



Doc#: 1119919060 Fee: \$54.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 07/18/2011 11:17 AM Pg: 1 of 10

Prepared by:
Victoria M. de Lisle
Locke Lord Bissell & Liddle, LLP
601 Poydras Street, Suite 2620
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# - 05-07-211-035-1022
05-07-211-035-1023
05-07-211-035-1028

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

THIS AGREEMENT (the "Agreement") is made as of the 8 day of February, 2011 ("Effective Date"), by and among Cole Taylor Bank, an Illinois banking corporation, whose address is 225 W. Washington St., Ninth Floor, Chicago, Illinois 60606 (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 Silver Fern, LLC, an Illinois limited liability company, whose address is 630 Vernon Ave., Glencoe, Illinois 60022 (hereinafter referred to as "Site Owner")

WITNESSETH:

WHEREAS, Lender has made one or more loans to Site Owner (such loans and any renewal, substitution, extension or replacement thereof being hereinafter collectively called the "Loan"), which are secured by, *inter alia*, 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 (such Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing and any and all other security interests encumbering the Site Owner's Property, as hereafter defined, securing the Loan and any renewal, substitution, amendment,

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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 Feb 9, 2011 (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 (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, 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

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the interest of Site Owner under the Communication Easement. The respective rights and obligations of Unison and Lender upon such attainment, 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:

Cole Taylor Bank
225 W. Washington St. 9th Floor
Chicago, IL 60606
Attn: Karyn Duffy

For Site Owner:

Silver Fern LLC
630 Vernon Ave.
Glencoe, IL 60022

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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 TO FOLLOW]

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

WITNESSES:

[Signature]
Print Name: ADAM M. GARRETT

[Signature]
Print Name: PICK LORENZ

"LENDER":

COLE TAYLOR BANK,
an Illinois banking corporation

By: [Signature]
Print Name: DENNIS W. ROURKE
Title: SENIOR VICE PRESIDENT

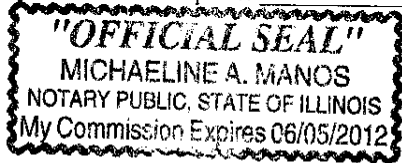
Address: 225 W. Washington St., 9th Floor
City: Chicago
State: IL
Zip: 60606
Tel: _____
Fax: _____

STATE OF ILLINOIS)
COUNTY OF COOK) ss.

Before me, a notary public in and for said State, appeared DENNIS W. ROURKE S.V.P. of Cole Taylor Bank, known to me, or proven to me, who duly authorized to act on behalf of the Lender described in the foregoing Agreement, executed and acknowledged said instrument as his/her free act and deed on behalf of said Lender.

Given under my hand and seal this 19th day of NOVEMBER, 2010.

My commission expires: _____



[Signature]
Notary Public

[S E A L]

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

WITNESSES:

Wendy J. Holman
Print Name: Wendy Holman

Garry Roberts
Print Name: Garry Roberts

"SITE OWNER":

SILVER FERN LLC,
an Illinois limited liability company

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

Address: 630 Vernon Ave.
City: Glencoe
State: IL
Zip: 60022
Tel: 480.874.9900
Fax: _____

STATE OF ~~ILLINOIS~~ ARIZONA) ss.
COUNTY OF MARICOPA)

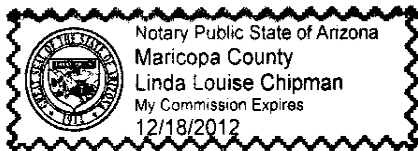
Before me, a notary public in and for said State, appeared DAVID HOVEY JR., known to me, or proven to me, who duly authorized to act on behalf of the Site Owner described in the foregoing Agreement, executed and acknowledged said instrument as his/her free act and deed on behalf of said Site Owner.

Given under my hand and seal this 28 day of OCTOBER, 2010.

My commission expires: 12.18.2012

Linda J. Chipman
Notary Public

[S E A L]



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

“UNISON”:

WITNESSES:

T6 UNISON SITE MANAGEMENT LLC,
a Delaware limited liability company

Print Name: *[Signature]*
 Print Name: Shirley Amer
 Print Name: MAISHA SMITH

By: *[Signature]*
 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: *Pamela Villacis*
 My Commission Expires: _____
 Commission Number: _____

Pamela Villacis
Notary Public, State of New York
No. 01VI6123442
Qualified in Queens County
Commission Expires March 7, 2013

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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 Northwesternly 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 41 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.

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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

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EXHIBIT "B"

Description of Assigned Leases

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.

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