

UNOFFICIAL COPY



1128703035

Prepared By and
WHEN RECORDED RETURN TO:
Eugene Washington
Symetra Life Insurance Company
Mortgage Loan Department
PO Box 84066
Seattle, WA 98124-8466
Loan No. 2441

Doc#: 1128703035 Fee: \$50.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 10/14/2011 01:59 PM Pg: 1 of 8



4 of 8

NCS 437104

First American Title Order #

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Subordination, Non-Disturbance and Attornment Agreement ("**Agreement**") effective as of ~~23rd~~ ^{15th} day of ~~September~~ ^{October}, 2011, between Symetra Life Insurance Company, a Washington corporation whose address for notices is PO Box 84066, Seattle, WA 98124-8466 (the "**Lender**"), Prairie Stone Crossing, LLC, a Florida limited liability company ("**Landlord**") and Clearchoice Mobility, Inc., an Illinois corporation, dba. AT&T whose address for notices is 1535 W. Brandy Parkway, Streamwood, Illinois 60107, Attn: Tom Giuliano (the "**Tenant**") with respect to the real property located in Cook County, Illinois more particularly described in **Exhibit A** attached hereto and made a part hereof (the "**Property**").

RECITALS:

A. Lender has made, or is about to make, a loan to Landlord, evidenced by a Promissory Note and secured by a mortgage or deed of trust (the "**Security Instrument**") and an assignment of leases and rents ("**Assignment of Leases**") each recorded concurrently herewith with respect to the Property (the Deed of Trust, Assignment of Leases and any other documents evidencing or securing the loan are jointly referred to herein as the "**Loan Documents**"); and

B. Tenant leases all or a portion of the Property (the "**Premises**") pursuant to an unrecorded lease between UG Prairie Stone, L.P., an Illinois limited partnership as Landlord's predecessor in interest and Tenant dated July 15, 2008 and a Settlement and Release Agreement dated June 16, 2010 (the "**Lease**") commonly known as Suite #4630 located at 4630 Hoffman Boulevard, Hoffman Estates, IL 60192, City of Hoffman Estates, County of Cook and State of Illinois; and

C. The parties desire to subordinate the Lease to the lien of the Security Instrument and set forth their agreement as to their respective rights, obligations and priorities with respect to the Lease; and

UNOFFICIAL COPY

D. Tenant has requested that Lender agree not to disturb Tenant's rights in the Premises in the event Lender should foreclose the Security Instrument, provided no event of default under the Lease on the part of Tenant has occurred and is continuing, and Tenant attorns to Lender or to the purchaser at any foreclosure or trustee's sale of the Property.

NOW, THEREFORE, in consideration of the foregoing and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby represented and agreed as follows:

1. **Subordination of Lease.** Notwithstanding any provision in the Lease to the contrary, the Lease and the leasehold estate created thereby and all of Tenant's rights under the Lease (including without limitation, any right, option or opportunity of Tenant to purchase the Property) are and shall at all times remain subject, subordinate and inferior (i) to the Security Instrument and the lien thereof to the extent of all amounts secured by the Security Instrument and interest thereon, and (ii) to all rights of Lender under the Security Instrument, and (iii) to any and all renewals, modifications, consolidations, restructurings, replacements and extensions of the Security Instrument and (iv) to any loan or loans made by Lender, or any subsequent increase, modification, replacement, consolidation, extension or refinancing of any such loan, if a purpose of such loan is to refinance the loan secured by the Security Instrument. Tenant will not subordinate or cause the Lease to be subordinated to any interests other than those held by Lender (and its successors and assigns) without notice to and written consent of Lender. If Tenant has any right of first refusal under the Lease to purchase the Property (a "**Purchase Right**"), Tenant agrees that the acquisition of title pursuant to the exercise of such right shall be subject to the Security Instrument remaining a lien on the Property unless the obligations secured thereby are fully paid and satisfied, and Lender agrees that following any acquisition of title to the Property by Lender or a Successor Landlord, such Purchase Right shall continue in full force and effect.

2. **Notice to Lender; Right to Cure.** Tenant agrees to deliver to Lender at the address set forth above (or such other addresses as may be designated from time to time in writing to Tenant by Lender), prompt written notice of any default by Landlord under the Lease which would entitle Tenant to cancel the Lease or abate the Rent payable thereunder or that would provide Tenant with a right of offset against any monetary obligations under the Lease. No such notice given on behalf of Tenant shall be effective unless Lender has received said notice and has failed within thirty (30) days of the date of receipt thereof to cure Landlord's default; however, Lender shall have no obligation to cure (and shall have no liability for not curing).

3. **Tenant Acknowledgment of Assignment.** Tenant acknowledges that the Lease and the rent due under the Lease will be assigned to Lender pursuant to the Assignment of Leases as security for the loan secured by the Security Instrument. If Lender notifies Tenant of a default by Landlord under the Loan Documents and demands that Tenant pay rent and all other sums due under the Lease to Lender, Tenant agrees to honor such demand and pay rent due under the Lease as directed by Lender, and Landlord agrees that any such payment by Tenant to Lender pursuant to such a demand shall satisfy Tenant's payment obligations to Landlord under the Lease to the extent of the amount so paid. Tenant will not, without the prior written consent of Lender, pay to Landlord any rent under the Lease more than thirty (30) days in advance of its due date. To the extent that the Lease or any law or regulation shall entitle Tenant to notice of any mortgage, this Agreement shall constitute such notice to Tenant with respect to the Security Instrument and any and all other mortgages which may hereafter be affected by this Agreement.

4. **Attornment.** In the event of foreclosure of the Security Instrument, or upon a sale of the Property pursuant to the trustee's power of sale contained in the Security Instrument, or upon the transfer of the Property by conveyance in lieu of foreclosure (collectively a "**Transfer**"), so long as Tenant complies

UNOFFICIAL COPY

with this Agreement and no default has occurred and is continuing under the Lease. The Lease shall continue in full force and effect as a direct Lease between the succeeding owner of the Property (a "**Successor Landlord**"), Successor Landlord agrees not to affect, terminate or disturb tenant's right to quiet enjoyment and possession of the property regarding the premises and any of Tenant's rights under the lease in the exercise of Lender's rights under the Security Instrument so long as Tenant is not then in default, after all applicable cure periods, and Tenant, upon and subject to all of the terms, covenants and conditions of the Lease for the balance of the Lease term and any extensions or renewals, if exercised. Tenant shall have no right to terminate the Lease by reason of the foreclosure of the Security Instrument so long as Tenant's peaceable and quiet use and possession of the Premises shall not be disturbed by reason thereof. Any Transfer of the Property shall be made subject to the Lease and this Agreement. Tenant agrees to attorn to and accept any such Successor Landlord as landlord under the Lease, and to be bound by and perform all of the obligations imposed by the Lease, said attornment to be self-operative, without execution of any further instruments, upon a Transfer. Notwithstanding the foregoing, neither Lender nor any other Successor Landlord shall be (i) liable for any act or omission of a prior Landlord occurring before the date Successor Landlord obtains fee title to the property except for repair and maintenance obligations of Landlord pursuant to the terms of the lease as of the date Successor Landlord takes fee title, (ii) subject to any claims, offsets, counterclaims, or defenses which Tenant may have against any prior landlord (including Landlord), (iii) bound by any rent or additional rent which Tenant may have paid in advance to any prior landlord (including Landlord) for a period in excess of one month or by any security deposit, cleaning deposit or other prepaid charge which Tenant might have paid in advance to any prior landlord (including Landlord), unless such advance rent, deposit or charge has been delivered to Lender, (iv) bound by any amendment or renewals or extensions thereof which reduces the amount of rent or other sums due under the Lease, changes the frequency of the payment of rent, or shortens the original term or changes any renewal option, made without the prior written consent of Lender unless the same is to document the exercise of a right or option contained in the Lease, or (v) bound by any assignment or subletting, unless expressly permitted by and consummated in accordance with the Lease. In the event Lender elects to foreclose the Security Instrument, Lender will not join Tenant in summary or foreclosure proceedings unless required by applicable law (and then only to the extent so required) so long as Tenant is not in default under the Lease, after applicable notice and cure period pursuant to the Lease.

5. **Non-Disturbance.** Lender, and any Successor Landlord, will not disturb the possession of the Tenant, its successors and assigns, so long as no event of default has occurred and is continuing which would entitle the Landlord to terminate the Lease, or would cause, without further action of the Landlord, the termination of the Lease or would entitle the Landlord to dispossess the Tenant from the Premises. Tenant acknowledges that this Agreement satisfies any requirement in the Lease relating to the granting of a non-disturbance agreement.

6. **No Construction by Lender.** Lender shall have no obligation nor incur any liability nor be bound by any covenant to undertake or complete any improvement to or restoration of the building, Premises or the Property, except to the extent insurance proceeds are made available to Lender or Successor Landlord to cover the full cost thereof.

7. **No Recourse to Lender.** Lender shall not, either by virtue of the Security Instrument or this Agreement, be or become (i) a mortgagee-in-possession or (ii) subject to any liability or obligation under the Lease or otherwise until Lender shall have acquired by foreclosure or otherwise the interest of Landlord in the Premises. Lender's liability or obligation under the Lease shall extend only to those liabilities or obligations accruing subsequent to the date that Lender has acquired the interest of Landlord in the Premises. In addition, upon such acquisition, Lender shall have no obligation, nor incur any liability, beyond Lender's then equity interest, if any, in the Premises. In the event of the assignment or transfer of

UNOFFICIAL COPY

the interest of Lender under this Agreement, all obligations and liabilities of Lender under this Agreement shall terminate and, thereupon, all such obligations and liabilities shall be the sole responsibility of the party to whom Lender's interest is assigned or transferred.

8. **Notices.** All notices, consents, requests, demands and other communications hereunder shall be in writing and deemed to have been duly given, served or received (i) if mailed, on the third day after deposit in the United States Mail, registered or certified, postage prepaid, return receipt requested, or (ii) if delivered by reputable commercial overnight courier (like Federal Express or similar firms), freight prepaid, the next business day after delivery to such courier, in each case addressed to the party at its address set forth herein (or at such other address as shall hereafter be designated in writing by the applicable party to the sender).

9. **Delivery of Certificates.** Tenant shall, from time to time, deliver such certificates as Lender shall reasonably request as to the continuance of the Lease in effect, as to payment of rents thereunder, and as to such other factual matters as Lender may require.

10. **No Lien on Trade Fixtures of Tenant.** None of the Loan Documents shall be construed as subjecting in any manner to the lien thereof, any trade fixtures, signs or other personal property at any time furnished or installed by Tenant or its subtenants or licensees on or within the portion of the Premises leased to Tenant, regardless of the manner or extent of attachment thereof.

11. **Binding Agreement.** This Agreement shall be binding upon the parties and their respective successors and assigns.

12. **Miscellaneous.** This Agreement supersedes any inconsistent provision in the Lease. Nothing in this Agreement shall be construed to derogate from or in any way impair or affect the lien of the Security Instrument. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the Parties hereto or their respective successors in interest. The laws of the State where the Property is located shall govern the validity, construction and enforcement of this Agreement, without giving effect to the conflict of laws principles thereof.

13. **Counterparts.** This Agreement may be executed in separate counterparts all of which shall constitute a single instrument.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

UNOFFICIAL COPY

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

TENANT:

Clearchoice Mobility, Inc.,
an Illinois corporation,

By: Thomas M. Giuliano

Its: V.P.

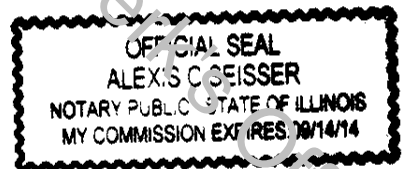
(all signatures must be acknowledged)

STATE OF ILLINOIS)
COUNTY OF COOK) ss.

On Sept 14, 2011, before me, Alexis C. Seisser, a Notary Public in and for said County and State, personally appeared Thomas M. Giuliano, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person 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 person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Signature: Alexis C. Seisser
Residing At: _____
My Commission Expires: 9/14/14



UNOFFICIAL COPY

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

LANDLORD:

Prairie Stone Crossing, LLC,
a Florida limited liability company

By: DeBartolo Development, LLC, a Delaware
limited liability company, Its Manager

By: [Signature]
Name: Edward M. Kobel
Its: PRESIDENT

(all signatures must be acknowledged)

STATE OF FLORIDA)
COUNTY OF Hillsborough) ss.

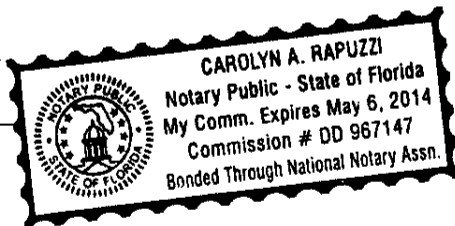
On September 21, 2011, before me, CAROLYN A. RAPUZZI, a Notary Public in and for said County and State, personally appeared EDWARD M. KOBEL, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity as an Officer of DeBartolo Development, LLC, the Manager of Prairie Stone Crossing, LLC, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Carolyn A. Rapuzzi
SIGNATURE OF NOTARY

residing at TAMPA, FL

My appointment expires _____

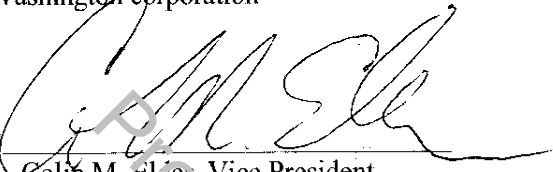


UNOFFICIAL COPY

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

LENDER:

SYMETRA LIFE INSURANCE COMPANY,
a Washington corporation

By: 
Colin M. Elder, Vice President

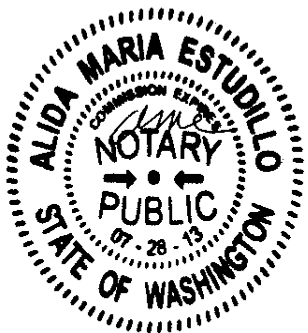
(all signatures must be acknowledged)

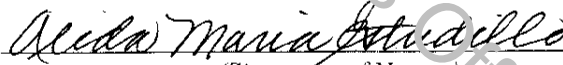
STATE OF WASHINGTON
COUNTY OF King

ss.

I certify that I know or have satisfactory evidence that COLIN M. ELDER is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the Vice President of Symetra Life Insurance Company, a Washington corporation, to be the free and voluntary act of such corporation for the uses and purposes mentioned in the instrument.

Dated this 11th day of October, 2011.




(Signature of Notary)

Alida Maria Estudillo
(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington,

residing at Bothell, WA

My appointment expires 07/28/2013

UNOFFICIAL COPY

EXHIBIT A

(Legal Description of Property)

Parcel 1:

Lot 6A in Final Plat of Resubdivision of Lots 5 and 6 in Sears Business Park Amended Plat of Subdivision, being a Resubdivision of part of Sections 32 and 33, Township 42 North, Range 9, East of the Third Principal Meridian, according to the Plat thereof recorded April 20, 2001 as document 0010323867, in Cook County, Illinois.

Parcel 2:

A non-exclusive easement for the benefit of Parcel 1 as created by Reciprocal Easement Agreement dated as of August 14, 2007 and recorded October 23, 2007 as document 0729615115, for the purpose of ingress and egress between Lot 2 and Lot 6A via the Access Points depicted on Exhibit "D" attached thereto.

PROPERTY ADDRESS: 4600, 4610, 4620, 4630, 4640, 4650, 4660, 4670, 4674, 4684 and 4700 Hoffman Boulevard, Hoffman Estates, IL 60192

PROPERTY TAX INDEX # 01-33-303-009-0000 & 01-33-303-010-0000