

# UNOFFICIAL COPY



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RHSP Fee: \$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 06/27/2013 09:19 AM Pg: 1 of 9

Prepared by:  
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601 Poydras Street, Suite 2500  
New Orleans, LA 70130  
LL File: #0590924.05551

Record and Return to:  
Dione Carter  
Fidelity National Title Group  
7130 Glen Forest Drive, Suite 300  
Richmond, VA 23226  
Phone: 1.804.267.2049  
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File: #16312018  
Unison Site: #301003

PIN: 04-11-204-018-0000

## NON-DISTURBANCE AND ATTORNMENT AGREEMENT (INCLUDING PARTIAL RELEASE OF ASSIGNMENT OF LEASES AND RENTS AS TO CERTAIN "ASSIGNED LEASES")

THIS AGREEMENT (the "Agreement") is made as of the 15 day of May, 2013 ("Effective Date"), by and among West Suburban Bank, an Illinois Banking Corporation, whose address is Attn: Commercial Loan Department, 711 South Westmore-Meyers Road, Lombard, Illinois, 60148 (hereinafter referred to as "Lender"), T10 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 The 899 Building, LLC, an Illinois limited liability company, whose address is 2421 Simpson Street, Evanston, Illinois, 60201 (hereinafter referred to as "Site Owner").

Property Address: 899 Skokie Boulevard,  
Northbrook, IL 60062

### WITNESSETH:

WHEREAS, Lender has made a loan to Site Owner (such loan and any modification, renewal, substitution, extension, refinance or replacement thereof being hereinafter collectively called the "Loan") in the amount of Two Million Two Hundred Fifty Thousand and No/100 (\$2,250,000.00) Dollars, which is secured by, *inter alia*, that certain Mortgage, Assignment of Rents and Security Agreement (Including a UCC Financing Statement) dated October 3, 2012, by and between The 899 Building LLC, an Illinois limited liability company, as mortgagor, and West Suburban Bank, an Illinois Banking Corporation, as mortgagee, and recorded on October 23, 2012, as Document No. 1229735020, Official Records, Cook County, Illinois (such Mortgage, Assignment of Rents and Security Agreement (Including a UCC Financing Statement) and any and all other security interests encumbering the Site Owner's Property, as hereafter defined, securing the Loan and any modification, renewal, substitution, amendment, extension, refinance 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

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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 May 15, 2013 (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");

WHEREAS, the effective date of this Agreement is the effective date specified in the Communication Easement ("Effective Date"); and

WHEREAS, the parties hereto desire to enter into this Agreement for purposes of: (i) recognizing the Site Owner's grant of easement and assignment of the "Assigned Leases" to Unison; (ii) Lender's agreement not to disturb Unison's enjoyment of its Communications Easement and to partially release its assignment of rents and leases only to such specific "Assigned Leases"; and (iii) reaffirmation, recognition and attornment to Lender and Lender's continuing prior first lien and security interest as to Site Owner's Property excluding only the Communication Easement and the Assigned Leases.

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 / Non-Interference. 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 Mortgage, Assignment of Rents and Security Agreement (Including a UCC Financing Statement) dated October 3, 2012, by and between The 899 Building L.L.C., an Illinois limited liability company, as mortgagor, and West Suburban Bank, an Illinois Banking Corporation, as mortgagee, and recorded on recorded on October 23, 2012, as Document No. 1229735020, Official Records, Cook County, Illinois, and any and all other security interests executed in connection with the aforesaid or otherwise securing the Loan.** In all other respects, however, such Mortgage and all other security interest and liens remain in full force and effect and is hereby affirmed and reaffirmed. As an express condition precedent and inducement and continuing inducement to Lender to enter into this Agreement and so partially release Lender's Mortgage (solely as to the "Assigned Leases") and agree not to disturb Unison's easement rights (solely as to the Communication Easement), Unison (for itself and its successors and assigns, covenants and agrees not to take or cause to be taken any action whatsoever which disturbs, interferes with, contests or hinders Lender's own lien rights, remedies, recourses and security interests under its mortgage or otherwise or with respect to the subject collateral of Lender's Mortgage and other security interests, except as may be appropriate to give effect to Unison's rights under this Agreement.

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.

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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 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 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, provided however, as an express condition precedent and inducement to Lender to enter into this Agreement, the scope, breadth and extent of the Communication Easement shall not be modified, enlarged, or expanded without the Lender's express prior written consent for so long as Lender maintains any lien or security interest in and to all or any part of the Site Owner's Property.
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/Venue. This Agreement shall be interpreted and governed by the laws of the State in which the Site Owner's Property is located. Venue for any and all disputes or enforcement of this Agreement shall be in the Illinois Circuit Court having jurisdiction in the County in which Site Owner's Property is situated.
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:

West Suburban Bank  
Attn: Commercial Loan Department

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711 South Westmore-Meyers Road  
Lombard, Illinois 60148

For Site Owner:

The 899 Building, LLC  
2421 Simpson Street  
Evanston, Illinois 60201

For Unison:

TIC 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.

13. Waiver of Jury Trial. As a partial inducement for each party to enter into this Agreement, each party affirmatively waives any right to demand or seek any trial by jury with respect to this Agreement.

14. Waiver of Partition. Unison hereby affirmatively waives any right to division, subdivision or partition of the Site Owner's Property.


15. Non-Recordation. Unison shall not record or cause to be recorded in the public real estate records for Site Owner's Property any lien, security instruments, assignments or mortgage in any matter identifying or pertaining to any of Site Owner's Property without Lender's express prior written consent, which consent may be conditioned upon Lender receiving a satisfactory intercreditor agreement, except that Unison may record or cause to be recorded in any public real estate records for Site Owner's Property this Agreement, Unison's Wireless Communication Easement and Assignment Agreement, an assignment, mortgage, or grant of security interest solely to Unison's Communication Easements and/or the Assigned Leases.


SIGNATURES ON FOLLOWING PAGES

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the effective date.

**WITNESSES:**

  
Print Name: EDDIE STEPHENS

  
Print Name: DAVID S. ORR

**"LENDER":**

**WEST SUBURBAN BANK**, an Illinois banking corporation

By:   
Print Name: MICHAEL F. MOONE  
Title: VICE PRESIDENT

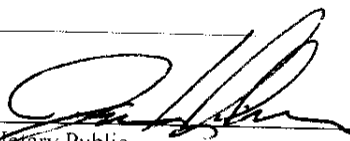
Address: Attn: Commercial Loan Department  
711 South Westmore-Meyers Road  
City: Lombard  
State: Illinois  
Zip: 60148  
Tel: 630-652-2318  
Fax: 630-629-0279

STATE OF ILLINOIS )  
COUNTY OF DuPage ) ss.

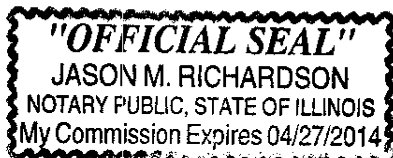
Before me, a notary public in and for said State, appeared DAVID S. ORR, EDDIE STEPHENS, MICHAEL F. MOONE, known to me, or proven to me, who duly authorized to act on behalf of the Lender described in the foregoing Non-Disturbance and Attornment Agreement and Partial Release of Assignment of Leases and Easements, 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 14th day of May, 2013.

My commission expires: 04/27/2014

  
Notary Public

[SEAL]



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

**WITNESSES:**

*Kelly Kealis*  
Print Name: KELLY KEALIS

*Bridget Ryan*  
Print Name: BRIDGET RYAN

**"SITE OWNER":**

**THE 899 BUILDING, LLC**, an Illinois limited liability company

By: *RS*  
Print Name: Robert Stephen Qualkinbush  
Title: Manager

Address: 2421 Simpson Street  
City: Evanston  
State: Illinois  
Zip: 60201  
Tel: 847-272-9299  
Fax: 847 282 1744

STATE OF ILLINOIS

COUNTY OF COOK

)  
) ss.  
)

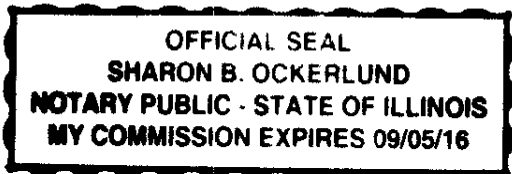
Before me, a notary public in and for said State, appeared Robert S. Qualkinbush, known to me, or proven to me, who duly authorized to act on behalf of the Site Owner described in the foregoing on-Disturbance and Attornment Agreement and Partial Release of Assignment of Leases and Rents, executed and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

Given under my hand and seal this 9<sup>th</sup> day of May, 2013.

My commission expires: 9/5/2016

*Sharon B. Ockerlund*  
Notary Public

[SEAL]

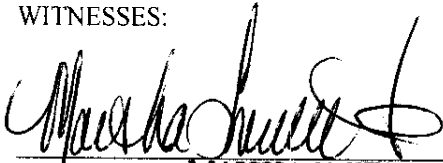


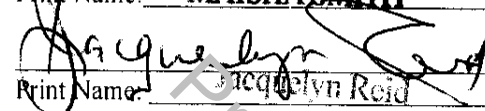
# UNOFFICIAL COPY

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

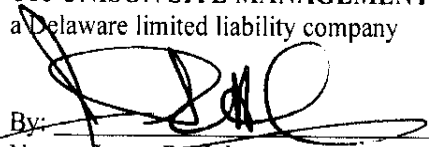
"UNISON":

WITNESSES:

  
 Print Name: MAISHA SMITH

  
 Print Name: Jacquelyn Reid

T10 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

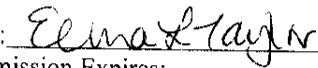
STATE OF NEW YORK

COUNTY OF NEW YORK

) ss.

On the 6<sup>th</sup> day of May in the year of 2013, before me, the undersigned, a Notary Public in and for said state, personally appeared James R. Holmes, Authorized Signatory of T10 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: \_\_\_\_\_

ELMA L. TAYLOR  
 Notary Public, State of New York  
 No. 021A6138247  
 Qualifying in New York County  
 Commission Expires December 19, 2013

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## EXHIBIT "A"

### Site Owner's Property

#### PARCEL 1:

Lots Eight, Nine and Ten in Block Two and all of Block Three excepting therefrom that part thereof lying South of a line drawn from a point in the West line of said Block Three, 9.0 feet North of the Southwest corner of said Block Three, to a point in the East line of said Block Three, 15.75 feet North of the Southeast corner of said Block Three, in Hughes-Brown-Moore Corporation's First Addition to North Shore Villa, being a subdivision of part of the Northeast Quarter of the Northeast Quarter of Section Eleven, Township Forty-Two North, Range Twelve East of the Third Principal Meridian, together with, that portion of vacated Sunset Ridge bounded and described as follows: Beginning at the Northeast corner of Lot Ten in Block Two aforesaid; thence East along the extension East of the North line of said Lot Ten, for a distance of 20.0 feet; thence South along a line of 20.0 feet East of and parallel to the West line of said Sunset Ridge Road, said line being 30.0 feet West of and parallel with the East line of Section Eleven, aforesaid, for a distance of 370.0 feet; thence Southwesterly to a point on said West line of Sunset Ridge Road, said point being 15.75 feet North of the Southeast corner of Block Three, aforesaid; thence North along said West line of Sunset Ridge Road, 380.0 feet to the place of beginning, in Cook County, Illinois.

#### PARCEL 2:

All that part of vacated Sheridan Place lying West of the West line of Sunset Ridge Road, East of the East line of Skokie Boulevard and lying between Blocks (erroneously typed Locks) 2 and 3 in Hughes-Brown-Moore Corporation's First Addition to North Shore Villa, aforesaid, East of the Third Principal Meridian in Cook County, Illinois.

AND BEING the same property conveyed to 899 Skokie Blvd. LLC, from Chicago Title Land Trust Company, as Successor Trustee under Trust Agreement dated April 01, 1993 and known as Trust Number 3886 by Trustee's Deed dated May 24, 2012 and recorded June 12, 2012 in Instrument No. 1216412118; AND FURTHER CONVEYED to The 899 Building, LLC, an Illinois limited liability company from 899 Skokie Blvd. LLC, an Illinois limited liability company by Special Warranty Deed dated October 03, 2012 and recorded October 23, 2012 in Instrument No. 1229735019.

Tax Parcel No. 04-11-204-018



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## EXHIBIT "B"

### Description of Assigned Leases

1. The Lease dated as of April 17, 1989 between LaSalle National Bank as successor trustee to LaSalle Bank/Northbrook, formerly Northbrook Trust and Savings Bank, as Trustee under Trust Agreement dated November 7, 1966 and known as Trust No. 25-219-00 and 899 Skokie Limited Partnership as sole beneficiary of said trust, collectively as lessor, and Cellular One - Chicago, a division of Southwestern Bell Mobile Systems, Inc., a corporate incorporated under the laws of the State of Delaware and the Commonwealth of Virginia, as lessee, as amended by the First Amendment to Lease Agreement dated as of August 28, 2005 by and between LaSalle National Bank as successor trustee to LaSalle Bank/Northbrook, formerly Northbrook Trust and Savings Bank, as Trustee under Trust Agreement dated November 7, 1966 (erroneously referred to as 1996) and known as Trust No. 25-219-00 and 899 Skokie Limited Partnership, as sole beneficiary of said trust number 25-219-00 (erroneously referred to as 21-219-00), as lessor, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, d/b/a Cingular Wireless, successor in interest to Cellular One - Chicago, a division of Southwestern Bell Mobile Systems, Inc., as lessee.
2. The Rooftop Site Lease With Option dated October 20, 1999 between Bank of Waukegan Trust 3886 dated April 1, 1993, as lessor, and Cook Inlet/VoiceStream PCS, LLC, by its agent, VoiceStream PCS BTA 1 Corp., as lessee, as disclosed by the Memorandum of Lease of even date therewith and recorded on March 22, 2001 in Instrument No. 0010229229, as amended by First Amendment to Rooftop Site Lease With Option by and between Bank of Waukegan Trust 3886 dated April 1, 1993, as lessor, and VoiceStream GSM I Operating Company, LLC, successor in interest to Cook Inlet/VoiceStream PCS, LLC by its agent VoiceStream PCS BTA 1 Corp., as lessee, dated as of August 16, 2005.