

20090806000301610 1/8 \$32.00
Shelby Cnty Judge of Probate, AL
08/06/2009 09:51:46 AM FILED/CERT

Prepared by:

Robert W. Mouton
Locke Lord Bissell & Liddell LLP
601 Poydras Street, Suite 2660
New Orleans, LA 70130
File: #0590924/03158

Record and Return to:

Dione Carter
Fidelity National Title Group
7130 Glen Forest Drive, Suite 300
Richmond, VA 23226
Phone: 1.804.267.2049
Fax: 1.804.267.2330
File: #11664553
Unison Site# 433519

**NON-DISTURBANCE
AND ATTORNMENMENT AGREEMENT AND
PARTIAL RELEASE OF ASSIGNMENT OF LEASES AND RENTS**

THIS AGREEMENT (the "Agreement") is made as of the 31st day of July, 2009 ("Effective Date"), by and among Frontier Bank, whose address is 16863 Highway 280, Chelsea, Alabama 35043 (hereinafter referred to as "Lender"), T6 Unison Site Management LLC, a Delaware limited liability company (hereinafter referred to as "Unison"), whose address is P. O. Box 1951, Frederick, Maryland 21702-0951, and KDR Construction, L.L.C., an Alabama limited liability company, whose address is 534 Castlebridge Lane, Birmingham, Alabama 35242 (hereinafter referred to as "Site Owner").

WITNESSETH:

WHEREAS, Lender has one or more loans to Site Owner (such loan and any renewal, substitution, extension or replacement thereof being hereinafter collectively called the "Loan"), which is secured by, *inter alia*, that certain Mortgage and Security Agreement in the amount of \$880,000.00 and executed by KDR Construction, LLC, as grantor, in favor of Frontier Bank on October 10, 2001, and recorded October 17, 2001, in Instrument No. 2001-45015, in the original amount of \$880,000.00, as modified by the Amendment to Mortgage and Security Agreement executed between the foregoing parties on January 30, 2009, and which increased the loan amount to \$1,100,000.00, recorded on February 24, 2009, in Instrument No. 20090224000065130 (such Mortgage and any and all other security interests encumbering the Site Owner's Property, as hereafter defined, securing the Loan and any renewal, substitution, amendment, extension or replacement thereof being hereinafter collectively referred to as the "Mortgage"), 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 Wireless Communication Easement and Assignment Agreement by and between Site Owner and Unison dated as of July 31, 2009 (the "Communication Easement") in which said Communication Easement, the Site Owner has

assigned to Unison 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, Unison and Site Owner hereby agree as follows:

1. Non-Disturbance. So long as the Communication Easement is not terminated, the use, possession or enjoyment of the Communication Site by Unison or its subtenants, invitees and customers, successors, assigns, mortgagees and secured creditors, including the collection of rents by Unison, 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 Mortgage, or by foreclosure or any action or proceeding instituted under or in connection with the Mortgage, except that the person or entity acquiring the interest of the Site Owner under the Communication Easement 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 (b) subject to any offsets of defenses which Unison under the Communication Easement might have against the prior site owner under the Communication Easement; or (c) bound by any amendment or modification to the Communication Easement made without Lender's prior written consent. **Lender and Site Owner specifically acknowledge that Unison shall have the exclusive right to collect any and all rents due by Tenant(s) under the Assigned Leases, said Assigned Leases being more fully described on Exhibit "B" hereof and, by execution of this instrument, any Assigned Leases are specifically released from that certain Mortgage and Security Agreement in the amount of \$880,000.00 and executed by KDR Construction, LLC, as grantor, in favor of Frontier Bank on October 10, 2001, and recorded October 17, 2001, in Instrument No. 2001-45015, in the original amount of \$880,000.00, as modified by the Amendment to Mortgage and Security Agreement executed between the foregoing parties on January 30, 2009, and which increased the loan amount to \$1,100,000.00, recorded on February 24, 2009, in Instrument No. 20090224000065130, and any and all other security interests executed in connection with the aforesaid or otherwise securing the Loan.**

2. Unison Not To Be Joined In Foreclosure. So long as the Communication Easement is not terminated, Lender will not join Unison as a party defendant in any action or proceeding foreclosing the Mortgage unless such joinder is necessary to foreclose the Mortgage and then only for such purpose and not for the purpose of terminating the Communication Easement and in such event Lender shall reimburse Unison for all reasonable expenses incurred by Unison in connection therewith.

3. Attornment. In the event the exercise of the power of sale in the Mortgage, or in the event of foreclosure of the Mortgage, or in event of a conveyance of the Site Owner's Property in lieu of foreclosure, Unison agrees to attorn to and accept the purchaser at the foreclosure sale or the grantee under the conveyance in lieu of foreclosure as the site owner for the balance then remaining of the term of the Communication Easement, subject to all terms and conditions of said Communication Easement 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 under the Communication Easement. The respective rights and obligations of Unison and Lender upon such attornment, shall be and are the same as now set forth in the Communication Easement.

4. Unison's Tower, Building and Equipment. Lender hereby acknowledges and agrees that the Mortgage does not apply to Unison'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.

5. As to Site Owner and Unison. As between Site Owner and Unison, Site Owner and Unison 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.

6. 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 Mortgage.

7. Successors and Assigns. This Agreement and each and every covenant, agreement and other provision hereof shall be binding upon the parties hereto and their respective heirs, administrators, representatives, successors and assigns, including without limitation each and every holder of the Communication Easement 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.

8. 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.

9. Provisions Binding; Authority. The terms and provisions hereof shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors and permitted assigns, respectively, of Lender, Unison and Site Owner. The respective signatories for the parties to this Agreement represent and warrant to their respective counterparties that each is duly authorized to execute this Agreement on behalf of the party each signatory represents, and that said party is duly authorized to execute and deliver 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 to be given pursuant to this Agreement shall be in writing and shall be considered properly given if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, or by delivering same in person to the addressee addressed as set forth below. Notice so mailed shall be deemed effective upon its deposit. Notice given in any other manner shall be deemed effective only if and when delivered to the addressee.

For Lender:

Frontier Bank
P.O. Box 414
Chelsea, Alabama 35043

For Site Owner:

KDR Construction, L.L.C
34 Castlebridge Lane
Birmingham, Alabama 35242

For Unison:

T6 Unison Site Management LLC
P. O. Box 1951
Frederick, Maryland 21702-0951

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

[SIGNATURE PAGES FOLLOW]

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

WITNESSES:

Russen Scruggs
Print Name: Russen Scruggs

Nikki Matherson
Print Name: Nikki Matherson

"LENDER":

FRONTIER BANK

By: Margaret Thomas
Print Name: Margaret Thomas
Title: EVP & COO

Address: 16863 Highway 280
City: Chelsea
State: Alabama
Zip: 35043
Tel: 205-678-2265
Fax: 205-678-2267

STATE OF ALABAMA)
COUNTY OF Shelby) ss:

On this 30 day of July, 2009, before me, the undersigned, a Notary Public in and for said State, personally appeared Margaret Thomas of Frontier Bank, by and through their EVP & COO, personally known, who, being by me duly sworn, did say that he/she is the EVP & COO of said corporation; that no seal has been procured by the said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and that the said Margaret Thomas, as such officer, acknowledged the execution of said instrument to be the free act and deed of said corporation, by it and by him/her voluntarily executed.

Kelli Foster
Notary Public in and for the State of
KELLI FOSTER
Notary Public - Alabama State at Large
My Commission Expires 1/15/2013



20090806000301610 5/8 \$32.00
Shelby Cnty Judge of Probate, AL
08/06/2009 09:51:46 AM FILED/CERT

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

WITNESSES:

"SITE OWNER":

Print Name: _____

KDR Construction, L.L.C., an Alabama limited liability company

Print Name: _____

By: Kathy D. Laughley
Print Name: KATHY D. LAUGHEY
Title: Manager

Address: 534 Castlebridge Lane
City: Birmingham
State: Alabama
Zip: 35242
Tel: 205-991-7373
Fax: 205-991-7361

STATE OF ALABAMA)
COUNTY OF Shelby) ss:

On this 28 day of July, 2009, before me the undersigned, a Notary Public in and for said County and State, personally appeared Kathy D. Laughley, to me personally known, who, being by me duly sworn, did say that he/she is the Manager of said KDR Construction, L.L.C.; that no seal has been procured by the said limited liability company; that said instrument was signed on behalf of said limited liability company by authority of its Manager and/or Members, and the said _____ acknowledged the execution of said instrument to be the free act and deed of said limited liability company, by it and by him/or voluntarily executed.

[Signature]
Notary Public in and for said County and State

MY COMMISSION EXPIRES JANUARY 15, 2012

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

WITNESSES:

Ting Wong
Print Name: Ting Wong
Elana L Taylor
Print Name: Elana L Taylor

"UNISON":

T6 UNISON SITE MANAGEMENT LLC,
a Delaware limited liability company

By: Laurel Zabel
Name: Laurel Zabel
Title: Authorized Signatory

Address: P. O. Box 1951
City: Frederick
State: Maryland
Zip: 21702-0951
Tel: (646) 452-5455
Fax: (301) 360-0635

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On the 22nd day of July in the year of 2009, before me, the undersigned, a Notary Public in and for said state, personally appeared Laurel Zabel, Authorized Signatory of T6 Unison Site Management LLC, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the individual or the entity upon behalf of which the individual acted, executed the instrument.

WITNESS my hand and official seal.

Signature: Stephanie Novick
My Commission Expires: _____
Commission Number: _____

STEPHANIE NOVICK
Notary Public, State of New York
No. 01NO5035998
Qualified in New York County
Commission Expires Nov. 14, 2010

20090806000301610 7/8 \$32.00
Shelby Cnty Judge of Probate, AL
08/06/2009 09:51:46 AM FILED/CERT

EXHIBIT "A"

Site Owner's Property


An Easement Estate, said easement being a portion of the following described parent parcel:

Lot 3, according to the Survey of Eagle Point Office Park, as recorded in Map Book 26, Page 2, in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.

AND BEING the same property conveyed to KDR Construction, L.L.C. from David J. Smelcer by General Warranty Deed recorded on October 17, 2001 in Instrument No. 2001-45014.

Tax Parcel No. 09-3-08-0-006-003.000

EXHIBIT "B"


20090806000301610 8/8 \$32.00
Shelby Cnty Judge of Probate, AL
08/06/2009 09:51:46 AM FILED/CERT

Description of Assigned Leases

1. The Option and Ground Lease Agreement dated July 20, 2004, by and between KDR Construction, L.L.C., as lessor, and BellSouth Mobility, LLC, as lessee, as disclosed by the Memorandum of Option and Lease Agreement of even date therewith, and recorded on December 3, 2004, in Instrument No. 20041203000366248.