

# UNOFFICIAL COPY



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Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 12/22/2011 03:08 PM Pg: 1 of 9

Prepared by:  
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601 Poydras Street, Suite 2660  
New Orleans, LA 70139  
File: #0590924.04438

Record and Return to:  
Dione Carter  
Fidelity National Title Insurance Company  
7130 Glen Forest Drive, Suite 300  
Richmond, VA 23226  
Phone: 1.804.267.2049  
Fax: 1.804.267.2330  
File: #12771015  
Unison Site: #329426

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

THIS AGREEMENT (the "Agreement") is made as of the 27<sup>th</sup> day of July, 2011 ("Effective Date"), by and among The Bank of New York Mellon Trust Company, N.A. successor in interest to American National Bank and Trust Company of Chicago, a national association, as Master Trustee, whose address is 2 North LaSalle St., Suite 1020, Chicago, IL 60602 (hereinafter referred to as "Master Trustee and Mortgagee"), T8 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 Norwegian Lutheran Bethesda Home Association, an Illinois corporation, whose address is 2833 N. Nordica Ave., Chicago, IL 60634 (hereinafter referred to as "Site Owner").

WITNESSETH

BOX 162

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WHEREAS, Master Trustee and Mortgagee and Norwegian Lutheran Bethesda Home Association, doing business as Bethesda Home a Retirement Center, executed that certain Mortgage and Security Agreement dated as of November 1, 1999 (and recorded November 15, 1999 in Instrument No. 09069635, Official Records of Cook County, IL) (such Mortgage and Security Agreement and any and all other security interests encumbering the Site Owner's Property, as hereafter defined, securing the Mortgage and any renewal, substitution, amendment, extension or replacement thereof being hereinafter collectively referred to as the "Mortgage"), upon the tract of land described in Exhibit "A" hereto (the "Site Owner's Property"); and

WHEREAS, a portion of the Site Owner's Property (the "Communication Site") is subject to a Wireless Communication Easement and Assignment Agreement by and between Site Owner and Unison dated as of July 27, 2011 (as same may be hereafter amended, 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");

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WHEREAS, Master Trustee and Mortgagee and Site Owner acknowledge that the execution of this Agreement is within the definition of "Permitted Encumbrances" as stated in that certain Loan Agreement dated November 1, 1999, Article II "Representations" page 3, section 2.2 (b), and defined in that certain Master Trust Indenture dated November 1, 1999 Article I "Definitions" page 16, paragraph (f); 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, Master Trustee and Mortgagee, 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 Master Trustee and Mortgagee's prior written consent. **Master Trustee and Mortgagee and Site Owner specifically acknowledge that Unison shall have the exclusive right to collect any and all rents due by Tenant(s) under the Assigned Leases, said Assigned Leases being more fully described on Exhibit 'B' hereof and, by execution of this instrument, any Assigned Leases are specifically released from that certain Mortgage and Security Agreement executed by Norwegian Lutheran Bethesda Home Association, doing business as Bethesda Home and Retirement Center, in favor of American National Bank and Trust Company of Chicago, a national association, as Master Trustee, dated as of November 1, 1999 and recorded November 15, 1999, in Instrument No. 09069635, Official Records of Cook County, IL, 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, Master Trustee and Mortgagee 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 Master Trustee and Mortgagee shall reimburse Unison for all reasonable expenses incurred by Unison in connection therewith.

3. **Attornment.** In the event the exercise of the power of sale in the Mortgage, or in the event of foreclosure of the Mortgage, or in event of a conveyance of the Site Owner's Property in lieu of foreclosure, Unison agrees to attorn to and accept the purchaser at the foreclosure sale or the grantee under the conveyance in lieu of foreclosure as the site owner for the balance then remaining of the term of the Communication Easement, subject to all terms and conditions of said Communication Easement and the terms of this Agreement. Said attornment shall be effective and self-operative without the execution of any further instruments upon the succession by Purchaser to the interest of Site Owner under the Communication Easement. The respective rights and obligations of Unison and Master Trustee and Mortgagee upon such attornment, shall be and are the same as now set forth in the Communication Easement.

4. **Unison's Equipment.** Master Trustee and Mortgagee hereby acknowledges and agrees that the Mortgage does not apply to Unison's Equipment and that removal of said Equipment is governed by the terms of the Communication Easement.

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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 Master Trustee and Mortgagee. As between Site Owner and Master Trustee and Mortgagee, Site Owner and Master Trustee and Mortgagee 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 Master Trustee and Mortgagee, 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 Master Trustee and Mortgagee:

The Bank of New York Mellon Trust Company, N.A.  
2 North LaSalle St., Suite 1020  
Chicago, IL 60602  
Attention: Robert W. Hardy, Public Finance  
Facsimile No. 312-827-8522

For Site Owner:

Norwegian Lutheran Bethesda Home Association  
2833 N. Nordica Ave.  
Chicago, IL 60634

For Unison:

T8 Unison Site Management LLC  
P. O. Box 1951  
Frederick, Maryland 21702-0951

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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]

Property of Cook County Clerk's Office





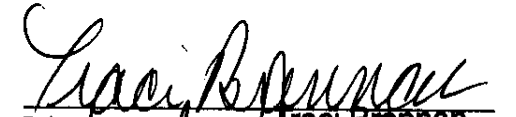



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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

“UNISON”:

WITNESSES:

  
 Print Name: Traci Brennan  
  
 Print Name: MAISHA SMITH

T8 UNISON SITE MANAGEMENT LLC,  
a Delaware limited liability company

  
 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

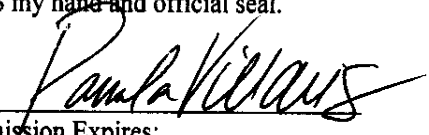
STATE OF NEW YORK

COUNTY OF NEW YORK

) ss.

On the 26<sup>th</sup> day of July in the year of 2017, before me, the undersigned, a Notary Public in and for said state, personally appeared James R. Holmes, Authorized Signatory of T8 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. 01VI6123442  
 Qualified in Queens County  
 Commission Expires March 7, 2013

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## EXHIBIT "A"

### Site Owner's Property

Lots 3, 4, 5, 11, 12 and 13 and the vacated alley lying south and adjoining said lots 3,4 and 5 and north of and adjoining said lots 11, 12, and 13 all in John J. Rutherford's Third Addition to Mont Clare, being a subdivision in the West half of the North West quarter of Section 30, Township 40 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois.

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## EXHIBIT "B"

### Description of Assigned Leases

That certain Option and License Agreement by and between Norwegian Lutheran Bethesda Home Association, as Licensor, and AT&T Wireless PCS, Inc., a Delaware corporation, as Tenant, dated October 11, 1996, as amended by the First Amendment to Option and License Agreement by the aforementioned Licensor and New Cingular Wireless PCS, LLC, a Delaware limited liability company, d/b/a Cingular Wireless, successor in interest to AT&T Wireless PCS, LLC, dated December 15, 2005, together with all amendments and memoranda related thereto.

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