

mtc 96038  
RECORDING REQUESTED BY )  
AND WHEN RECORDED MAIL TO: )  
 )  
Black Dot Capital & Real Estate Group )  
27271 Las Ramblas, Suite 200 )  
Mission Viejo, CA 92691 )  
Attn: Howard Forgey )  
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2013-003222  
Klamath County, Oregon  
03/26/2013 02:30:55 PM  
Fee: \$97.00

Space above for Recorder's Use

**SUBORDINATION, NON-DISTURBANCE**  
**AND ATTORNMEN AGREEMENT AND**  
**PARTIAL RELEASE OF ASSIGNMENT OF LEASES AND RENTS**

THIS AGREEMENT (this "Agreement") is made as of the 28th day of February 2013, by and among Washington Federal, a federal savings association, successor by merger to South Valley Bank & Trust, whose address is Commercial Branch, P.O. Box 5210, Klamath Falls, OR 97601 (hereinafter referred to as "Lender"), CF Black Dot LLC, a Delaware limited liability company (hereinafter referred to as "CFBD"), whose address is 27271 Las Ramblas, Suite 200, Mission Viejo, CA 92691, and KBQ, LLC, an Oregon limited liability company, whose address is 2450 N.E. Mary Rose Place, Suite 200, Bend, OR 97701 (hereinafter referred to as "Site Owner").

**WITNESSETH:**

WHEREAS, Lender has made a loan to Site Owner (such loan and any renewal, substitution, extension or replacement thereof being hereinafter collectively called the "Loan") in an amount up to Two Hundred Fifty Thousand and No/100 (\$250,000.00) Dollars, which is secured by, *inter alia*, that certain Deed of Trust in the amount of up to \$250,000.00, by Site Owner, as trustor, in favor of Lender, as trustee, dated September 28, 2011, and recorded in the Klamath County, Oregon Microfilm Records on October 11, 2011 in Volume No. 2011-011292, as amended on June 28, 2012 and recorded on July 11, 2012 in Volume No. 2012-007596, and the Assignment of Rents dated September 28, 2011 and recorded on October 11, 2011 in Volume No. 2011-011293 (such Deed of Trust and any and all other security interests encumbering the Site Owner's Property, as hereinafter defined, securing the Loan and any renewal, substitution, amendment, extension or replacement thereof being hereinafter collectively referred to as the "Deed of Trust"), upon the tract of land described in **Exhibit "A"** hereto (the "Site Owner's Property"); and

WHEREAS, a portion of the Site Owner's Property (the "Communication Site") is subject to a Lease Purchase and Easement Agreement by and between Site Owner and CFBD dated as of March 25, 2013, pursuant to which Site Owner granted to CFBD an

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easement for the operation of a communications facility, utilities, access and other purposes more fully described therein (the "Communication Easement"), and has assigned to CFBD all right, title and interest in and to the Leases set forth on Exhibit "B" hereto (the "Assigned Leases"); and

WHEREAS, the parties hereto desire to enter into this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt, adequacy and sufficiency of which is hereby acknowledged by the parties hereto, Lender, CFBD and Site Owner agree as follows:

1. Subordination. Notwithstanding anything to the contrary set forth in the Assigned Leases or Lease Purchase Agreement, the Assigned Leases and the leasehold estate created thereby, and the Communication Easement and all of CFBD's rights thereunder, shall be and shall at all times remain subject, subordinate and inferior to the Deed of Trust and the lien thereof, and all rights of Lender thereunder.

2. Non-Disturbance. So long as the Communication Easement is not terminated, CFBD's use, possession or enjoyment of the Communication Site, including the collection of rents by CFBD pursuant to the Assigned Leases shall not be interfered with nor shall the easement granted by the Communication Easement be affected in any other manner, in any exercise of any power of sale in the Deed of Trust, or by foreclosure or any action or proceeding instituted under or in connection with the Deed of Trust, except that the person or entity acquiring the interest of the Site Owner as a result of any such action or proceeding, and the successors and assigns thereof (hereinafter referred to as the "Purchaser") shall not be (a) liable for any act or omission of any prior site owner under the Communication Easement or Assigned Leases; or (b) subject to any offsets of defenses which CFBD under the Communication Easement or Assigned Leases might have against the prior site owner under the Communication Easement or Assigned Leases; or (c) bound by any amendment or modification to the Communication Easement or Assigned Leases made without Lender's prior written consent. Lender and Site Owner specifically acknowledge that CFBD shall have the exclusive right to collect any and all rents due by tenants under the Assigned Leases (each, a "Tenant") and, by execution of this instrument, any Assigned Leases are specifically released from the Deed of Trust, and any and all other security interests executed in connection with the aforesaid or otherwise securing the Loan.

3. CFBD Not to Be Joined in Foreclosure. So long as the Communication Easement and Assigned Leases are not terminated, Lender will not join CFBD as a party defendant in any action or proceeding foreclosing the Deed of Trust unless such joinder is necessary to foreclose the Deed of Trust and then only for such purpose and not for the purpose of terminating the Communication Easement or the Assigned Leases. In such instance, Lender will prepare and CFBD will execute a stipulation between the parties, which acknowledges the existence of this Agreement and relieves CFBD of any obligation to file responsive pleadings in such action or proceeding. Lender shall bear the costs of preparing such stipulation and filing it in the action or proceeding.

4. Attornment. In the event the exercise of the power of sale in the Deed of Trust, or in the event of foreclosure of the Deed of Trust, or in event of a conveyance of the Site Owner's Property in lieu of foreclosure, CFBD agrees to attorn to and accept the Purchaser as the site owner for the balance then remaining of the term of the Communication Easement and Assigned Leases, subject to all terms and conditions of said Communication Easement and Assigned Leases, and the terms of this Agreement. Said attornment shall be effective and self-operative without the execution of any further instruments upon the succession by Purchaser to the interest of Site Owner. The respective rights and obligations of CFBD and Lender upon such attornment, shall be and are the same as now set forth in the Communication Easement and the Assigned Leases.

5. Tenant's Tower, Building and Equipment. Lender hereby acknowledges and agrees that the Deed of Trust and Assignment does not apply to Tenant's Tower(s), Building(s) and Equipment and that removal of said Tower(s), Building(s) and Equipment is governed by the terms of the Communication Easement and the Assigned Leases.

6. As to Site Owner and CFBD. As between Site Owner and CFBD, Site Owner and CFBD covenant and agree that nothing contained herein nor anything done pursuant to the provisions hereof shall be deemed or construed to modify the Communication Easement or the Assigned Leases.

7. As to Site Owner and Lender. As between Site Owner and Lender, Site Owner and Lender covenant and agree that nothing contained herein nor anything done pursuant to the provisions hereof shall be deemed or construed to modify the Deed of Trust.

8. Successors and Assigns. This Agreement and each and every covenant, agreement and other provision hereof shall be binding upon the parties and their respective heirs, administrators, representatives, successors and assigns, including without limitation each and every holder of the Communication Easement and Assigned Leases, or any other person having an interest therein and any purchaser of the Site Owner's Property, including without limitation at or after a foreclosure sale or conveyance in lieu of foreclosure.

9. Title of Paragraphs. The titles of the paragraphs of this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

10. Governing Law. This Agreement shall be interpreted and governed by the laws of the State in which the Site Owner's Property is located.

11. Notices. All notices or other communications made pursuant hereto shall be in writing addressed to the parties at their respective addresses set forth below and shall be deemed properly delivered, given or served as follows:

(a) The next business day when deposited with FedEx or other overnight delivery service with all delivery charges paid or accounted for, provided such notice is deposited with the courier service in time for delivery by no later than 5:00 p.m. on the next business day; or

(b) On the date transmitted if sent by facsimile; provided such notice is sent transmitted to the recipient by 5:00 p.m. on a business day, otherwise it shall be deemed delivered or sent on the next business day; or

(c) Two business days after being mailed by certified or registered mail, postage prepaid.

All such notices shall be addressed to the parties as follows:

For Lender:

Washington Federal, a federal savings association, successor by  
Merger to South Valley Bank & Trust  
Commercial Branch  
P.O. Box 5210  
Klamath Falls, OR 97601

For Site Owner:

KBQ, LLC  
2450 N.E. Mary Rose Place  
Suite 200  
Bend, OR 97701

For CFBD:

CF Black Dot LLC  
c/o Black Dot Capital & Real Estate Group, L.L.C.  
27271 Las Ramblas, Suite 200  
Mission Viejo, CA 92691  
Attention: Howard Forgey  
Facsimile: (949) 502-3942


Any party may change its address for the purposes of this Section by giving five days prior written notice of such change to the other parties in the manner provided in this Section.

12. Counterparts. This Agreement may be signed in multiple counterparts, each of is an original, but all of which comprise one Agreement.

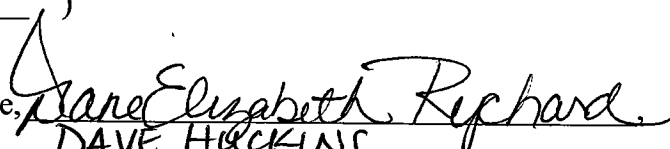
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

**"LENDER":**

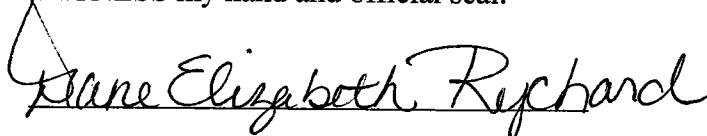
**Washington Federal, a federal savings  
association, successor by merger to South  
Valley Bank & Trust**

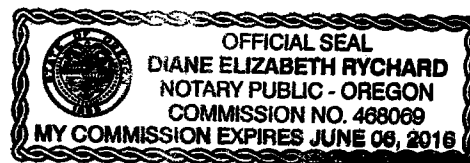
By:   
Print Name: DAVE HUCKINS  
Title: VICE PRESIDENT

STATE OF OREGON )  
COUNTY OF DESCHUTES ) ss.

On MAR 12, 2013, before me, ,  
notary public, personally appeared DAVE HUCKINS,  
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 behalf of which the person(s)  
acted, executed the instrument.

WITNESS my hand and official seal.





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

**"SITE OWNER":**

KBQ, LLC,  
an Oregon limited liability company

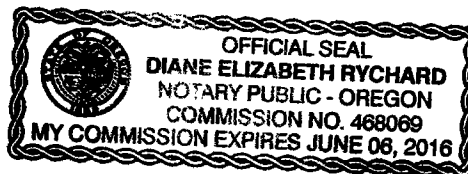
By: [Signature]  
Print Name: R. Quinn  
Title: MANAGING PARTNER

STATE OF Oregon )  
 ) ss.  
COUNTY OF Deschutes )

On March 12<sup>th</sup>, 2013, before me, Diane Elizabeth Rychar,  
notary public, personally appeared R. Quinn,  
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 behalf of which the person(s)  
acted, executed the instrument.

WITNESS my hand and official seal.

Diane Elizabeth Rychar  
Signature of Notary Public



**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

**“CFBD”:**

CF Black Dot, LLC,  
a Delaware limited liability company

By: CF Black Dot Holdco LLC,  
a Delaware limited liability company  
Its: Member

By: Black Dot Capital & Real Estate Group, L.L.C.,  
a Delaware limited liability company  
Its: Member

By:

  
\_\_\_\_\_  
**Name: Marc Anthony**  
**Title: Manager**

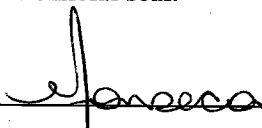
-ACKNOWLEDGMENT

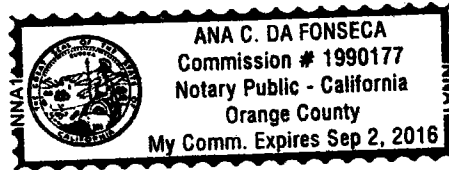
STATE OF CALIFORNIA           )  
                                          )  
COUNTY OF ORANGE           )

On 3/12/13 before me, Ana C. Da Fonseca, the undersigned, a Notary Public in and for said State, personally appeared Marc Anthony, who 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 behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 



Name Ana C Da Fonseca  
(typed or printed)

(Seal)



**EXHIBIT "A"**

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

**Legal Description**

Parcel 2 of Land Partition 3-12, located in the Southeast one-quarter of the Northwest one-quarter of Section 20, Township 38 South, Range 9 East, Willamette Meridian, filed June 18, 2012 in Volume 2012-006593, Microfilm Records of Klamath County, Oregon.

**EXHIBIT "B"**  
**TO SUBORDINATION, NON-DISTURBANCE**  
**AND ATTORNMENT AGREEMENT**

**Description of Assigned Leases**

- (1) Land Lease Agreement dated March 1, 2006, by and between South Central Enterprises, LLC, an Oregon limited liability company, as Landlord, and Verizon Wireless (VAW) LLC d/b/a Verizon Wireless, as Tenant, concerning the Premises that are a portion of the Property located at 2701 Clover Street, Klamath Falls, OR 97601, for the purpose of installing, operating and maintaining a communications facility and other improvements.
- (2) Option and Lease Agreement dated February 25, 2009, by and between South Central Enterprises, LLC, an Oregon limited liability company, as Landlord, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Tenant, concerning the Premises that are a portion of the Property located at 2701 Clover Street, Klamath Falls, OR 97601, for the purpose of installing, operating and maintaining a communications facility and other improvements.