

M06-13907

Klamath County, Oregon

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Pages 10 Fee: \$66.00

FILED FOR RECORD AT REQUEST OF
AND WHEN RECORDED RETURN TO:

Verizon Wireless

Attn: Network Real Estate – M/S 231

15900 SE Eastgate Way

Bellevue, WA 98008

(Space above this line is for Recorder's use.)

SUBORDINATION, CONSENT, NON-DISTURBANCE, AND
ATTORNMENMENT AGREEMENT

Grantor: Walter P. Hammerich and Nancy L. Hammerich

Grantee: Verizon Wireless (VAW) LLC d/b/a Verizon Wireless

Legal Description: Klamath County, State of Oregon
Official legal description as Exhibit "A"

Assessor' s Tax Parcel ID#: 3911-00000-01200-000, 3911-00000-01600-000,
3911-009D0-00100-000

Reference # (if applicable): N/A

FILED FOR RECORD AT REQUEST OF
AND WHEN RECORDED RETURN TO:
Verizon Wireless
Attn: Network Real Estate - M/S 221
3350 - 161st Avenue SE
Bellevue, WA 98008
(Re: KLF BONANZA)

ORIGINAL

(Space above this line for recorder's use)

**SUBORDINATION, CONSENT, NON-DISTURBANCE, AND
ATTORNMEN T AGREEMENT**

This SUBORDINATION, CONSENT, NON-DISTURBANCE, AND ATTORNMEN T AGREEMENT ("Agreement") is made as of the 21st day of Feb, 2006, among **STERLING SAVINGS BANK**, whose address is Klamath Falls Business Banking, 540 Main Street, Klamath Falls, Oregon 97601 ("**Lender**"), **WALTER P. HAMMERICH and NANCY L. HAMMERICH**, with their mailing address at 3311 Haskins Road, Bonanza, Oregon 96723 ("**Lessor**"), and **VERIZON WIRELESS (VAW) LLC** d/b/a Verizon Wireless,, with offices at 180 Washington Valley Road, Bedminster, New Jersey 07921 ("**Lessee**").

RECITALS

A. Lessee is the lessee pursuant to a Land Lease Agreement ("**Lease**") dated March 1, 2006, between Lessor and Lessee, of premises located in Klamath County, State of Oregon ("**Lessor's Property**") as shown on Exhibit "A" attached hereto and made a part hereof.

B. Lender made a loan to Hammerich, Inc., which is secured by (i) that certain Deed of Trust on Lessor's Property, executed by Lessor and Lender on February 15, 2005, and recorded on February 17, 2005, in Volume M05, Page 11049 of the records of Klamath County, State of Oregon., and (ii) that certain Assignment of Rents executed by Lessor and Lender on February 15, 2005, recorded on February 17, 2005, in Volume M05, Page 11062 of the records of Klamath County, State of Oregon (collectively the "**Trust Deed**").

C. In the Lease, Lessee has agreed to attorn to the beneficiary of any deed of trust given by Lessor that may encumber the Lessor's Property as Lessee's Lessor under the Lease in the event of a foreclosure of Lessor's interest, provided that Lessee receives from every such deed of trust beneficiary a nondisturbance agreement that recognizes the validity of the Lease in the event of a foreclosure of Lessor's interest and also Lessee's right to remain in occupancy of

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the portion of the Lessor's Property leased by the Lessee ("**Leased Premises**"), pursuant to the terms of the Lease, as long as the Lessee is not in default of the Lease.

NOW, THEREFORE, in consideration of the mutual covenants in this Agreement, the parties hereby agree as follows:

1. Subordination. Notwithstanding anything to the contrary set forth in the Lease, the Lease, and the leasehold estate created thereby, and all of Lessee's rights thereunder, shall be and shall at all times remain subject, subordinate, and inferior to the Trust Deed, and the lien thereof, and all rights of Lender thereunder.

2. Consent. Lender consents to the Lease and to the Lessee's use and occupancy of the Leased Premises under the Lease. Lender also acknowledges and consents to Lessee utilizing and maintaining on Lessor's Property sealed batteries, propane/diesel/gasoline, HVAC system, and a halon/FM200 fire suppression system and that the use and maintenance of such items shall not constitute a violation or breach of federal hazardous material laws.

3. Non-Disturbance. So long as the Lessee is not in default (after the expiration of any applicable cure period) in the payment of rent or in the performance of any of the other covenants of the Lease that Lessee is to perform, the Lessee's possession of the Leased Premises and the Lessee's other rights under the Lease, or any extensions or renewals thereof, shall not be diminished or interfered with by Lender. In addition, Lender shall not join Lessee as a party defendant in any action or proceeding for the purpose of terminating the Lessee's interest under the Lease or otherwise.

4. Nondisturbance, Foreclosure and Attornment.

a. If Lender, or any other purchaser at a foreclosure sale or sale under private power contained in the Trust Deed, becomes the owner of Lessor's Property, by reason of any foreclosure of the Trust Deed, the acceptance by Lender of a deed in lieu of foreclosure, or by any other manner, Lender or such other purchaser shall not terminate the Lease, and the Lease shall continue in full force and effect as a direct lease between Lessee and Lender, or such other purchaser, under all of the terms, covenant and conditions of the Lease for the remainder of the term thereof and any extensions or renewals thereof, with the same force and effect as if Lender or such other purchaser were the Lessor under the Lease.

b. Immediately upon the succession of Lender or such other purchaser to the interest of the Lessor under the Lease, Lessee does hereby agree to attorn to Lender or such other purchaser as Lessee's Lessor. The parties agree that such attornment shall be effective and self-operative without the execution of any further documents. Such attornment shall be subject to all terms, provisions and conditions of the Lease and all amendments and modifications thereof. So long as Lessee is not in default (after the expiration of any applicable cure periods) in the payment of rent and otherwise has not been determined by a court of competent jurisdiction to be in default under any of the material terms and conditions of the Lease, Lender or such other purchaser shall not disturb Lessee in Lessee's possession of the Leased Premises during the term of the Lease and any extensions or renewals thereof, or in the enjoyment of Lessee's rights under

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the Lease. Nothing in this Agreement shall be construed to limit Lessee's rights against Lessor for any breach of a Lease obligation that occurred prior to the date of takeover, or any claims arising out of such takeover. Lessee shall, from and after Lender's or such other purchaser's succession to the interest of Lessor under the Lease, have the same remedies against such party that Lessee might have had under the Lease against Lessor.

5. Modifications. This Agreement may be modified only by an agreement in writing signed by the parties hereto or their respective successors in interest. Nothing in this Agreement shall be construed as to require the consent of Lender to any amendments, modifications, renewals, or extensions of the Lease.

6. Binding Effect. This Agreement shall run with the land and shall be binding upon and inure to the benefit of the respective heirs, administrators, executors, legal representatives, successors and assigns of the parties hereto.

7. Attorneys' Fees. If any of the parties hereto institutes any action or proceeding in court to enforce any of the provisions hereof, or any action for damages by reason of any alleged breach of any of the provisions hereof, then the prevailing parties in any such action or proceeding shall be entitled to receive from the losing parties such amount as the court may adjudge to be reasonable attorneys' fees for the services rendered to the prevailing parties, together with the prevailing parties' other reasonable litigation costs and expenses.

8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state in which Lessor's Property is located without giving effect to the choice of law rules thereof.

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

LENDER:

STERLING SAVINGS BANK

By: Bridgette Griffin Smith

Name: BRIDGETTE GRIFFIN SMITH

Title: VP/TEAM LEADER

Date: 2/23/06

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

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LESSOR:

WALTER P. HAMMERICH AND NANCY L.
HAMMERICH

By: Walter P. Hammerich
Walter P. Hammerich

Date: 3-1-06

By: Nancy L. Hammerich
Nancy L. Hammerich

Date: 3-1-06

LESSEE:

VERIZON WIRELESS (VAW) LLC d/b/a Verizon
Wireless

By: Keith A. Surratt
Keith A. Surratt
West Area Vice President, Network

Date: 6/13/04

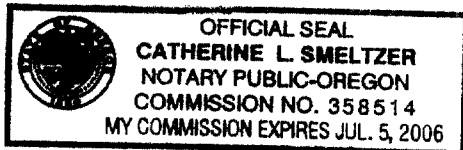
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LENDER ACKNOWLEDGEMENT

STATE OF Oregon)
COUNTY OF Klamath) ss.

On this 27th day of February, 2006, before me, a Notary Public in and for the State of Oregon, personally appeared Bridgette M. Griffin, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that He/She was authorized to execute the instrument; and acknowledged it as the Business Banking Team leader of STERLING SAVINGS BANK, to be the free and voluntary act and deed of said banking for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.



Catherine L. Smeltzer
NOTARY PUBLIC in and for the State of Oregon,
residing at Klamath Falls, OR
My appointment expires July 5th, 2006
Print Name Catherine L. Smeltzer

*with
not*

LESSOR ACKNOWLEDGEMENT

STATE OF Oregon)
COUNTY OF Klamath) ss.

On this 1 day of March, 2006, before me, a Notary Public in and for the State of Oregon, personally appeared **WALTER P. HAMMERICH**, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument and acknowledged it to be His free and voluntary act and deed for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.



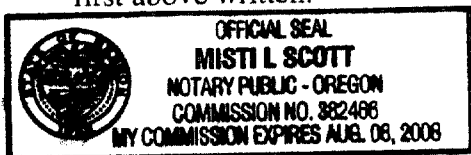
Misti L Scott
NOTARY PUBLIC in and for the State of Oregon
residing at Klamath County
My appointment expires August 8, 2008
Print Name Misti L Scott

LESSOR ACKNOWLEDGEMENT

STATE OF Oregon)
COUNTY OF Klamath) ss.

On this 1 day of March, 2006, before me, a Notary Public in and for the State of Oregon, personally appeared **NANCY L. HAMMERICH**, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument and acknowledged it to be His/Her free and voluntary act and deed for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.



Misti L Scott
NOTARY PUBLIC in and for the State of Oregon
residing at Klamath County
My appointment expires August 8, 2008
Print Name Misti Scott

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nlh*

LESSEE ACKNOWLEDGMENT

STATE OF ARIZONA)
) SS.
COUNTY OF MARICOPA)

On this 13th day of June, 2006, before me, the undersigned, a Notary Public in and for the State of Arizona, duly commissioned and sworn, personally appeared Keith A. Surratt, to me known to be an authorized representative of **VERIZON WIRELESS (VAW) LLC** d/b/a Verizon Wireless, the limited liability company that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of **VERIZON WIRELESS (VAW) LLC** d/b/a Verizon Wireless, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Janet Loeb
Print or Type Name: JANET LOEBS
Notary Public in and for the State of AZ, residing at
MARICOPA COUNTY
My appointment expires: DEC. 24, 2006

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EXHIBIT A
"Lessor's Property"

See Attached

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EXHIBIT A

LEASE PREMISES:

BEING A LEASE FOR A TELECOMMUNICATIONS FACILITY LOCATED IN THE SOUTHEAST 1/4 OF SECTION 4, TOWNSHIP 39 SOUTH, RANGE 11 EAST, WILLAMETTE MERIDIAN, AND BEING ON THE PROPERTY NOW OR FORMALLY OF WALTER P. AND NANCY L. HAMMERICH, AS DESCRIBED IN KLAMATH COUNTY, OREGON DEED RECORDS AS VOLUME M05, PAGE 11049, AND FURTHER DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT BEARING N 34°37'39" E, 1768.5 FEET FROM THE KLAMATH COUNTY ALUMINUM CAP MARKING THE SOUTH 1/4 CORNER OF SECTION 4, T39S, R11E, W.M.:

THENCE N 59°31'05" E, 60.00 FEET TO A POINT;
THENCE S 30°28'55" E, 60.00 FEET TO A POINT;
THENCE S 59°31'05" W, 60.00 FEET TO A POINT;
THENCE N 30°28'55" W, 60.00 FEET TO THE POINT OF BEGINNING, CONTAINING 3,600 SQUARE FEET, ALL BEING IN KLAMATH COUNTY, OREGON.

BASIS OF BEARING AND DESCRIPTION PER OREGON SOUTH ZONE NAD 1983 STATE PLANE GRID.

W.P. H.
N.L.H.