

# UNOFFICIAL COPY

Prepared by and after recording please  
Return to:



Aronberg Goldgehn  
330 N. Wabash Ave.  
Suite 1700  
Chicago, Illinois 60611  
Attn: Robert Sodikoff  
(Re: 10540 S. Western)

Doc# 1727922044 Fee \$50.00

CHSP FEE: \$9.00 RPRF FEE: \$1.00

CAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 10/06/2017 01:27 PM PG: 1 OF 7

Parcel ID No.: 24-13-224-044-0000

(Space above this line for recorder's use)

## SUBORDINATION, NON-DISTURBANCE, AND ATTORNMEN T AGREEMENT

**This SUBORDINATION, NON-DISTURBANCE, AND ATTORNMEN T AGREEMENT** (“Agreement”) is made as of the 28<sup>th</sup> day of September, 2017, by and among **Evergreen Bank Group** with an address located at 1 Grant Square – Suite 100, Hinsdale, IL 60521 (“Lender”), **Beverly Professional Building, LLC**, with its principal offices located at 10540 S. Western, Suite 403, Chicago, Illinois 60643 (“Landlord”), and **Chicago SMSA Limited Partnership d/b/a Verizon Wireless**, with offices at One Verizon Way, Mailstop 4AW100, Basking Ridge, New Jersey 07920 (“Tenant”).

### RECITALS

A. Tenant is the lessee pursuant to a Building and Rooftop Lease Agreement (“Lease”) dated September 28, 2017 between Landlord and Tenant, of premises located at 10540 S. Western Avenue, Chicago, Cook County, Illinois (the “Property”), and more particularly described on Exhibit “A” attached hereto and incorporated herein by this reference.

B. Lender has agreed to make a loan to Landlord in the principal amount of \$1,256,250.00 (the “Loan”) to be evidenced by Landlord’s Note to Lender (“Note”) in the principal amount of the Loan, which Note is to be secured by a Mortgage and by an Assignment of Rents (collectively, the “Security Instruments”) covering the Property, provided that the Lease is subordinated to the lien of the Security Instruments.

C. For the purpose of completing the Loan, the parties hereto desire expressly to subordinate the Lease to the lien of the Security Instruments, it being a condition precedent to Lender’s obligation to consummate the Loan that the lien of the Security Instruments be unconditionally and at all times prior and superior to the leasehold interests and estates created by the Lease.

NOW, THEREFORE, in consideration of the mutual covenants and agreements in this Agreement, and other good and valuable consideration, the parties, intending to be legally bound, hereby agree as follows:

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1. Incorporation by reference. The Recitals are made part of this Agreement by this reference thereto.

2. Subordination. Notwithstanding anything to the contrary set forth in the Lease, the Lease and the leasehold estate created thereby, and all of Tenant's rights thereunder, shall be and shall at all times remain subject, subordinate, and inferior to the Security Instruments, and the lien thereof, and all rights of Lender thereunder and to any renewals, modifications consolidations, replacements and extensions thereof. Without affecting the foregoing subordination, Lender may, from time to time: (a) extend, in whole or in part, by renewal or otherwise, the terms of payment or performance of any obligation secured by the Security Instruments; (b) release, surrender, exchange or modify any obligation secured by the Security Instruments, or any security for such obligation; or (c) settle or compromise any claim with respect to any obligation secured by the Security Instruments or against any person who has given security for any such obligation.

3. Non-Disturbance and Attornment.

If any time, Lender or any person or entity or any of their successors or assigns who shall acquire the interest of Landlord under the Lease through a foreclosure of the Mortgage, a deed-in-lieu of foreclosure, an assignment-in-lieu of foreclosure or otherwise (each, a "New Owner") shall succeed to the interests of Landlord under the Lease, so long as the Lease is then in full force and effect, Tenant complies with this Agreement and no default on the part of Tenant exists under the Lease beyond any applicable cure period, the Lease shall continue in full force and effect as a direct lease between the New Owner and Tenant, upon and subject to all of the terms, covenants and conditions of the Lease, for the balance of the term thereof. Tenant hereby agrees to attorn to and accept any such New Owner as landlord under the Lease and to be bound by and perform all of the obligations imposed by the Lease, and Lender, or any such New Owner of the Property, agrees that it will not disturb the possession of Tenant and will be bound by all of the obligations imposed on the Landlord by the Lease, provided, however, that any New Owner shall not be:

(a) liable for any act or omission of a prior landlord (including Landlord) arising prior to the date upon which the New Owner shall succeed to the interests of Landlord under the Lease, except to the extent it continues after such transfer; or

(b) subject to any claims, offsets or defenses which Tenant might have against any prior landlord (including Landlord) arising prior to the date upon which the New Owner shall succeed to the interests of Landlord under the Lease, except as to continuing defaults; or

(c) bound by any rent or additional rent which Tenant might have paid in advance to any prior landlord (including Landlord) for a period in excess of one (1) month in advance of the due date under the Lease or by any security deposit, or other prepaid charge which Tenant might have paid in advance to any prior landlord (including Landlord), except to the extent that such New Owner actually comes into exclusive possession of the same; or

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(d) bound by any assignment (except as permitted by the Lease), surrender, release, waiver, cancellation, material amendment or modification of the Lease made without the written consent of Lender, unless such rights to assign, surrender, release, waive, cancel, amend or modify are expressly stated in the Lease or are expressly stated in a subsequent amendment to the Lease which amendment is approved of in writing by Lender; or

(e) responsible for the making of any improvement to the Property or repairs in or to the Property in the case of damage or destruction of the Property or any part thereof due to fire or other casualty or by reason of condemnation unless such New Owner shall be obligated under the Lease to make such improvements or repairs and in the case of damage or destruction, shall have received insurance proceeds or condemnation awards sufficient to finance the completion of such repairs; or

(f) obligated to make any payment to Tenant except for the timely return of any security deposit actually received by such New Owner or unless otherwise expressly set forth in the Lease.

Nothing contained herein shall prevent Lender from naming or joining Tenant in any foreclosure or other action or proceeding initiated by Lender pursuant to the Mortgage to the extent necessary under applicable law in order for Lender to avail itself of and complete the foreclosure or other remedy, but such naming or joinder shall not be in derogation of the rights of Tenant as set forth in this Agreement.

4. Limitation of Liability. Lender shall not, either by virtue of the Security Instruments or this Agreement, be or become a mortgagee-in-possession or be or become subject to any liability or obligation under the Lease or otherwise until Lender shall have acquired the interest of Landlord in the Property, by foreclosure or otherwise, and then such liability or obligation of Lender under the Lease shall extend only to those liabilities or obligations accruing subsequent to the date that Lender has acquired the interest of Landlord in the Property as modified by the terms of this Agreement. In addition, upon such acquisition, Lender shall have no obligation, nor incur any liability, beyond Lender's then equity interest, if any, in the Property and the proceeds or other disposition thereof. Furthermore, in the event of the assignment or transfer of the interest of Lender under this Agreement, all obligations and liabilities (other than those arising prior to such transfer) of Lender under this Agreement accruing after such assignment or transfer shall terminate and thereupon, all such obligations and liabilities shall be the sole responsibility of the party to whom Lender's interest is assigned or transferred.

5. Modifications. This Agreement may be modified, altered, amended, waived, discharged or terminated only by an agreement in writing signed by the party against whom such modification, alteration, amendment, waiver, discharge or termination is sought. Nothing in this Agreement shall be construed as to require the consent of Lender to any amendments, modifications, renewals, or extensions of the Lease.

6. Binding Effect. This Agreement 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.

7. Notice. Any notice, demand, statement, request, consent or other communication made hereunder shall be in writing and delivered (i) personally, (ii) mailed by

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certified or registered mail, postage prepaid, return receipt requested, or (iii) sent by reputable overnight courier service, prepaid, for next business day delivery, to the parties at their addresses first set forth above and shall be deemed given when delivered personally, or 3 business days after being placed in the United States mail, if sent by certified mail, or one (1) business day after deposit with such private courier service. The parties hereto may have the right from time to time to change their respective addresses to any other address within the United States of America by giving thirty (30) days' prior written notice in accordance with this Section. Tenant agrees to send a copy of any notice or statement under the Lease to Lender at the same time such notice or statement is sent to Landlord.

## 8. Miscellaneous.

(a) In the event of any conflict or inconsistency between the provisions of this Agreement and the Lease, the provisions of this Agreement shall govern. However, the foregoing shall in no way diminish Landlord's obligations or liability to Tenant under the Lease. Lender's enforcement of any provisions of this Agreement or the Security Instruments shall not entitle Tenant to claim any interference with the contractual relations between Landlord or Tenant or give rise to any claim or defense against Lender with respect to the enforcement of such provisions.

(b) Tenant agrees that this Agreement satisfies any condition or requirement in the Lease relating to the granting of a non-disturbance agreement.

(c) Tenant agrees that it will not subordinate the Lease to the lien of any mortgage or deed of trust other than the Security Instruments for so long as the Security Instruments shall remain a lien on the Property, without Lender's written consent.

(d) The captions appearing after the paragraph number designations of this Agreement are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions of this Agreement.

(e) If any portion or portions of this Agreement shall be held invalid or inoperative, then all of the remaining portions shall remain in full force and effect, and, so far as is reasonable and possible, effect shall be given to the intent manifested by the portion or portions held to be invalid or inoperative.

(f) This Agreement shall be governed by and construed in accordance with the laws of the State in which the Property is located.

(g) Intentionally Omitted

(h) As between Landlord and Lender, nothing herein nor anything done pursuant to the provisions hereof shall be deemed or construed to modify the Security Instruments.

(i) The parties hereto knowingly, irrevocably and unconditionally waive a right to trial by jury with regard to any dispute relating to or arising out of the Agreement, whether based on contract tort or otherwise.

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IN WITNESS WHEREOF the parties have executed and delivered this Agreement as of the day and year first above written.

**LENDER:**

EVERGREEN BANK GROUP

By: [Signature]

Name: Michael R. Beary

Title: Vice President

Date 8/30/17

**LANDLORD:**

BEVERLY PROFESSIONAL BUILDING, LLC

By: [Signature]

Name: Joe Esselman

Title: President

Date 8/30/17

**TENANT:**

CHICAGO SMSA LIMITED PARTNERSHIP  
D/B/A VERIZON WIRELESS

By: CELCO PARTNERSHIP, ITS GENERAL

By: [Signature]

Name: Jacque Vaillier

Title: Executive Director Network Field Engineering

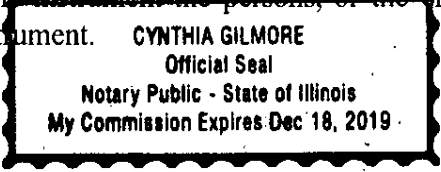
Date 9-28-17

**PARTNER**

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STATE OF IL ) LENDER ACKNOWLEDGMENT  
COUNTY OF Cook ) ss.

On August 30, 2017 before me, Michael P. Geary, personally appeared \_\_\_\_\_, personally known to me (or 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 persons, or the entity upon behalf of which the persons acted, executed the instrument.

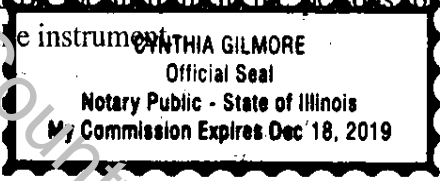


WITNESS my hand and official seal.

Signature: Cynthia Gilmore [Seal]

STATE OF IL ) LANDLORD ACKNOWLEDGMENT  
COUNTY OF Cook ) ss.

On August 30<sup>th</sup>, 2017 before me, Joe Esselman, personally appeared \_\_\_\_\_, personally known to me (or 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 persons, or the entity upon behalf of which the persons acted, executed the instrument.

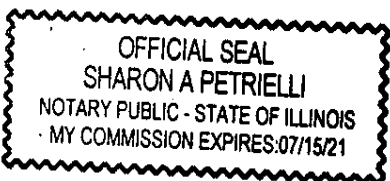


WITNESS my hand and official seal.

Signature: Cynthia Gilmore [Seal]

STATE OF ILLINOIS ) TENANT ACKNOWLEDGMENT  
COUNTY OF COOK ) ss.

On September 28, 2017 before me, Sharon A. Petruelli, personally appeared JACQUE VALLIER, personally known to me (or 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 persons, or the entity upon behalf of which the persons acted, executed the instrument.



WITNESS my hand and official seal.

Signature: Sharon A. Petruelli [Seal]

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## Exhibit "A"

### Legal Description of Landlord's Property

ALL THAT PARCEL OF LAND IN COOK COUNTY, STATE OF ILLINOIS, AS MORE FULLY DESCRIBED IN DEED DOC # 0735257053, ID# 24-13-224-044-0000, BEING KNOWN AND DESIGNATED AS FOLLOWS:

LOTS 12, 13, 14 AND 15 IN BLOCK 2 IN O. REUTER AND COMPANY'S MORGAN PARK MANOR, BEING A SUBDIVISION OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4, THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 AND THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 13, TOWNSHIP 37 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THE RAILROAD RIGHT-OF-WAY AND THE STREET HERETOFORE DEDICATED), IN COOK COUNTY, ILLINOIS. BY FEE SIMPLE DEED FROM CHICAGO TITLE LAND TRUST COMPANY, AS TRUSTEE UNDER THE PROVISIONS OF A TRUST AGREEMENT DATED THE 24TH DAY OF FEBRUARY, 1978, TRUST NUMBER 1071509 AS SET FORTH IN DOC # 0735257053 DATED 11/07/2007 AND RECORDED 12/18/2007, COOK COUNTY RECORDS, STATE OF ILLINOIS.

Commonly Known As: 10540 S. Western Avenue, Chicago, Cook County, Illinois