIBER LOOP AND FOR STORM WATER DRAINAGE AS CREATED BY RECIPROCAL EASEMENT AGREEMENT RECORDED JULY 10, 2013 AS DOCUMENT NUMBER 1319118008.

Common Address: 1455 W. Shure Drive, Arlington Heights, Illinois

PIN(s): 03-07-100-005-000 and 03-07-100-015-0000

03-07-100-006-0000

CHI:2752641.2