

NET PROFITS AGREEMENT

THIS NET PROFITS AGREEMENT ("Agreement") is made as of the ____ day of July, 2014 ("Effective Date") by and between City of Fresno, a California municipal corporation, whose address is 2600 Fresno Street, 2nd Floor, Fresno, California 93721 ("Site Owner") and T14 Unison Site Management LLC, a Delaware limited liability company, whose address is 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 real property ("Property") located in the City of Fresno, and County of Fresno, in the State of California, having a street address of 815 E. Nees Avenue, Fresno, California 93720;

WHEREAS, the Property is subject to certain existing leases and license agreements (collectively, "Existing Agreements") and may be subject to New Agreements (as hereafter defined) that require the lessees or licensees thereunder to pay rents, license payments, escalations and any other amounts (such amounts, collectively the "Rent");

WHEREAS, as of July _____, 2014, the Parties entered into a Wireless Communication Easement and Assignment Agreement (the "Easement Agreement"), pursuant to which Site Owner granted to Unison certain easements in the Property (the "Easement"), and assigned to Unison the Existing Agreements;

WHEREAS, the Easement Agreement grants Unison the right to lease, license, transfer or assign, in whole or in part, or permit the use of the Easement to third parties and/or customers of Unison (collectively, "Customers") and grants Unison the right to any and all Rent through the stated term of the Easement Agreement;

WHEREAS, the Parties agree that "Scheduled Rent" means the Rent due, at any point in time, in accordance with the provisions of the Existing Agreements as of the Effective Date. Scheduled Rent shall begin on the Effective Date and continue through the stated term of the Easement Agreement. For purposes of determining Scheduled Rent, the Existing Agreements are deemed to remain in full force and effect throughout the stated term of the Easement Agreement;

WHEREAS, the Parties agree that "Unison Rent" means the cumulative amount of Scheduled Rent due to Unison from the Effective Date through the date on which the amount is calculated ("Date of Determination");

WHEREAS, the Parties recognize that in the future, Unison may enter into agreements with Customers ("New Agreements") pursuant to which Unison may lease or license, or consent to a sublease, sublicense or co-location with respect to portions of the Easement which lie within and/or outside the boundaries of the premises demised in the Existing Agreements which may result in Unison actually receiving Rent that is greater than Unison Rent ("Excess Revenue");

WHEREAS, Unison has agreed to pay to Site Owner fifty percent (50%) of Excess Revenue, if any, as set forth below;

NOW, THEREFORE, for and in consideration of the sum of Two Hundred and Three Thousand and Seventy-Three and No/100 (\$203,073.00) 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. **Stipulation and Acknowledgement.** The Parties stipulate, acknowledge, and agree that this Agreement (i) does not constitute an "executory contract" under Section 365 of the United States Bankruptcy Code,

11 U.S.C. § 365; and (ii) is non-executory in nature, and therefore is not subject to rejection under Section 365 of the United States Bankruptcy Code, 11 U.S.C. § 365. The Parties stipulate, acknowledge, and agree that this Agreement does not impose any continuing obligations on the Site Owner whatsoever.

2. Acknowledgement Concerning Effect of Easements. The Parties acknowledge and agree that, pursuant to the Easement Agreement and the easements created and real property rights granted to Unison under the Easement Agreement, only Unison is entitled to collect and receive Rent from the Existing Agreements and New Agreements.

3. Excess Revenue. Notwithstanding the acknowledgement contained in Section 2 above, Unison shall pay to Site Owner, on a monthly basis, fifty percent (50%) of all Excess Revenue, if any, from the Rent actually received by Unison from Customers (the "Net Profits Payment"). Unison shall remit the Net Profits Payment to Site Owner on the fifteenth (15th) day or first business day thereafter of each month throughout the term hereof, based on the amount of Excess Revenue, if any, actually received by Unison during the preceding month, less (i) any costs and expenses actually incurred by Unison due to the failure of Site Owner to comply with its obligations under the Easement Agreement and any amounts due to Unison (including, without limitation, any reimbursement or offset) under the Easement Agreement, and (ii) fifty percent (50%) of collection costs, attorneys' fees and court costs actually incurred by Unison in enforcing or otherwise litigating the terms of any Customer agreement.

4. Unison Rent. Throughout the term of this Agreement, Unison is entitled to receive the amount of Unison Rent as determined in accordance with the provisions of this Agreement. The Parties intend that if at any time during the term hereof the Rent actually received by Unison is less than Scheduled Rent, then Unison shall retain all Rent, until such time as Unison has received the full amount of Unison Rent which would then be due to Unison as of the Date of Determination. The obligation of Unison to pay any amounts to Site Owner pursuant to this Agreement is expressly subject to the condition that at any point in time throughout the term of this Agreement, Unison shall have received the full amount of Unison Rent due to Unison as of the Date of Determination.

5. Termination. This Agreement shall terminate, and the payment and other obligations of Unison hereunder shall immediately cease and be of no effect upon termination of Unison's interest in the Property for any reason.

6. Default. (a) In the event of a monetary default ("Default") hereunder by Unison, Site Owner shall provide Unison with written notice of the Default, and Unison shall have fifteen (15) days from its actual receipt of such notice to cure same. If Unison fails to cure the Default within the foregoing grace period, then Site Owner may (i) exercise any right, remedy (in contract, law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law; and/or (ii) proceed by appropriate court action to enforce the terms of the Agreement. Further, Site Owner is not entitled to terminate the Easement Agreement or terminate the easements created under such agreement for any reason whatsoever (including any breach of this Agreement or the Easement Agreement).

(b) In the event of any dispute (including any dispute over an alleged Default) or non-monetary default arising out of this Agreement, the following dispute resolution process shall be followed: (1) 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 with thirty (30) days and (2) if such negotiation attempts fail, the parties must participate in non-binding mediation before either party may initiate litigation. The parties shall mutually select, in writing, a mediator with at least 5 years' experience. The parties shall share the mediator's fees equally. In the event the parties are unable to reach a mutually acceptable resolution of the Claim within 20 working days of the state of the mediation, unless extended or otherwise terminated by written mutual agreement of the parties, mediation shall terminate. Any settlement reached must be in writing and is subject to approval by the City Manager or City Council consistent with City laws and policies. If the dispute continues after exhausting all aforementioned measures, litigation may be initiated. The prevailing party, in any proceedings under this Section 6, shall be entitled to recover all costs incurred in connection therewith, including legal fees.

7. Severability. The Parties agree that 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 same valid, operative and enforceable to reflect the intent of the Parties as expressed herein.

8. Absence of Certain Representations or Warranties. Site Owner acknowledges that Unison has not made any representations or warranties to Site Owner concerning the amount of Excess Revenue, if any, to which Site Owner may be entitled to receive pursuant to the Agreement, and Unison hereby disclaims all such representations and warranties.

9. Receipt of Certain Funds by Site Owner. In the event Site Owner receives any revenues or checks due Unison pursuant to the Existing Agreements or otherwise with respect to the Easement, Site Owner shall promptly deliver such funds and/or endorse such checks to Unison for distribution pursuant to the terms hereof.

10. 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 may assign this Agreement 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 any Secured Party shall succeed to Unison's interest under this Agreement, such Secured Party shall have 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. Site Owner shall have the right to assign or grant a security interest in this Agreement, provided that Unison shall not be bound by any such assignment or security interest unless Unison receives notice of such assignment or security interest, together with the correct notice address of such assignee or grantee. All payments made by Unison to Site Owner prior to receipt of the foregoing notice shall be deemed to satisfy the payment obligations of Unison hereunder.

11. 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.

12. Audit. Site Owner shall have the right to conduct an audit of Unison's books and records pertaining to the rental income from the Easement and any amounts to be paid to Site Owner hereunder, upon at least thirty (30) days prior written notice to Unison delivered on or before December 31 of the calendar year following the calendar year for which the audit is to be conducted. Site Owner shall bear all reasonable costs of the audit, including, without limitation, reasonable copying costs.

13. 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 addresses of Site Owner and Unison set forth on the signature page. Either party may change its notice address by providing a new recipient name and address by notice as set forth in this paragraph.

14. No Joint Venture or Partnership. Neither party shall be, or hold itself out to be, the agent of the other party and neither party shall have the authority to bind or commit the other party. Neither party shall be empowered to accept legal process on behalf of the other party. Nothing contained in this Agreement shall be deemed to create a partnership or joint venture between the Parties.

15. Miscellaneous. (a) The Parties agree that the recitals and prefatory phrases and paragraphs set forth above are hereby incorporated in full, and made a part of, this Agreement; (b) this Agreement constitutes the entire agreement and understanding of the Parties with respect to the subject matter of this Agreement, and supersedes all offers, negotiations and any other written or verbal agreements; (c) any amendments to this Agreement must be in writing and executed by both Parties; (d) this Agreement is governed by the laws of the State in which the Property is located; (e) venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California; (f) the section 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 PAGE FOLLOWS]

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

“UNISON”:

T14 UNISON SITE MANAGEMENT LLC,
a Delaware limited liability company

By: _____
James R. Holmes

Title: Authorized Signatory

Address:
T14 Unison Site Management LLC
P.O. Box 1951
Frederick, Maryland 21702-0951
Tel: (646) 452-5455
Fax: (301) 360-0635

"SITE OWNER":

CITY OF FRESNO,
a California municipal corporation

By: _____
Bruce Rudd, City Manager

By: _____
Kerri Donis, Fire Chief

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: _____
Deputy

APPROVED AS TO FORM:
City Attorney's Office

By: _____
Brandon M. Collet Date
Deputy City Attorney

Address:
City of Fresno
Attention: _____
2600 Fresno Street, 2nd Floor
Fresno, California 93721
Tel: (559) _____