



Doc#: 1119919057 Fee: \$74.25
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 07/18/2011 11:06 AM Pg: 1 of 19

Prepared by:
Victoria M. de Lisie
Locke Lord Bissell & Lutz LLP
601 Poydras Street, Suite 2650
New Orleans, LA 70130
File: #0590924.04099

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: #324359
Unison Site: #12315450

PIN# 05-07-211-035-1028
05-07-211-035-1023

WIRELESS COMMUNICATION EASEMENT AND ASSIGNMENT AGREEMENT

(BUILDING)

THIS WIRELESS COMMUNICATION EASEMENT AND ASSIGNMENT AGREEMENT ("Agreement") is made as of the 9 day of February, 2011 ("Effective Date"), by and between Silver Fern, LLC, an Illinois limited liability company, whose address is 630 Vernon Avenue, Glencoe, Illinois 60022 ("Site Owner"), 630 Vernon Condominium Association, an Illinois not-for-profit corporation, whose address is 630 Vernon Avenue, Glencoe, Illinois 60022 ("Joinder Party") and T6 Unison Site Management LLC, a Delaware limited liability company, whose address is P. O. Box 1951, Frederick, Maryland 21702-0951 ("Unison"). All references hereafter to "Unison" and "Site Owner" shall include their respective heirs, successors, personal representatives, lessees, licensees and assigns (Unison and Site Owner, collectively, "Parties").

RECITALS

WHEREAS, Site Owner owns, manages or controls those certain interior storage rooms in the building and property (collectively, the "Property") located in the Village of Glencoe, and County of Cook, in the State of Illinois, having a street address of 630 Vernon Avenue, Glencoe, Illinois 60022, and which Property is more particularly described on Exhibit A attached hereto.

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars and other good and valuable consideration, the receipt and sufficiency of which Site Owner does hereby acknowledge and grant Unison full discharge and acquittance therefor, Site Owner and Unison agree to the following:

1. Grant of Easement.
 - (a) Site Owner grants, bargains, sells, transfers and conveys to Unison:
 - (i) an exclusive easement in, to, under and over the interior storage rooms owned, managed or controlled by Site Owner at the Property substantially as shown and/or described on Exhibit B-1 ("Communication Easement") for


S ✓
P 18
S ✓
M ✓
SC ✓
E ✓
INT ✓

UNOFFICIAL COPY

Property of Cook County Clerk's Office

COUNTY TAX

COOK COUNTY
REAL ESTATE TRANSACTION TAX



JUL. 15.11


REVENUE STAMP

0000003065

REAL ESTATE TRANSFER TAX
00080,25
FP 103042

STATE TAX

STATE OF ILLINOIS



JUL. 15.11

REAL ESTATE TRANSFER TAX
DEPARTMENT OF REVENUE

0000003216

REAL ESTATE TRANSFER TAX
00160,50
FP 103037

UNOFFICIAL COPY

the transmission and reception of any and all wireless communication signals and the construction, maintenance, repair, replacement, improvement, operation and removal of towers, antennas, generators and related facilities (collectively, "Facilities") and any related activities and uses including those necessary for Unison to comply with its obligations under the agreements listed on Exhibit C ("Existing Agreements") together with the right to enter the Property and access the Easements described below, without notice to Site Owner, twenty-four (24) hours a day, seven (7) days a week, as may be required in connection with the activities and uses described in this Agreement, and

(ii) a non-exclusive easement in, to, under and over portions of the Property substantially as shown and/or described on Exhibit B-2 ("Access and Utility Easements," Communication Easement and Access and Utility Easements, collectively "Easements") for ingress and egress to and from the Communication Easement and a publicly dedicated roadway, and for the installation, repair, replacement, improvement, maintenance and removal of utilities providing service to the Communication Easement and the Facilities, and any related activities and uses; and

(iii) a non-exclusive easement in, to, and under and over portions of the Property for ingress and egress to building risers, conduits, shafts, raceways or other designated space to connect the telecommunications equipment to other locations in the building as is necessary to install wiring, electronic equipment and other personal property to support and maintain the Facilities.

- (b) The Parties agree that the Communication Easement includes, without limitation, (i) the portion of the Property leased by Site Owner under the Existing Agreements, and (ii) the portion of the Property upon which any Facilities are located on the Effective Date.

2. Assignment of Existing Agreements. Site Owner transfers and assigns to Unison, as of the Effective Date, all of its right, title and interest in, to and under the Existing Agreements, including without limitation, all rents, security deposits and other monies due the Site Owner specified therein. The Parties intend that this Agreement serve as an absolute assignment and transfer to Unison of all rents and other monies due the Site Owner pursuant to the Existing Agreements. Unison assumes the obligations and liabilities of Site Owner under the Existing Agreements only to the extent that such obligations and liabilities (i) are not the responsibility of the Site Owner pursuant to the terms of this Agreement; and (ii) accrue on or after the Effective Date.

3. Use of Easements. Consistent with the uses set forth in Section 1 above, Unison shall have the unrestricted right to lease, license, transfer or assign, in whole or in part, or permit the use of the Easements and/or its rights under this Agreement by any third parties including communication service providers or tower owners or operators, and any lessee or licensee under the Existing Agreements and the affiliates, agents, contractors, invitees and employees of Unison and/or Unison's present or future lessees or licensees (collectively, "Customers").

(a) Unison shall incorporate language in any new agreements requiring Customer's improvements to be similar in appearance, including height, size and location of equipment, to existing installations in Existing Agreements and painted a color as designated by Site Owner to match or blend with the construction of the building. Unison shall also use commercially reasonable efforts to ensure new Customers comply with such requirements.

(b) Unison or future Customers shall not permit any mechanics', materialman's or any other liens to be filed against the Site Owner or Property by reason of work, labor, services or materials performed or furnished. If such a lien is filed, then, in addition to any other right or remedy available to Site Owner, Site Owner shall have the right to remove such lien by paying the full amount thereof or by bonding as Site Owner deems appropriate. In the event that Site Owner causes the lien to be paid or bonded, Site Owner shall notify the appropriate Customer and submit an invoice to such Customer which will require reimbursement to Site Owner within five (5) business days of receipt of the invoice from the Site Owner, of the amount paid by Site Owner to discharge the lien or obtain the bond, together with reasonable expenses incurred in connection therewith, including reasonable legal fees. In addition, Site Owner shall provide the Customer with sufficient documentation substantiating the costs and reason therefor. A copy of said notice, invoice and documentation shall be provided simultaneously to Unison by Site Owner and Unison shall use commercially efforts to enforce payment of said invoice by the responsible Customer. Unison shall incorporate the above requirements in all new Customer agreements.

(c) Except for the representations and warranties herein and subject to the terms, provisions and conditions hereinafter set forth, and in consideration of the duties, covenants and obligations of Unison hereunder, Unison agrees to take the Property in its "As Is" condition, and acknowledges that Site Owner (a) has made no representations or warranties whatsoever with respect to any physical condition of the Property, and (b) has not agreed to construct any improvements in connection with this Agreement.

4. Term. This Agreement and the Easements shall be for a term of fifty (50) Years commencing on the Effective Date.

UNOFFICIAL COPY

Notwithstanding the foregoing, in the event Unison and Customers voluntarily cease to use the Easements (as defined in Section 1) for a period of more than three (3) years (for reasons other than casualty, condemnation or Act of God), the Easements shall be deemed surrendered. Unison may surrender the Easements for any reason or at any time by giving thirty (30) days' notice to Site Owner. Upon surrender, this Agreement shall be terminated, and Unison and Site Owner shall execute and record such documents reasonably required to terminate the Easements. This Agreement may not be terminated by Site Owner.

5. Improvements; Utilities. Unison and its Customers, may, at their discretion and expense, construct such improvements in, to, under and over the Easements, consistent with the uses specified in Section 1, all of which shall be deemed part of the Facilities. The Facilities shall remain the property of Unison and its Customers, as applicable, and Site Owner shall possess no right, title or interest therein. In the event that utilities necessary to serve the Facilities cannot be installed within the Easements, Site Owner agrees to cooperate (at no cost to Site Owner) with Unison and to act reasonably and in good faith in granting Unison the right to locate such utilities on the Property without requiring the payment of additional fees. If necessary, Site Owner shall, upon Unison's request, execute and record a separate written easement with Unison or with the utility company providing the utility service to reflect such right. Site Owner hereby irrevocably constitutes and appoints Unison as its true and lawful attorney-in-fact, with full power of substitution and resubstitution, to apply for and obtain any and all licenses, permits, consents or approvals which may be required in connection with the use of the Easements by Unison, and as necessary to comply with applicable laws, statutes or regulations.

6. Taxes. Site Owner acknowledges that a portion of the purchase price delivered by Unison to Site Owner is for and in consideration of the continuing obligation of Site Owner to pay, on or before the due date, all present and future real property taxes, transfer taxes, penalties, interest, roll-back or additional taxes, sales and use taxes and all other fees and assessments, regardless of the taxing method (the "Taxes") attributable to the Property, this Agreement and the Easements. Without limiting the foregoing, except to the extent Taxes are the obligation of tenants under the Existing Agreements, Site Owner shall be solely responsible for the payment of such Taxes. Within ten (10) days of receiving a request from Unison, Site Owner shall furnish to Unison a copy of each bill for any such Taxes and evidence of Site Owner's payment of such bill. Site Owner agrees and acknowledges that Unison shall be deemed an "interested party", as provided by the Illinois Property Tax Code, 35 ILCS 200/21-75. In the event that Site Owner fails to pay any Taxes when due, Unison shall have the right, but not the obligation, to pay such Taxes on behalf of Site Owner. Site Owner shall reimburse Unison for the full amount of such Taxes paid by Unison on Site Owner's behalf within five (5) business days of Site Owner's receipt of an invoice from Unison.

7. Building and Property Maintenance and Access. Site Owner agrees to maintain the Property. Without limiting the foregoing, except to the extent maintenance is the obligation of tenants under the Existing Agreements, Site Owner shall be solely responsible for the maintenance of the interior storage rooms owned, managed or controlled by Site Owner at the Property. Site Owner agrees to provide Unison and its Customers access to and from the Easements and all other space in the interior storage rooms owned, managed or controlled by the Site Owner at the Property consistent with the grant of the Easements set forth in Section 1 above, twenty-four (24) hours a day, seven (7) days a week.

8. Representations; Other Covenants of Site Owner. Site Owner represents, warrants and agrees that: (a) it is the legal owner of indefeasible and marketable title to the Property with the right, power and authority to enter into this Agreement and to grant the Easements to Unison, and any consents and authorizations required in connection with the execution and delivery of this Agreement have been obtained; (b) except for the Existing Agreements and as disclosed on Exhibit D, no leases, mortgages, deeds of trust or other encumbrances affect the Property as of the Effective Date; (c) Site Owner will comply with all governmental laws, rules and regulations applicable to the Property; (d) Site Owner has delivered to Unison true, correct and complete copies of the Existing Agreements, and, to Site Owner's best knowledge, no party is in default of any of their respective obligations under the Existing Agreements; (e) no party under the Existing Agreements has advised of any intention to exercise, nor have they exercised, any right of early termination set forth in its Existing Agreements, and further, no party has requested a reduction in the rental amount or escalator due under the Existing Agreements; (f) as of the Effective Date, Site Owner shall not, without the prior written consent of Unison, amend or modify the Existing Agreements in any respect or exercise any rights granted by Site Owner to Unison under this Agreement, including, without limitation, any and all rights and remedies of Site Owner under the Existing Agreements; (g) notwithstanding anything to the contrary in this Agreement, Site Owner shall comply with all obligations of the lessor under the Existing Agreements, which relate to the use, ownership and operation of interior storage rooms owned, managed or controlled by the Site Owner located at the Property; and (h) Site Owner shall not use nor permit its affiliates, licensees, invitees or agents to use any portion of the Property or any other property owned or controlled by Site Owner, either directly, indirectly or by action or inaction, in a manner which in any way could result in default of the Existing Agreements or otherwise interfere with the operations of Unison and/or any Customers.

9. Environmental Covenants and Indemnity. Site Owner represents that it has not permitted or engaged in the use of, and

UNOFFICIAL COPY

has no knowledge of, any substance, chemical or waste (collectively "Substance") located on, under or about the Property that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Neither Site Owner nor Unison will introduce or use any such Substance on, under or about the Property in violation of any applicable law or regulation. No underground storage tanks for petroleum or any other Substance, or underground piping or conduits, are or have previously been located on the Property, and no asbestos-containing insulation or products containing PCB or other Substances have been placed anywhere on the Property by Site Owner or, to Site Owner's knowledge, by any prior owner or user of the Property. Site Owner and Unison shall each defend, indemnify, protect and hold the other party harmless from and against all claims, costs, fines, judgments and liabilities, including attorney's fees and costs, arising out of or in connection with the presence, storage, use or disposal of any Substance on, under or about the Property caused by the acts, omissions or negligence of the indemnifying party and their respective agents, contractors and employees. The foregoing indemnity shall survive any termination of this Agreement.

10. Interference. Unison agrees to only permit installation of Facilities in compliance with all Federal Communications Commission ("FCC") requirements and then-existing industry standards of the type and frequency which will not cause Harmful Interference (defined below) to any equipment of Site Owner, the condominium association or other tenants at the Property which were in operation at the Property prior to the Effective Date, or prior to the beginning of the new Customer's lease term, except for such equipment serving only the condominium association at the Property, which shall not be required to predate the installation of the Facilities ("Pre-existing Equipment"). In the event Unison's or its Customers' equipment causes such harmful interference to Pre-existing Equipment, and after Site Owner has notified Unison in writing of such interference, Unison will take all steps necessary to correct and eliminate such interference.

(a) "Harmful Interference" as used in this Agreement has the same meaning ascribed to it as in FCC Title 47 C.F.R. § 15.3(m).

11. General Indemnity. In addition to the Environmental Indemnity set forth above, Site Owner and Unison shall each indemnify, defend and hold the other harmless against any and all costs (including reasonable attorney's fees) and claims of liability or loss arising (a) due to the breach of any representation, warranty or covenant of such indemnifying party set forth herein; and (b) out of the use and/or occupancy of the Property and Easements by the indemnifying party. This indemnity shall not apply to any claims to the extent arising from the gross negligence or intentional misconduct of the indemnified party.

12. Assignment; Secured Parties. Unison has the unrestricted right to assign, mortgage or grant a security interest in all of Unison's interest in and to this Agreement and the Easements, and may assign this Agreement and the Easements to any such assignees, mortgagees or holders of security interests, including their successors and assigns ("Secured Party" or, collectively, "Secured Parties"). Site Owner agrees to notify Unison and Secured Parties (provided Unison has given Site Owner notice and contact information of Secured Parties) simultaneously of any default by Unison and give Secured Parties the same right to cure any default. If a termination, disaffirmation or rejection of this Agreement shall occur, pursuant to any laws (including any bankruptcy or insolvency laws), Site Owner will notify Secured Parties (provided Unison has given Site Owner notice and contact information of Secured Parties) promptly and Site Owner shall enter into a new easement agreement with any such Secured Party upon the same terms of this Agreement, without requiring the payment of any additional fees. If any Secured Party shall succeed to Unison's interest under this Agreement, such Secured Party shall have no obligation to cure and no liability for any defaults of Unison accruing prior to the date that such Secured Party succeeds to such interest. Site Owner will enter into modifications of this Agreement reasonably requested by any Secured Party. Site Owner hereby waives any and all lien rights it may have, statutory or otherwise, in and to the Easements and/or the Facilities or any portion thereof.

13. Estoppel Certificate. At any time during the term hereof, but in no event more frequently than one time during any twelve (12) month period, each party shall have the right to deliver to the other a statement of such party certifying: (i) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, stating the modifications and that the modified Agreement is in full force and effect); (ii) whether or not, to the best knowledge of the responding party, the requesting party is in default in performance of any of its obligations under this Agreement, and, if so, specifying each such default; (iii) that there are no amounts due to the responding party from the requesting party; and (iv) any other information reasonably requested concerning this Agreement (the "Estoppel Certificate"). In the event the responding party fails to dispute the Estoppel Certificate by delivery to the requesting party of a notice specifying the nature and circumstances of any matter in the Estoppel Certificate that is disputed by the responding party within thirty (30) days of receipt of the Estoppel Certificate, then all matters specified in the Estoppel Certificate shall be deemed true and correct, and the Estoppel Certificate shall thereafter be binding on the Parties, Secured Party or any party designated by the requesting party, and all of such parties may thereafter rely on the Estoppel Certificate as a conclusive statement of fact by the responding party as to the matters set forth therein.

14. Additional Customers. It is the intent of the Parties to encourage the addition of Customers to the Property throughout and

UNOFFICIAL COPY

after the term hereof. Site Owner hereby irrevocably constitutes and appoints Unison as its true and lawful attorney-in-fact, with full power of substitution and resubstitution, to negotiate and consummate leases, licenses and/or other agreements of use with Customers having a duration beyond the term of this Agreement. Site Owner ratifies and acknowledges the right of Unison to enter into such agreements, and the Property and Site Owner will be bound by such agreements throughout and after the termination of this Agreement for any reason. Site Owner acknowledges that all such agreements entered into by Unison shall survive the termination of this Agreement for any reason. Upon termination of this Agreement, Unison shall assign all Customers with leases in effect at that time to Site Owner and Site Owner shall thereafter receive 100% of all rents due under the terms of such leases. Site Owner agrees that it shall not, directly or indirectly, divert or solicit the business of any of Unison's Customers on behalf of itself or on behalf of any third party. Upon the grant or transfer of the Property, or any portion thereof, to a third party, Site Owner shall immediately notify Unison in writing of such grant or transfer, with the name and address of the purchaser.

15. Condemnation. In the event of any condemnation of the Easements in whole or in part, Unison shall be entitled to file claims against the condemning authority for, and to receive, the value of the portion of the Property so taken on which the Easements are located, business dislocation expenses and any other award or compensation to which Unison may be legally entitled. Site Owner hereby assigns to Unison any such claims and agrees that any claims made by Site Owner will not reduce the claims made by Unison.

16. Covenant Running with the Land. The provisions of and covenants contained in this Agreement shall run with the land and shall bind and inure to the benefit of the Parties and their respective successors, heirs and/or assigns as their interests may appear.

17. Dispute Resolution.

(a) If Unison fails to perform any of its obligations under this Agreement, Site Owner agrees to notify Unison and any Secured Parties, provided Unison has given Site Owner notice and contact information of Secured Parties, in writing of any default by Unison, and to give Unison and/or any Secured Parties the right to cure any default within a period of not less than sixty (60) days from Unison's receipt of the written default notice. If Unison or any Secured Parties shall fail to cure any default in accordance with this Section, Site Owner agrees that its only remedies for such default shall be specific performance or damages. Any and all damages for which Site Owner may be compensated is limited to the actual damages of Site Owner and Unison's liability shall be limited to its interest in the Property. In the event that any dispute or claim arises that could impair the use or possession of the Facilities by Unison or its Customers, Unison shall have the right to seek injunctive relief, without the necessity of posting a bond.

(b) Except as set forth in Section 16(a), in the event of any dispute arising out of this Agreement, the following dispute resolution process shall be followed: (i) upon a party's written notice of dispute to the other party, an authorized representative of the Site Owner and Unison shall, through a good faith negotiation, attempt to settle a written resolution within thirty (30) days and (ii) if such negotiation attempts fail, the dispute shall be submitted by the parties to a mutually agreed upon arbitrator for a binding and final arbitration decision in accordance with the rules of the American Arbitration Association ("AAA") and using the Federal Rules of Evidence and Civil Procedure. In the event the parties are unable to mutually agree to an arbitrator, each party shall select their own arbitrator, and each such arbitrator shall thereafter mutually agree on a third arbitrator, and the majority decision by all such arbitrators shall be final and binding on the parties. Each party shall pay one-half of all arbitrator professional fees and the prevailing party, in any proceedings under this Section 16, shall be entitled to recover all costs incurred in connection therewith, including legal fees.

18. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given one (1) business day after posting with a nationally recognized overnight courier service, or the earlier of receipt or ten (10) days after posting by registered or certified mail, return receipt requested, to the addresses of Site Owner and Unison set forth on the signature page. Either party may change its notice address by providing a new recipient name and address by notice as set forth in this paragraph. Copies of all notices will be sent to DCH Management, Inc., 630 Vernon Ave., Glencoe, Illinois 60022.

19. Insurance. Unison shall carry and maintain commercial general liability insurance against bodily injury and property damage written with companies having a Best's rating of A- or better. Coverage shall be written on an occurrence form equivalent or better than the occurrence form (CG0001) as published by the ISO with minimum limits of One Million and No/100 Dollars (\$1,000,000.00) each occurrence and Five Million and No/100 Dollars (\$5,000,000.00) general aggregate. The policy shall name Site Owner, Property Manager and the 630 Vernon Condominium Association as additional insured with respect to liability arising out of the Property. Certificates of insurance showing Site Owner as additional insured, premiums prepaid, shall be deposited with Site Owner and shall contain provision for thirty (30) days notice to Site Owner prior to any cancellation or non-renewal except for ten (10) days notice for non-payment of premium. Unison will incorporate the following insurance provisions in any New Agreement:

UNOFFICIAL COPY

(a) **Customer's/ Licensee's Liability Insurance.** Licensee shall obtain and maintain in effect during the term of this Agreement, (i) a policy or policies of comprehensive general liability insurance with single limit base coverage of at least \$1,000,000 and umbrella coverage of \$5,000,000 (ii) contractual indemnity insurance covering Licensee's obligations hereunder in the same amount as the general liability insurance required above, and (iii) any other insurance coverage required by the appropriate governmental authorities pertaining to Licensee's use. All such policies shall be from responsible, solvent insurance companies and shall name Licensor and its mortgagee, Site Owner, Property Manager and Condominium Association as additional insureds. Licensee shall promptly furnish to Licensor and Site Owner certificate(s) of insurance issued in favor of Licensor and Site Owner evidencing such insurance coverage. Licensee shall promptly notify Licensor and Site Owner of any changes in the coverage or carrier, and shall provide to Licensor and Site Owner a certificate indicating the renewal of such policy not later than thirty (30) days prior to the expiration of the then current policy.

(b) **Customer's/Licensee's Property Insurance.** Licensee shall obtain and maintain property and casualty insurance, from a responsible, solvent insurance company, upon Licensee's Equipment and any and all other property of Licensee or of any party which may from time to time be stored or maintained in, on or around the Site by or at the direction of Licensee. Such insurance shall be maintained in such amounts as shall be necessary to cover replacement costs. Licensee shall promptly furnish to Licensor and Site Owner a certificate of insurance issued in favor of Licensor and Site Owner evidencing such insurance coverage. Licensee shall promptly notify Licensor and Site Owner of any changes in the coverage or carrier. Licensee shall provide to Licensor and Site Owner a certificate indicating the renewal of such policy not later than thirty (30) days prior to the expiration of the then current policy.

(i) All property and casualty insurance policies required by this Agreement shall include a waiver of subrogation of any and all claims against Licensor, Site Owner, Property Manager and Condominium Association. Licensee agrees that it will look solely to its insurance policies for recovery of any loss or damage to its property and further confirms and agrees that in no event will it make any claim against Licensor, Site Owner, Property Manager or Condominium Association for any loss or damage to such property, and that it will indemnify and hold Licensor, Site Owner, Property Manager and Condominium Association harmless from and against any claim arising out of its failure to maintain such insurance.

(ii) All insurance policies to be maintained by Licensee hereunder shall contain an endorsement stating that such insurance may not be canceled or materially changed except upon thirty (30) days prior written notice to Licensor and Site Owner.

20. **Miscellaneous.** (a) This Agreement and all Exhibits attached hereto constitute the entire agreement and understanding of Site Owner and Unison with respect to the subject matter of this Agreement, and supersedes all offers, negotiations and any other written or verbal agreements; (b) any amendments to this Agreement must be in writing and executed by both parties; (c) this Agreement is governed by the laws of the State in which the Property is located; (d) if any term of this Agreement is found to be void or invalid, such provision shall be fully severable herefrom and such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect, and this Agreement shall be reformed and construed as if such invalid provision had never been contained herein, and if possible, such provisions shall be reformed to the maximum extent permitted under applicable law to render same valid, operative and enforceable to reflect the intent of the Parties as expressed herein; (e) upon the request of Unison, Site Owner shall execute a Memorandum of this Agreement and such plats or surveys as deemed reasonably necessary by Unison for recordation in the public records of the County in which the Property is located; (f) the paragraph headings of this Agreement have been inserted for convenience of reference only, and shall in no way modify or restrict the terms of this Agreement; (g) Site Owner acknowledges that Unison has not provided any legal or tax advice to Site Owner in connection with the execution of this instrument; and (h) this Agreement may be executed in any number of counterparts, each of which shall, when executed, be deemed to be an original and all of which shall be deemed to be one and the same instrument.

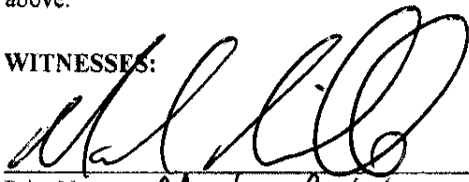
21. **Joinder Party.** 630 Vernon Condominium Association, an Illinois not-for-profit corporation, hereby joins in the execution of this Wireless Communication Easement and Assignment Agreement (Building) to grant its written consent allowing Site Owner to grant Unison the Communication Easements as shown on Exhibit B-1 of this Agreement, attached hereto, covering a limited common element known Storage Room #18 for the benefit of Unit E and Unit I.

[SIGNATURE PAGES TO FOLLOW.]

UNOFFICIAL COPY

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

WITNESSES:

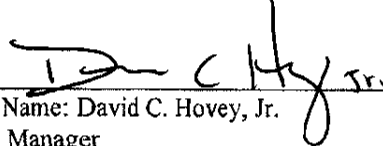

Print Name: Mark Riehle

Print Name: _____



"SITE OWNER":

Silver Fern, LLC, an Illinois limited liability company

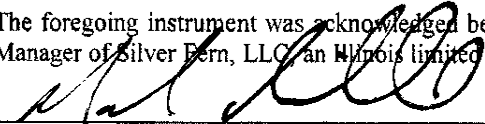
By: 
Print Name: David C. Hovey, Jr.
Title: Manager

Address: 630 Vernon Avenue
City: Glencoe
State: Illinois
Zip: 60022
Tel: 480.874.9900
Fax: _____

State of Arizona

County of Maricopa

The foregoing instrument was acknowledged before me this 9th day of February, 2011 by David C. Hovey, Jr., Manager of Silver Fern, LLC, an Illinois limited liability company, on behalf of the company.



(Signature of person taking acknowledgment)

(Title or rank) _____

(Serial number, if any) _____

of Cook County Clerk's Office

UNOFFICIAL COPY

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

WITNESSES:

Print Name: _____

Matthew Gison
Print Name: Matthew Gison

"Joinder Party":

630 Vernon Condominium Association, an Illinois not-for-profit corporation

Warren Bruhl
By: _____

Print Name: Warren Bruhl
Title: President

Address: 630 Vernon Avenue
City: Glencoe
State: Illinois
Zip: 60022
Tel: 847.835.4700
Fax: _____

STATE OF ILLINOIS)
COUNTY OF Cook) ss.

Before me, a notary public in and for said State, appeared Warren Bruhl, known to me, or proven to me, who duly authorized to act on behalf of the Site Owner of the Easement described in the foregoing Wireless Communication Easement and Assignment Agreement, 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 10th day of February, 2011.

My commission expires: 04.13.13

Melanie Herbst
Notary Public




UNOFFICIAL COPY

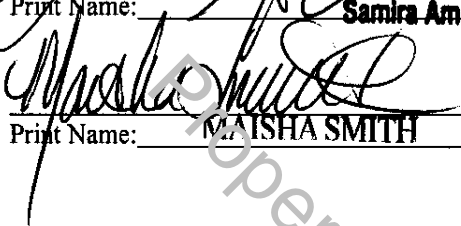
. IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

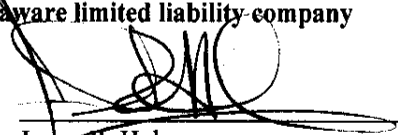
“UNISON”:

WITNESSES:

T6 UNISON SITE MANAGEMENT LLC,
a Delaware limited liability company


 Print Name: Samira Amer


 Print Name: MAISHA SMITH


By: 
 Name: James R. Holmes
 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 8th day of February in the year of 2011, before me, the undersigned, a Notary Public in and for said state, personally appeared James R. Holmes, 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: 
 My Commission Expires: _____
 Commission Number: _____

Pamela Villacis
Notary Public, State of New York
No. 01V16123442
Qualified in Queens County
Commission Expires March 7, 2013

UNOFFICIAL COPY

EXHIBIT "A" Legal Description

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

PARCEL 1:

A portion of the Common Elements, being part of the rooftop, of 630 Vernon Condominium Association, an Illinois not-for-profit corporation, as established and defined by Declaration of Condominium recorded on January 03, 1996 in Instrument No. 96006146, and any amendments thereto.

PARCEL 2:

A portion of the Limited Common Elements assigned to:

TRACT 1:

Unit E and Unit I, in the 630 Vernon Condominium as delineated on a survey of the following described land: Lot 3 and Parts of Lots 1, 2 and 4 (together with the Easterly half of the vacated alley Westerly of and adjoining Lots 1, 2, 3 and the Northwesterly 10 feet of Lot 4) in Block 24 in the Village of Glencoe, a Subdivision in the Southwest quarter of the Northeast quarter of Section 7, Township 42 North, Range 13 East of the Third Principal Meridian, which survey is attached as an exhibit to the Declaration of Condominium recorded January 03, 1996 as Document Number 96006146 as amended from time to time together with its undivided interest in the common elements all in Cook County, Illinois.

TRACT 2:

The exclusive right to the use of Parking Space P-31 for the benefit of Unit E of Parcel 1, a limited common element as set forth in said declaration,

TRACT 3:

The exclusive right to the use of Storage Room #18 for the benefit of Unit E of Parcel 1, a limited common element as set forth in said declaration.

UNOFFICIAL COPY

EXHIBIT "A" Cont.

AND BEING a portion of the same property conveyed to Silver Fern, LLC, an Illinois limited liability company from Chicago Title Land Trust Company, a corporation of Illinois, as Successor Trustee to LaSalle Bank, NA under the provisions of a Trust Agreement dated the 1st day of November, 1984, and known as Trust Number 62920 by Trustee's Deed dated August 05, 2008 and recorded August 15, 2008 in Instrument No. 0822822020.

Tax Parcel Nos. 05-07-211-035-1023 and 05-07-211-035-1028

Said Easement being more particularly described by the following description:

Insert metes and bounds description of Easement area

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT B-1

COMMUNICATION EASEMENT

That portion of the Property on which any Facilities exist on the date of this Agreement together with the portion of the Property leased by Site Owner under the Existing Agreements, and the portion of the Property described as follows:

Storage Room #18 for the benefit of Unit E.

Additional Area

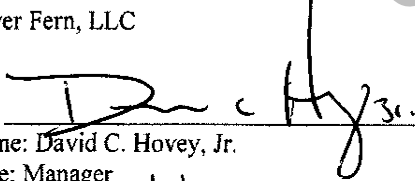
Unit I.

Site Owner herein agrees that this legal description may be substituted at a later date upon presentation of a survey of the property more clearly defining the location thereof.

Agreed and Approved:

Site Owner:

Silver Fern, LLC

By: 
Name: David C. Hovey, Jr.
Title: Manager
Date: 2/9/11

Unison:

By: _____
Name: James R. Holmes
Title: Authorized Signatory
Date: _____

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT B-1

COMMUNICATION EASEMENT

That portion of the Property on which any Facilities exist on the date of this Agreement together with the portion of the Property leased by Site Owner under the Existing Agreements, and the portion of the Property described as follows:

Storage Room #18 for the benefit of Unit E.

Additional Area

Unit I.

Site Owner herein agrees that this legal description may be substituted at a later date upon presentation of a survey of the property more clearly defining the location thereof.

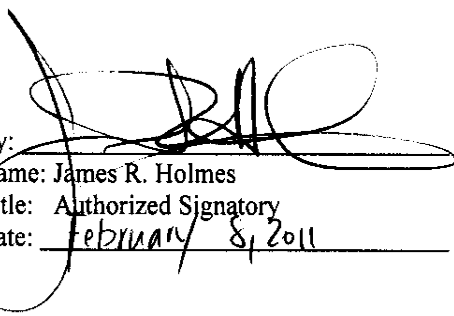
Agreed and Approved:

Site Owner:

Silver Fern, LLC

By: _____
Name: David C. Hovey, Jr.
Title: Manager
Date: _____

Unison:

By: 
Name: James R. Holmes
Title: Authorized Signatory
Date: FEBRUARY 8, 2011

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT B-2

ACCESS AND UTILITY EASEMENTS

That portion of the Property on which any Facilities exist on the date of this Agreement or provided by Site Owner under the Existing Agreements for access and utility providers, including the following:

All rights of ingress and egress across the Property, more fully described on Exhibit "A" hereof, to and from the Communication Easement described in Exhibit B-1 hereof, providing access to a publicly dedicated roadway, including but not limited to **Vernon Avenue** (hereinafter the "Access Easement"), along with the right to use said Access Easement for the development, repair, maintenance and removal of utilities providing service to the Communication Easement and the Facilities, as defined herein, and any related activities and uses.

Utility Easement.

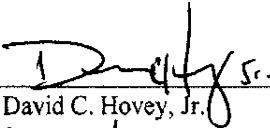
A non-exclusive easement in, to, under and over portions of the Property for ingress and egress to the Communication Easement, conduits, shafts, raceways or other designated space to connect the telecommunications equipment to other location inside or outside the building as is necessary to install wiring, electronic equipment and other personal property, and to support and maintain the Facilities (hereinafter the "Utility Easement") along with the right to use said Access Easement and Utility Easement for the development, repair, maintenance and removal of utilities providing service to the Communication Easement and the Facilities, as defined herein, and any related activities and uses.

Site Owner herein agrees that this legal description may be substituted at a later date upon presentation of a survey of the property more clearly defining the location thereof.

Agreed and Approved:

Site Owner:

Silver Fern, LLC

By: 
Name: David C. Hovey, Jr.
Title: Manager
Date: 2/9/11

Unison:

By: _____
Name: James R. Holmes
Title: Authorized Signatory
Date: _____

UNOFFICIAL COPY

EXHIBIT B-2

ACCESS AND UTILITY EASEMENTS

That portion of the Property on which any Facilities exist on the date of this Agreement or provided by Site Owner under the Existing Agreements for access and utility providers, including the following:

All rights of ingress and egress across the Property, more fully described on Exhibit "A" hereof, to and from the Communication Easement described in Exhibit B-1 hereof, providing access to a publicly dedicated roadway, including but not limited to **Vernon Avenue** (hereinafter the "Access Easement"), along with the right to use said Access Easement for the development, repair, maintenance and removal of utilities providing service to the Communication Easement and the Facilities, as defined herein, and any related activities and uses.

Utility Easement.

A non-exclusive easement in, to, under and over portions of the Property for ingress and egress to the Communication Easement, conduits, shafts, raceways or other designated space to connect the telecommunications equipment to other locations inside or outside the building as is necessary to install wiring, electronic equipment and other personal property, and to support and maintain the Facilities (hereinafter the "Utility Easement") along with the right to use said Access Easement and Utility Easement for the development, repair, maintenance and removal of utilities providing service to the Communication Easement and the Facilities, as defined herein, and any related activities and uses.

Site Owner herein agrees that this legal description may be substituted at a later date upon presentation of a survey of the property more clearly defining the location thereof.

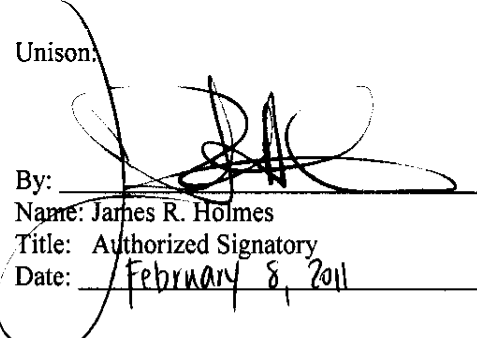
Agreed and Approved:

Site Owner:

Silver Fern, LLC

By: _____
Name: David C. Hovey, Jr.
Title: Manager
Date: _____

Unison:

By: 
Name: James R. Holmes
Title: Authorized Signatory
Date: February 8, 2011

UNOFFICIAL COPY

EXHIBIT C

EXISTING AGREEMENTS

Site Owner assigns and transfers to Unison, as of the effective date herein, all of its right, title and interest in, to and under any existing lease agreements, and any amendments, transfers, modifications and/or assignments thereof, affecting any portion of the Property leased by Site Owner under any Existing Agreements, including, without limitation, the following:

That certain License Agreement dated as of March 29, 1996 by and between 630 Vernon Associates, an Illinois limited liability partnership, as landlord, and AT&T Wireless PCS, Inc., a Delaware corporation, as tenant.

Read, Agreed and Approved:

Site Owner:

Silver Fern, LLC

By: [Signature]
Name: David C. Hovey, Jr.
Title: Manager
Date: 2/1/11

Unison:

By: _____
Name: James R. Holmes
Title: Authorized Signatory
Date: _____

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT C

EXISTING AGREEMENTS

Site Owner assigns and transfers to Unison, as of the effective date herein, all of its right, title and interest in, to and under any existing lease agreements, and any amendments, transfers, modifications and/or assignments thereof, affecting any portion of the Property leased by Site Owner under any Existing Agreements, including, without limitation, the following:

That certain License Agreement dated as of March 29, 1996 by and between 630 Vernon Associates, an Illinois limited liability partnership, as landlord, and AT&T Wireless PCS, Inc., a Delaware corporation, as tenant.

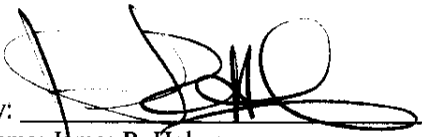
Read, Agreed and Approved:

Site Owner:

Silver Fern, LLC

By: _____
Name: David C. Hovey, Jr.
Title: Manager
Date: _____

Unison:

By: 
Name: James R. Holmes
Title: Authorized Signatory
Date: February 8, 2011

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT D

TITLE ENCUMBRANCES

That certain (a) Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing from Silver Fern, LLC, an Illinois limited liability company, in favor of Cole Taylor Bank, an Illinois banking corporation, dated August 12, 2008 and recorded on August 15, 2008 in Instrument No. 0822822021 in the original principal amount of \$11,244,000.00, together with that Assignment of Rents and Leases among the same parties, recorded on August 15, 2008 in Instrument No. 0822822022; and (b) Junior Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing from Silver Fern, LLC, an Illinois limited liability company, to Cole Taylor Bank, an Illinois banking corporation, dated December 12, 2009 and recorded on April 30, 2010 in Instrument No. 1012031116 in the original principal amount of \$500,000.00, together with that Junior Assignment of Rents and Leases by the same parties recorded on April 30, 2010 in Instrument No. 1012031117, for which a Non-Disturbance Agreement has been executed in favor of Unison and recorded in the Official Records of Cooke County, State of Illinois, under Instrument No. _____.

Property of Cook County Clerk's Office