



Doc#: 0326203106
Eugene "Gene" Moore Fee: \$36.00
Cook County Recorder of Deeds
Date: 09/19/2003 02:11 PM Pg: 1 of 7

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

WELLS FARGO BANK, NATIONAL
ASSOCIATION
Real Estate Merchant Banking (AU #2034)
555 Montgomery Street, 16th Floor
San Francisco, CA 94111

Attn: Kathy Z. Marker
Loan No. 5565

CC43768 D.G. 3/4
DEC

**SUBORDINATION AGREEMENT; ACKNOWLEDGMENT OF LEASE ASSIGNMENT, ESTOPPEL,
ATTORNMEN AND NON-DISTURBANCE AGREEMENT**
(Lease To Deed of Trust)

**NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY
BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER
SECURITY INSTRUMENT.**

THIS SUBORDINATION AGREEMENT; ACKNOWLEDGMENT OF LEASE ASSIGNMENT, ESTOPPEL, ATTORNMEN AND NON-DISTURBANCE AGREEMENT ("Agreement") is made ~~August 23~~^{Sept.}, 2003 by and between 3800 Golf Road LLC, a Delaware limited liability company ("Owner"), UTStarcom, Inc., a Delaware corporation ("Lessee") and WELLS FARGO BANK, NATIONAL ASSOCIATION ("Lender").

RECITALS

- A. Pursuant to the terms and provisions of a lease dated May 23, 2003 ("Lease"), 3Com Corporation, a Delaware corporation, as "Landlord", granted to Lessee a leasehold estate in and to a portion of the property described on Exhibit A attached hereto and incorporated herein by this reference (which property, together with all improvements now or hereafter located on the property, is defined as the "Property"). The Lease has been or will be assigned by Landlord to Owner, as "Lessor", as a condition to the sale of the Property.
- B. Owner has executed a deed of trust with absolute assignment of leases and rents, security agreement and fixture filing ("Deed of Trust") securing, among other things, a promissory note ("Note") in the principal sum of TWENTY THREE MILLION SEVEN HUNDRED FIFTY THOUSAND AND NO/100THS DOLLARS (\$23,750,000.00), dated Sept. 17, 2003, in favor of Lender, which Note is payable with interest and upon the terms and conditions described therein ("Loan").
- C. As a condition to making the Loan secured by the Deed of Trust, Lender requires that the Deed of Trust be unconditionally and at all times remain a lien on the Property, prior and superior to all the rights of Lessee under the Lease and that the Lessee specifically and unconditionally subordinate the Lease to the lien of the Deed of Trust.
- D. Owner and Lessee have agreed to the subordination, attornment and other agreements herein in favor of Lender.

NOW THEREFORE, for valuable consideration and to induce Lender to make the Loan, Owner and Lessee hereby agree for the benefit of Lender as follows:

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CAUTION
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1. **SUBORDINATION.** Owner and Lessee hereby agree that:
 - 1.1 **Prior Lien.** The Deed of Trust securing the Note in favor of Lender, and any modifications, renewals or extensions thereof, shall unconditionally be and at all times remain a lien on the Property prior and superior to the Lease;
 - 1.2 **Subordination.** Lender would not make the Loan without this agreement to subordinate; and
 - 1.3 **Whole Agreement.** This Agreement shall be the whole agreement and only agreement with regard to the subordination of the Lease to the lien of the Deed of Trust and shall supersede and cancel, but only insofar as would affect the priority between the Deed of Trust and the Lease, any prior agreements as to such subordination, including, without limitation, those provisions, if any, contained in the Lease which provide for the subordination of the Lease to a deed or deeds of trust or to a mortgage or mortgages.

AND FURTHER, Lessee individually declares, agrees and acknowledges for the benefit of Lender, that:

 - 1.4 **Use of Proceeds.** Lender, in making disbursements pursuant to the Note, the Deed of Trust or any loan agreements with respect to the Property, is under no obligation or duty to, nor has Lender represented that it will, see to the application of such proceeds by the person or persons to whom Lender disburses such proceeds, and any application or use of such proceeds for purposes other than those provided for in such agreement or agreements shall not defeat this agreement to subordinate in whole or in part;
 - 1.5 **Waiver, Relinquishment and Subordination.** Lessee intentionally and unconditionally waives, relinquishes and subordinates all of Lessee's right, title and interest in and to the Property to the lien of the Deed of Trust and understands that in reliance upon, and in consideration of, this waiver, relinquishment and subordination, specific loans and advances are being and will be made by Lender and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination.
2. **ASSIGNMENT.** Lessee acknowledges and consents to the assignment of the Lease by Lessor in favor of Lender.
3. **ESTOPPEL.** Lessee acknowledges and represents that:
 - 3.1 **Lease Effective.** The Lease has been duly executed and delivered by Lessee and, subject to the terms and conditions thereof, the Lease is in full force and effect, the obligations of Lessee thereunder are valid and binding and there have been no modifications or additions to the Lease, written or oral;
 - 3.2 **No Default.** To the best of Lessee's knowledge, as of the date hereof: (i) there exists no breach, default, or event or condition which, with the giving of notice or the passage of time or both, would constitute a breach or default under the Lease; and (ii) there are no existing claims, defenses or offsets against rental due or to become due under the Lease;
 - 3.3 **Entire Agreement.** The Lease constitutes the entire agreement between Lessor and Lessee with respect to the Property and Lessee claims no rights with respect to the Property other than as set forth in the Lease; and
 - 3.4 **No Prepaid Rent.** No deposits or prepayments of rent have been made in connection with the Lease, except as follows: (if none, state "None") None.
4. **ADDITIONAL AGREEMENTS.** Lessee covenants and agrees that, during all such times as Lender is the Beneficiary under the Deed of Trust:
 - 4.1 **Modification, Termination and Cancellation.** Lessee will not consent to any modification, amendment, termination or cancellation of the Lease (in whole or in part) without Lender's prior written consent and will not make any payment to Lessor in consideration of any modification, termination or cancellation of the Lease (in whole or in part) without Lender's prior written consent;

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- 4.2 **Notice of Default.** Lessee will notify Lender in writing concurrently with any notice given to Lessor of any default by Lessor under the Lease, and Lessee agrees that Lender has the right (but not the obligation) to cure any breach or default specified in such notice within the time periods set forth below and Lessee will not declare a default of the Lease, as to Lender, if Lender cures such default within fifteen (15) days from and after the expiration of the time period provided in the Lease for the cure thereof by Lessor; provided, however, that if such default cannot with diligence be cured by Lender within such fifteen (15) day period, the commencement of action by Lender within such fifteen (15) day period to remedy the same shall be deemed sufficient so long as Lender pursues such cure with diligence;
- 4.3 **No Advance Rents.** Lessee will make no payments or prepayments of rent more than one (1) month in advance of the time when the same become due under the Lease; and
- 4.4 **Assignment of Rents.** Upon receipt by Lessee of written notice from Lender that Lender has elected to terminate the license granted to Lessor to collect rents, as provided in the Deed of Trust, and directing the payment of rents by Lessee to Lender, Lessee shall comply with such direction to pay and shall not be required to determine whether Lessor is in default under the Loan and/or the Deed of Trust.
5. **ATTORNNMENT.** In the event of a foreclosure under the Deed of Trust, Lessee agrees for the benefit of Lender (including for this purpose any transferee of Lender or any transferee of Lessor's title in and to the Property by Lender's exercise of the remedy of sale by foreclosure under the Deed of Trust) as follows:
- 5.1 **Payment of Rent.** Lessee shall pay to Lender all rental payments required to be made by Lessee pursuant to the terms of the Lease for the duration of the term of the Lease;
- 5.2 **Continuation of Performance.** Lessee shall be bound to Lender in accordance with all of the provisions of the Lease for the balance of the term thereof, and Lessee hereby attorns to Lender as its landlord, such attornment to be effective and self-operative without the execution of any further instrument immediately upon Lender succeeding to Lessor's interest in the Lease and giving written notice thereof to Lessee;
- 5.3 **No Offset.** Lender shall not be liable for, nor subject to, any offsets or defenses which Lessee may have by reason of any act or omission of Lessor under the Lease, nor for the return of any sums which Lessee may have paid to Lessor under the Lease as and for security deposits, advance rentals or otherwise, except to the extent that such sums are actually delivered by Lessor to Lender; and
- 5.4 **Subsequent Transfer.** If Lender, by succeeding to the interest of Lessor under the Lease, should become obligated to perform the covenants of Lessor thereunder, then, upon any further transfer of Lessor's interest by Lender, all of such obligations shall terminate as to Lender.
6. **NON-DISTURBANCE.** In the event of a foreclosure under the Deed of Trust, so long as there shall then exist no breach, default, or event of default on the part of Lessee under the Lease, Lender agrees for itself and its successors and assigns that the leasehold interest of Lessee under the Lease shall not be extinguished or terminated by reason of such foreclosure, but rather the Lease shall continue in full force and effect and Lender shall recognize and accept Lessee as tenant under the Lease subject to the terms and provisions of the Lease except as modified by this Agreement; provided, however, that Lessee and Lender agree that the following provisions of the Lease (if any) shall not be binding on Lender: any provision regarding the use of insurance proceeds or condemnation proceeds with respect to the Property which is inconsistent with the terms of the Deed of Trust.
7. **MISCELLANEOUS.**
- 7.1 **Heirs, Successors, Assigns and Transferees.** The covenants herein shall be binding upon, and inure to the benefit of, the heirs, successors and assigns of the parties hereto; and
- 7.2 **Notices.** All notices or other communications required or permitted to be given pursuant to the provisions hereof shall be deemed served upon delivery or, if mailed, upon the first to occur of receipt or the expiration

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~~XXXXXXXXXX~~
Loan No. 5565

of three (3) days after deposit in United States Postal Service, certified mail, postage prepaid and addressed to the address of Lessee or Lender appearing below:

"OWNER"

3800 Golf Road LLC
c/o Spear Street Capital
One Market Plaza
Steuart Street Tower, Suite 1010
San Francisco, CA 94105
Attn: John Grassi

"LENDER"

WELLS FARGO BANK, NATIONAL ASSOCIATION
Real Estate Merchant Banking (AU #2034)
555 Montgomery Street, 16th Floor
San Francisco, CA 94111

Attn: Kathy Z. Marker
Loan No. 5565

"LESSEE"

UTStarcom, Inc.
1275 Harbor Bay Parkway
Alameda, CA 94502
Attn: General Counsel

With a copy to:

Wilson Sonsini Goodrich & Rosati, P. C.
650 Page Mill Road
Palo Alto, CA 94304-1050
Attn: Marc Gottschalk, Esq.

provided, however, any party shall have the right to change its address for notice hereunder by the giving of written notice thereof to the other party in the manner set forth in this Agreement; and

- 7.3 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute and be construed as one and the same instrument; and
- 7.4 **Remedies Cumulative.** All rights of Lender herein to collect rents on behalf of Lessor under the Lease are cumulative and shall be in addition to any and all other rights and remedies provided by law and by other agreements between Lender and Lessor or others; and
- 7.5 **Paragraph Headings.** Paragraph headings in this Agreement are for convenience only and are not to be construed as part of this Agreement or in any way limiting or applying the provisions hereof.

INCORPORATION. Exhibit A is attached hereto and incorporated herein by this reference.

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Loan No. 5565

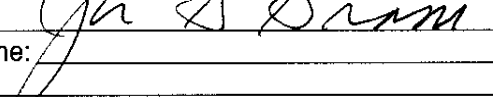
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.

IT IS RECOMMENDED THAT, PRIOR TO THE EXECUTION OF THIS AGREEMENT, THE PARTIES CONSULT WITH THEIR ATTORNEYS WITH RESPECT HERETO.


"OWNER"

3800 GOLF ROAD LLC,
a Delaware limited liability company

By: 
Name: _____
Its: _____

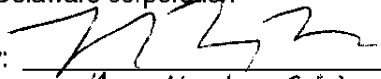
"LENDER"

WELLS FARGO BANK,
NATIONAL ASSOCIATION

By: 
Sean Flannery
Its: Managing Director

"LESSEE"

UTSTARCOM, INC.,
a Delaware corporation

By: 
Name: Russell L. Robinson
Its: General Counsel

(ALL SIGNATURES MUST BE ACKNOWLEDGED)

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EXHIBIT A
Loan No. 5565

DESCRIPTION OF PROPERTY

^{Sept.}
EXHIBIT A to Subordination Agreement; Acknowledgment of Lease Assignment, Estoppel, Attornment and Non-Disturbance Agreement dated as of ~~August 13~~, 2003, executed by 3800 GOLF ROAD LLC, a Delaware limited liability company, as "Owner", UTSTARCOM, INC., a Delaware corporation as "Lessee", and WELLS FARGO BANK, NATIONAL ASSOCIATION, as "Lender".

All that certain real property located in the County of Cook County, State of Illinois, described as follows:

PARCEL 1:

LOT 1 IN 3800 GOLF ROAD SUBDIVISION OF PART OF FRACTIONAL SECTION 7, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT RECORDED JANUARY 31, 1996 AS DOCUMENT NO. 96080514, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

EASEMENT FOR THE BENEFIT OF PARCEL 1 AFORESAID, TO GO UPON LOT 2 IN 3800 GOLF ROAD SUBDIVISION AFORESAID, FOR THE PURPOSE OF PERFORMING WORK OF CONSTRUCTION AND MAINTENANCE OF BERM IF SUCH WORK IS NOT TIMELY PERFORMED BY THE OWNER OF SAID LOT 2, AS GRANTED IN PARAGRAPH 9.4 OF ARTICLE 9 OF THE DECLARATION AND GRANT OF EASEMENTS, COVENANTS AND RESTRICTIONS EXECUTED BY AT&T CORP., A NEW YORK CORPORATION, DATED JANUARY 26, 1996 AND RECORDED FEBRUARY 9, 1996 AS DOCUMENT NO. 96110279, IN COOK COUNTY, ILLINOIS.

TAX # 08-07-403-019

Address 3800 Golf Road
Rolling Meadows, IL

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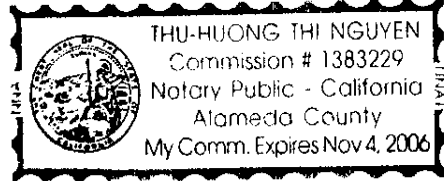
STATE OF California
COUNTY OF Alameda ss.

On this 3rd day of Sept., 2003, before me, Thu-Huong Thi Nguyen
a Notary Public in and for the State of California, personally appeared Russell L. Boltwood
personally known to me (or proved 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

Signature Thu-Huong Thi Nguyen

My commission expires Nov 4, 06



STATE OF California
COUNTY OF San Francisco ss.

On this 17th day of September, 2003, before me, Mary M. Hamilton
a Notary Public in and for the State of California, personally appeared John S. Gressi
personally known to me (or proved 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

Signature Mary M. Hamilton

My commission expires March 10, 2004



STATE OF California
COUNTY OF San Francisco ss.

On this 18 day of September, 2003, before me, Michelle Lam
a Notary Public in and for the State of California, personally appeared Sean Flannery
personally known to me (or proved 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

Signature Michelle Lam

My commission expires 2-25-06

