

BK: 2018 PG: 936
Recorded: 3/27/2018 at 2:51:57.0 PM
Fee Amount: \$57.00
Revenue Tax:
LISA SMITH RECORDER
Madison County, Iowa

DRAFTED BY
AND RETURN TO:
Moss & Barnett (AAD)
150 South Fifth Street
Minneapolis, MN 55402
(Site Name: IA07 Patterson)
(Prepared by Meredith O'Neill, Telephone No. (612) 877-5449)
Parcel Id. No. 45008196003000 & 40007248802000
Legal Description on Page 7

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

This SUBORDINATION, CONSENT, NON-DISTURBANCE, AND ATTORNMEN T AGREEMENT ("Agreement") is made as of the 19th day of March, 2018 among Metropolitan Life Insurance Company, a New York corporation, with offices at 10801 Mastin Boulevard, Suite 930, Overland Park, Kansas 66210 ("LENDER"), Benshoof Farms Partnership, an Iowa general partnership, with its principal offices located at 1931 Quail Ridge Avenue, Winterset, Iowa 50273 ("GRANTOR"), and RSA 7 Limited Partnership d/b/a Verizon Wireless, with its address for notice located at 180 Washington Valley Road, Bedminster, New Jersey 07921 ("GRANTEE").

RECITALS

A. GRANTEE is the grantee pursuant to an Access and Utility Easement ("Easement") dated 3/19, 2018 between GRANTOR and GRANTEE, of premises located near the intersection of 201st Trail and State Highway 92, near the City of Winterset, County of Madison, State of Iowa ("GRANTOR's Property"), and more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference.

B. LENDER has made a loan that is secured by a Mortgage, Assignment of Rents, Security Agreement, and Fixture Filing on the GRANTOR's Property in the amount of \$4,884,000.00, dated

November 13, 2015, and recorded November 13, 2015, as Document No. 20153362 in the official records of the County Recorder of Madison County, Iowa ("Mortgage").

NOW, THEREFORE, in consideration of the mutual covenants in this Agreement, the parties hereby agree as follows:

1. SUBORDINATION. Notwithstanding anything to the contrary set forth in the Easement, the Easement and all of GRANTEE's rights thereunder, shall be and shall at all times remain subject, subordinate, and inferior to the Mortgage, and the lien thereof, and all rights of LENDER thereunder.

2. CONSENT. LENDER consents to the Easement and to the GRANTEE's use and occupancy of GRANTOR's Property under the Easement. GRANTEE agrees to give LENDER copies of whatever notices of default GRANTEE must give GRANTOR, and GRANTEE agrees to accept a cure by LENDER of any of GRANTOR's defaults, provided such cure is completed within the deadline applicable to GRANTOR. GRANTEE agrees that no material modification or material amendment of the Easement will be binding on LENDER unless it has been consented to in writing by LENDER. LENDER and GRANTEE agree that, for the purposes of this Agreement, nonmaterial amendments or modifications shall include, but shall not be limited to, the following: (i) any extension of the term of the Easement and (ii) any addition to, alteration, modification, or replacement of GRANTEE's easement.

3. NON DISTURBANCE. So long as the GRANTEE is not in default of any of the covenants of the Easement that GRANTEE is to perform, the GRANTEE's use of the Easement Premises and the GRANTEE's other rights under the Easement, or any extensions or renewals thereof, shall not be diminished or interfered with by LENDER. In addition, LENDER shall not join GRANTEE as a party defendant in any action or proceeding for the purpose of terminating the GRANTEE's interest under the Easement or otherwise.

4. NONDISTURBANCE, FORECLOSURE AND ATTORNMENT.

a. If LENDER, or any other purchaser at a foreclosure sale or sale under private power contained in the Mortgage ("Transferee"), becomes the owner of GRANTOR's Property, by reason of any foreclosure of the Mortgage, the acceptance by LENDER of a deed in lieu of foreclosure, or by any other manner, Transferee shall not terminate the Easement, and the Easement shall continue in full force and effect as a direct easement between GRANTEE and Transferee, or such other purchaser, under all of the terms, covenants and conditions of the Easement for the remainder of the term thereof and any extensions or renewals thereof, with the same force and effect as if Transferee were the GRANTOR under the Easement.

b. Immediately upon the succession of Transferee to the interest of the GRANTOR under the Easement, GRANTEE does hereby agree to attorn to Transferee as GRANTEE's GRANTOR. The parties agree that such attornment shall be effective and self-operative without the execution of any further documents. Such attornment shall be subject to all terms, provisions and conditions of the Easement and all amendments and modifications thereof. So long as GRANTEE has not been determined by a court of competent jurisdiction to be in default under any of the material terms and conditions of the Easement, Transferee shall not disturb GRANTEE in GRANTEE's use of the Easement

Premises during the term of the Easement and any extensions or renewals thereof, or in the enjoyment of GRANTEE's rights under the Easement. Nothing in this Agreement shall be construed to limit GRANTEE's rights against GRANTOR for any breach of an Easement obligation that occurred prior to the date of takeover, or any claims arising out of such takeover. GRANTEE shall, from and after Transferee's succession to the interest of GRANTOR under the Easement, have the same remedies against such party that GRANTEE might have had under the Easement against GRANTOR.

5. TRANSFEEE'S LIABILITY. Any Transferee will not be: (a) liable for the defaults, breaches, acts or omissions of any prior GRANTOR, including GRANTOR, provided that such prior GRANTOR shall not be released from liability for such defaults, breaches, acts or omissions, and nothing herein shall be construed as a waiver of any contractual claim that GRANTEE may have against such GRANTOR, or as a release of GRANTOR from liability to GRANTEE, on account of the non-performance of any obligation of GRANTOR under the Easement; (b) bound by any material amendment of the Easement made without notice to Transferee made after the date hereof; (c) subject to any rights of offsets which GRANTEE may have against any prior GRANTOR; or (d) obligated with respect to any representations or warranties of the prior GRANTOR contained in the Easement. Without limitation of the foregoing (x) Transferee will be liable under the Easement only for so long as the Transferee is the owner of the GRANTOR's Property; (y) Transferee will not be liable for consequential, punitive, special, incidental or indirect damages; and (z) any liability of Transferee will be limited to the value of Transferee's interest in the Easement Premises.

6. OFAC PROVISIONS. GRANTEE and LENDER hereby represent, warrant and covenant to each other, either that (i) it is regulated by the SEC, FINRA or the Federal Reserve (a "**Regulated Entity**"), or (ii) is managed or controlled by a wholly-owned subsidiary or wholly-owned affiliate of a Regulated Entity.

7. HAZARDOUS SUBSTANCES. Lender acknowledges and agrees that GRANTEE shall have the right to use commercially reasonable amounts of hazardous materials that are commonly used in the telecommunications industry in similar facilities, provided that such use shall be in full compliance with industry standards and all applicable laws pertaining to the use, storage, and disposal of such materials. Such use of hazardous materials shall not be deemed a default by GRANTOR under the Mortgage.

8. MODIFICATIONS. This Agreement may be modified only by an agreement in writing signed by the parties hereto or their respective successors in interest. Nothing in this Agreement shall be construed as to require the consent of LENDER to any amendments, modifications, renewals, or extensions of the Easement.

9. 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.

10. ATTORNEYS FEES. If any of the parties hereto institutes any action or proceeding in court to enforce any of the provisions hereof, or any action for damages by reason of any alleged breach of any of the provisions hereof, then the prevailing parties in any such action or proceeding shall be

entitled to receive from the losing parties such amount as the court may adjudge to be reasonable attorneys' fees for the services rendered to the prevailing parties, together with the prevailing parties' other reasonable litigation costs and expenses.

11. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the state in which GRANTOR's Property is located without giving effect to the choice of law rules thereof.

Signatures on following page

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IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year written below.

GRANTOR:

Benshoof Farms Partnership,
an Iowa general partnership

By: Robert Howard Benshoof
Name: Robert Howard Benshoof
Its: Partner

Date: 1-29-18

By: Ted Alan Benshoof
Name: Ted Alan Benshoof
Its: Partner

Date: 1-29-18

By: Steven Arthur Benshoof
Name: Steven Arthur Benshoof
Its: Partner

Date: 1-29-18

By: Ted Arthur Benshoof
Name: Ted Arthur Benshoof
Its: Partner Date 1-29-18

By: Cheryl Jean Howell
Name: Cheryl Jean Howell
Its: Partner

Date: 1-29-18

GRANTEE:

RSA 7 Limited Partnership
d/b/a Verizon Wireless

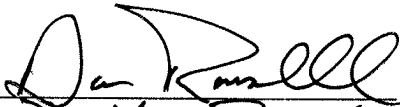
By: Verizon Wireless (VAW) LLC
Its: General Partner

By: James R. Martin
Name: James R. Martin
Its: Director - Network Field Engineering

Date: 3/19/18

LENDER:

Metropolitan Life Insurance Company, a New York corporation

By: 
Name: David C. Russell
Its: Director
Date: 1-18-18

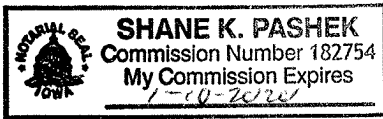
Acknowledgments on following page

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GRANTOR ACKNOWLEDGMENT

STATE OF IOWA)
) ss.
COUNTY OF Marion)

On this 29 day of Jan, 2018 before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Robert Howard Benshoof, to me personally known, who being by me duly sworn, did say that the person is one of the partners of Benshoof Farms Partnership, an Iowa general partnership, and that the instrument was signed on behalf of the partnership by authority of the partners and the partner acknowledged the execution of the instrument to be the voluntary act and deed of the partnership by it and by the partner voluntarily executed.



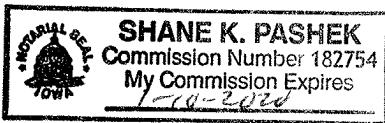
[Handwritten Signature]

Signature

Title: _____

STATE OF IOWA)
) ss.
COUNTY OF Marion)

On this 29 day of Jan, 2018 before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Ted Alan Benshoof, to me personally known, who being by me duly sworn, did say that the person is one of the partners of Benshoof Farms Partnership, an Iowa general partnership, and that the instrument was signed on behalf of the partnership by authority of the partners and the partner acknowledged the execution of the instrument to be the voluntary act and deed of the partnership by it and by the partner voluntarily executed.



[Handwritten Signature]

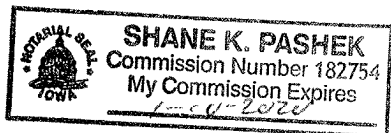
Signature

Title: _____

GRANTOR ACKNOWLEDGMENT

STATE OF IOWA)
) ss.
COUNTY OF Madison)

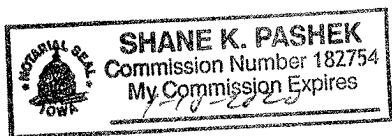
On this 29 day of Jan, 2018, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Steven Arthur Benshoof, to me personally known, who being by me duly sworn, did say that the person is one of the partners of Benshoof Farms Partnership, an Iowa general partnership, and that the instrument was signed on behalf of the partnership by authority of the partners and the partner acknowledged the execution of the instrument to be the voluntary act and deed of the partnership by it and by the partner voluntarily executed.



[Signature]
Signature
Title: _____

STATE OF IOWA)
) ss.
COUNTY OF Madison)

On this 29 day of Jan, 2018, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Ted Arthur Benshoof, to me personally known, who being by me duly sworn, did say that the person is one of the partners of Benshoof Farms Partnership, an Iowa general partnership, and that the instrument was signed on behalf of the partnership by authority of the partners and the partner acknowledged the execution of the instrument to be the voluntary act and deed of the partnership by it and by the partner voluntarily executed.



[Signature]
Signature
Title: _____

GRANTOR ACKNOWLEDGMENT

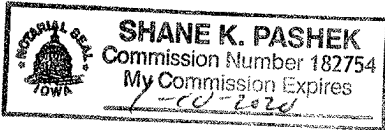
STATE OF IOWA)

) ss.

COUNTY OF Melrose) On this 29 day of July, 2018, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Cheryl Jean Howell, to me personally known, who being by me duly sworn, did say that the person is one of the partners of Benshoof Farms Partnership, an Iowa general partnership, and that the instrument was signed on behalf of the partnership by authority of the partners and the partner acknowledged the execution of the instrument to be the voluntary act and deed of the partnership by it and by the partner voluntarily executed.

[Signature]
Signature

Title: _____



GRANTEE ACKNOWLEDGMENT

STATE OF Minnesota)

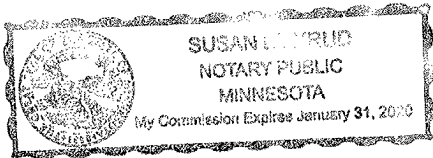
) ss.

COUNTY OF Hennepin)

On this 19th day of March, 2018, before me, the undersigned, a Notary Public in and for the State of MN, duly commissioned and sworn, personally appeared James R. Martin, to me known to be the Director - Network Field Engineering of Verizon Wireless (VAW) LLC, General Partner of RSA 7 Limited Partnership d/b/a Verizon Wireless, that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of RSA 7 Limited Partnership d/b/a Verizon Wireless, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written

[Signature]
Print or Type Name: Susan Blixrud
Notary Public in and for the State of MN
My appointment expires: 1/31/2020



LENDER ACKNOWLEDGMENT

STATE OF Kansas)
) ss.
COUNTY OF Johnson)

On this 10th day of January, 2018, before me, a notary public in and for said county, personally appeared David C Russell, to me personally known, who being by me duly (sworn or affirmed) did say that that person is the Director of said corporation, Metropolitan Life Insurance Company, a New York corporation, and that said instrument was signed on behalf of the said corporation by authority of its board of (directors or trustees) and the said Director acknowledged the execution of said instrument to be the voluntary act and deed of said corporation by it voluntarily executed.

Roberta L Black
Signature

Title: Notary Public

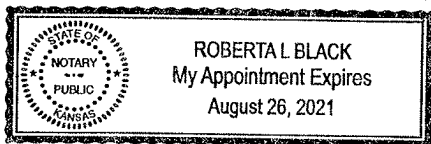


Exhibit "A"

Legal Description

45008196003000:

The West Thirty-three (W33) feet off the West End of the South Fractional One-half (S 1/2) of the South Fractional One-half (S 1/2) of Section Nineteen (19), Township Seventy-six (76) North, Range Twenty-six (26) West of the 5th P.M., Madison County, Iowa.

40007248802000:

One-half (1/2) acre off the east side of the Southeast Quarter (SE 1/4) of the Southeast Quarter (SE 1/4), Section Twenty-Four (24) in Township Seventy-six (76) North, Range Twenty-seven (27) West of the 5th P.M.