

UNOFFICIAL COPY



0508312199

Prepared by:
Robert W. Mouton, Esq.
Locke Liddell & Sapp LLP
601 Poydras Street, Suite 2400
New Orleans, LA 70130
File: #90924.00316

Doc#: 0508312199
Eugene "Gene" Moore Fee: \$40.00
Cook County Recorder of Deeds
Date: 03/24/2005 02:38 PM Pg: 1 of 9

Record and return to:
Steve Howard
First American Title Insurance Company
National Commercial Services
7370 College Parkway, Suite 104
Fort Myers, FL 33907
Phone: 1.800.585.2906
Fax: 1.239.938.8885
File: #NCS-129106-FTM
Unison Site: #228572

NON-DISTURBANCE AND ATTORNEY AGREEMENT AND PARTIAL RELEASE OF ASSIGNMENT OF LEASES AND RENTS

THIS AGREEMENT (the "Agreement") is made as of the 11th day of March, 2005 ("Effective Date"), by and among Bank One, NA, a national banking association, whose address is Bank One Center/Tower, 4th Floor, 111 Monument Circle, Indianapolis, Indiana 46227, (hereinafter referred to as "Lender"), Unison Site Management, L.L.C., a Delaware limited liability company (hereinafter referred to as "Unison"), whose address is 6809D Bowman's Crossing, Frederick, Maryland 21703-7150, and Mays Property Management Company, LLP, whose address is 5611 East 71st Street, Indianapolis, Indiana 46226 (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 the amount One Million Five Hundred Thousand and No/100 (\$1,500,000.00) Dollars, which is secured by, *inter alia*, the certain Mortgage by Chicago Title and Trust Company not individually, but solely as Trustee under a Trust Agreement dated as of June 1, 1994, and known as Trust No. 1100170, to NBD Bank, N.A., a national banking association, to secure the obligations of Mays Property Management Company in the principal amount of \$1,500,000.00, dated December 15, 1994 and recorded December 15, 1994, Official Records of Cook County, Illinois at Instrument No. 04049661, together with that certain Assignment of Rents and Leases, dated December 15, 1994 and recorded December 15, 1994 at Instrument No. 04049660, which Mortgage and Assignment of Rents and Leases ("Loan Documents") were modified by that certain Modification of Loan Documents, dated as of May 15, 1998 and recorded June 29, 1998 at Instrument No. 98552345, and such Loan Documents were further modified by that certain Second Modification of Loan Documents, dated effective as of November 19, 2001 and recorded December 21, 2001 at Instrument No. 0011218009, and which Loan Documents were assumed by that certain Assumption and Modification of Mortgage by Mays Property Management Company, LLP, an Indiana limited liability partnership, successor in interest to Mays Property Management Company, an Indiana general partnership and Bank One, NA, successor by merger to Bank One, Indiana, successor by merger to NBD Bank, N.A., dated as of September 30, 2002 and recorded November 14, 2002 at Instrument No. 0021255494, and which Mortgage was amended, restated and replaced by that certain Amended and Restated Mortgage, Security Agreement and Assignment of Leases and Rents, to secure indebtedness in the principal amount of \$7,471,015.59, executed on March 31, 2003 and recorded April 16, 2003 at Instrument No. 0310641046 (such Mortgage or other lien on the Site Owner's Property, as hereafter defined, securing the Loan and any renewal, substitution, amendment, extension or replacement thereof being hereinafter

1 of 4
NCS-129106-FTM
First American Title Order #

9

UNOFFICIAL COPY

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 an Rooftop Easement and Assignment Agreement by and between Site Owner and Unison dated as of _____, 2005 (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, Unison's use, possession or enjoyment of the Communication Site, 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 or 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 by Chicago Title and Trust Company not individually, but solely as Trustee under a Trust Agreement dated as of June 1, 1994, and known as Trust No. 1100170, to NBD Bank, N.A., a national banking association, to secure the obligations of Mays Property Management Company in the principal amount of \$1,500,000.00, dated December 15, 1994 and recorded December 15, 1994, Official Records of Cook County, Illinois at Instrument No. 04049661, together with that certain Assignment of Rents and Leases, dated December 15, 1994 and recorded December 15, 1994 at Instrument No. 04049660, which Mortgage and Assignment of Rents and Leases ("Loan Documents") were modified by that certain Modification of Loan Documents, dated as of May 15, 1998 and recorded June 29, 1998 at Instrument No. 98552345, and such Loan Documents were further modified by that certain Second Modification of Loan Documents, dated effective as of November 19, 2001 and recorded December 21, 2001 at Instrument No. 0011218009, and which Loan Documents were assumed by that certain Assumption and Modification of Mortgage by Mays Property Management Company, LLP, an Indiana limited liability partnership, successor in interest to Mays Property Management Company, an Indiana general partnership and Bank One, NA, successor by merger to Bank One, Indiana, successor by merger to NBD Bank, N.A., dated as of September 30, 2002 and recorded November 14, 2002 at Instrument No. 0021255494, and which Mortgage was amended, restated and replaced by that certain Amended and Restated Mortgage, Security Agreement and Assignment of Leases and Rents, to secure indebtedness in the principal amount of \$7,471,015.59, executed on March 31, 2003 and recorded April 16, 2003 at Instrument No. 0310641046, and any 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

UNOFFICIAL COPY

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 and Assignment 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. 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.

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:

Bank One, NA
Bank One Center/Tower, 4th Floor
111 Monument Circle
Indianapolis, Indiana 46277

For Site Owner:

Mays Property Management Company, LLP
5611 East 71st Street
Indianapolis, Indiana 46220
Attn: Manager, Managed Assets Dept.

UNOFFICIAL COPY

For Unison:

Unison Site Management, L.L.C.
6809D Bowman's Crossing
Frederick, Maryland 21703-7150

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]

Property of Cook County Clerk's Office

UNOFFICIAL COPY

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

“LENDER”

WITNESSES:

**BANK ONE, NA,
a national banking association**

Wanda Hunt
Print Name: WANDA HUNT

[Signature]
Name: Peter J. Munson
Title: FVP

[Signature]
Print Name: KENNETH B. IRWIN

Address: 111 Monument Circle, 4th Floor
City: Indianapolis
State: Indiana
Zip: 46277
Tel: 317-321-7087
Fax: 317-572-5270

STATE OF Indiana)
~~ILLINOIS~~)
) ss.
COUNTY OF Marion)

Before me, a notary public in and for said State, appeared Peter Munson, known to me, or proven to me, who duly authorized to act on behalf of the Lender described in the foregoing Non-Disturbance and Atornment Agreement and Partial Release of Assignment of Leases and Rents, executed and acknowledged said instrument as his/her free act and deed on behalf of said Lender.

Given under my hand and seal this 3rd day of March, 2005.

My commission expires: March 31, 2007

Patricia M. Davis
Notary Public

[S E A L]



UNOFFICIAL COPY

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

“SITE OWNER”

WITNESSES:

MAYS PROPERTY MANAGEMENT COMPANY LLP,
an Indiana limited liability partnership,

W. A. West
Print Name: W. A. West

By William G Mays
Title: Managing Partner

Adrian McCann
Print Name: Adrian McCann

Address: 5611 East. 71st Street
City: Indianapolis
State: Indiana
Zip: 46220
Tel: (317) 842-8722
Fax: 317 845-8410

STATE OF INDIANA)

COUNTY OF Marion) ss.

Before me, a notary public in and for said State, appeared William G Mays
Managing Partner, known to me, or proven to me, who duly authorized to act on behalf of the Site Owner described in the foregoing Non-Disturbance and Attornment Agreement and Partial Release of Assignment of Leases and Rents, executed and acknowledged said instrument as his/her free act and deed on behalf of said Site Owner.

Given under my hand and seal this 28th day of February, 2005.

My commission expires: 04/28/08

Sherrida Diane Hull
Notary Public
[SEAL]


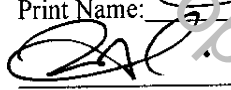
UNOFFICIAL COPY

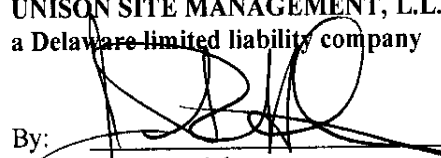
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

“UNISON”

WITNESSES:

UNISON SITE MANAGEMENT, L.L.C.
a Delaware limited liability company


 Print Name: LORNA R. JONES

 Print Name: Pascale Andre

By: 
 Name: James R. Holmes
 Title: Vice President/Secretary
 Address: 6809D Bowman's Crossing
 City: Frederick
 State: Maryland
 Zip: 21703-7150
 Tel: (646) 452-5455
 Fax: (301) 360-0635

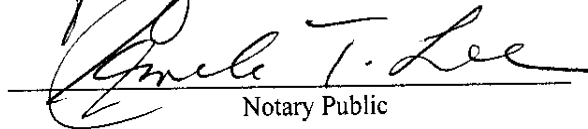
STATE OF NEW YORK)
) ss.
 COUNTY OF NEW YORK)

On the 23 day of February, 2005, before me, the undersigned, a notary public in and for said state, personally appeared James R. Holmes, duly authorized Vice President/Secretary of Unison Site Management, L.L.C., a Delaware limited liability company, 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 executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Subscribed and sworn before me and witness my hand and official seal this 23rd day of February, 2005.

My commission expires: _____

Identity proven on the basis of satisfactory evidence.


 Notary Public

[SEAL]

PAMELA T. LEE
 Notary Public, State of New York
 No. 02LE6009835
 Qualified in Suffolk County
 Commission Expires July 6, 2010

UNOFFICIAL COPY

Exhibit "A"

Site Owner's Property

Lot 21 (except the West 151.53 feet thereof) and all of Lot 22 in Pullman Industrial Park, being a Subdivision of part of the Northeast quarter of Section 22 and part of the Northwest fractional quarter of Section 23, North of the Indian Boundary Line in Township 37 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

APN: 25-23-102-006

Property Address: 875 EAST 112th, Chicago, IL.

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT "B"

Description of Assigned Leases

1. That certain unrecorded Option and Lease Agreement by and between Mays Property Management Company, an Indiana General Partnership, as Landlord and AT&T Wireless PCS, LLC, a Delaware limited liability company ("AT&T") by and through its manager, AT&T Wireless Services, Inc., d/b/a AT&T Wireless Services, as Tenant, dated October 8, 1999, as evidenced by that certain unrecorded Memorandum of Lease executed on October 8, 1999 and October 25, 1999, which Lease was assigned by that certain Assignment and Assumption of Option and Lease Agreement by AT&T, as Assignor, and American Towers Inc., a Delaware Corporation, as Assignee, dated January 24, 2002 and recorded March 21, 2002 at Instrument No. 0020320199.