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Karen A. Yarbrough RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 03/11/2013 01:08 PM Pg: 1 of 9

PREPARED BY WHEN RECORDED MAIL TO:

Nisen & Elliot, LLC
200 W. Adams Street
Suite 2500
Chicago, IL 60606

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

This Agreement is dated as of August 1, 2012 and is made by and between Cricket Communications, Inc., a Delaware corporation ("Tenant"), A.S. Melrose Park Building, LLC, a Colorado limited liability company (the "Landlord") and American Chartered Bank ("Lender").

P R E A M B L E

WHEREAS, Pursuant to that certain Lease more fully described on Exhibit B attached hereto (said lease, as amended, and as may from time to time be amended, modified, substituted, extended, renewed or restated shall be referred to as the "Lease"), A.S. Melrose Park Building, LLC (the "Landlord"), the owner of the property more fully described on Exhibit "A" attached hereto ("Property"), leased to Tenant the portion of the Property described in the Lease (the "Premises"); and

WHEREAS, Lender has previously made or will make certain loans to Landlord (the "Financing") evidenced by certain notes (the "Notes") and secured by a Mortgage or Deed of Trust filed or recorded as Documents No. 1224048024 and No. ~~_____~~, recorded on August 27, 2012 in the Cook County Recorder of Deeds Office in State of Illinois encumbering the Property; and

WHEREAS, Lender agreed to make the loan so long as, among other things, this Agreement is entered into by Tenant whereby Tenant acknowledges that the lien of the Mortgage or Deed of Trust has priority over the Lease so long as, among other things, Landlord agrees not to affect or disturb the rights and privileges of Tenant in accordance herewith; and

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

1. Representations Regarding Lease. Tenant represents and warrants to Lender that (a) Tenant is in possession of the Premises; (b) there have been no changes, modifications, alterations or amendments to the Lease; (c) no default or event of default (howsoever such terms are defined) exists under the Lease; (d) all parties to the Lease are in full compliance with the terms and provisions of the Lease; (e) all rent and other payments required to

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be paid by Tenant under the Lease as of the date of this Agreement have been paid in full; and (f) Tenant has no offsets or defenses to Tenant's performance under the Lease.

2. **Attornment.** So long as the Tenant is permitted quiet enjoyment of the Property (and notwithstanding any foreclosure of the lien of the Deed of Trust), Tenant agrees, at the option and request of Lender, to attorn to the following persons upon the terms and conditions of the Lease for the remainder of the term thereof (whether original or renewal), with the same force and effect as if such persons were named as Landlord under the Lease:

- (i) the lender when such lender is in possession of the Property, whether by foreclosure of the Deed of Trust, deed-in-lieu of foreclosure or pursuant to any assignment of rents executed as additional security for the indebtedness evidenced by the Note;
- (ii) any receiver appointed to take possession of the property;
- (iii) any party acquiring title to the Property by foreclosure, pursuant to the power of sale contained in the Deed of Trust or by deed-in-lieu of foreclosure, and hi or its heirs, successors, and assigns;

Tenant will execute and deliver, upon request of Lender, an appropriate agreement of attornment in confirmation of its obligations hereunder; and Lender shall have no obligation to perform as landlord under the Lease until such time as Lender enters into possession of the Property and requests attornment by Tenant; such obligation shall continue only so long as Lender remains in possession of the Property; and Tenant's recourse against Lender for any non-performance of its obligation as landlord under the Lease shall be limited to Lender's interest in the Property.

3. **Subordination of Lease.** Tenant covenants and agrees that all of Tenant's right, title and interest in and under the Lease is and shall be subordinated to the lien of the Mortgage or Deed of Trust, and to all renewals, modifications, consolidations, and extensions thereof, in whole or in part, in the same manner as if the Lease had been executed after execution, delivery and recording of Lender's interest in the Property.

4. **Nondisturbance.** Lender covenants and agrees that in the event that Lender or any other person exercises any of its rights, powers or remedies pursuant to any agreement, instrument or document relating to the Financing with respect to the Property, and Lender or any other person acquires title to the Property pursuant to the exercise of any such right, power or remedy, and provided that the Tenant is not then in default under the Lease beyond the period, if any, given in the Lease for cure of such default, then Tenant's Tenant's rights and privileges under the Lease, and Tenant's quiet possession and enjoyment of the Property, shall not be affected or disturbed by the exercise by Lender or any third parties of any of its rights under the Mortgage or Deed of Trust, nor by any sale or foreclosure of the Property or deed-in-lieu thereof; and further, that that Lender will, to the extent possible, avoid naming Tenant as a party in any foreclosure or other court action taken pursuant to the Mortgage or Deed of Trust, unless Tenant is required to be named as a necessary party or by request of the court.

5. **Amendment, Modifications.** This Agreement may not be modified other than by agreement in writing signed by Lender and Tenant, or by their respective successors in interest.

6. **Binding Agreement.** This Agreement shall inure to the benefit of and shall be binding upon Lender and its successors and assigns, and be binding upon Tenant and its successors and assigns.

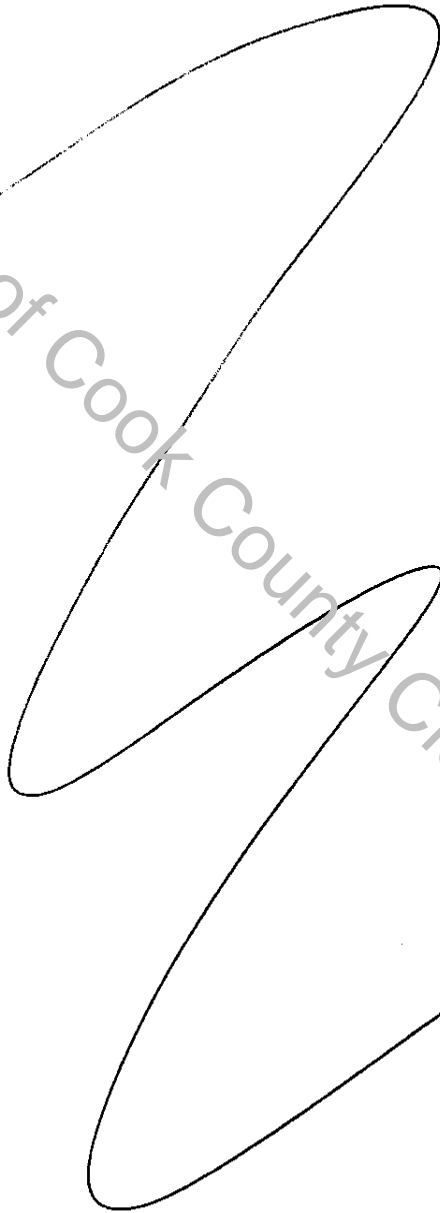
7. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which counterparts, once executed and delivered, shall be deemed to be an original and all of which counterparts taken together, shall constitute but one and the same Agreement.

8. **Governing Laws.** This Agreement shall be deemed to be a contract made under the laws of the State of Illinois and for all purposes shall be construed in accordance with the internal laws, and not the conflict of laws provisions, of the State of Illinois.

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IN WITNESS WHEREOF, the authorized representatives of the parties have executed this Agreement on the day and year first set forth above.

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TENANT:
Cricket Communications, Inc.

By: Victoria Forbes

Title: **Victoria Forbes**
Director, National Real Estate

LENDER:
American Chartered Bank 504, Inc.

By: [Signature]
Title: VP

LANDLORD:
A.S. Melrose Park Building, LLC

By: [Signature]
Title: Manager

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CALIFORNIA ACKNOWLEDGEMENT

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STATE OF CALIFORNIA)
)
COUNTY OF San Diego)

On September 27, 2012, before me, "Felipe A. Martinez, Notary Public," personally appeared Victoria Forbes, who 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 ~~(ies)~~, and that by ~~his~~ ~~her~~ signature ~~(s)~~ on the instrument the person , or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Felipe A. Martinez
Notary Public

(Seal)

Property of Cook County Clerk's Office

UNOFFICIAL COPY**EXHIBIT A - LEGAL DESCRIPTION**

PIN # 12-34-400-022-0000

Having an address of: 2001 N. 17th Ave., Melrose Park, IL, Cook County**PARCEL 1:**

A PARCEL OF LAND BEING A PART OF LOT 4 IN BLOCK 2 OF FRANKLIN FARMS, BEING A SUBDIVISION OF THE NORTH 1/2 OF THE SOUTH EAST 1/4 AND THE WEST 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 AND THE NORTHWEST 1/4 OF SECTION 34, TOWNSHIP 40 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF THE INDIAN BOUNDARY LINE EXCEPT THAT PART TAKEN FOR RAILROAD, DESCRIBED AS FOLLOWS: : BEGINNING AT A POINT IN THE NORTH LINE OF THE SOUTH 300 FEET OF THE NORTH 468.66 FEET OF SAID LOT 4, A DISTANCE OF 13.21 FEET WEST OF THE NORTH AND SOUTH CENTER LINE OF THE WEST 1/2 OF THE WEST 1/2 OF THE SOUTH EAST 1/4 OF SAID SECTION: THENCE EAST ALONG THE NORTH LINE OF THE SOUTH 300 FEET OF THE NORTH 468.66 FEET OF SAID LOT 4, A DISTANCE OF 3.21 FEET TO A POINT 10.00 FEET WEST OF THE NORTH AND SOUTH CENTER LINE OF THE WEST 1/2 OF THE WEST 1/2 OF THE SOUTH EAST 1/4 OF SAID SECTION, THENCE NORTH ALONG A LINE 10.00 FEET WEST AND PARALLEL WITH SAID NORTH AND SOUTH CENTER LINE A DISTANCE OF 34.18 FEET TO A POINT OF TANGENCY THENCE SOUTHWESTERLY ALONG AN ARC OF A CIRCLE CONVEX TO THE SOUTHEAST AND HAVING A RADIUS OF 183.18 FEET A DISTANCE OF 34.37 FEET TO THE POINT OF BEGINNING IN COOK COUNTY, ILLINOIS

PARCEL 2:

THE NORTH 234 FEET OF THE SOUTH 300 FEET OF THE NORTH 468.66 FEET OF THAT PART OF LOT 4 IN BLOCK 2 IN FRANKLIN FARMS, BEING A SUBDIVISION OF THE NORTH 1/2 OF THE SOUTH EAST 1/4 AND THE WEST 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 AND THE NORTHWEST 1/4 OF SECTION 34, TOWNSHIP 40 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF INDIAN BOUNDARY LINE (EXCEPT THAT PART TAKEN FOR RAILROAD) LYING EAST OF THE EAST LINE OF 17TH AVENUE BEING A LINE 33 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SAID LOT 4 AND LYING WEST OF A LINE 10 FEET WEST OF AND PARALLEL WITH THE NORTH AND SOUTH CENTER LINES OF THE WEST 1/2 OF THE WEST 1/2 OF THE SOUTH EAST 1/4 OF SAID SECTION 34 IN COOK COUNTY, ILLINOIS

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EXHIBIT B TO SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

Site Lease With Option dated October 30, 2007, by and between 2001 N. 17th Avenue, LLC, an Illinois limited liability company, as successor in interest to, A.S. Melrose Park Building, LLC, an Illinois limited liability company (together with its successors and assigns, "Landlord") and Denali Spectrum Operations, LLC, a Delaware corporation, as successor in interest to Cricket Communications, Inc., a Delaware corporation (together with its successors and assigns, "Tenant").

Property of Cook County Clerk's Office