

Market: OK
Site Name: 91st Elm
Site #: TUL-019
Fixed Asset #:

TERMINATION AND EQUIPMENT TRANSFER AGREEMENT

This Termination and Equipment Transfer Agreement (the "Agreement") is made effective this ___ day of _____, 2015 (the "Effective Date"), by and between Cricket Communications, Inc., a Delaware corporation, with an address at 7337 Trade Street, Suite 1600, San Diego, CA 92121 ("Cricket"), and City of Broken Arrow, with an address at 220 South First Street, Broken Arrow, OK 74012 ("Lessor").

WITNESSETH

WHEREAS, CRICKET and Lessor (or its respective predecessors) are parties to a certain Cricket Oklahoma Property Company Site Lease Agreement dated February 5, 2001, First Amendment date April 25, 2001, Second Amendment dated March 22, 2011 (collectively the "Lease") whereby CRICKET was entitled to install, maintain, operate and remove communications equipment and appurtenances described in the Lease (the "Equipment") at a property owned by Lessor and located at 1701 W. Boston Street (the "Site"); and

WHEREAS, CRICKET has notified Lessor that CRICKET intends to terminate the Lease; and

WHEREAS, the parties wish to modify CRICKET's responsibility for removal of the Equipment from the Site under the Lease; and

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants contained herein and intending to legally be bound hereby, agree as follows:

- 1. Termination of Lease:** Lessor hereby acknowledges and agrees that as of the Effective Date, this Agreement shall serve as notice of CRICKET's termination of the Lease/License. The Lease shall terminate as of February 4, 2016 (the "Lease Termination Date"), rendering the Lease null and void. All rights and obligations of the parties under the Lease shall terminate as of the Lease Termination Date, except for those rights and obligations which expressly survive the termination of the Lease.
- 2. Consideration:** As consideration for Lessor's agreement to the terms and conditions described herein, including but not limited to Lessor's assumption of the obligation to remove any and all Equipment remaining at the Site, CRICKET agrees to pay the amount of Four Thousand Dollars (\$4,000.00) (the "Pay and Walk Fee") within sixty (60) days after the full execution and delivery of this Agreement.
- 3. Transferred Equipment:** All of CRICKET's right, title, and interest in and to any Equipment that remains located at the Site (the "Transferred Equipment") shall be deemed to be automatically transferred to Lessor free and clear of all liens and encumbrances, as of February 4, 2016 (the "Transfer Date"). The Transferred Equipment includes the building and adjoining structural components, and all other equipment remaining on the Site as of the Transfer Date as further described on Exhibit A, attached. Lessor shall be solely responsible for, and shall pay, any and all taxes, including sales/use/property taxes that may be due in connection with the transfer of the Transferred Equipment. Lessor agrees to assume all of the rights and obligations of CRICKET, including removal, for the Transferred Equipment.
- 4. No Warranty:** The parties hereby explicitly acknowledge and agree that the Transferred Equipment is being transferred "as is, where is" with all faults and without warranty.

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, AS TO THE CONDITION, QUALITY, MERCHANTABILITY AND FITNESS OR SUITABILITY FOR ANY PARTICULAR USE OR PURPOSE ARE HEREBY EXCLUDED AND DISCLAIMED. CRICKET SHALL HAVE ABSOLUTELY NO OBLIGATION TO REPAIR OR REPLACE ANY OF THE TRANSFERRED EQUIPMENT.

5. **Waiver and Release:** In consideration of this Agreement, CRICKET hereby waives remuneration for the full market value of the Transferred Equipment. As of the Transfer Date, Lessor hereby releases CRICKET from all of the remaining responsibilities and obligations of CRICKET under the Lease, including removal of the Transferred Equipment. The parties specifically acknowledge that the Lease contained provisions that were expressly intended to survive the expiration or termination of the Lease. The foregoing notwithstanding, the parties agree that any such responsibility or obligation shall remain in full force and effect and is incorporated by reference into this Agreement. Lessor agrees to release and hold CRICKET harmless for any defect in the Transferred Equipment.
6. **Construction:** Each party has had the opportunity for its own counsel to review this Agreement and participate in its drafting. Therefore, the rule construing the document against the drafter shall not apply to this Agreement or against any party.
7. **Amendment:** No amendment, supplement, modification, or waiver or termination of this Agreement and, unless otherwise specified, no consent or approval by any party, shall be binding unless executed in writing by the party to be bound thereby.
8. **Waiver:** No waiver by either party of any provision herein shall be deemed a waiver of any other provision or of any prior or subsequent breach of any provision herein.
9. **Assignment:** Neither this Agreement nor any rights or obligations under this Agreement shall be assignable by either party without the prior written consent of the other parties.
10. **Authorization:** The signatories hereto represent that they are duly authorized to execute this Agreement on behalf of their respective entities.
11. **Binding Effect:** This Agreement shall be binding upon and inure to the benefit of the parties' respective successors and assigns.
12. **Choice of Law:** This Agreement shall be construed in accordance with, and all disputes hereunder shall be governed by, the laws of the State where the Site is located.
13. **Counterparts:** This Agreement may be executed in more than one original, and the parties agree that each original executed shall be treated as the original for all purposes. Facsimile signatures shall be acceptable to both parties and shall be deemed original signatures.
14. **Severability:** If any term, covenant or condition of this Agreement, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to other persons or circumstances, shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
15. **Survival:** All terms, covenants and obligations contained in the Agreement shall remain in full force and effect without any limitation.

[Signatures Appear on Following Page]

IN WITNESS WHEREOF, the parties have signed this Agreement on the date first above written.

Cricket:

Cricket Communications, Inc.
A Delaware limited liability company

(Signature)

VICTORIA FORBES

(Name Typed)

DIRECTOR OF REAL ESTATE

(Title)

(Date)

Lessor:

The City of Broken Arrow

(Signature)

(Name Typed)

(Title)

(Date)

APPROVED AS TO FORM:

Lesli Myers

ASSISTANT CITY ATTORNEY

Exhibit A

Remaining materials will be assigned to the landlord.

Site Inventory (Items remaining on site):	Description	N/A	LEAVE	REMOVE
BTS	Three (3) BTS cabinet			X
Coax	From cabinet to tower			X
Platform	9'-6" x 21' steel platform		X	
Antennas		X		
Antenna Mounts		X		
Doghouse		X		
Duct bank		X		
Conduit			X	
Ice Bridge			X	
Fencing			X	
Cable Tray		X		
Waveguide ladder		X		
PTC/PPC			X	
Ground Ring			X	
Ground Vaults		X		
H-Frame			X	
Microwave		X		
Shelter		X		