

Ent: 366672 - Pg 1 of 13
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Fee: \$35.00
Filed By: eCASH
Jerry M. Houghton, Recorder
Tooele County Corporation
For: Lawyers Title Insurance Corporation

Prepared by:
Robert W. Mouton
Locke Lord Bissell & Liddell LLP
601 Poydras Street, Suite 2660
New Orleans, LA 70130
File: 0590924/04956

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: #13675538
Unison Site: #477970

WIRELESS COMMUNICATION EASEMENT AND ASSIGNMENT AGREEMENT

THIS WIRELESS COMMUNICATION EASEMENT AND ASSIGNMENT AGREEMENT ("Agreement") is made as of the 29th day of February 2012 ("Effective Date"), by and between Tooele City, a municipal corporation, whose address is 90 North Main Street, Tooele, Utah 84074 ("Site Owner") and T10 Unison Site Management LLC, a Delaware limited liability company, 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 is the owner of that certain property (collectively, the "Property") located in the City of Tooele, and County of Tooele, in the State of Utah, having a street address of 1000 W. Rogers Street, Tooele, Utah 84074, 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 portion of the Property substantially as shown and/or described on Exhibit B-1 ("Communication Easement") for the transmission and reception of any and all wireless communication signals and the construction, maintenance, repair, replacement, improvement

operation and removal of towers, antennas, buildings, fences, gates, 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.

(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 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").

4. Term. This Agreement and the Easements shall be for a term of fifty (50) years commencing on the Effective Date. 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 five years (for reasons other than casualty, condemnation or Act of God) (such 5 year period shall be defined as the "Abandonment Period"), the Easements shall be deemed surrendered. Unison shall provide Site Owner with written notice within 30 days after commencement of the Abandonment Period, and, in addition, Unison shall provide Site Owner with written notice within 30 days if it re-commences use of the Easements prior to the expiration of the Abandonment Period. Such notice shall be given in accordance with Section 17 of this Agreement. 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 at no additional cost to Site Owner. 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 also will assist and cooperate in good faith, not to be unreasonably withheld, conditioned, or delayed, 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. Should Site Owner's withholding of cooperation be deemed to have been unreasonably withheld,

conditioned, or delayed as a result of the dispute resolution described in Paragraph 16, Unison shall be entitled to damages from Site Owner equal to the total rent that would have been due had the applicable licenses, permits, consents or approvals been timely obtained.

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. 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. 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 Property. Site Owner agrees to provide Unison and its Customers access to and from the Easements and all other space in 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 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 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. 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. Notwithstanding anything in this Section, Unison acknowledges that Site Owner shall not be obligated to indemnify Unison against any costs or claims of liability or loss arising from the use and/or occupancy of the Property and Easements by Unison's successors, lessees, licensees or assigns.

11. 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 in accordance with Section 18(b) of this Agreement. 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.

12. Estoppel Certificate. At any time during the term hereof, 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 ten (10) 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.

13. Additional Customers. It is the intent of the Parties to encourage the addition of Customers to the Property throughout and after the term hereof. Site Owner shall assist and cooperate with Unison in good faith, not to be unreasonably withheld, conditioned or delayed, to negotiate and consummate leases, licenses and/or other agreements of use with Customers having a duration beyond the term of this Agreement. Should Site Owner's withholding of cooperation be deemed to have been unreasonably withheld, conditioned, or delayed as a result of the dispute resolution described in Paragraph 16, Unison shall be entitled to damages from Site Owner equal to the total rent that would have been due pursuant to such 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. Unison agrees to provide Site Owner with notice of any future leases upon commencement of such future leases. Site Owner acknowledges that all such agreements entered into by Unison shall survive the termination of this Agreement for any reason. 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. Unison shall have a right of first refusal to acquire, on the same terms and conditions offered by or to a third party, any interest in the Property or any portion thereof being transferred by Site Owner for wireless communication purposes such as described in Section 1 above. Site Owner shall, prior to granting or transferring such interest, notify Unison with a copy of the offer including the price and terms thereof. The foregoing is a continuing right in favor of Unison and shall not be extinguished by Unison's exercise or non-exercise of such right on one or more occasions.

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.

14. 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.

15. 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.

16. 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 court of competent jurisdiction. Each party shall pay one-half of all court 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.

17. 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 addressee addressed as set forth below. Either party may change its notice address by providing a new recipient name and address by notice as set forth in this paragraph.

For Site Owner:

Mayor
90 North Main Street
Tooele, Utah 84074

With a copy to:

City Attorney
90 North Main Street
Tooele, Utah 84074

For Unison:

T10 Unison Site Management LLC
P. O. Box 1951
Frederick, Maryland 21702-0951

18. 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 this Agreement 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.

[SIGNATURE PAGES FOLLOW]

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

Approved as to Form:

[Signature]

Print Name: Roger Baker, City Attorney

"SITE OWNER":

TOOELE CITY, a municipal corporation

By: *[Signature]*

Name: Patrick H. Dunlavy

Title: Mayor

Attest:

[Signature]

Print Name: Michelle Pitt, City Recorder

Address: 90 North Main Street

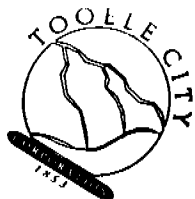
City: Tooele

State: Utah

Zip: 84074

Tel: (435) 843-2104

Fax: (435) 843-2159



STATE OF UTAH)
) ss.
COUNTY OF TOOELE)

The foregoing instrument was acknowledged before me this 29th day of Feb., 2012, by Patrick Dunlavy as Mayor of Tooele City, a municipal corporation.

[Signature]

Notary Public
Residing at: Grantville, UT

My commission expires: 9-9-14

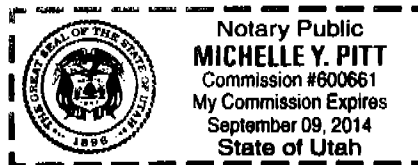


EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Beginning at a point 10.64 chains East of N.W. cor of the SW quarter of Section 20, Township three South of Range 4 West of the Salt Lake Meridian, Thence South 9.16 chains East 10 chains, north 20 chains, North 89°, West 10 chains, South 10.84 chains to the place of beginning, together with 56 shares of Capitol Stock in the Settlement Canyon Irrigation Company, a Corporation.

Said lands being Lots 2 and 7 in Block 6, Block 6, Plat "B" Toole City, Field Survey, in Tooele County, State of Utah.

AND BEING the same property conveyed to Tooele City, a municipal corporation from Martin Luketich & Eleanor Luketich by Warranty Deed dated April 19, 1937 and recorded April 23, 1937 in Deed Book 334, Page 525.

Tax Parcel No. 02-087-0-0012

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:

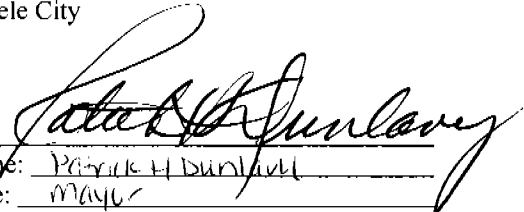
Commencing at the Northeasterly corner of the Property; thence Southerly, along the Easterly line of the Property, 100.00 feet; thence Westerly, parallel to the Northerly line of the Property, 100.00 feet to the Point of Beginning; thence continuing Westerly, parallel to the Northerly line of the Property, 50.00 feet; thence Southerly, perpendicular to the Northerly line of the Property, 40.00 feet; thence Easterly, parallel to the Northerly line of the Property, 25.00 feet; thence Northerly, perpendicular to the Northerly line of the Property, 10.00 feet; thence Easterly, parallel to the Northerly line of the Property, 25.00 feet; thence Northerly, perpendicular to the Northerly line of the Property, 30.00 feet to the Point of beginning.

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:

Tooele City

By: 
Name: Patrick H. Dunlavy
Title: Mayor
Date: _____

Unison:

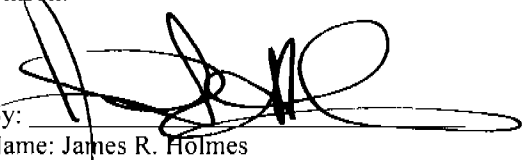

By: _____
Name: James R. Holmes
Title: Authorized Signatory
Date: February 22, 2012

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 **W. Rogers Street** (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.

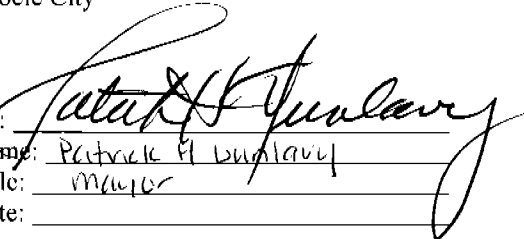
The Utility Easement includes, but is not limited to, a 10.00 foot wide easement with a centerline beginning at a point on the Northerly line of the Communication Easement, which said Point of beginning is 20.00 feet, more or less, East of the Northwesterly corner of the Communication Easement; thence Northerly, 100.00 feet to a point on the Southerly right-of-way of Rogers Street.

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:

Tooele City

By: 
Name: Patrick H. Dunlavy
Title: Mayor
Date: _____

Union:

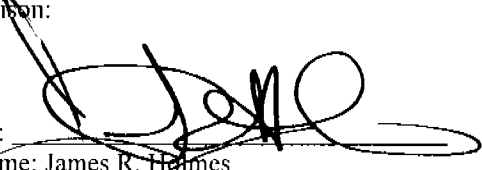
By: 
Name: James R. Holmes
Title: Authorized Signatory
Date: February 22, 2012

EXHIBIT C

EXISTING AGREEMENTS

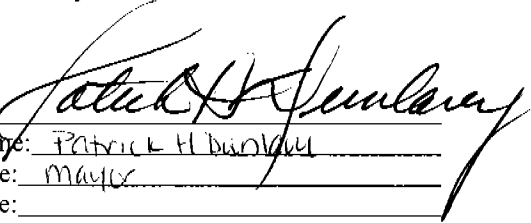
Site Owner assigns and transfers to Unison, as of the effective date herein, all of its right, title and interest in, to and under any existing lease agreements, and any amendments, transfers, modifications and/or assignments thereof, affecting any portion of the Property leased by Site Owner under any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

The Option and Lease Agreement, by and between Tooele City, as lessor, and AT&T Wireless Services of Utah, Inc., d/b/a AT&T Wireless, dated as of September 16, 2003, and as disclosed by the Memorandum of Lease recorded on October 30, 2003 in Deed Book 901, Page 333.

Read, Agreed and Approved:

Site Owner:

Tooele City

By: 
Name: Patrick H. Dunham
Title: Mayor
Date:

Unison:

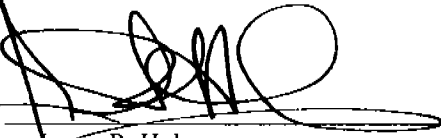
By: 
Name: James R. Holmes
Title: Authorized Signatory
Date: February 22, 2012

EXHIBIT D

TITLE ENCUMBRANCES

"NONE"