

# UNOFFICIAL COPY

WHEN RECORDED RETURN TO:



John P. Ahern  
1402 N. Sandburg Terrace  
Chicago, Illinois 60610

Doc#: 1311616025 Fee: \$56.00  
RHSP Fee:\$10.00 Affidavit Fee:  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 04/26/2013 11:44 AM Pg: 1 of 10

212236

(Space above this line for Recorder's Use)

## SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN T AGREEMENT

THIS AGREEMENT, made as of this 15<sup>th</sup> day of APRIL, 2013 by and between ELM VENTURES, LLC, an Illinois limited liability company, as successor in interest to Park Shore East Associates, an Illinois limited partnership ("Owner" or "Lessor"), as lessor under the lease hereinafter described, and United States Cellular Operating Company of Chicago, LLC, a Delaware limited liability company, as successor in interest to PRIMECO PERSONAL COMMUNICATIONS, L.P., a Delaware limited partnership ("Operator" or "Lessee"), lessee under the aforementioned lease, in favor of P/R Mortgage & Investment Corp., an Indiana corporation, its assigns and successors ("FHA Lender"), the owner and holder of the Mortgage hereinafter described.

### WITNESSETH:

WHEREAS, Lessor has executed, or will execute that certain Mortgage/Deed of Trust with Assignment of Rents, dated of as APRIL 1, 2013, (the "Mortgage") in favor of FHA lender and covering certain real property (the "Property") located in the City of Chicago, County of Cook, State of Illinois, with a legal description as set forth in Exhibit "A" attached hereto and incorporated herein by this reference, and covering the improvements situated thereon (the "Improvements"); and

WHEREAS, Lessor and Lessee entered into that certain Memorandum of PCS Site Agreement, dated January 9, 1997 (previously October 10, 1996 but later corrected) and all amendments thereto (the "Lease"), recorded January 24, 1997 as Document Number 97054448, covering the Improvements for the term and upon the conditions set forth therein; and

# UNOFFICIAL COPY

WHEREAS, Lessor and Lessee entered into that certain Memorandum of First Amendment to PCS Site Agreement, dated August 5, 2011 and recorded on September 19, 2011 as Document Number 1126210022, covering the Improvements for the term and upon the conditions set forth therein: and

WHEREAS, the parties hereto now desire to enter into this Agreement to establish certain rights and obligations with respect to their interests, and to provide for various contingencies as hereinafter set forth.

NOW, THEREFORE, in consideration for the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and of the mutual benefits to accrue to the parties hereto, it is hereby declared, understood and agreed that the Lease, all terms and conditions set forth in the Lease, the leasehold interests and estates created thereby, and the priorities, rights, privileges and powers of Lessee and Lessor thereunder shall be and the same are hereby, and with full knowledge and understanding of the effect thereof, unconditionally made subject and subordinate to the lien and charge of the Mortgage, all terms and conditions contained therein, any renewals, extensions, modifications or replacements thereof, and the rights, privileges and powers of the trustee and FHA lender thereunder, and shall hereafter be junior and inferior to the lien and charge of the Mortgage. The parties further agree as follows:

1. It is expressly understood and agreed that this Agreement shall supersede, to the extent inconsistent herewith, the provisions of the Lease relating to the subordination of the Lease and the leasehold interests and estates created thereby to the lien or charge of the Mortgage.
2. FHA lender consents to the lease.
3. In the event FHA lender or any other purchaser at a foreclosure sale or sale under private power contained in the Mortgage, or by acceptance of a deed in lieu of foreclosure, succeeds to the interest of Lessor under the Lease by reason of any foreclosure of the Mortgage or the acceptance by FHA lender of a deed in lieu of foreclosure, or by any other manner, it is agreed as follows:
  - a. Lessee shall be bound to FHA lender or such other purchaser under all of the terms, covenants and conditions of the Lease for the remaining balance of the term thereof, with the same force and effect as if FHA lender or such other purchaser were the lessor under such Lease, and Lessee does hereby agree to attorn to FHA lender or such other purchaser as its lessor, such attornment to

# UNOFFICIAL COPY

be effective and self-operative without the execution of any further instruments on the part of any of the parties to this Agreement, immediately upon FHA lender or such other purchaser succeeding to the interest of Lessor under the Lease.

- b. Subject to the observance and performance by Lessee of all the terms, covenants and conditions of the Lease on the part of the Lessee to be observed and performed, FHA lender or such other purchaser shall recognize the leasehold estate of Lessee under all of the terms, covenants and conditions of the Lease for the remaining balance of the term (as the same may be extended in accordance with the provisions of the Lease) with the same force and effect as if FHA lender or such other purchaser were the lessor under the Lease and the Lease shall remain in full force and effect and shall not be terminated, except in accordance with the terms of the Lease or this Agreement; provided, however, that FHA lender or such other purchaser shall not be (i) liable for any act or omission of Lessor or any other prior lessor (ii) obligated to cure any defaults of Lessor or any other prior lessor under the Lease which occurred prior to the time that FHA lender or such other purchaser succeeded to the interest of Lessor or any other prior lessor under the Lease, (iii) subject to any offsets or defenses which Lessee may be entitled to assert against Lessor or any other prior lessor (iv) bound by any payment of rent or additional rent by Lessee to Lessor or any other prior lessor for more than one (1) month in advance, (v) bound by any amendment or modification of the Lease made without the written consent of FHA lender or such other purchaser, excluding minor amendments, if necessary, to modify the Improvements, so long as such amendments do not affect HUD's security interest in the building or the Property, or (vi) liable or responsible for or with respect to the retention, application and/or return to Lessee of any security deposit paid to Lessor or any other prior landlord, whether or not still held by Lessor, unless and until FHA lender or such other purchaser has actually received for its own account as lessor the full amount of such security deposit.

Lessee hereby agrees that it will not exercise any right granted it under the Lease, or which it might otherwise have under applicable law, to terminate the Lease on account of a default of Lessor thereunder without first giving to FHA lender prior written notice of its intent to terminate for such a default, which notice shall include a statement of the default on which such termination is based. Thereafter, Lessor shall not take any action to terminate the Lease if FHA lender (a) within ten (10) days after service of such notice on FHA lender by Lessee of its intention to terminate the Lease, shall cure such default if the same can be cured by the payment or expenditure of money, or (b) shall diligently take action to obtain possession of the leased

# UNOFFICIAL COPY

premises (including possession by receiver) and to cure such default which cannot be cured unless and until FHA lender has obtained possession, but in no event to exceed thirty (30) days after service of such written notice on FHA lender by Lessee of its intention to terminate.

4. Lessor and Lessee hereby certify to FHA lender the lease as previously submitted to FHA lender has not been further amended, excluding minor amendments, if necessary, to modify the Improvements, so long as such amendments do not affect HUD's security interest in the building or the Property.
5. For the purpose of facilitating FHA lender's rights hereunder, FHA lender shall have, and for such purposes is hereby granted by Lessee and Lessor, the right to enter upon the Property and the Improvements thereon but only after twenty-four (24) hours notice to Lessee and the opportunity to be present, for the purpose of affecting any such cure.
6. Lessee hereby agrees to provide the FHA lender a copy of any notice of default it serves upon Lessor as provided in the Lease, by mailing the same to FHA lender in the manner set forth herein below. Lessee further agrees that if the Lessor shall have failed to cure such default within the time provided for in the Lease, then FHA lender, at its election, shall have the right to cure Lessor's default as provided in the Lease.
7. Subordination of Lease to Mortgage and Regulatory Agreements and Regulation by the U.S. Department of Housing and Urban Development ("HUD").
  - a. The lease and all estates, rights, options, liens and charges therein contained or created under the Lease are and shall be subject and subordinate to the lien or interest of (i) the Mortgage on the Lessor's interest in the Property in favor of FHA lender, its successors and assigns insofar as it affects the real and personal property comprising the Property (and not otherwise owned, leased or licensed by Lessee) or located thereon or therein, and to all renewals, modifications, consolidations, replacements and extensions thereof, and to all advances made or to be made thereunder, to the full extent of amounts secured thereby and interest thereon, and (ii) that certain Regulatory Agreement for Multifamily Housing Projects between Lessor and HUD to be recorded against the Property.
  - b. The parties to the Lease agree to execute and deliver to FHA lender and/or HUD such other instrument or instruments as the FHA lender and/or HUD, or their respective successors or assigns, shall reasonably request from time to time to reconfirm the status of the lease and to effect and/or confirm the

# UNOFFICIAL COPY

subordination the Lease to the lien of the Mortgage and the above-described Regulatory Agreements. To the extent that any provision of the Lease shall be in conflict with the HUD Program Obligations (as such term is defined below) as they relate to providing such instruments to reconfirm the status of the lease and to effect or confirm the subordination of the Lease to the lien of Mortgage, the HUD Program Obligations shall be controlling.

- c. In the event HUD, at a foreclosure sale or sale under private power contained in the Mortgage, or by acceptance of a deed in lieu of foreclosure, succeeds to the interest of Lessor under the Lease by reason of any foreclosure of the Mortgage or the acceptance by HUD of a deed in lieu of foreclosure, or by any other manner, it is agreed as follows:
- i. HUD can terminate the Lease for any default of the Lease that is not cured within any applicable notice and cure period given in the Lease.
  - ii. As used in this Agreement "HUD Program Obligations" shall mean all applicable statutes and regulations, including all amendments to such statutes and regulations, as they become effective, and all applicable requirements in HUD Handbooks, Notices and Mortgagee Letters that apply to the Property, including all updates and changes to such Handbooks, Notices and Mortgagee Letters that apply to the Property, except that changes subject to notice and comment rulemaking shall become effective upon completion of the rulemaking process.
- d. To the extent there is any inconsistency between the terms of this Subordination, Non-Disturbance and Attornment Agreement, and the Lease, the terms of this Subordination, Non-Disturbance and Attornment Agreement shall be controlling.
8. For purposes of any notices to be given to FHA lender hereunder, the same shall be sent by U.S. certified mail, return receipt requested, postage prepaid, to FHA lender at the following address:

P/R MORTGAGE & INVESTMENT CORP.  
 11555 N. MERIDIAN STREET, SUITE 400  
 CARMEL, INDIANA 46032

or to such other address as FHA lender may hereafter notify Lessee in writing by notice sent to Lessee as aforesaid at Lessee's address at the Property, or such other

# UNOFFICIAL COPY

address as FHA lender may hereafter be advised of in writing by notice sent to FHA lender as aforesaid.

9. The agreements contained herein 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.
10. This Agreement may be executed on one or more counterparts, all of which when taken together shall constitute a single instrument.
11. This Agreement shall, in all respects, be governed by and construed and interpreted in accordance with the laws of the state of Illinois.
12. Upon default by Lessor under the Mortgage and the giving of notice by Lender to Lessee, Lessee will pay rent to Lender.

[SEE ATTACHED SIGNATURE PAGES]

# UNOFFICIAL COPY

Signature Page -- 6250 S. Harper Apartments - Subordination, Non-Disturbance and  
Attornment Agreement

OWNER/ LESSOR:

ELM VENTURES, LLC, an Illinois limited liability company

BY: *Elzie L. Higginbottom*  
Elzie L. Higginbottom  
Its Manager

STATE OF ILLINOIS        )  
                                          )  
COUNTY OF COOK        )

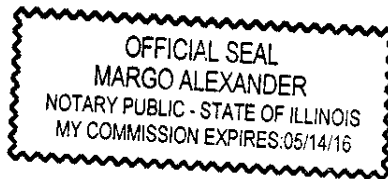
ss:

I, *MARGO Alexander*, a Notary Public in and for the State of Illinois, do hereby certify that Elzie L. Higginbottom, as Manager of Elm Ventures, LLC, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as his own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 27 day of March, 2013.

*Margo Alexander*  
Notary Public

My Commission Expires:



# UNOFFICIAL COPY

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT  
6250 S. Harper Ave., Chicago, IL 60637  
SIGNATURE PAGE:

OPERATOR/LESSEE:

United States Cellular Operating Company of Chicago, LLC,  
A Delaware limited liability company

BY: Kevin R. Lovell

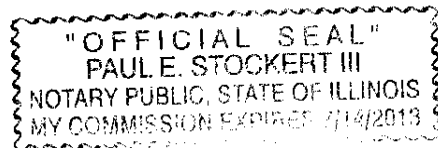
Kevin Lovell its Vice President

STATE OF ILLINOIS )  
                                  )  
COUNTY OF COOK    )  
                                  )

On this 22<sup>nd</sup> day of <sup>March</sup> ~~February~~, 2013, before me, the undersigned Notary Public, personally appeared Kevin Lovell Known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing Subordination, Non-Disturbance and Attornment Agreement as Vice President of United States Cellular Operating Company of Chicago, LLC and acknowledged that he executed the same as the act of said Delaware limited liability company for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[Signature]  
Notary Public





# UNOFFICIAL COPY

50

## EXHIBIT A

\*\*\*THAT PART OF THE FOLLOWING DESCRIBED TRACT OF LAND, LYING NORTH OF A LINE DRAWN 155.24 FEET NORTH OF THE NORTH LINE OF EAST 63<sup>RD</sup> STREET, SAID NORTH LINE BEING ALSO THE SOUTH LINE OF LOT 15 AND LOT 16 IN "PARKVIEW", BEING A SUBDIVISION MADE BY THE CIRCUIT COURT COMMISSIONERS IN PARTITION OF THE SOUTH 20 ACRES OF THAT PART OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 14, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF THE RIGHT OF WAY OF THE ILLINOIS CENTRAL RAILROAD COMPANY:

A TRACT OF LAND COMPRISING ALL OR A PART OF THE FOLLOWING DESCRIBED LOTS, ALLEYS AND STREETS, TO WIT:

LOTS 6, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 24 AND 25 IN BLOCK 3 IN "PARKVIEW", BEING A SUBDIVISION MADE BY THE CIRCUIT COURT COMMISSIONERS IN PARTITION OF THE SOUTH 20 ACRES OF THAT PART OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 14, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF THE RIGHT OF WAY OF THE ILLINOIS CENTRAL RAILROAD COMPANY,

ALSO

LOTS 1, 2 AND 5 TOGETHER WITH THE ADJOINING EAST-WEST AND NORTH-SOUTH VACATED ALLEYS, ALL AS LAID OUT IN THE RESUBDIVISION OF LOTS 7 TO 10 AND 21 TO 23, INCLUSIVE, AND PART OF LOTS 11 AND 20 LYING NORTH OF A LINE DRAWN 248.17 FEET NORTH OF AND PARALLEL WITH THE NORTH LINE OF EAST 63<sup>RD</sup> STREET, IN BLOCK 3 IN "PARKVIEW" AFORESAID,

continued...

**UNOFFICIAL COPY**

continued...

51

ALSO

PART OF THE EAST 14.50 FEET OF VACATED SOUTH BLACKSTONE AVENUE LYING NORTH OF AND ADJOINING THE NORTH LINE OF EAST 63<sup>RD</sup> STREET, EXTENDED WEST,

THE AFORESAID TRACT OF LAND, BEING A PART OF THE ABOVE MENTIONED PROPERTY, DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE NORTH LINE OF EAST 63<sup>RD</sup> STREET (BEING 33 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SECTION 14 AFORESAID) WITH THE WEST LINE OF SOUTH HARPER AVENUE; THENCE NORTH, ALONG THE WEST LINE OF SOUTH HARPER AVENUE, A DISTANCE OF 492 FEET; THENCE WEST, ALONG A LINE PARALLEL WITH THE NORTH LINE OF EAST 63<sup>RD</sup> STREET, A DISTANCE OF 263 FEET; THENCE SOUTH PARALLEL WITH THE WEST LINE OF SOUTH HARPER AVENUE, A DISTANCE OF 62 FEET; THENCE EAST, PARALLEL WITH THE NORTH LINE OF EAST 63<sup>RD</sup> STREET, A DISTANCE OF 93 FEET; THENCE SOUTH, PARALLEL WITH THE WEST LINE OF SOUTH HARPER AVENUE, A DISTANCE OF 215 FEET; THENCE WEST, PARALLEL WITH THE NORTH LINE OF EAST 63<sup>RD</sup> STREET, A DISTANCE OF 144.60 FEET TO THE WEST LINE OF THE EAST 14.50 FEET OF VACATED SOUTH BLACKSTONE AVENUE; THENCE SOUTH, ALONG THE WEST LINE OF THE EAST 14.50 FEET OF VACATED SOUTH BLACKSTONE AVENUE, A DISTANCE OF 215 FEET TO THE NORTH LINE OF EAST 63<sup>RD</sup> STREET EXTENDED WEST; THENCE EAST, ALONG THE NORTH LINE OF EAST 63<sup>RD</sup> STREET AND ITS WESTERLY EXTENSION, A DISTANCE OF 314.60 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.\*\*\*

PPN: 20-14-418-023, 20-14-418-026 and 20-14-418-027

COMMON ADDRESS: 6250 S. Harper Avenue  
Chicago, Illinois

A-1