



MISC 2014031745



MAY 01 2014 10:38 P 8

Fee amount: 52.00  
FB: 23-05660  
COMP: MB

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
05/01/2014 10:38:26.00



2014031745

---

THE ABOVE SPACE IS RESERVED FOR THE REGISTER OF DEEDS RECORDING INFORMATION

**THIS PAGE INCLUDED  
FOR INDEXING**

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

Valentine Capital, LLC  
c/o Wireless Capital Partners, LLC  
11900 W. Olympic Blvd, Suite 400  
Los Angeles, California 90064  
Attn: Servicing Manager  
Asset #: 404964

---

---

(Space Above For Recorder's Use)

### **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT (this "Agreement") is made as of the latest of the dates set forth below the signatures to this Agreement (such date, the "Effective Date") between NorthMarq Capital, LLC, a Minnesota limited liability company ("Lender"), and WCP III, a Delaware limited liability company, its successors and assigns ("Buyer").

A. 2223 Dodge Street LLC, a Nebraska limited liability company ("Property Owner"), owns the fee interest in the real property located at 2223 Dodge Street, Omaha, Nebraska 68102 (as more particularly described on Exhibit A attached hereto, the "Property");

B. Property Owner and 2223 Dodge Street Master Tenant LLC, a Nebraska limited liability company ("Landlord"), entered into that certain Lease Agreement, dated as of April 19, 2012, a memorandum of which was recorded on May 30, 2012 in the Register of Deeds, Douglas County, Nebraska as Instrument No. 2012052314, pursuant to which Property Owner leases to Landlord a portion of the Property (such area, the "Master Premises"); and

C. Landlord is a party to that certain Facilities Space Lease, dated October 14, 2004 (the "Lease"), between Mid-City Bank Inc., a Nebraska corporation, as successor-in-interest to Landlord, and USCOC of Greater Iowa, Inc., a Pennsylvania corporation, d/b/a U.S. Cellular (together with its applicable successors or assigns, "Tenant"), pursuant to which Landlord leases a portion of the ground space and rooftop of the building located within the Master Premises to Tenant (such area, as further defined in the Purchase Agreement, the "Premises");

D. Landlord and Buyer propose to enter into that certain Purchase and Sale of Lease and Successor Lease Agreement (the "Purchase Agreement") which would, among other things, provide for the payment by Buyer of a lump sum to Landlord in exchange for a sale and assignment by Landlord of all its right, title and interest in and to the Lease, and certain rights related thereto.

E. On or after the Effective Date, Property Owner and Lender propose to enter into that certain Deed of Trust, and other related documents (collectively known as the "Security Instrument"), securing, among other things, a loan in favor of Lender (the "Loan"), which Security Instrument shall encumber the Property.

F. As a condition to Lender making the Loan, Lender requires Buyer to subordinate the Lease and Purchase Agreement to the lien of the Security Instrument. Buyer has agreed to subordinate its interests in the Lease and Purchase Agreement, provided Lender does not disturb Buyer's rights in the Premises, the Lease, or the Purchase Agreement. All initially capitalized terms used but not defined

herein shall have the meanings ascribed to them in the Purchase Agreement.

NOW THEREFORE, in consideration of the mutual covenants contained herein and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Non-Disturbance. Provided that Buyer is not then in default under the terms and conditions of the Purchase Agreement beyond any applicable notice and cure periods, then:

a. The right of possession of Tenant and Buyer to the Premises and Buyer's rights arising out of the Lease and Purchase Agreement shall not be affected or disturbed by Lender in the exercise of any of its rights under the Security Instrument, or the note secured thereby; nor shall Tenant or Buyer be named as a party defendant to any foreclosure of the lien of the Security Instrument, unless required by law, nor shall Buyer in any other way be deprived of its rights under the Lease or Purchase Agreement.

b. If the Lender or any other party (a "Successor Owner") acquires title to the Property pursuant to the exercise of any remedy provided for in the Security Instrument, or as a result of a default by Property Owner thereunder, the Lease and Purchase Agreement shall not be terminated or affected by any foreclosure or sale, or any such proceeding, and Lender covenants that any sale by it or transfer of the Property pursuant to the exercise of any rights or remedies under the Security Instrument or otherwise shall be made subject to the Lease and Purchase Agreement and the rights of Buyer thereunder. Buyer hereby attorns to Lender or Successor Owner (as applicable), provided the transferee assumes the obligations of Property Owner under the Lease and Purchase Agreement. Buyer's attornment by these presents shall be effective and self-operative without the execution of any other instruments on the part of the parties hereto, immediately upon such substitute owner succeeding to Property Owner's fee ownership interest in the Property. Notwithstanding the foregoing, Buyer agrees to execute and deliver upon request of Successor Owner an appropriate agreement of attornment to Successor Owner.

c. Notwithstanding the foregoing, it is agreed that in no event shall Lender or Successor Owner: (i) be subject to any claims, offsets or defenses which Buyer may be entitled to assert against Property Owner with respect to events occurring prior to Lender obtaining possession of the Property; (ii) be obligated to cure any defaults of Property Owner occurring prior to Lender obtaining possession of the Property; (iii) be liable for any sum that Property Owner owed Buyer; (iv) be liable for any breach of any representations or warranty of Property Owner made Buyer; or (v) be bound by the terms of any amendment to the Purchase Document executed after the Effective Date without the consent of Lender or Successor Owner, as applicable.

2. Subordination. Subject to the foregoing, the Lease and Purchase Agreement shall be subject and subordinate to the lien of the Security Instrument and to all the terms, conditions and provisions thereof, to all advances made or to be made thereunder, and to any renewals, extensions, modifications, or replacements thereof. Buyer hereby agrees to subordinate its rights in the Lease and Purchase Agreement to any deed of trust in favor of Lender that is recorded against the Property after the Effective Date, provided that Buyer or its assignee receives an assignable and recordable agreement from Lender stating that, if there shall be a foreclosure of the applicable deed of trust, Lender will not, unless required by law, make Buyer a party defendant to such foreclosure or disturb Buyer's interest in the Lease or Purchase Agreement, and including other terms as are reasonably acceptable to the parties. The parties agree that Lender is not prohibited from exercising any rights it may now or in the future have against Buyer pursuant to the Lease.

3. Modification. This Agreement may not be modified other than by an agreement in writing signed by the parties or by their respective successors in interest.

4. Notices. All notices, demands, or other communications under this Agreement and the shall be in writing and shall be delivered to the appropriate party at the address set forth below (subject to change from time to time by written notice to all other parties to this Agreement). All notices, demands or other communications shall be considered as properly given if delivered personally or sent by first class United States Postal Service mail, postage prepaid, or by Overnight Express Mail or by overnight commercial courier service, charges prepaid, except that notice of Default may be sent by certified mail, return receipt requested, charges prepaid. Notices so sent shall be effective three (3) Business Days after mailing, if mailed by first class mail, and otherwise upon delivery or refusal; provided, however, that non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. For purposes of notice, the address of the parties shall be:

If given to Lender:

NorthMarq Capital, LLC  
Attention: Servicing  
Suite 500  
3500 American Boulevard West  
Bloomington, MN 55431-4435

If given to Buyer:

WCP III, LLC  
c/o Wireless Capital Partners, LLC  
11900 West Olympic Blvd., Suite 400  
Los Angeles, California 90064  
Site ID # 404964

Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other party in the manner set forth hereinabove.

5. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State where the Property is located.

6. Successors and Assigns. This Agreement shall inure to the benefit of and bind the parties hereto, and their respective successors and assigns. The obligations of the parties hereunder shall burden the land upon which the Premises are located, and shall run with such land.

7. Headings. All article, section or other headings appearing in this Agreement are for convenience of reference only and shall be disregarded in construing this Agreement.

8. Counterparts. To facilitate execution, this document may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective


signatures of, or on behalf of, each of the parties hereto. Any signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages.

*[Signatures Appear on Following Page]*

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

LENDER:

NorthMarq Capital, LLC,  
a Minnesota limited liability company

By:   
Name: Paul W. Cairns  
Title: Senior Vice President

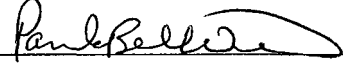
Date: April 25, 2014

STATE OF MINNESOTA )  
  )  
COUNTY OF HENNEPIN )

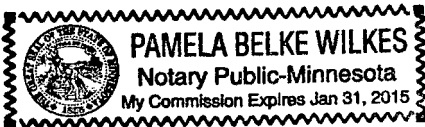
On April 25, 2014, before me, Pamela Belke Wilkes, a Notary Public, personally appeared Paul W. Cairns, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of Minnesota that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 

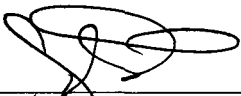
(Seal)



[Signatures Continue on the Following Page]

BUYER:

WCP III, LLC,  
a Delaware limited liability company

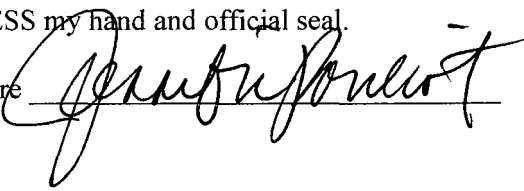
By:   
Name: Joshua L. Wade  
Title: Authorized Signatory

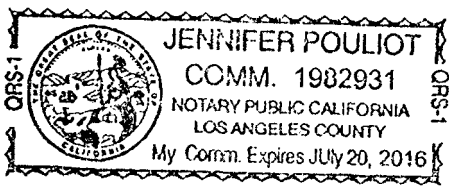
Date: March 25, 2014

STATE OF CALIFORNIA     )  
  )  
COUNTY OF LOS ANGELES )

On 3/25/2014, before me, Jennifer Pouliot, a Notary Public, personally appeared Joshua L. Wade, 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, and that by his/her signature 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.  
Signature  (Seal)



## EXHIBIT A

### LEGAL DESCRIPTION OF PROPERTY

An interest in land, said interest being over a portion of the following described parent parcel:

Parcel 1:

Sublots 2, 5, 6 and 7 of Lot 3 and the North 146 feet of Sublot 4 of Lot 3, and the West 7.76 feet of the North 146 feet of Sublot 1 of Lot 3, all in Capitol Addition, an Addition to the City of Omaha, in Douglas County, Nebraska; together with

Sublots 8, 9 and 10 of Lot 3 and the South 152 feet of Sublot 4 of Lot 3 and Sublot 3 of Lot 3, except the East 3.0 feet thereof, in Capitol Addition, an Addition to the City of Omaha, in Douglas County, Nebraska.

Parcel 2:

The East 3.0 feet of Sublot 3 of Lot 3 and the North 152 feet of the South 168 feet of Sublot 1 of Lot 3, and the West 49.0 feet of the South 152 feet of Sublot 7 of Lots 2 and 3, in Capitol Addition, an Addition to the City of Omaha, Douglas County Nebraska.

Parcel 3:

Easement for ingress and egress as contained in the Easement Agreement filed February 9, 1988 in Book 839 at Page 78, Miscellaneous Records, Douglas County, Nebraska.