

UNOFFICIAL COPY

Doc#. 1722218053 Fee: \$78.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 08/10/2017 11:53 AM Pg: 1 of 16

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

JPMorgan Chase Bank, N.A.
Attn. POST CLOSING
P.O. Box 9011
Coppell, TX 75019-9011
Loan No. 100027997

NCS 848643

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

[Loan No. 100027997]

THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made as of July 14, 2017, by and among JPMORGAN CHASE BANK, N.A. (together with its successors and assigns, "Lender"), 1608 SHERWIN LLC ("Borrower"), and Chicago SMSA Limited Partnership d/b/a Verizon Wireless ("Tenant"). For purposes of this Agreement, all references to Borrower shall include Successor Landlord (defined below) as applicable.

Borrower is or expects to become the landlord and Tenant is the tenant under a lease dated DECEMBER 27, 2004 (as amended, the "Lease"). The Lease covers all or a portion (such leased premises, the "Leased Premises") of the real property described on the attached Exhibit A and the improvements thereon (the "Property"). Tenant's use of the Leased Premises will require the construction of structures and associated equipment and improvements on the Leased Premises and/or use of existing structures on the rooftop and/or other portion of Borrower's building located at the Property for Tenant's operation of certain telecommunications equipment (the "Facility"). Borrower has obtained or applied for a loan (the "Loan"), payment of which is to be secured by, among other things, a deed of trust, mortgage or similar instrument (the "Security Instrument") encumbering the Property. (All documents evidencing or securing the Loan, including the Security Instrument, are referred to as the "Loan Documents.") Tenant has agreed to subordinate the Lease to the Security Instrument, and Lender has agreed not to disturb Tenant's rights under the Lease, all in accordance with the terms and conditions set forth below. The parties agree as follows:

1. **Subordination.** The Lease, and all other rights and interests of Tenant in the Property (including any purchase options and rights of first refusal) are and at all times will be subordinate to the Loan Documents and the lien of the Security Instrument, to all advances made or to be made thereunder, and to any and all renewals, extensions, modifications, or replacements thereof. Tenant acknowledges and agrees that no right of first refusal held by Tenant will be exercisable in connection with any transfer pursuant to a Foreclosure Event (as defined below).

2. **Consent.** Lender acknowledges the Lease and expressly consents to Tenant's use and occupancy of the Facility and the Leased Premises pursuant to the Lease.

3. **Attornment.** After any transfer of the Property pursuant to a Foreclosure Event, the terms of the Lease will be recognized as a new and direct lease from Successor Landlord (as defined below) to

UNOFFICIAL COPY

Tenant, and Tenant hereby attorns to Successor Landlord as its landlord, such attornment to be effective and self-operative without the execution of any further instrument immediately upon such Foreclosure Event. Tenant shall, from and after Lender's or Successor Landlord's succession to the interest of Borrower under the Lease, have the same remedies against such Party that Tenant might have had under the Lease against Borrower; provided, however, that Lender or Successor Landlord will not be liable for or bound by any of the following:

3.1 any act, omission, breach of the Lease, representation or warranty of Borrower or any other prior landlord (other than defaults of a continuing nature which Lender has notice of prior to commencing a Foreclosure Event and an opportunity to cure in accordance with this Agreement);

3.2 any offset or credit Tenant may have against Borrower or any other prior landlord (other than offsets or credits provided for in the Lease or arising from defaults of a continuing nature which Lender has notice of prior to commencing a Foreclosure Event and an opportunity to cure in accordance with this Agreement);

3.3 any obligation with respect to any prepaid rent for greater than one (1) month, unless such payment is required under the Lease;

3.4 any obligation to return or give credit for any security deposit under the Lease, unless such security deposit has actually been delivered to Successor Landlord;

3.5 unless previously approved in writing by Lender in accordance with Paragraph 6, or otherwise agreed to in writing by Tenant and Borrower prior to the execution of the Security Instrument, (a) any modification or waiver of any provision of the Lease relating to (i) rent or other sums due Tenant or any decrease in rent or other sums due Borrower, (ii) the Lease term or any options to renew the Lease, or (iii) Lease termination, sublease or assignment; (b) any other modification of the Lease that materially and adversely affects the economics of the Lease to the detriment of Borrower; or (c) any termination, sublease or assignment of the Lease unless permitted under the Lease;

3.6 any payment of rent by Tenant to Borrower in violation of Section 5 below; or

3.7 any purchase option or right of first refusal with respect to the Property granted under the Lease or otherwise held by Tenant.

"Foreclosure Event" means: (i) foreclosure under the Security Instrument; (ii) any other exercise by Lender of rights and remedies as a result of which a Successor Landlord becomes the owner of the Property; or (iii) delivery to Lender (or its designee or nominee) of a deed or other conveyance of the Property in lieu of (i) or (ii) above.

"Successor Landlord" means Lender or any other person or entity that becomes the owner of the Property as the result of, or after, a Foreclosure Event.

4. **Nondisturbance.** Upon a Foreclosure Event, Lender will not (and no other Successor Landlord will be entitled to) terminate the Lease, or interfere with Tenant's use, possession or enjoyment of the Leased Premises, or adversely affect the leasehold estate granted by the Lease in any Foreclosure Event; provided that if Tenant is then in default under the Lease beyond any applicable notice, grace or cure

UNOFFICIAL COPY

period, at Lender's option, the Lease shall be terminated by virtue of the Foreclosure Event. So long as the Lease is not terminated and Tenant is not in default, Lender will not join Tenant as a party defendant in any action or proceeding foreclosing the Security Instrument unless such joinder is necessary to foreclose the Security Instrument and then only for such purpose and not for the purpose of terminating the Lease.

5. **Notice and Opportunity To Cure Defaults.** So long as Lender holds a lien on the Leased Premises pursuant to the Security Instrument, Tenant shall notify Lender of any default by Borrower under the Lease and offer Lender the opportunity (without the obligation) to cure such default and not terminate (or otherwise exercise any remedies with respect to) the Lease for a period of 30 days following Lender's actual receipt of such notice; or such longer period as is reasonably necessary to cure such default (not to exceed 90 days) provided that there is no material detriment to Tenant's ability to operate the Facility.

6. **Amendment or Modification to Lease.** Tenant agrees that any modification or waiver of any provision of the Lease subsequent to the execution of the Security Instrument and relating to (i) rent or other sums due Tenant or any decrease in rent or other sums due Borrower, (ii) the Lease term or any options to renew the Lease, (iii) lease termination, sublease or assignment or (iv) any other modification of the Lease that materially and adversely affects the economics of the Lease to the detriment of Borrower, shall not be binding upon Lender without Lender's consent or deemed consent as provided in this Paragraph 6. Borrower or Tenant shall provide to Lender, in accordance with Paragraph 9.7 below, notice of any amendment or modification to the Lease as described in this Paragraph 6. In the event Lender fails to accept or reject such amendment or modification within forty-five (45) days of notice from Landlord or Tenant, Lender shall be deemed to have consented to such amendment or modification to the Lease.

7. **Other Acknowledgments and Agreements.** Tenant acknowledges and agrees that: (a) the Lease will be assigned to Lender under the Security Instrument; (b) upon and after Lender's written request and written notice that an event of default has occurred under any of the Loan Documents, Tenant will (and Borrower authorizes Tenant to) pay all rent and other amounts due and owing to Borrower under the Lease directly to Lender; (c) Lender has no obligation to Tenant regarding Borrower's application of the proceeds of the Loan; (d) Tenant shall at the request of Lender certify promptly in writing to Lender and any proposed assignee of the Loan whether or not any default on the part of Borrower then exists under the Lease; (e) notwithstanding Section 1 above, Lender may in its sole discretion at any time record (or otherwise provide in accordance with applicable law) notice that it elects the Security Instrument to become subordinate to the Lease, which recorded or other notice need only be executed by Lender; and upon such recording (or the giving of such other notice), the Security Instrument shall be subordinate to the Lease; and (f) if Lender becomes the Successor Landlord, Lender shall have no liability to Tenant with respect to the Lease after Lender no longer has any ownership interest in the Property, except to the extent such liability arises solely by acts or omissions of Lender during the period of Lender's ownership of the Property.

8. **Additional Telecom Terms.** Notwithstanding anything to the contrary in the Lease, Borrower and Tenant agree to the following additional terms of the Lease (the "Additional Terms"), and if there is any inconsistency between the Lease and the Additional Terms, the latter shall control. The Additional

UNOFFICIAL COPY

Terms shall terminate and no longer be in effect if (a) Borrower pays off the Loan in full; or (b) following a Foreclosure Event, Lender (or any of its affiliates or subsidiaries) does not own the Property).

8.1.1 Tenant, in its use of the Leased Premises and any easements granted to Tenant under or in connection with the Lease (the "Easements"), shall not unreasonably interfere with the use and enjoyment of the Property by Borrower or any of the residential or other tenants at the Property, provided Tenant's rights under the Lease are not disturbed or interfered with throughout the term thereof. Any access Easements are nonexclusive and are subject to Tenant's use of such Easements in accordance with the terms thereof by any third parties or Borrower.

8.1.2 Borrower shall have the right, upon at least 48 hours' notice to Tenant via telephone to Tenant's Network Operations Center (at (800) 224-6620/(800) 621-2622), of access to the Leased Premises if necessary to repair and maintain the Property; provided, however, that with respect to emergency repairs, no such notice to Tenant shall be required as a condition to such access, but Borrower shall give Tenant as much notice as is reasonably practicable via telephone to Tenant's Network Operations Center (at (800) 224-6620/(800) 621-2622). In all events, a representative of Tenant may accompany Borrower and/or Borrower's contractors and agents during any such access to the Leased Premises.

8.1.3 If Tenant has the right under the Lease to add utilities in addition to those approved by Borrower in the Lease, Borrower and Lender shall have the right in their reasonable discretion to review the proposal to add such utilities and such utilities will be added to the Leased Premises only after Borrower and Lender grant their written consent thereto, provided, however, in the event Lender or Borrower, as the case may be, fails to consent or reject such proposal to add utilities within forty-five (45) days of notice from Tenant in accordance with Paragraph 9.7, Lender and/or Borrower, as the case may be, shall be deemed to have consented to such proposal.

8.1.4 Tenant shall comply with all applicable laws, regulations, and ordinances, and rulings or directives by any court or administrative agency (including the Federal Communications Commission and the Federal Aviation Administration) pertaining to the Lease and Tenant's operation of the Facility.

8.1.5 Except as otherwise provided in the Lease, upon the expiration of the Lease term, or within 90 days after any early termination of the Lease, Tenant will remove the Facility and any other fixtures or equipment located on the Property in connection with the Lease, and shall restore the Property (and any improvements on the Property) to the condition prior to the commencement of the Lease, ordinary wear and tear excepted. Further, upon expiration or within 90 days after any early termination of the Lease, any access Easement granted in connection with the Lease shall automatically terminate and be of no further force or effect.

8.1.6 Unless otherwise set forth in the Lease, if by virtue of the height of any antenna included within the Facility, the height of any building on the Property is such that Borrower is responsible to light the building in compliance with any Federal Aviation Administration requirements, Tenant shall reimburse Borrower for the costs of such compliance.

UNOFFICIAL COPY

8.1.7 Tenant and Borrower shall during the term of the Lease maintain general liability insurance as set forth in the Lease. Upon Lender's request, Tenant shall provide Lender with a certificate of insurance as evidence of its insurance coverage.

8.1.8 The Leased Premises and any Easements granted to Tenant may not be expanded without Lender's prior written consent. Provided that the Leased Premises and any Easements are not expanded, Tenant may, without Lender's consent, replace, repair, add or otherwise modify its communications equipment, tower structure, antennas, conduits, fencing and other screening, or other improvements or any portion thereof within the Leased Premises and the frequencies over which the communications equipment operates, whether or not any of the communications equipment, antennas, conduits or other improvements are listed on any exhibit to the Lease.

8.1.9 Borrower shall not sell, transfer, pledge, otherwise convey any income, profits or rents from the Lease (collectively, the "Lease Transfer"), and any Lease Transfer shall be null and void, and have no legal effect absent Lender's and Tenant's written consent which may be withheld in their sole and independent judgment.

8.1.10 Tenant shall be responsible for, and shall indemnify, defend and hold Borrower and Lender harmless from and against, any and all claims (including claims by other tenants at the Property), and other losses and liabilities (including reasonable attorneys' fees) arising from Tenant's use of the Leased Premises and the Easements, except to the extent any such claims, losses or liabilities are caused by the negligent action or inaction of Borrower or Lender.

8.1.11 Borrower represents and warrants to Lender that (a) the Leased Premises and any Easements are locatable and do not unreasonably interfere with the use and enjoyment of the Property by any tenants at the Property, or with access from the improvements on the Property to a public street; and (b) the Easements are not encroached on by any improvements or other easements on the Property.

8.1.12 Borrower is required to provide and maintain such property, liability, rental income interruption, flood and other insurance coverage in connection with the Property ("Borrower Insurance") as Lender may reasonably require from time to time. Tenant hereby disclaims any and all interest in the Borrower Insurance and acknowledges and agrees that Lender has the right to, among other things, direct, control, apply and/or disburse any and all Borrower Insurance proceeds in accordance with the terms and conditions of the Security Instrument.

9. Miscellaneous.

9.1 Binding Effect. This Agreement will inure to the benefit of and be binding upon the parties hereto, their successors and assigns and the holder from time to time of the Loan Documents.

9.2 Entire Agreement. This Agreement constitutes the final expression of the entire agreement of the parties with respect to the subordination of the Lease to the lien of the Security Instrument. This Agreement may not be modified other than by an agreement in writing, signed by the parties hereto or their respective successors in interest.

UNOFFICIAL COPY

9.3 **Effect on Lease.** Except as modified by this Agreement, all of the terms and provisions of the Lease will remain in full force and effect. If there are any conflicts between the Lease and this Agreement, the terms and provisions of this Agreement will control.

9.4 **Counterparts.** This Agreement may be executed in any number of identical counterparts and by each party on a separate counterpart. If so executed, all of such counterparts will collectively constitute one agreement.

9.5 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the state where the Property is located, without regard to its conflicts of laws principles.

9.6 **Legal Costs.** In the event of any litigation to enforce the terms of this Agreement or to recover damages for the breach thereof, the prevailing party or parties will be entitled to recover from the nonprevailing party or parties all attorneys' fees and other costs and expenses incurred in connection therewith.

9.7 **Notices.** All notices under this Agreement will be in writing and mailed or delivered by recognized overnight delivery service (such as Federal Express) at the following addresses:

If to Lender: JPMorgan Chase Bank, N.A.
Portfolio Administration – Transactions
P.O. Box 9178
Coppell, Texas 75019-9178
Loan No. 100027997

If to Borrower: 1608 SHERWIN LLC
c/o Sal Becovic
4520 N. Clarendon Ave.
Chicago, IL 60640

If to Tenant: Chicago SMSA Limited Partnership
d/b/a Verizon Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
Attention: Network Real Estate

All such notices will: (a) if mailed, be effective three (3) business days following deposit in the United States mail with postage prepaid and return receipt requested; and (b) if delivered as provided above, be effective upon delivery. Any party to this Agreement may change the address for notices to that party by written notice to the other parties to this Agreement. With the exception of notice provided in accordance with Paragraph 6.8.1.3, no notice under or related to this Agreement shall be effective against or binding upon Lender or Tenant, unless furnished in writing.

9.8 **WAIVER OF SPECIAL DAMAGES.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HERETO AGREES NOT TO ASSERT, AND HEREBY WAIVES, ANY CLAIM AGAINST THE OTHER PARTIES HERETO, ON ANY THEORY OF LIABILITY, WHETHER UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, FOR SPECIAL, INDIRECT,

UNOFFICIAL COPY

CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES), LOST PROFITS, LOST REVENUE, LOSS OF TECHNOLOGY, RIGHTS OR SERVICES, LOSS OF DATA, OR INTERERRUPTION OR LOSS OF USE OF SERVICE, ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS AGREEMENT.

9.9 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS PARAGRAPH.

9.10 WAIVER OF JURY TRIAL AND JUDICIAL REFERENCE PROVISION. IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) (EACH, A "CLAIM") AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

9.10.1 WITH THE EXCEPTION OF THE MATTERS SPECIFIED IN SUBSECTION 9.10.2 BELOW, ANY CLAIM WILL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638. VENUE FOR THE REFERENCE PROCEEDING WILL BE IN THE STATE OR FEDERAL COURT IN THE COUNTY OR DISTRICT WHERE VENUE IS OTHERWISE APPROPRIATE UNDER APPLICABLE LAW.

9.10.2 THE FOLLOWING MATTERS SHALL NOT BE SUBJECT TO A GENERAL REFERENCE PROCEEDING: (A) NON-JUDICIAL FORECLOSURE OF ANY SECURITY INTERESTS IN REAL OR PERSONAL PROPERTY, (B) EXERCISE OF SELF-HELP REMEDIES (INCLUDING, WITHOUT LIMITATION, SET-OFF), (C) APPOINTMENT OF A RECEIVER AND (D) TEMPORARY, PROVISIONAL OR ANCILLARY REMEDIES (INCLUDING, WITHOUT LIMITATION, WRITS OF ATTACHMENT, WRITS OF POSSESSION, TEMPORARY RESTRAINING ORDERS OR PRELIMINARY INJUNCTIONS). THIS AGREEMENT DOES NOT LIMIT THE RIGHT OF ANY PARTY TO EXERCISE OR OPPOSE ANY OF THE RIGHTS AND REMEDIES DESCRIBED IN CLAUSES (A) - (D) AND ANY SUCH EXERCISE OR OPPOSITION DOES NOT WAIVE THE RIGHT OF ANY PARTY TO A REFERENCE PROCEEDING PURSUANT TO THIS AGREEMENT.

9.10.3 UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN (10) DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE

UNOFFICIAL COPY

COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B).

9.10.4 ALL PROCEEDINGS AND HEARINGS CONDUCTED BEFORE THE REFEREE, EXCEPT FOR TRIAL, SHALL BE CONDUCTED WITHOUT A COURT REPORTER, EXCEPT WHEN ANY PARTY SO REQUESTS, A COURT REPORTER WILL BE USED AND THE REFEREE WILL BE PROVIDED A COURTESY COPY OF THE TRANSCRIPT. THE PARTY MAKING SUCH REQUEST SHALL HAVE THE OBLIGATION TO ARRANGE FOR AND PAY COSTS OF THE COURT REPORTER, PROVIDED THAT SUCH COSTS, ALONG WITH THE REFEREE'S FEES, SHALL ULTIMATELY BE BORNE BY THE PARTY WHO DOES NOT PREVAIL, AS DETERMINED BY THE REFEREE.

9.10.5 THE REFEREE MAY REQUIRE ONE OR MORE PREHEARING CONFERENCES. THE PARTIES HERETO SHALL BE ENTITLED TO DISCOVERY, AND THE REFEREE SHALL OVERSEE DISCOVERY IN ACCORDANCE WITH THE RULES OF DISCOVERY, AND MAY ENFORCE ALL DISCOVERY ORDERS IN THE SAME MANNER AS ANY TRIAL COURT JUDGE IN PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA. THE REFEREE SHALL APPLY THE RULES OF EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH APPLICABLE STATE AND FEDERAL LAW. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION WHICH WOULD BE AUTHORIZED IN A TRIAL, INCLUDING, WITHOUT LIMITATION, MOTIONS FOR DEFAULT JUDGMENT OR SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS OR HER DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

9.10.6 THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY.

UNOFFICIAL COPY

9.10.4 ALL PROCEEDINGS AND HEARINGS CONDUCTED BEFORE THE REFEREE, EXCEPT FOR TRIAL, SHALL BE CONDUCTED WITHOUT A COURT REPORTER, EXCEPT WHEN ANY PARTY SO REQUESTS, A COURT REPORTER WILL BE USED AND THE REFEREE WILL BE PROVIDED A COURTESY COPY OF THE TRANSCRIPT. THE PARTY MAKING SUCH REQUEST SHALL HAVE THE OBLIGATION TO ARRANGE FOR AND PAY COSTS OF THE COURT REPORTER, PROVIDED THAT SUCH COSTS, ALONG WITH THE REFEREE'S FEES, SHALL ULTIMATELY BE BORNE BY THE PARTY WHO DOES NOT PREVAIL, AS DETERMINED BY THE REFEREE.

9.10.5 THE REFEREE MAY REQUIRE ONE OR MORE PREHEARING CONFERENCES. THE PARTIES HERETO SHALL BE ENTITLED TO DISCOVERY, AND THE REFEREE SHALL OVERSEE DISCOVERY IN ACCORDANCE WITH THE RULES OF DISCOVERY, AND MAY ENFORCE ALL DISCOVERY ORDERS IN THE SAME MANNER AS ANY TRIAL COURT JUDGE IN PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA. THE REFEREE SHALL APPLY THE RULES OF EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH APPLICABLE STATE AND FEDERAL LAW. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION WHICH WOULD BE AUTHORIZED IN A TRIAL, INCLUDING, WITHOUT LIMITATION, MOTIONS FOR DEFAULT JUDGMENT OR SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS OR HER DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

9.10.6 THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY.

DATED as of the day and year first above written.

LENDER:

JPMORGAN CHASE BANK, N.A.

By: 

Name: Jennifer Smith

Title: Authorized Officer

BORROWER:

1608 Sherwin LLC

By: _____

Name: Sal Becovic,

Its Manager

UNOFFICIAL COPY

9.10.4 ALL PROCEEDINGS AND HEARINGS CONDUCTED BEFORE THE REFEREE, EXCEPT FOR TRIAL, SHALL BE CONDUCTED WITHOUT A COURT REPORTER, EXCEPT WHEN ANY PARTY SO REQUESTS, A COURT REPORTER WILL BE USED AND THE REFEREE WILL BE PROVIDED A COURTESY COPY OF THE TRANSCRIPT. THE PARTY MAKING SUCH REQUEST SHALL HAVE THE OBLIGATION TO ARRANGE FOR AND PAY COSTS OF THE COURT REPORTER, PROVIDED THAT SUCH COSTS, ALONG WITH THE REFEREE'S FEES, SHALL ULTIMATELY BE BORNE BY THE PARTY WHO DOES NOT PREVAIL, AS DETERMINED BY THE REFEREE.

9.10.5 THE REFEREE MAY REQUIRE ONE OR MORE PREHEARING CONFERENCES. THE PARTIES HERETO SHALL BE ENTITLED TO DISCOVERY, AND THE REFEREE SHALL OVERSEE DISCOVERY IN ACCORDANCE WITH THE RULES OF DISCOVERY, AND MAY ENFORCE ALL DISCOVERY ORDERS IN THE SAME MANNER AS ANY TRIAL COURT JUDGE IN PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA. THE REFEREE SHALL APPLY THE RULES OF EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH APPLICABLE STATE AND FEDERAL LAW. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION WHICH WOULD BE AUTHORIZED IN A TRIAL, INCLUDING, WITHOUT LIMITATION, MOTIONS FOR DEFAULT JUDGMENT OR SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS OR HER DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

9.10.6 THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY.

DATED as of the day and year first above written.

LENDER:

JPMORGAN CHASE BANK, N.A.

By: _____

Name: Jennifer Smith

Title: Authorized Officer

BORROWER:

1608 Sherwin LLC

By: _____

Name: Sal Becovic

Its Manager

UNOFFICIAL COPY

DATED as of the day and year first above written.

LENDER:

JPMORGAN CHASE BANK, N.A.

By: _____
Name: _____
Title: _____

BORROWER:

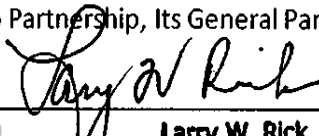
1608 SHERWIN LLC

By: _____
Name: Sal Becovic
Its Manager

TENANT:

Chicago SMSA Limited Partnership

By: Cellco Partnership, Its General Partner

By:  7/24/17
Name: Larry W. Rick
Its Director Network Field Engineering

[ADD APPROPRIATE ACKNOWLEDGMENTS FOR EACH OF THE ABOVE SIGNATORIES.]

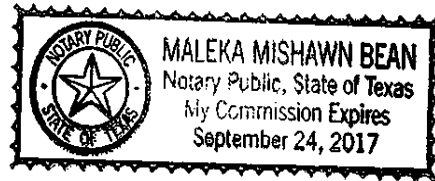
UNOFFICIAL COPY

STATE of Texas
COUNTY of Tarrant

Before me, Maleka Mishawn Bean a Notary Public in and for Fort Worth in the State of Texas, personally appeared Jennifer Smith, Authorized Officer, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 14th day of July, 2017.

Maleka Mishawn Bean
Name: Maleka Mishawn Bean
Notary Expires: September 24, 2017



Office of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF IL)
COUNTY OF COOK) ss.

On 7/19/17 before me, Glennie Hernandez (here insert name and title of the officer), personally appeared Al Pecovic, manager Club Sherwin LLC who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Glennie Hernandez



Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

TENANT ACKNOWLEDGEMENT

On July 24, 2017 before me, Sharon A. Petrielli
personally appeared LARRY W. RICK, personally known to me (or
proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed
to the within instrument and acknowledged to me that they executed the same in their authorized
capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of
which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature: Sharon A. Petrielli



Property of Cook County Clerk's Office

UNOFFICIAL COPY

[GUARANTOR'S CONSENT AND AGREEMENT

Each of the undersigned, a guarantor of Tenant's obligations under the Lease (a "Guarantor") consents and agrees to the terms of the above Agreement, ratifies Guarantor's guaranty of the Lease (the "Guaranty") and confirms that: (i) all provisions of the Guaranty remain in full force and effect and (ii) Guarantor presently has no offset, defense, claim or counterclaim with respect to Guarantor's obligations under the Guaranty.

GUARANTOR:

N/A

N/A

[ADD APPROPRIATE ACKNOWLEDGMENTS FOR EACH OF THE ABOVE SIGNATORIES.]

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT "A"

LEGAL DESCRIPTION OF REAL PROPERTY

Real property in the City of Chicago, County of Cook, State of Illinois, described as follows:

PARCEL 1:

LOT 19 AND THE WEST 16 1/2 FEET OF LOT 20 IN BLOCK 3 IN F. H. DOLAND'S SUBDIVISION OF THE EAST 414.5 FEET OF SECTION 30, TOWNSHIP 41 NORTH, RANGE 14, AND THE WEST 175 FEET OF SECTION 29, TOWNSHIP 41 NORTH, RANGE 14, SOUTH OF THE COMMONWEALTH EDISON COMPANY AND L.S. RAILROAD AND THE INDIAN BOUNDARY LINE IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOT 5 IN BLOCK 8 IN F.H. DOLAND'S SUBDIVISION IN ROGERS PARK, BEING THE 590 FEET LYING EAST OF AND ADJOINING THE WEST 175 FEET OF THAT PART OF THE SOUTHWEST 1/4 OF SECTION 29, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, SOUTH OF THE CHICAGO AND WAUKEE AND ST. PAUL RAILROAD EVANSTON DIVISION PLAT RECORDED AS DOCUMENT 1194920, IN COOK COUNTY, ILLINOIS.

Tax/Account Parcel #11-30-416-021 (Parcel 1) and 11-29-316-006-0000 (Parcel 2)

Common Street Address: 1608 W. Sherwin Avenue (Parcel 1) and 1521 W. Sherwin Avenue (Parcel 2), Chicago, IL

EXHIBIT "A"