

## SITE LICENSE AGREEMENT

This SITE LICENSE AGREEMENT ("**Agreement**") is made and entered into upon the full execution of this Agreement ("**Effective Date**") by and between TriStar Investors LLC, a Delaware limited liability company ("**Licensor**") and the City and County of San Francisco, a municipal corporation ("**Licensee**"), acting through its Public Utilities Commission ("**SFPUC**"). The Licensor and Licensee are at times referred to hereinafter collectively as the "**Parties**" or individually as a "**Party**".

### WITNESSETH

WHEREAS, Licensor, either directly or through its subsidiary, owns or has leased, licensed, acquired an easement, or otherwise obtained the right to use certain real property located at 2201 Blue Gum Avenue, Modesto, California 95351 ("**Property**"), which Property is more particularly described on **Exhibit "A"** attached hereto and made a part hereof; and

WHEREAS, Licensor operates on the Property a communications tower (the "**Tower**") and associated ground facilities; and

WHEREAS, Licensee desires to license from Licensor, and Licensor desires to license to Licensee, the non-exclusive rights to operate on the Property a communication facility for Licensee's own use without sublease rights, together with non-exclusive access and utility easements thereto.

### AGREEMENT

NOW THEREFORE, in consideration of the mutual agreements herein contained, and intending to be legally bound hereby, Licensor and Licensee hereby agree and covenant to and with each other as follows:

1. RECITALS. The recitals set forth above are incorporated herein by reference and made a part of this Agreement.

2. PREMISES. Licensor licenses to Licensee certain ground space on the Property and certain space on the Tower (collectively "**Premises**"), which Premises is more particularly described on **Exhibit "B"** attached hereto and made a part hereof, together with non-exclusive access and utility easements thereto. Licensee shall also have a nonexclusive license for the installation on the Property of wires, cables, conduit, an ice bridge, fasteners and other appurtenances necessary for the installation, maintenance and operation of Licensee's antennas and equipment. Licensor shall maintain the Property, including access to the Premises, in good, safe condition and repair. Without limiting the foregoing, Licensor shall maintain the Tower in good, structurally sound condition. Licensee acknowledges that Licensee's use of the Property and Premises is subject and subordinate to the lease, license, easement or other legal instrument(s) from which Licensor's rights in the Property are derived (the "**Prime Lease**"), and Licensee agrees to be bound by and to perform all of the duties and responsibilities required of the lessee, grantee or licensee as set forth in the Prime Lease to the extent they are applicable to Licensee's access to and use of the Site. A copy of the Prime Lease is attached as **Exhibit E**.

3. TERM. The term of this Agreement shall be for five (5) years ("**Initial Term**") and shall commence upon the earlier of one hundred eighty (180) days following the full execution of this Agreement or the commencement of Licensee's installation of Licensee's Facilities (as defined in **Section 5**) on the Premises ("**Commencement Date**"). Licensee shall have the right to extend the term for four

(4) successive five (5) year periods ("**Renewal Terms**") upon the same covenants, terms and conditions set forth herein, except for rent increases in accordance with the terms herein. This Agreement shall be automatically extended for each successive Renewal Term unless Licensee provides written notice to Licensor of Licensee's intention not to renew this Agreement at least ninety (90) days prior to the expiration of the then current Initial Term or Renewal Term. The Initial Term and all Renewal Terms are collectively referred to hereinafter collectively as the "**Term**".

4. **RENT.** Licensee shall pay to Licensor, or to such other party as Licensor may direct, rent in the amount of Eighteen Thousand Six Hundred Dollars (\$18,600.00) per year ("**Rent**"), which Rent shall be paid in annual installments, in advance, commencing on the Commencement Date and thereafter on or before the first day of each calendar month during the Term, which Rent shall increase annually by three percent (3%). Notwithstanding the foregoing, if and to the extent that Licensee is delayed in commencing or completing installation of Licensee's Facilities or in obtaining any required FCC license or approval due to (i) Licensor's failure to timely respond to Licensee's request for information required for the completion of Licensee's plans and specifications, as required in **Section 5**, (ii) Licensor's failure to respond within three (3) business days to reasonable inquiries from Licensee or Licensee's contractor regarding construction of Licensee's Facilities, or (iii) any changes requested by Licensor to the Licensee's Facilities described in **Exhibit C** (each, a "**Licensor Delay**"), then, commencing on the Commencement Date, Rent shall be abated one day for each day of Licensor Delay. Rent for any partial calendar month at the beginning or end of the Term shall be prorated. Payments shall be made by check payable to TriStar Investors LLC, PO Box 301439, Dallas, Texas, 75303-1439.

5. **PERMITTED USE.** Licensee may utilize the Premises for the sole purpose of constructing, maintaining and operating a communication facility. Licensee may maintain or install at the Premises that personal property described on **Exhibit "C"** attached hereto and made a part hereof ("**Licensee's Facilities**"). Licensor and Licensee shall reasonably coordinate and cooperate to facilitate Licensee's preparation of drawings and specifications for Licensee's Facilities and obtaining necessary FCC approval, at no cost to Licensor. Licensor shall promptly provide to Licensee, no later than ten (10) business days after Licensee's request, any information in Licensor's possession and reasonably required by Licensee to complete such plans and specifications or FCC license process. At Licensor's request, Licensee shall deliver the completed plans and specifications and a copy of the FCC license to Licensor for Licensor's file. Licensee shall not install any additional Licensee's Facilities beyond those described in **Exhibit C**, modify existing Licensee's Facilities, or perform any maintenance on Licensee's Facilities without the prior written consent of Licensor, except that consent shall not be required for Licensee to perform maintenance on any ground-based Licensee's Facilities. To the extent that Licensee desires to install additional Licensee's Facilities, modify existing Licensee's Facilities and/or perform any maintenance on Licensee's Facilities requiring Licensor's consent, Licensee shall provide a written request to Licensor detailing such proposed work and Licensor shall respond within ten (10) business days of the receipt of such request; provided, however, in no event shall Licensee install Licensee's Facilities described herein, install additional Licensee's Facilities, or modify existing Licensee's Facilities prior to Licensee's receipt from Licensor of a written notice to proceed with such installation or modification. All of Licensee's installation, modification, maintenance and removal of Licensee's Facilities shall be performed at Licensee's sole cost and in a good and workmanlike manner. Licensee, Licensee's employees and agents shall have the right to enter and access the Premises at any time, twenty-four (24) hours a day, seven (7) days a week. Licensee shall not allow any person to climb a tower for or on behalf of Licensee without ensuring that such person works for a vendor approved by Crown Castle for the subject Work. Licensee will maintain the Premises and Licensee's Facilities in a good condition, reasonable wear and tear excepted, in full compliance with all applicable federal, state and local laws and regulations. Licensor will maintain the Property, excluding the Premises and Licensee's Facilities, in good condition, reasonable wear and tear excepted, in full compliance with all applicable federal, state and local laws and regulations.



Licensee understands that the Licensor desires to attract additional tenants to the Property. Licensee also understands Licensor may have existing tenants sharing the facility and Licensee agrees to reasonably cooperate with these tenants to resolve any issues of interference in an equitable fashion and in accordance with applicable laws and regulations. Licensee acknowledges that all fees, payments and rents payable for the use or occupancy of the Property by any party belong to Licensor. Licensee shall not sublease, sublicense or otherwise grant the use of any part of the Premises to any other party in any manner, except as provided in **Section 14** and except that Licensee may retain qualified contractors to install, repair or maintain the Licensee's Facilities approved by Licensor.

6. UTILITIES. Licensee shall have the right to install utilities within the Property, at Licensee's sole cost and expense, to service the Premises. Licensor shall cooperate with Licensee in the acquisition of utilities at no cost to Licensor. Licensee shall install a 120/240 volt 60 amp meter frame for power used by Licensee on the Premises. In the event separate meters are not installed, Licensee shall pay the periodic charges for all utilities attributable to Licensee's use within thirty (30) days after receipt of invoice accompanied by reasonable back-up documentation.

7. TAXES ON LICENSEE'S FACILITIES. Licensee shall timely pay any taxes assessed on or attributable to Licensee's Facilities. To the extent that Licensee fails to pay such taxes before delinquency, Licensor shall, following delivery of notice to Licensee, have the right but not the obligation to pay such taxes on behalf of Licensee and Licensee shall reimburse Licensor for the full amount of such sums paid within ten (10) business days of Licensee's receipt of an invoice from Licensor.

8. TAXES ON PROPERTY. To the extent that Licensor incurs any real or personal property taxes on the Property and/or the Tower ("**Taxes**"), Licensor shall timely pay such Taxes and Licensee shall reimburse Licensor for Licensee's pro rata share of such taxes within twenty (20) business days of Licensee's receipt of an invoice from Licensor, which pro rata share shall be calculated based on a broadband installation at a single centerline being weighted three times the share of each microwave dish, satellite radio or similar installation, Licensee's share not to exceed one-third of Licensor's total incurred Taxes on the Property and/or the Tower. By way of example, if the Property is assessed such that \$1,000.00 in taxes is owed for a year and the tenants on the Tower are Licensee with a broadband installation at a single centerline, two additional broadband carriers (each with one installation at a single centerline) and one satellite radio company with a single satellite radio antenna, Licensee's pro rata share would be \$300.00. "**Taxes**" shall not include any (1) franchise, transfer, inheritance, gross receipts, or capital stock taxes or income taxes of Landlord, (2) any penalties, fines, interest or charges attributable to the late payment of any Taxes, (3) any personal property taxes attributable to the personal property of any tenant or occupant of the Property or to any antennas owned or operated by Licensor, or (4) any taxes due and payable to the tax collector more than two years prior to Licensee's receipt of the invoice from Licensor (even if attributable to a fiscal tax year within the Term). If the Commencement Date or expiration or termination date of this Agreement shall occur on a date other than the first or last day of a fiscal tax year, Licensee's pro rata share of Taxes for the fiscal tax year in which the Commencement Date or expiration or termination date occurs, shall be prorated based on a three hundred sixty-five (365) day year.

9. TERMINATION. Except as otherwise provided herein, this Agreement may be terminated without further liability as follows:

(a) immediately upon written notice by either Party upon a default of any covenant or term hereof by the other Party, which default is not cured within ten (10) business days of receipt of notice for any monetary default and thirty (30) days for any non-monetary default, or such longer period as may be

reasonably necessary to cure a non-monetary default provided a cure is commenced within thirty (30) days of receipt of notice of such default and diligently pursued thereafter;

(b) immediately upon written notice if Licensee, despite good faith efforts, is unable to obtain within twenty months after the Effective Date or maintain all necessary governmental approvals for the installation and operation of Licensee's Facilities and is unable to cure such failure within thirty days after receipt of notice from Licensors;

(c) as set forth in **Section 20** in the event of damage to or destruction of the Tower or impairment of access thereto; and

(d) as set forth in **Section 21** in the event that there is a taking under the power or threat of eminent domain.

In the event this Agreement is terminated for any reason other than Licensors' default and Licensee desires to attach equipment to a replacement site, Licensee shall consider in good faith any potential replacement site on a parcel of land owned or controlled by Licensors and if such a site meets Licensee's requirements, in Licensee's sole judgment, the Parties shall enter into an agreement for such replacement site under terms equivalent to those provided herein, with the rent thereunder to be equivalent to the rent that would have continued herein if this Agreement had not been terminated.

10. INSURANCE; WAIVER OF SUBROGATION. At all times during the Term, Licensors shall keep the Tower (excluding the land upon which it is located) insured against damage and destruction by fire, vandalism, malicious mischief, sprinkler damage and other perils customarily covered under a cause of loss special form property insurance policy in an amount equal to the lesser of (i) \$250,000.00 (which amount shall be increased from time to time to the extent that Licensors carries a greater amount of insurance on twenty percent (20%) of other sites in its portfolio) or (ii) one hundred percent (100%) of the full insurance replacement value (replacement cost new, including, debris removal and demolition) thereof. Licensors shall, upon request by Licensee, provide to Licensee a certificate of insurance issued by the insurance carrier, evidencing the insurance required above. Licensors shall provide Licensee with thirty (30) days prior written notice of cancellation, reduction of coverage or other modification of such insurance. Licensors hereby waives any rights against Licensee for loss or damage to the Premises or any other part of the Property, to the extent covered by Licensors' property insurance.

In addition, Licensors, at no cost to Licensee, shall procure and keep in effect at all times during the Term insurance as follows: (a) Commercial general liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, independent contractors, broad-form property damage, fire damage legal liability (of not less than Fifty Thousand Dollars (\$50,000)), personal injury, products and completed operations, and explosion, collapse and underground (XCU); and (b) Worker's Compensation Insurance with Employer's Liability Limits not less than One Million Dollars (\$1,000,000) each accident. Licensors shall provide Licensee with thirty (30) days' prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage.

Notwithstanding anything to the contrary contained herein, Licensors hereby waives any right of recovery against Licensee for any loss or damage sustained by Licensors with respect to the Tower or the Premises or Licensors' ground improvements, or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of Licensee, to the extent such loss or damage is covered by insurance which Licensors is required to purchase under this Agreement or is otherwise actually recovered from valid and collectible insurance covering Licensors. Licensors agrees to obtain a waiver of



subrogation endorsement from each insurance carrier issuing policies relative to the Tower or the Premises; provided, Licensor's failure to do so shall not affect the above waiver.

Licensor acknowledges that Licensee maintains a program of self-insurance and agrees that Licensee shall not be required to carry any insurance with respect to this Lease. Licensee assumes the risk of damage to any of Licensee's Facilities, except for damage caused by Licensor or its agents, employees or contractors.

11. MUTUAL INDEMNIFICATION. Licensor and Licensee shall each, as the "**Indemnifying Party**", indemnify, defend and hold the other (the "**Indemnified Party**") and its employees and agents harmless against any and all costs (including without limitation reasonable attorney fees), liabilities, damages, losses, penalties and claims of liability or loss (collectively "**Claims**") caused by or arising out of (i) the breach of any representation, warranty or covenant of such Indemnifying Party set forth herein, or (ii) the use and/or occupancy of the Property or the Premises by the Indemnifying Party or its employees, agents or contractors, except to the extent arising from the negligence or intentional misconduct of the Indemnified Party or its employees, agents or contractors. In any action or proceeding brought against the Indemnified Party by reason of any Claim indemnified by the Indemnifying Party hereunder, the Indemnifying Party may, at its sole option, elect to defend such Claim by attorneys selected by the Indemnifying Party. The Indemnifying Party shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that the Indemnified Party shall have the right, but not the obligation, to participate in the defense of any such Claim at its sole cost. The foregoing indemnity shall survive any termination or expiration of this Agreement.

12. INTERFERENCE. Licensee shall operate at the Premises in a manner that complies with all noninterference rules of the Federal Communications Commission and will not cause interference to any equipment existing on the Property as of the date of installation or modification of Licensee's Facilities provided such existing equipment is being operated in accordance with the applicable license and applicable laws and regulations. In the event that Licensee causes such interference, Licensee shall promptly take all steps necessary to eliminate such interference in accordance with applicable laws and regulations. Subject to preexisting rights and the provisions of this Section, Licensor will not permit the installation of any future equipment on the Property that results in unreasonable technical interference problems with Licensee's then existing Licensee's Facilities. If such interference with Licensee's operations occurs, Licensee shall notify Licensor in writing, and Licensor shall have a reasonable period to correct such interference.

13. ASSIGNMENT BY LICENSOR. Licensor may assign, sublease or otherwise transfer or pledge all or any part of the Property and/or this Agreement, provided that any such assignment shall be under and subject to this Agreement and Licensee's rights hereunder.

14. ASSIGNMENT BY LICENSEE. Licensee may not assign, sublease, sublicense or otherwise transfer or pledge all or any part of its interest in this Agreement or in the Premises without the prior written consent of Licensor, such consent to assignments or transfers in whole not to be unreasonably withheld, conditioned or delayed, except that Licensee may assign its interest upon written notice to Licensor to Licensee's parent company, any subsidiary or affiliate, or to any entity which acquires all or substantially all of Licensee's assets in the market defined by the Federal Communications Commission in which the Property is located.

15. NOTICES. All notices, requests, and demands (collectively, "notice") hereunder shall be in writing and shall be given by posting with a nationally or regionally recognized next-business day

courier service, by personal delivery, or by posting by registered or certified mail, return receipt requested, to the addresses of Licensor and Licensee as follows:

Licensor: For day-to-day operations:

Juliette Hamer  
Account Executive | West Area  
Crown Castle  
116 Inverness Drive East, Ste. 280  
Englewood, CO 80112  
Re: BU #819990/ LI #471874  
720.450.3005 Office  
303.945.0708 Cell  
724.416.6563 Efax

For all other notices:

TriStar Investors LLC  
2000 Corporate Drive  
Canonsburg, PA 15317  
Attention: Legal Department  
Re: BU #819990/ LI #471874  
Telephone No.: (724) 416-2000  
Facsimile: (724) 416-2353

Licensee: For day-to-day operations:

Chief Engineer and Communications Manager  
SFPUC Hetch Hetchy Water and Power Maintenance Engineering  
One Lakeshore Drive  
Moccasin, CA 95347  
(209) 989-2000

For all other notices:

SFPUC Hetch Hetchy Water and Power Maintenance Engineering  
Attention: Chief Engineer and Communications Manager  
One Lakeshore Drive  
Moccasin, CA 95347

with a copy to: SFPUC Real Estate Services  
Re: Modesto 2 Site License Agreement  
525 Golden Gate Avenue, 10th Floor  
San Francisco, CA 94102

and: SFPUC Hetch Hetchy Water and Power  
Attention: Accounts Payable  
One Lakeshore Drive  
PO Box 160  
Moccasin, CA 95347

Telephone or fax numbers, if any, are provided herein for convenience of communication and are not sufficient methods for delivering notices. Correctly addressed notices sent by a method that provides confirmation of delivery or attempted delivery shall be deemed received on the earliest of confirmed delivery, confirmed rejected delivery or confirmed attempted delivery. Either Party may change its notice address(es) by providing notice as set forth herein.

16. ENVIRONMENTAL. Neither Licensor nor Licensee will introduce or use any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation ("Hazardous Materials") on, under or about the Property or the Premises in violation of any applicable law or regulation. Licensor and Licensee shall each indemnify, defend and hold the other Party harmless from and against any and all demands, claims, enforcement actions, costs and expenses, including reasonable attorneys' fees, arising out of the presence of Hazardous Materials upon or affecting the Property or the Premises and caused by the indemnifying Party. The foregoing indemnity shall survive any termination of this Agreement.

17. ESTOPPEL CERTIFICATE. Each Party shall, within ten (10) business days after request by the other Party, execute and deliver to the requesting Party, or the Party designated by requesting Party, a statement certifying (i) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, stating the modifications and that the modified Agreement is in full force and effect); (ii) whether either Party is in default in performance of any of its obligations under this Agreement, and, if so, specifying each such default; and (iii) any other information reasonably requested concerning this Agreement.

18. MEMORANDUM OF SITE LICENSE; RECORDING. Upon the request of either Party, Licensor and Licensee shall fully execute a memorandum of site license evidencing Licensee's rights hereunder. Either Party may thereafter record such memorandum of site license at its sole expense.

19. SUCCESSORS. This Agreement and the covenants contained herein shall run with the land, and shall be binding upon the respective parties and their respective successors, heirs, executors, administrators and assigns.

20. DAMAGE OR DESTRUCTION

(a) Damage Repairable Within Repair Period. In the event of damage to the Premises or the Property by any cause and provided Licensor elects to rebuild or repair such damage, Licensor shall rebuild or repair the same without delay, provided that such repairs can be made under applicable laws within sixty (60) days after Licensor obtains all necessary permits for such repairs but not later than two hundred ten (210) days after the date of such damage (the "**Repair Period**"). In such event, this Agreement shall remain in full force and effect, except that Licensee shall be entitled to an abatement of Rent while the repairs are being made. Such abatement in Rent shall be based on the extent to which the damage and the making of the repairs interfere with Licensee's access to or use of the Premises. Licensor's repairs shall not include, and the Rent shall not be abated as a result of, any damage by fire or other cause to Licensee's Facilities. Notwithstanding the foregoing, if Licensor elects to make repairs such that any other tenant of the Tower can continue to operate therefrom, this Agreement shall remain in full force and effect and Licensor shall also repair the Premises for Licensee's use (to the extent



Licensee's Premises are damaged). In such event, Licensee shall be entitled to an abatement of Rent while any such repairs to the Premises are being made.

(b) Damage Not Repaired or Repairable Within Repair Period. Within twenty (20) days after the date Licensor learns of such damage, Licensor shall notify Licensee (i) whether or not, in Licensor's reasonable judgment made in good faith, such repairs can be made within the Repair Period, and (ii) if Licensor elects to rebuild or repair such damage ("**Repair Decision Notice**"). If Licensor reasonably determines that the repairs cannot be made within the Repair Period and/or if Licensor elects not to rebuild or repair such damage, then either party hereto may, by written notice to the other given within sixty (60) days after the date of such damage, terminate this Agreement as of the date specified in such notice, which date shall be not less than sixty (60) nor more than ninety (90) days after the Repair Decision Notice is given by Licensor. In case of termination, the Rent shall be reduced by a proportionate amount based on the extent to which such damage interferes with the conduct of Licensee's business in the Premises, and Licensee shall pay such reduced Rent up to the date of termination. Licensor shall refund to Licensee any Rent previously paid for any period of time after such date of termination. If Licensor elects to terminate this Agreement pursuant to this paragraph and within three years thereafter rebuilds or repairs the damage, Licensee shall have the option to enter into a new site rental agreement with Licensor for the same or substantially similar space in the restored Premises on the same terms and conditions as this Agreement. If neither party elects to terminate pursuant to this paragraph, Licensor shall rebuild or repair the damage and rent shall be abated until the rebuild or repairs are completed as provided above.

(c) Licensee's Temporary Facilities. During the period of any repair or rebuilding provided for hereunder, Licensee shall have the right, at its sole expense, to bring onto the Property (provided sufficient space is available) in a location mutually acceptable to Licensee and Licensor and to operate a portable generator and/or mobile Communications Property and telescopic antennae or tower (collectively "**Temporary Communications System**") in order to provide for continuous service to Licensee's customers during such period. Neither the placement nor use of such generator or equipment shall interfere with Licensor's operations or business in the Property or, if Licensor has elected to repair or rebuild the Premises or the Property as provided above, with such repair or reconstruction. Notwithstanding the foregoing, Licensee, in its sole discretion, shall have the right to terminate this Agreement upon thirty (30) days advance written notice if Licensee is unable to operate such portable generator or mobile Communication Property on the Property during any period of repair or rebuilding provided for hereunder as a result of Licensor's failure to provide a mutually acceptable location for such equipment.

(d) Damage by Flood or Earthquake. Notwithstanding the foregoing, in the event the Premises are damaged or destroyed by reason of flood or earthquake, and such damage or destruction is not fully covered by insurance proceeds payable under the insurance policies Licensor carries (excluding any deductible, for which Licensor shall be responsible), Licensor may terminate this Agreement by written notice to Licensee within thirty (30) days of the date Licensor receives written notice that such damage is not covered by insurance. Such notice from Licensor shall include adequate written evidence of the denial of insurance coverage. If Licensor does not elect to terminate this Agreement as provided above, this Agreement shall remain in full force and effect, and Licensor shall repair and restore the Premises as provided above.

(e) Damage During Last Six Months. If at any time during the last six (6) months of the Term of this Agreement there is substantial damage, Licensor or Licensee may, at the respective option of each, terminate this Agreement as of the date such damage occurred by giving written notice to the other party of its election to do so within thirty (30) days after the date of such damage. The parties

hereto understand and agree that the provisions of this Section are intended to govern fully the rights and obligations of the parties in the event of damage or destruction, and Licensee and Licensor each hereby waives and releases the provisions of Section 1932, subdivision 2, and Section 1933, subdivision 4, of the Civil Code of California (when hirer may terminate the hiring) or under any similar law, statute or ordinance now or hereafter in effect.

21. EMINENT DOMAIN

(a) Partial or Total Permanent Taking. If all or any part of the Premises or access thereto shall be taken as a result of the exercise of the power of eminent domain or any transfer in lieu thereof, this Agreement shall terminate as to the part so taken as of the date of taking. In the case of a partial taking, Licensee shall have the right to terminate this Agreement as to the balance of the Premises by written notice to Licensor within thirty (30) days after such date. In the event of a partial taking of the Premises which does not result in a termination of this Agreement, the Rent and additional charges thereafter to be paid shall not be reduced, except that the Rent shall be equitably reduced to the extent that such taking requires Licensee to cease to use certain elevations on the Tower and Licensor cannot provide reasonable equivalent space on the Tower.

If any material part of the Property shall be taken as a result of the exercise of the power of eminent domain or any transfer in lieu thereof, Licensor shall have the right to terminate this Agreement by written notice to Licensee within thirty (30) days of the date of the taking.

(b) Award. In the event of any taking, Licensor shall be entitled to any award that may be paid or made in connection therewith. Licensee shall have no claim against Licensor for the value of any unexpired term of this Agreement or otherwise except that Licensee may claim any portion of the award that is specifically allocable to Licensee's relocation expenses or the interruption of or damage to Licensee's business or loss or damage to Licensee's Facilities.

(c) Temporary Takings. Notwithstanding the foregoing, if a taking occurs with respect to all or any portion of the Premises for less than ninety (90) days, this Agreement shall remain unaffected thereby, and Licensee shall continue to perform all of the terms, conditions and covenants of this Agreement, except that Licensee shall be entitled to an abatement in Rent to the extent that its use of the Premises as a communications site is materially impaired. In the event of any such temporary taking, Licensee shall be entitled to receive that portion of any award which represents compensation for the use or occupancy of the Premises during the Term up to the total Rent and additional charges owing by Licensee for the period of the taking, and Licensor shall be entitled to receive the balance of any award.

(d) Waiver of Code of Civil Procedure Sections. The parties understand and agree that the foregoing provisions of this Section are intended to govern fully the rights and obligations of the parties in the event of a taking. Licensee and Licensor each hereby waives and releases any right to terminate this Agreement in whole or in part under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure (partial termination of lease and Court order terminating lease, respectively) or under any similar law, statute or ordinance now or hereafter in effect.

22. RF EXPOSURE. Licensee agrees to reduce power or suspend operation of Licensee's Facilities if and as necessary and upon reasonable notice to prevent exposure of workers or the public to radio frequency ("RF") radiation from Licensee's Facilities in excess of the then-existing regulatory standards.

23. WAIVER OF CONSEQUENTIAL DAMAGES. Neither party shall be liable to the other for consequential, indirect, punitive or exemplary damages for any cause of action whether in contract, tort or otherwise, hereunder.

24. NO LIENS. Licensee shall keep the Premises, the Property and any interest it or Licensor has therein free from any liens arising from any work performed, materials furnished or obligations incurred by or at the request of Licensee, including any mortgages or other financing obligations, and shall discharge any such lien or remove the same of record by bonding, in a manner satisfactory to Licensor, within thirty (30) days after Licensee receives written notice from any party that the lien has been filed.

25. MISCELLANEOUS.

(a) This Agreement, including all Exhibits attached hereto, constitutes the entire agreement and understanding of Licensor and Licensee with respect to the subject matter of this Agreement, and supersedes all offers, negotiations and any other written or verbal agreements concerning the subject matter of this Agreement, and any amendments to this Agreement must be in writing and executed by both Parties;

(b) this Agreement is governed by the laws of the state in which the Property is located and the City's Charter;

(c) if any term of this Agreement is found to be void, invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed modified to the minimum extent necessary to be operative, valid and enforceable to most closely reflect the intent of the Parties as expressed herein, or if such modification is not practicable, such provision shall be deemed deleted from this Agreement, and the other provisions of this Agreement shall remain in full force and effect;

(d) the section headings of this Agreement have been inserted for convenience of reference only, and shall in no way modify or restrict the terms of this Agreement;

(e) each Party represents and warrants to the other that it has the legal right and authority to execute this Agreement and all ancillary documents, and the execution and delivery thereof has been duly authorized by all requisite action;

(f) if either Licensor or Licensee files an action for the enforcement or breach of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs, (and for purposes of this Agreement, reasonable attorneys' fees of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney);

(g) City's standard contract clauses set forth in attached **Exhibit D** are incorporated into this Agreement (notwithstanding anything to the contrary therein, all obligations regarding third party contracts and operations shall apply only to contracts and operations relating exclusively to the Premises and not to the remainder of the Property);

(h) the exhibits referenced in and attached to this Agreement are incorporated herein and made a part hereof; and



(i) this Agreement may be executed in any number of counterparts, each of which shall, when executed, be deemed to be an original and all of which shall be deemed to be one and the same instrument.

*[Signatures on the next page.]*

IN WITNESS WHEREOF, and intending to be legally bound, Licensor and Licensee have executed this Agreement.

**LICENSOR:**

TRISTAR INVESTORS LLC,  
a Delaware limited liability company

By:   
Print Name: Kim Springer  
Title: Licensing Manager  
Area \_\_\_\_\_

Date: OCT 06 2015

**LICENSEE:**

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By:   
Harlan L. Kelly, Jr.  
General Manager  
San Francisco Public Utilities Commission

Date: 9/13/15

**APPROVED AS TO FORM:**

DENNIS J. HERRERA  
San Francisco City Attorney

By:   
Carolyn Johnson Stein  
Deputy City Attorney

## EXHIBIT "A"

### The Property

That parcel more particularly defined as the Premises in that certain Ground Lease Agreement dated December 15, 2010, as evidenced by that certain Memorandum of Lease recorded as Document # 2011-0012111-00 in the records of Stanislaus County, California, being a portion of that certain parent tract defined hereafter:

THE FOLLOWING DESCRIBED PROPERTY IN THE STATE OF CALIFORNIA, COUNTY OF STANISLAUS:

ALL THAT PORTION OF SECTION 19, TOWNSHIP 3 SOUTH, RANGE 9 EAST, M.D.B. & M., DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 19, SAID CORNER BEING ON THE CENTER LINE OF 40.00 FOOT WIDE BLUE GUM AVENUE; THENCE SOUTH  $89^{\circ} 16' 43''$  EAST ON THE EAST-WEST INTERIOR QUARTER LINE THROUGH SAID SECTION 19, A DISTANCE OF 397.81 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE NORTH  $0^{\circ} 43' 18''$  EAST 30.00 FEET; THENCE NORTH  $89^{\circ} 16' 43''$  WEST 253.55 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 100.00 FEET AND A CENTRAL ANGLE OF  $88^{\circ} 06' 38''$ ; THENCE NORTHWESTERLY ON THE ARC OF SAID CURVE 153.78 FEET; THENCE NORTH  $1^{\circ} 10' 05''$  WEST 115.93 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF  $85^{\circ} 14' 36''$ , AND FROM WHICH POINT THE CENTER OF SAID CURVE BEARS NORTH  $5^{\circ} 55' 29''$  WEST; THENCE NORTHEASTERLY ON THE ARC OF SAID CURVE 267.80 FEET; THENCE NORTH  $1^{\circ} 10' 05''$  WEST 285.62 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF  $138^{\circ} 01' 09''$ ; THENCE NORTHEASTERLY ON THE ARC OF SAID CURVE 60.22 FEET SOUTHWESTERLY FROM, AND PARALLEL WITH SAID RIGHT-OF-WAY LINE, 913.50 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 40.00 FEET AND A CENTRAL ANGLE OF  $133^{\circ} 52' 13''$  THENCE SOUTHWESTERLY ON THE ARC OF SAID CURVE 93.46 FEET; THENCE SOUTH  $0^{\circ} 43' 17''$  WEST 30.00 FEET TO THE EAST-WEST INTERIOR QUARTER LINE THROUGH SAID SECTION 19, ON THE CENTER LINE 40.00 FOOT WIDE BLUE GUM AVENUE; THENCE NORTH  $89^{\circ} 16' 43''$  WEST ON SAID INTERIOR LINE, 461.96 FEET TO THE POINT OF BEGINNING.

ALL THAT PORTION OF SECTION 24, TOWNSHIP 3 SOUTH, RANGE 8 EAST, M.D.B. & M. DESCRIBED AS FOLLOWS: COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 24, SAID CORNER BEING ON THE CENTER LINE OF 40.00 FOOT WIDE BLUE GUM AVENUE; THENCE SOUTH  $89^{\circ} 25' 04''$  WEST ON THE EAST-WEST INTERIOR QUARTER LINE THROUGH SAID SECTION 24, ALSO BEING ON THE CENTER LINE OF BLUE GUM AVENUE 401.73 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUE SOUTH  $89^{\circ} 25' 04''$  WEST 1567.80 FEET TO THE SOUTHEAST CORNER OF THE LANDS DESCRIBED IN ASSEMBLY BILL NO. 542 OF 1970 LEGISLATURE AS BEING RESERVED BY THE STATE OF CALIFORNIA; THENCE NORTH  $0^{\circ} 35' 03''$  WEST ON THE EAST LINE OF SAID DESCRIBED LANDS 1306.36 FEET TO THE NORTHEAST CORNER THEREOF; THENCE SOUTH



89° 24' 57" WEST ON THE NORTH LINE OF SAID LANDS 1009.23 FEET TO THE NORTHWEST CORNER THEREOF; THENCE NORTH 0° 35' 03" WEST ON THE NORTHERLY EXTENSION OF THE WEST LINE OF SAID LANDS 1344.93 FEET TO THE NORTH LINE OF SAID SECTION 24; THENCE NORTH 89° 20' 00" EAST ON SAID NORTH LINE 343.86 FEET TO THE NORTH QUARTER CORNER OF SAID SECTION 24; THENCE CONTINUE ON SAID NORTH LINE, NORTH 89° 18' 48" EAST 1105.04 FEET TO A POINT WHICH IS 100.00 FEET SOUTHWESTERLY, BY RIGHT ANGLE MEASUREMENT, FROM THE SOUTHWESTERLY LINE OF THE SOUTHERN PACIFIC RAILROAD RIGHT-OF-WAY LINE; THENCE SOUTH 43° 08' 56" EAST, 100.00 FEET SOUTHWESTERLY FROM AND PARALLEL WITH SAID RIGHT-OF-WAY LINE 1888.54 FEET; THENCE LEAVING SAID PARALLEL LINE, SOUTH 1° 10' 05" EAST, 820.00 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 180.00 FEET AND A CENTRAL ANGLE OF 85° 14' 36"; THENCE SOUTHEASTERLY ON THE ARC OF SAID CURVE, 267.80 FEET TO THE POINT OF REVERSE CURVATURE WITH A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 25.00 FEET, AND A CENTRAL ANGLE OF 85° 14' 36" AND FROM WHICH POINT THE CENTER OF SAID CURVE BEARS SOUTH 3° 35' 19" WEST, THENCE SOUTHEASTERLY ON THE ARC OF SAID CURVE 37.19 FEET; THENCE SOUTH 10° 10' 05" EAST 109.55 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 100.00 FEET AND A CENTRAL ANGLE OF 90° 35' 09"; THENCE SOUTHWESTERLY ON THE ARC OF SAID CURVE, 158.10 FEET; THENCE SOUTH 89° 25' 04" WEST, 30.00 FEET NORTHERLY FROM AND PARALLEL WITH THE EAST-WEST INTERIOR QUARTER LINE THROUGH SAID SECTION 24, A DISTANCE OF 248.87 FEET; THENCE SOUTH 0° 34' 56" EAST 30.00 FEET TO THE POINT OF BEGINNING.

## **EXHIBIT "B"**

### **The Premises**

1. Ground space suitable for an outdoor cabinet approximately 34" x 59" x 63-1/8" to be installed and maintained by Licensee on a concrete pad approximately 65" x 86-1/4"
2. Space on the Tower suitable for the following antennas:
  - One six-foot (6') diameter dish antenna, 130' elevation, 259.67 degrees true azimuth
  - One four-foot (4') diameter dish antenna, 170' elevation, 55.85 degrees true azimuth

## **EXHIBIT "C"**

### The Licensee's Facilities

1. Outdoor cabinet approximately 34" x 59" x 63-1/8" to be installed and maintained by Licensee on a concrete pad approximately 65" x 86-1/4"
2. The following antennas to be installed by Licensee's contractor on the Tower:
  - One six-foot (6') diameter dish antenna
  - One four-foot (4') diameter dish antenna



## EXHIBIT "D"

### City's Standard Contract Provisions

**1. Disclosure.** The City's Sunshine Ordinance (San Francisco Administrative Code Chapter 67) and the State Public Records Law (Government Code Section 6250 et seq.) apply to this Agreement and any and all records, information, and materials submitted to the City in connection with this Agreement. Accordingly, any and all such records, information and materials may be subject to public disclosure in accordance with the City's Sunshine Ordinance and the State Public Records Law. Licensor hereby authorizes the City to disclose any records, information and materials submitted to the City in connection with this Agreement.

**2. Non-Liability of City Officials, Employees and Agents.** Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, member, officer, employee or agent of City shall be personally liable to Licensor, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Licensor, its successors and assigns, or for any obligation of City under this Agreement.

**3. Conflict of Interest.** Through its execution of this Agreement, Licensor acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Licensor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Licensor further acknowledges that the prohibition on contributions applies to each Licensor; each member of Licensor's board of directors, and Licensor's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Licensor; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Licensor. Additionally, Licensor acknowledges that Licensor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Licensor further agrees to provide to City the name of each person, entity or committee described above.

**4. Notification of Limitations on Contributions.** Through its execution of this Agreement, Licensor acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Licensor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total



anticipated or actual value of \$50,000 or more. Licensor further acknowledges that the prohibition on contributions applies to each Licensor; each member of Licensor's board of directors, and Licensor's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Licensor; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Licensor. Additionally, Licensor acknowledges that Licensor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Licensor further agrees to provide to City the name of each person, entity or committee described above.

**5. City's Charter.** This Agreement shall be subject to the budgetary and fiscal provisions of City's Charter. There shall be no obligation for the payment of money by City or SFPUC under this Agreement unless City's Controller first certifies, pursuant to Section 3.105 of City's Charter, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure. If sufficient funds for the payment of the compensation and any other payments required under this Agreement are not appropriated, then SFPUC may terminate this Agreement, without penalty, liability or expense of any kind to SFPUC, as of the last date on which sufficient funds are appropriated.

**6. Prevailing Wages for Construction Work.** Licensor agrees that any person performing labor in the construction of any improvements to the Premises which Licensor provides under this Agreement shall be paid not less than the highest prevailing rate of wages as required by Section 6.22(E) of the San Francisco Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco County. Licensor shall include, in any contract for construction of such improvements to the Premises, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Licensor shall require any contractor to provide, and shall deliver to City every two weeks during any construction period, certified payroll reports with respect to all persons performing labor in the construction of any improvements to the Premises.

**7. Non-Discrimination in City Contracts and Benefits Ordinance.**

**(a) Covenant Not to Discriminate.** In the performance of this Agreement, Licensor agrees not to discriminate against any employee of Licensor, any City employee working with Licensor, or any applicant for employment with Licensor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

**(b) Contracts.** Licensor shall include in all contracts relating to the Premises a non discrimination clause applicable to such contractor in substantially the form of subsection (a) above. In addition, Licensor shall incorporate by reference in all contracts relating to the Premises the provisions of Sections 12B.2(a), 12B.2(c)-(k) and 12C.3 of the San Francisco Administrative Code and shall require all contractors to comply with such provisions. Licensor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

(c) **Non-Discrimination in Benefits.** Licensor does not as of the date of this Agreement and will not during the Term, in any of its operations in San Francisco, on real property owned by City, or where the work is being performed for the City, or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) **Condition to Agreement.** As a condition to this Agreement, Licensor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the Contract Monitoring Division (the "CMD"). Licensor hereby represents that prior to execution of this Agreement, (i) Licensor executed and submitted to the CMD Form CMD-12B-101 with supporting documentation, and (ii) the CMD approved such form.

(e) **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non discrimination by parties contracting for the lease of property to City are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Licensor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Licensor understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Licensor and/or deducted from any payments due Licensor.



**EXHIBIT "E"**

**Prime Lease**

[Attached]

# Delaware

PAGE 1

*The First State*

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"WEIDL MGT, LLC", A DELAWARE LIMITED LIABILITY COMPANY, WITH AND INTO "TRISTAR INVESTORS LLC" UNDER THE NAME OF "TRISTAR INVESTORS LLC", A LIMITED LIABILITY COMPANY ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE TWENTY-EIGHTH DAY OF MAY, A.D. 2015, AT 3:35 O'CLOCK P.M.


AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF MERGER IS THE THIRTY-FIRST DAY OF MAY, A.D. 2015, AT 11:59 O'CLOCK P.M.

3955986 8100M

150800938



You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 2428439

DATE: 06-02-15

**CERTIFICATE OF MERGER**

**OF**

**WEIDL MGT, LLC**  
**(A DELAWARE LIMITED LIABILITY COMPANY)**

**INTO**

**TRISTAR INVESTORS LLC**  
**(A DELAWARE LIMITED LIABILITY COMPANY)**

The undersigned limited liability company formed and existing under and by virtue of the laws of Delaware,

DOES HEREBY CERTIFY:

**FIRST:** The name and jurisdiction of formation or organization of each of the constituent entities which is to merge are as follows:

<u>Name</u>	<u>Jurisdiction of Formation or Organization</u>
WEIDL MGT, LLC	Delaware
TRISTAR INVESTORS LLC	Delaware

**SECOND:** An Agreement and Plan of Merger has been approved and executed by (i) WEIDL MGT, LLC, a Delaware limited liability company ("**Non-Surviving LLC**"), and (ii) TRISTAR INVESTORS LLC a Delaware limited liability company ("**Surviving Company**").

**THIRD:** The name of the surviving business entity is TRISTAR INVESTORS LLC.

**FOURTH:** The merger of the Non-Surviving LLC into the Surviving Company shall be effective on May 31, 2015, at 11:59 p.m. Eastern Daylight Time.

**FIFTH:** The executed Agreement and Plan of Merger is on file at the principal place of business of the Surviving Company. The address of the principal place of business of the Surviving Company is 1220 Augusta Drive, Suite 600, Houston, Texas 77057.

**SIXTH:** A copy of the Agreement and Plan of Merger will be furnished by the Surviving Company, on request and without cost, to any member of the Non-Surviving LLC and to any person holding an interest in the Surviving Company.

[Signature Page Follows]



IN WITNESS WHEREOF, the Surviving Company has caused this Certificate of Merger to be duly executed as of May 26 2015.

TRISTAR INVESTORS LLC

By:



Name: E. Blake Hawk

Title: Executive Vice President

# Delaware

PAGE 1

*The First State*

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:


"SHAMROCK BGM, LLC", A DELAWARE LIMITED LIABILITY COMPANY, WITH AND INTO "WEIDL MGT, LLC" UNDER THE NAME OF "WEIDL MGT, LLC", A LIMITED LIABILITY COMPANY ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE TWENTY-SEVENTH DAY OF MAY, A.D. 2015, AT 4:22 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF MERGER IS THE THIRTY-FIRST DAY OF MAY, A.D. 2015, AT 11:58 O'CLOCK P.M.

4154641 8100M

150785532



  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 2426867

DATE: 06-02-15

You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 03:35 PM 05/27/2015  
FILED 04:22 PM 05/27/2015  
SRV 150785532 - 4154641 FILE

**CERTIFICATE OF MERGER**

**OF**

**SHAMROCK BGM, LLC  
(A DELAWARE LIMITED LIABILITY COMPANY)**

**INTO**

**WEIDL MGT, LLC  
(A DELAWARE LIMITED LIABILITY COMPANY)**

The undersigned limited liability company formed and existing under and by virtue of the laws of Delaware,

DOES HEREBY CERTIFY:

**FIRST:** The name and jurisdiction of formation or organization of each of the constituent entities which is to merge are as follows:

<u>Name</u>	<u>Jurisdiction of Formation or Organization</u>
WEIDL MGT, LLC	Delaware
SHAMROCK BGM, LLC	Delaware

**SECOND:** An Agreement and Plan of Merger has been approved and executed by (i) SHAMROCK BGM, LLC, a Delaware limited liability company ("**Non-Surviving LLC**"), and (ii) WEIDL MGT, LLC a Delaware limited liability company ("**Surviving Company**").

**THIRD:** The name of the surviving business entity is WEIDL MGT, LLC.

**FOURTH:** The merger of the Non-Surviving LLC into the Surviving Company shall be effective on May 31, 2015, at 11:58 p.m. Eastern Daylight Time.

**FIFTH:** The executed Agreement and Plan of Merger is on file at the principal place of business of the Surviving Company. The address of the principal place of business of the Surviving Company is 1220 Augusta Drive, Suite 600, Houston, Texas 77057.

**SIXTH:** A copy of the Agreement and Plan of Merger will be furnished by the Surviving Company, on request and without cost, to any member of the Non-Surviving LLC and to any person holding an interest in the Surviving Company.

[Signature Page Follows]

**IN WITNESS WHEREOF**, the Surviving Company has caused this Certificate of Merger to be duly executed as of May 27, 2015.

WEIDL MGT, LLC

By:



Name: E. Blake Hawk

Title: Executive Vice President



PREPARED BY AND  
WHEN RECORDED MAIL TO:

\_\_\_\_\_ SPACE ABOVE THIS LINE FOR RECORDER'S USE \_\_\_\_\_

**AMENDMENT TO GROUND LEASE AGREEMENT**

**THIS AMENDMENT TO GROUND LEASE AGREEMENT** ("Amendment") is made as of the 28<sup>th</sup> day of January, 2011 by and between **YOSEMITE JUNIOR COLLEGE DISTRICT a/k/a YOSEMITE COMMUNITY COLLEGE DISTRICT**, a California community college district ("Landlord"), and **SHAMROCK BGM, LLC**, a Delaware limited liability company ("Tenant").

**RECITALS:**

**WHEREAS**, Landlord and Tenant entered into that certain Ground Lease Agreement dated the 13<sup>th</sup> day of December, 2010 ("Lease Agreement"), regarding a portion of that certain property located at 2201 Blue Gum Avenue, Modesto, Stanislaus County, California 95351 ("Property"), which Property is more particularly described on Exhibit "A" attached hereto and made a part hereof; and

**WHEREAS**, Tenant obtained a title commitment indicating that the Property is titled to Yosemite Junior College District.

**WHEREAS**, Landlord and Tenant desire to modify the Lease Agreement to reflect the name "Yosemite Junior College District".

**NOW, THEREFORE**, for and in consideration of the mutual promises hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Landlord and Tenant hereby agree and covenant to and with each other the following:

1. The recitals set forth above are incorporated herein by reference and made a part of this Amendment. Any capitalized term used in this Amendment and not herein defined shall have the meaning given to such capitalized term in the Lease Agreement.

2. The Lease Agreement is amended to name the Landlord as "Yosemite Junior College District a/k/a Yosemite Community College District, a California community college district, as owner of the Property" ("Revised Landlord Name").

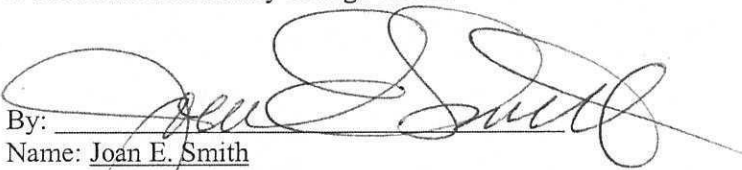
3. Related documents to the Lease Agreement shall include the Revised Landlord Name.

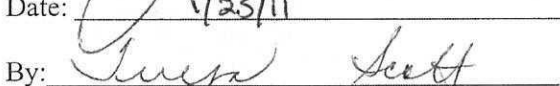
4. Except as modified herein, all other terms, conditions and provisions of the Lease Agreement shall continue in full force and effect and the same are hereby ratified and confirmed.

**IN WITNESS WHEREOF**, and intending to be legally bound, Landlord and Tenant have executed this Amendment.

**LANDLORD:**


Yosemite Junior College District a/k/a  
Yosemite Community College District,  
a California community college district

By:   
Name: Joan E. Smith  
Title: Interim Chancellor  
Date: 1/25/11

By:   
Name: Teresa M. Scott  
Title: Executive Vice Chancellor  
Date: 1/25/11

**TENANT:**

Shamrock BGM, LLC,  
a Delaware limited liability company

By:   
Name: John P. Lemmon  
Title: Vice President and General Counsel  
Date: 1/28/11

**Exhibit "A"**

The Property

IN THE COUNTY OF STANISLAUS, CALIFORNIA

LEGAL DESCRIPTION:

THE FOLLOWING DESCRIBED PROPERTY IN THE STATE OF CALIFORNIA, COUNTY OF STANISLAUS:

ALL THAT PORTION OF SECTION 19, TOWNSHIP 3 SOUTH, RANGE 9 EAST, M.D.B. & M., DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 19, SAID CORNER BEING ON THE CENTER LINE OF 40.00 FOOT WIDE BLUE GUM AVENUE; THENCE SOUTH 89° 16' 43" EAST ON THE EAST-WEST INTERIOR QUARTER LINE THROUGH SAID SECTION 19, A DISTANCE OF 397.81 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE NORTH 0° 43' 18" EAST 30.00 FEET; THENCE NORTH 89° 16' 43" WEST 253.55 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 100.00 FEET AND A CENTRAL ANGLE OF 88° 06' 38"; THENCE NORTHWESTERLY ON THE ARC OF SAID CURVE 153.78 FEET; THENCE NORTH 1° 10' 05" WEST 115.93 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF 85° 14' 36", AND FROM WHICH POINT THE CENTER OF SAID CURVE BEARS NORTH 5° 55' 29" WEST; THENCE NORTHEASTERLY ON THE ARC OF SAID CRUVE 267.80 FEET; THENCE NORTH 1° 10' 05" WEST 285.62 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF 138° 01' 09"; THENCE NORTHEASTERLY ON THE ARC OF SAID CURVE 60.22 FEET SOUTHWESTERLY FROM, AND PARALLEL WITH SAID RIGHT-OF-WAY LINE, 913.50 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 40.00 FEET AND A CENTRAL ANGLE OF 133° 52' 13" THENCE SOUTHWESTERLY ON THE ARC OF SAID CURVE 93.46 FEET; THENCE SOUTH 0° 43' 17" WEST 30.00 FEET TO THE EAST-WEST INTERIOR QUARTER LINE THROUGH SAID SECTION 19, ON THE CENTER LINE 40.00 FOOT WIDE BLUE GUM AVENUE; THENCE NORTH 89° 16' 43" WEST ON SAID INTERIOR LINE, 461.96 FEET TO THE POINT OF BEGINNING.

ALL THAT PORTION OF SECTION 24, TOWNSHIP 3 SOUTH, RANGE 8 EAST, M.D.B. & M. DESCRIBED AS FOLLOWS: COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 24, SAID CORNER BEING ON THE CENTER LINE OF 40.00 FOOT WIDE BLUE GUM AVENUE; THENCE SOUTH 89° 25' 04" WEST ON THE EAST-WEST INTERIOR QUARTER LINE THROUGH SAID SECTION 24, ALSO BEING ON THE CENTER LINE OF BLUE GUM AVENUE 401.73 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUE SOUTH 89° 25' 04" WEST 1567.80 FEET TO THE SOUTHEAST CORNER OF THE LANDS DESCRIBED IN ASSEMBLY BILL NO. 542 OF 1970



LEGISLATURE AS BEING RESERVED BY THE STATE OF CALIFORNIA; THENCE NORTH 0° 35' 03" WEST ON THE EAST LINE OF SAID DESCRIBED LANDS 1306.36 FEET TO THE NORTHEAST CORNER THEREOF; THENCE SOUTH 89° 24' 57" WEST ON THE NORTH LINE OF SAID LANDS 1009.23 FEET TO THE NORTHWEST CORNER THEREOF; THENCE NORTH 0° 35' 03" WEST ON THE NORTHERLY EXTENSION OF THE WEST LINE OF SAID LANDS 1344.93 FEET TO THE NORTH LINE OF SAID SECTION 24; THENCE NORTH 89° 20' 00" EAST ON SAID NORTH LINE 343.86 FEET TO THE NORTH QUARTER CORNER OF SAID SECTION 24; THENCE CONTINUE ON SAID NORTH LINE, NORTH 89° 18' 48" EAST 1105.04 FEET TO A POINT WHICH IS 100.00 FEET SOUTHWESTERLY, BY RIGHT ANGLE MEASUREMENT, FROM THE SOUTHWESTERLY LINE OF THE SOUTHERN PACIFIC RAILROAD RIGHT-OF-WAY LINE; THENCE SOUTH 43° 08' 56" EAST, 100.00 FEET SOUTHWESTERLY FROM AND PARALLEL WITH SAID RIGHT-OF-WAY LINE 1888.54 FEET; THENCE LEAVING SAID PARALLEL LINE, SOUTH 1° 10' 05" EAST, 820.00 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 180.00 FEET AND A CENTRAL ANGLE OF 85° 14' 36"; THENCE SOUTHEASTERLY ON THE ARC OF SAID CURVE, 267.80 FEET TO THE POINT OF REVERSE CURVATURE WITH A CURVE CONAVE TO THE SOUTHWEST, HAVING A RADIUS OF 25.00 FEET, AND A CENTRAL ANGLE OF 85° 14' 36" AND FROM WHICH POINT THE CENTER OF SAID CURVE BEARS SOUTH 3° 35' 19" WEST, THENCE SOUTHEASTERLY ON THE ARC OF SAID CURVE 37.19 FEET; THENCE SOUTH 10' 05" EAST 109.55 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 100.00 FEET AND A CENTRAL ANGLE OF 90° 35' 09"; THENCE SOUTHWESTERLY ON THE ARC OF SAID CURVE, 158.10 FEET; THENCE SOUTH 89° 25' 04" WEST, 30.00 FEET NORTHERLY FROM AND PARALLEL WITH THE EAST-WEST INTERIOR QUARTER LINE THROUGH SAID SECTION 24, A DISTANCE OF 248.87 FEET; THENCE SOUTH 0° 34' 56" EAST 30.00 FEET TO THE POINT OF BEGINNING.

TAX ID NO

BEING THE SAME PROPERTY CONVEYED BY QUITCLAIM DEED

GRANTOR: STATE OF CALIFORNIA

GRANTEE: YOSEMITE JUNIOR COLLEGE DISTRICT

DATED: 08/04/1970

RECORDED: 08/06/1970

DOC#/BOOK-PAGE: 1970-25201

ADDRESS: 2201 BLUE GUM AVE , MODESTO, CA 95351



## GROUND LEASE AGREEMENT

This GROUND LEASE AGREEMENT ("Lease") is made and entered into upon the full execution of this Lease ("Effective Date") by and between YOSEMITE COMMUNITY COLLEGE DISTRICT, a California community college district, as owner of Modesto Junior College West, ("Landlord") and SHAMROCK BGM, LLC, a Delaware limited liability company ("Tenant"). The Landlord and Tenant are at times referred to hereinafter collectively as the "Parties" or individually as a "Party".

WITNESSETH

WHEREAS, Landlord is the owner of that certain real property located at 2201 Blue Gum Avenue, Modesto, Stanislaus County, California 95351 ("Property"), which Property is more particularly described on Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, Tenant desires to lease from Landlord, and Landlord desires to lease to Tenant, a portion of the Property ("Premises"), which Premises is more particularly described on Exhibit "B" attached hereto and made a part hereof.

### AGREEMENT

NOW THEREFORE, in consideration of the mutual agreements herein contained, and intending to be legally bound hereby, Landlord and Tenant hereby agree and covenant to and with each other as follows:

1. RECITALS. The recitals set forth above are incorporated herein by reference and made a part of this Lease.

2. PREMISES. Landlord leases to Tenant the Premises, together with the non-exclusive easements in, to, under and over portions of the Property, substantially as shown or described on Exhibit "B" attached hereto, for ingress and egress to and from the Premises and a publicly dedicated roadway, and for the installation, repair, replacement, improvement, maintenance and removal of utilities providing service to the Premises and the Facilities (as defined in Section 5), and any related activities and uses ("Easements"). The Parties agree that the Premises and/or the Easements granted hereunder shall be modified to include any additional areas utilized beyond those areas described in Exhibit "B", if any, by the lessee or any assignees or sublessees under that certain Lease Agreement entered into by and between Landlord as lessor and Sacramento-Valley Limited Partnership, a California limited partnership of which PacTel Mobile Access, a California corporation of Costa Mesa, California, is the general partner, as lessee, dated May 7, 1986, including any amendments thereto ("Prior Lease"). Tenant shall have the right to replace any site plan or description provided in Exhibit "B" or on any ancillary documents with a survey mutually acceptable to Landlord and Tenant.

3. TERM. This Lease and the terms set forth herein shall be effective and binding as of the Effective Date, provided, however, the Tenant's right to occupy the Premises shall commence concurrently with the expiration or earlier termination of the Prior Lease ("Commencement Date"), and shall extend thereafter for a period of five (5) years ("Term"). If at the end of the Term, this Lease has not been terminated by Tenant by giving to Landlord written notice, at least ninety (90) days prior to the end of the Term, of Tenant's intention to terminate the Lease at the end of the Term, the Term shall be extended and continue in force upon the same

covenants, terms and conditions set forth herein for five (5) additional five (5) year terms thereafter (individually and collectively "Extension Term"), unless the Lease is terminated as set forth herein during the respective Extension Term. If at the end of the final Extension Term this Lease has not been terminated by Tenant, the Lease shall continue for one (1) year terms unless (i) terminated by either Party upon ninety (90) days written notice given prior to expiration of any such one (1) year period, or (ii) a new lease is executed between the Parties. Notwithstanding the foregoing, to the extent that this Lease may, by operation of law, be considered a transfer of title to the Premises rather than a lease of such Premises due to the length of the Term provided hereunder, the Term shall as a matter of law be reformed to the maximum term possible for this transaction to be considered a lease rather than a transfer of title.

4. CONSIDERATION. The consideration to be paid by Tenant to Landlord for the lease of the Premises shall be the sum of [REDACTED] per month ("Minimum Rent"). Additionally, Landlord shall receive a sum equal to [REDACTED] ("Signing Consideration"). The Signing Consideration and an amount equal to one month's (prorated for any partial month) Minimum Rent ("Preliminary Rent") shall be due upon the expiration of the Due Diligence Period or the earlier waiver of any remaining portion of such Due Diligence Period by Tenant ("Closing"). Thereafter, Tenant shall pay Preliminary Rent on a monthly basis (prorated for any partial months) until the Commencement Date. In addition, commencing upon the Commencement Date of the Term, Tenant shall thereafter pay to Landlord or the then current owner of Landlord's rights hereunder ongoing payments equal to the greater of the Minimum Rent, including annual escalations of [REDACTED], or [REDACTED] of Net Rental Revenues received by Tenant (the "Rent"). For the determination of the Rent payable hereunder, Net Rental Revenues shall mean all rental revenue received by Tenant from any sublessee(s) of the Premises subsequent to the Commencement Date and all sublessees of the Premises whose tenancy commenced during the Prior Lease less (i) all capital expenditures made by Tenant regarding the Premises and the Facilities thereon, (ii) all payments of taxes made by Tenant and attributable to the Facilities, and (iii) all operating expenses of Tenant paid to third parties regarding the Premises and the Facilities thereon, such operating expenses not to exceed [REDACTED] of the Net Rental Revenue received by Tenant for any applicable period.

Notwithstanding the Term as defined herein, for purposes of annual statements and/or auditing by Landlord, the applicable period shall be the annual period commencing on January 1 and ending on December 31 of each year of the Term; provided that the initial applicable period shall commence on the Commencement Date and end on December 31 and the final applicable period shall begin on January 1 and end on the last day of the Term. Within thirty (30) days of the last day of any applicable period, Tenant shall provide to Landlord an accounting setting forth Tenant's calculation of its Net Rental Revenues for the preceding applicable period ("Accounting Notice"). If fifty percent of such Net Rental Revenues exceeds the Minimum Rent due and payable for the preceding applicable period (such amount referred to herein as the "Net Rental Excess"), Tenant shall, concurrently with delivery of the Accounting Notice, provide to Landlord a check for the Net Rental Excess for the preceding applicable period. If Landlord disputes Tenant's calculation of its Net Rental Revenues or the Net Rental Excess, Landlord shall have the right to audit Tenant's records on written notice given not more than thirty (30) days after receipt of Tenant's Accounting Notice. Such audit shall be at Landlord's expense unless Landlord establishes, as a result of such audit, that Tenant has undercalculated its Net Rental Revenues or Net Rental Excess for the applicable period by more than ten percent [REDACTED], in which case, Tenant shall pay for such audit.



5. DUE DILIGENCE. Landlord shall promptly (i) inform Tenant in writing of all information known by Landlord which Landlord reasonably determines may be germane to Tenant's due diligence investigations, and (ii) provide Tenant with copies of all existing reports or documentation in Landlord's possession or otherwise reasonably available to Landlord which Landlord reasonably determines may be germane to Tenant's due diligence investigations (including, but not limited to, environmental reports, governmental approvals, and prior surveys. Commencing upon the Effective Date and extending for thirty (30) days following the last to occur of (i) the date Landlord certifies that it has provided all reports and information to Tenant as required herein or (ii) the Effective Date, Tenant may conduct any due diligence investigations of all matters related to the Premises and the Property as Tenant deems necessary ("Due Diligence Period"). In the event that Tenant, in its sole discretion, determines that any aspect of its due diligence investigation is unsatisfactory, Tenant may terminate this Lease upon written notice to Landlord within the Due Diligence Period. If Tenant does not, within the due diligence period, terminate this Lease, then Tenant shall be deemed to have approved the condition of the Property, the Premises and the Easements and this Lease shall be in full force and effect. Tenant has been informed that the Prior Lease is currently in full force and effect. Tenant therefore agrees to contact Landlord not less than two (2) business days prior to any physical entry onto the Premises or the Easements and agrees that Tenant will not enter until Landlord has confirmed that it has obtained the current lessee's consent to such entry. Tenant shall not make any invasive testing of the Premises or the Easements without Landlord's consent, which consent may be withheld. Tenant's entry and any work shall be conducted at the sole cost and expense of Tenant; the entry and work shall not unreasonably interfere with the use and possession of the Easements and the Premises by the lessee under the Prior Lease, and Tenant shall, on completion of such entry and any work approved by Landlord, restore the Premises and the Easements to their condition prior to such work. Buyer shall indemnify, defend, protect and hold Landlord harmless from any costs or liability incurred by Landlord as a result of Tenant's entry onto the Premises or the Easements and/or the conduct by Tenant of any work approved by Landlord pursuant to this Section.

5. USE. Landlord shall provide to Tenant the quiet enjoyment and use of the Premises for the purpose of constructing, maintaining and operating communications facilities and uses incidental and all necessary appurtenances, including but not limited to the construction, maintenance, repair, replacement, improvement, operation and removal of towers, antennas, cabinets, buildings, ice bridges, fences, gates and all reasonably related facilities which Tenant deems necessary or desirable ("Facilities"). Prior to and during the Term, Tenant shall have the exclusive, unrestricted right to mortgage, encumber or hypothecate, in whole or in part, its rights under this Lease to any third parties on not less than thirty (30) days subsequent written notice to Landlord. Tenant may transfer, assign or sublease the Premises with Landlord's prior written consent, such consent not to be unreasonably withheld, subject to the provisions of Section 22(1). Tenant and those transferees, assignees or sublessees approved by Landlord ("Approved Subtenants") shall have the right to enter and access the Premises and the Easements at any time, twenty-four (24) hours a day, seven (7) days a week.

6. IMPROVEMENTS. Tenant and its Approved Subtenants may, at their discretion and expense, construct improvements in, to, under and over the Premises, all of which shall be deemed part of the Facilities. Tenant shall be responsible for all improvements existing or installed by Tenant during the Term and Tenant shall maintain same including the tower, fencing, and other items controlled by Tenant. All such improvements shall be installed in accordance with applicable law, including, without limitation, the ordinances of Stanislaus County, California. Additionally, Landlord, upon thirty (30) days written notice to Tenant, shall have the



right to place wireless communications equipment, including microwave equipment, within the Premises, including on the communications tower, at a position which is functionally satisfactory and mutually agreeable with Tenant.

7. INDEMNIFICATION.

(a) Indemnification by Tenant. Tenant shall indemnify, defend (by counsel reasonably acceptable to Landlord), protect and hold Landlord and each of Landlord's trustees, officers, employees, agents, successors and assigns (collectively, "Landlord Parties"), the Premises and other real and personal property of Landlord free and harmless from and against any and all claims, demands, causes of action, losses, costs, damages, liabilities or expenses (including, without limitation, attorneys', consultants' and experts' fees and court or proceeding costs) which Landlord may suffer and which arise out of or are related to: (i) the death or injury of any person, including any person who is an employee or agent of Tenant, from any cause whatsoever in or on the Premises, the Facilities or in any way connected with the Leased Premises, the Easements, the Facilities or personal property on or related to either; (ii) the damage to or destruction of any property, including property owned by Tenant or by any person who is an employee or agent of Tenant, from any cause whatsoever, in or on the Premises, the Easements, the Facilities or in any way connected with the Premises, the Easements, the Facilities or personal property on or related to either; or (iii) any work performed on the Premises, the Easements or Facilities or furnished to them at the instance or request of Tenant or any person or entity acting for or on behalf of Tenant; or (iv) Tenant's failure to perform any covenant or agreement of Tenant set forth in this Lease.

(b) Indemnification by Landlord. Landlord shall indemnify, defend (by counsel reasonably acceptable to Tenant), protect and hold Tenant and each of Tenant's members, officers, employees, agents, attorneys, successors and assigns (collectively, "Tenant Parties"), free and harmless from and against any and all claims, demands, causes of action, losses, costs, liabilities or expenses (including, without limitation, attorneys', consultants' and experts' fees and court or proceeding costs) which Tenant Parties may suffer and which arise out of or are related to (i) Landlord's failure to perform any covenant or agreement of Landlord set forth in this Lease; or (ii) the negligent or intentionally wrongful act or omission of Landlord; or (iii) Landlord's breach of any representation or warranty set forth in this Lease.

8. TERMINATION.

(a) Abandonment. In the event Tenant and Approved Subtenants cease all use of all portions of the Premises for a period of more than one (1) year (for reasons other than casualty or force majeure) subsequent to the Commencement Date, the Premises shall be deemed abandoned. Limited or partial use of the Premises by Tenant or any Approved Subtenants shall not be deemed a surrender or abandonment of the Premises or any unused portion thereof, nor prevent Tenant from benefiting from the full use and enjoyment of the entirety of the Premises. Tenant may abandon the Premises upon thirty (30) days written notice to Landlord. This Lease may not be terminated by Landlord. Notwithstanding the language herein, in the event of casualty or force majeure there shall be no interruption of Minimum Rent or other amounts owed from Tenant to Landlord for a period of six (6) months from the date of such event. Upon abandonment, this Lease shall be terminated, and Tenant and Landlord shall cooperate in the execution and recordation of such documents reasonably required to evidence such termination. As used herein, the term "force majeure" shall mean events or occurrences which are beyond the reasonable control of the Tenant and which are the direct result of an act of God, including but

not limited to earthquakes, floods, fire, weather conditions that are abnormal or extreme for the location or period of time, and other natural calamities, civil commotion or acts of terrorism. Such term shall not include events which are the direct or indirect result of riots, strikes, picketing or other labor disputes, shortages of materials or supplies, increased labor, materials, equipment or other costs, vandalism, or a calamity such as a flood, fire, subsidence or collapse which is a direct result of the acts or omissions of Tenant.

(b) Default by Tenant. The following shall be events of default by Tenant:

(i) the filing by Tenant of a voluntary petition in bankruptcy or failure by Tenant to promptly lift any execution, garnishment or attachment, to avoid an adjudication of the Tenant as bankrupt, the filing of an involuntary petition in bankruptcy, or an assignment by the Tenant for the benefit of creditors or other agreement of composition with creditors; or (ii) failure by Tenant to perform any covenant, condition or agreement in this Lease, including without limitation, the payment of Minimum Rent or other amounts owed under this Lease, which failure is not cured by Tenant within thirty (30) days after receipt of written notice from Landlord to Tenant, specifying the failure to pay Rent or the covenant, condition or agreement to be performed and requesting performance. As to failures to perform which reasonably require more than thirty (30) days to cure, Tenant shall not be deemed in default if, within thirty (30) days after receipt of written notice from Landlord, Tenant undertakes to cure the failures identified in the notice and thereafter diligently pursues such cure to completion. If Tenant fails, after notice, to timely cure a default, Landlord shall be entitled to all relief available at law or in equity, including termination of this Lease.

(c) Default by Landlord. The following shall be events of default by

Landlord: (i) the filing by Landlord of a voluntary petition in bankruptcy or failure by Landlord to promptly lift any execution, garnishment or attachment, to avoid an adjudication of the Landlord as bankrupt, the filing of an involuntary petition in bankruptcy, or an assignment by the Landlord for the benefit of creditors or other agreement of composition with creditors; or (ii) failure by Landlord to perform any covenant, condition or agreement in this Lease, which failure is not cured by Landlord within thirty (30) days from Landlord's receipt of written notice from Tenant to Landlord, identifying the covenant, condition or agreement to be performed and requesting performance. As to failures to perform which reasonably require more than thirty (30) days to cure, Landlord shall not be deemed in default if, within thirty (30) days after receipt of written notice from Tenant, Landlord undertakes to cure the failures identified in the notice and thereafter diligently pursues such cure to completion. If Landlord fails, after notice, to timely cure a default, Tenant shall be entitled to all relief available at law or in equity, including termination of this Lease.

(d) Condition of the Premises. On abandonment, expiration of the Term or

termination in accordance with subsection (b) and (c), Tenant shall, immediately remove its personal property and fixtures and restore the Premises to their original condition, reasonable wear and tear excepted; provided, however, that at Landlord's option, and on written notice provided to Tenant prior to expiration of the Term or not later than thirty (30) days after receipt of a notice of abandonment, Landlord may elect to retain Tenant's improvements and fixtures (but not Tenant's personal property, if any), including, without limitation, all buildings, building foundations, fencing, and the lattice tower or towers erected by Tenant or its Approved Subtenants or erected prior to commencement of the Term by the lessee under the Prior Lease.

9. EXCLUSIVITY. Prior to and during the Term, except for Tenant's use or the use of any Approved Subtenants or third parties with Tenant's permission or as otherwise permitted



by the Prior Lease, no portion of the Property shall be used for the purpose of or in connection with communications towers and/or facilities without the prior written consent of Tenant, which consent may be withheld in Tenant's sole discretion. Landlord shall not install or permit to be installed any equipment which causes measurable interference to the equipment of Tenant or its Approved Subtenants, or otherwise permit any portion of the Property to be used in a manner which materially interferes with the operations of Tenant and/or any Approved Subtenants. Landlord and Tenant acknowledge that there will not be an adequate remedy at law for non-compliance with the provisions of this Section and therefore, Tenant shall have the right to specifically enforce the provisions of this Section in a court of competent jurisdiction.

10. RIGHTS UPON SALE. Should the Landlord, at any time prior to or during the Term, decide to sell or otherwise convey all or any part of the Property to a purchaser or transferee other than Tenant, such sale or conveyance shall be under and subject to this Lease and Tenant's rights hereunder. In the event of such sale or conveyance, Tenant agrees to attorn to the new owner.

11. TAXES. Upon the expiration of the Prior Lease, Tenant shall thereafter be responsible for all taxes directly attributable to the Facilities as evidenced by an applicable tax bill.

12. NOTICES. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given one (1) day after posting with a nationally recognized overnight courier service, or the earlier of receipt or ten (10) days after posting by registered or certified mail, return receipt requested, to the addresses of Landlord and Tenant as follows:

Landlord: Yosemite Community College District  
2201 Blue Gum Avenue  
Modesto, CA 95358  
Attention: Gina Rose  
Telephone No.: [REDACTED]

Tenant: Shamrock BGM, LLC  
470 Streets Run Road, Suite 300  
Pittsburgh, PA 15236  
Telephone No.: [REDACTED]

Either party may change its notice address by providing notice as set forth herein.

13. MORTGAGES. At Landlord's option, this Lease shall be subordinate to any mortgage or other security interest by Landlord which from time to time may encumber all or part of the Premises and/or right-of-way so long as Landlord's lender shall agree in writing in a form reasonably acceptable to Tenant that such lender will not disturb Tenant's possession and rights under this Lease so long as Tenant remains in compliance with this Lease and agrees, in the event of foreclosure or other sale or transfer of the Property and the Premises, to attorn to the new owner. Prior to the expiration of the Due Diligence Period, Landlord agrees to obtain a partial release of mortgage and/or a non-disturbance agreement in a form acceptable to Tenant from any mortgagee under the Mortgage, if any. If a partial release of mortgage and/or a non-

disturbance agreement in a form acceptable to Tenant is not provided from every mortgagee under the Mortgage, then the Due Diligence Period and Tenant's rights to terminate therein shall be extended until such time as all such partial releases of mortgage and/or non-disturbance agreements are provided.

14. SECURED PARTIES. Tenant shall have the unrestricted right, for financing purposes, to assign, mortgage or grant a security interest in Tenant's interest in and to this Lease and the Premises, which shall not include the fee interest in the Property or the Premises, and may assign, for financing purposes, this Lease and Tenant's interest in the Premises to any such assignees, mortgagees or holders of security interests, including their successors and assigns ("Secured Parties"). If Tenant fails to perform any of its obligations under this Lease, Landlord agrees to provide written notice of such default to Tenant and all Secured Parties of which Landlord has been notified in writing, and to give Tenant and/or such Secured Parties the right to cure such default within a period of not less than sixty (60) days from receipt of the written default notice. Any transfer, assignment or sublease of Tenant's interest in the Lease or the Premises which is for a purpose other than financing shall require the Landlord's consent, in accordance with Section 22(1). The repayment term of any financing obtained by Tenant shall not be longer than the Term of this Lease, as the same may be extended, from time to time.

15. ENVIRONMENTAL. Except as separately disclosed to Tenant in writing, Landlord represents that it has no knowledge of any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation ("Hazardous Materials") located on, under or about, or otherwise affecting, the Property or the Premises. Landlord does specifically disclose to Tenant that the Property was previously occupied by the U.S. Army Hammond General Hospital from approximately 1942 to 1945 and that the Property is subject to a Voluntary Cleanup Agreement between Landlord and the California Environmental Protection Agency, Department of Toxic Substances Control, a copy of which will be provided to Tenant. Neither Landlord nor Tenant will introduce or use any Hazardous Materials on, under or about the Property or the Premises in violation of any applicable law or regulation. Landlord and Tenant shall indemnify, defend and hold the other Party harmless from and against any and all demands, claims, enforcement actions, costs and expenses, including reasonable attorneys' fees, arising out of the presence of Hazardous Materials upon or affecting the Property or the Premises and caused by the indemnifying Party. The foregoing indemnity shall survive any termination of this Lease.

16. CONDEMNATION; CASUALTY.

(a) Condemnation. In the event of any condemnation of the Premises or the Easements in whole, Landlord shall receive the award attributable to the real property and fixtures thereon, and Tenant shall receive the award attributable to personal property, Tenant's goodwill, Tenant's leasehold estate, business relocation expenses and any other award or compensation to which Tenant may be legally entitled; provided, however, that the parties specifically agree that the bonus value of this Lease shall be awarded to Landlord, even if such award otherwise reduces Tenant's compensation. In the event of a partial condemnation, Tenant shall have the right to terminate if there is no commercially reasonable use, as contemplated in this Agreement, for the Premises, and if such use may occur in part, Tenant shall not be entitled to terminate this Lease and the rent, including the Minimum Rent, shall be reduced based on a reduction of square footage or gross rents received, as may be mutually agreeable to the parties.



(b) Casualty. If the Premises and/or Facilities are totally or partially damaged or destroyed during the Term of this Lease, and the Premises and/or Facilities can be restored in accordance with existing laws within one (1) year of the occurrence of such damage or destruction, then Tenant shall promptly restore the Premises and Minimum Rent and other amounts due from Tenant to Landlord shall be payable as follows: (i) during the first six (6) months following the damage or destruction, Tenant shall pay Minimum Rent and other amounts due in full; (ii) during the seventh to twelfth months (or until restoration is complete, whichever occurs first), Tenant shall pay one-half (1/2) of Minimum Rent and other amounts due; and from the thirteenth month on, Tenant shall pay Minimum Rent and other amounts due in full. Notwithstanding the foregoing, if such damage or destruction is attributable to the gross negligence or intentionally wrongful conduct of Landlord, Landlord shall be responsible for such restoration. If the Premises and/or Facilities are totally or partially damaged or destroyed during the Term of this Lease, and the Premises and/or Facilities cannot be restored in accordance with existing laws within one (1) year of the occurrence of such damage or destruction, then Tenant (or the Landlord in the event of Landlord's gross negligence or intentionally wrongful acts or omissions) shall restore the Premises and/or the Facilities and pursue all governmental approvals required in connection with the restoration as promptly and diligently as possible. Minimum Rent and other amounts owed from Tenant to Landlord shall be abated based on a reduction of square footage or gross rents received, as may be mutually agreeable to the parties.

17. INSURANCE. Upon the expiration of the Prior Lease, Tenant shall obtain and keep in force a policy of comprehensive public liability insurance insuring Tenant and Landlord, named and endorsed as an additional insured as well as Landlord's Board, officers and employees, against any liability arising out of Tenant's use or occupancy of the Premises in an amount of not less than One Million and No/100 Dollars (\$1,000,000.00) each occurrence and Three Million and No/100 Dollars (\$3,000,000.00) aggregate for injury, death or personal property damage. Tenant may self-insure against any loss or damage which could be covered by a comprehensive general public liability insurance policy, provided that Tenant does so in full compliance with all applicable laws and regulations. Tenant shall also obtain insurance coverage for Worker's Compensation in accordance with the provisions of Division 4 of the Labor Code, §1860-1861, if applicable; and auto liability of One Million and No/100 Dollars (\$1,000,000.00).

Tenant shall, on or before the Commencement Date and thereafter annually, on the anniversary of the Commencement Date, deliver to Landlord a true and correct copy of each policy of insurance and endorsements required hereunder, as the same may be renewed, replaced or amended from time to time.

Notwithstanding the foregoing, Tenant shall provide proof of liability coverage in the amount set forth above, endorsed to show Landlord as an additional insured, prior to any entry onto the Premises in connection with Tenant's due diligence investigations under Section 5 above.

18. REPRESENTATIONS AND WARRANTIES.

(a) Representations and Warranties of Landlord.

(1) Landlord warrants and certifies that (i) Landlord is the legal owner of title to the Property; (ii) prior to the Effective Date, Landlord has provided to Tenant

true and correct copies of all writings or agreements relating in any way to the Premises and the Easements or Tenant's use thereof or relating to communications facilities on the Property, excluding, however, the Prior Lease; (iii) all of such documents are in full force and effect as of the Effective Date and have not been extended or revised in any way; and (iv) Landlord shall not extend or otherwise revise the Prior Lease or other such documents without Tenant's prior written consent, which may be denied in Tenant's sole discretion.

(2) Landlord warrants and certifies that, as of the Effective Date, (i) the lessee under the Prior Lease is not in default of the Prior Lease, and (ii) the final term/renewal of the Prior Lease will expire on August 31, 2011.

(3) Landlord warrants and certifies that, as of the Effective Date, there is no mortgage, deed of trust, lien, security interest or other encumbrance on or affecting the Property except as follows ("Mortgage"), that Landlord is current in all payments and not otherwise in default of the Mortgage or any loans secured by the Mortgage, and that Landlord shall not place any further encumbrances on the Property prior to the recordation of a memorandum of this Lease:

Mortgagee: \_\_\_\_\_  
Maximum Secured: \_\_\_\_\_  
Commencement Date: \_\_\_\_\_  
Maturity Date: \_\_\_\_\_

(4) Landlord acknowledges that Tenant is entering into this Lease in reliance upon the representations made by Landlord in Sections (a), (b) and (c) above, and that Landlord shall indemnify, defend and hold harmless Tenant for any claim or harm suffered by Tenant due to any inaccuracies in the information provided by Landlord therein.

(5) Landlord's Social Security or Tax Identification Number shall be provided to Tenant on the Effective Date under separate cover.

(b) Representations and Warranties of Tenant. Tenant represents and warrants that it is a limited liability company duly organized, validly existing and in good standing in the State of Delaware, is qualified to do business in the State of California, and has the capacity and full power and authority to enter into and carry out the agreements contained in, and the transactions contemplated by, this Lease, and that, this Agreement has been duly authorized and executed by Tenant and, upon delivery to and execution by Landlord, shall be a valid and binding on Tenant.

19. ESTOPPEL CERTIFICATE. Each Party shall, within ten (10) days after request by the other Party, execute and deliver to the requesting Party, or the Party designated by requesting Party, a statement certifying (i) that this Lease is unmodified and in full force and effect (or, if there have been modifications, stating the modifications and that the modified Lease is in full force and effect); (ii) whether either Party is in default in performance of any of its obligations under this Lease, and, if so, specifying each such default; and (iii) any other information reasonably requested concerning this Lease.

20. MEMORADUM OF LEASE; RECORDING. Concurrently with the full execution of this Lease, the Parties shall fully execute a memorandum of lease evidencing Tenant's rights hereunder. Either Party may thereafter record such memorandum of lease and/or the Assignment



of Beneficial Rights at its sole expense. On termination of this Lease under any of the circumstances set forth in Section 8 or by operation of law, Tenant shall execute, acknowledge and deliver to Landlord within thirty (30) days of such termination a quitclaim deed which Landlord may thereafter record in the Official Records of Stanislaus County, California.

21. SUCCESSORS. This Lease and the covenants contained herein shall run with the land, and shall be binding upon the respective parties and their respective successors, heirs, executors, administrators and assigns.

22. MISCELLANEOUS.

(a) This Lease, including all Exhibits attached hereto, constitutes the entire agreement and understanding of Landlord and Tenant with respect to the subject matter of this Lease, and supersedes all offers, negotiations and any other written or verbal agreements, and any amendments to this Lease must be in writing and executed by both Parties;

(b) this Lease is governed by the laws of the state in which the Property is located;

(c) in the event that either Party fails to pay when due any taxes, loans, judgments or payments attributable to or encumbering the Property, Premises or this Lease, the other Party shall have the right, but not the obligation, to pay such sums on behalf of the non-paying Party, and the non-paying Party shall thereafter reimburse the paying Party for the full amount of such sums paid within five (5) business days of the non-paying Party's receipt of an invoice from the paying Party, or at the Paying party's option the paying Party may offset such amount, plus reasonable interest thereon, against any sums due from the paying Party to the non-paying Party;

(d) if any term of this Lease is found to be void, invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed modified to the minimum extent necessary to be operative, valid and enforceable to most closely reflect the intent of the Parties as expressed herein, or if such modification is not practicable, such provision shall be deemed deleted from this Lease, and the other provisions of this Lease shall remain in full force and effect;

(e) the Parties shall perform, execute and/or deliver promptly any and all such further acts and documents as may be reasonably required to consummate and continue to effectuate the transaction contemplated hereby, including any documents required for Tenant to acquire title insurance on its leasehold interest in the Premises;

(f) the Section headings of this Lease have been inserted for convenience of reference only, and shall in no way modify or restrict the terms of this Lease;

(g) this Lease has been negotiated at arm's-length, and in the event of any ambiguity in any of the terms and provisions, this Lease shall be interpreted in accordance with the intent of the Parties and shall not be interpreted against or in favor of either Landlord or Tenant;

(h) each Party acknowledges that neither Party has provided any legal or tax advice to the other regarding the transaction contemplated hereby or in connection with the



execution of this Lease or any ancillary documents hereto, and each of Landlord and Tenant has had the full opportunity to avail itself of legal and financial representation;

(i) each Party represents and warrants to the other that it has the legal right and authority to execute this Lease and all ancillary documents, and the execution and delivery thereof has been duly authorized by all requisite action;

(j) if either Landlord or Tenant files an action for the enforcement or breach of this Lease, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and court costs; and

(k) this Lease may be executed in any number of counterparts, each of which shall, when executed, be deemed to be an original and all of which shall be deemed to be one and the same instrument.

(l) Tenant's rights under this Lease and Tenant's interest in the Premises may be transferred, assigned or subleased by Tenant only with Landlord's written consent, which consent shall not be unreasonably withheld, and only on condition that each such transferee, assignee or sublessee agrees, in writing, to be bound by the terms of this Lease, including, without limitation, the insurance provisions of Section 17. Tenant shall submit any request for a transfer, assignment or sublease to Landlord in writing and Landlord shall, within ten (10) days of receipt of such request, respond in writing. Notwithstanding the language herein, in the event Tenant desires to assign the Lease to an entity possessing at least five hundred fifty (\$50) wireless communication facilities or an entity controlling Tenant, such assignment shall be upon thirty (30) days written notice to Landlord and on condition that such assignee agrees, in writing, to be bound by the terms of this Lease, including, without limitation, the insurance provisions of Section 17.

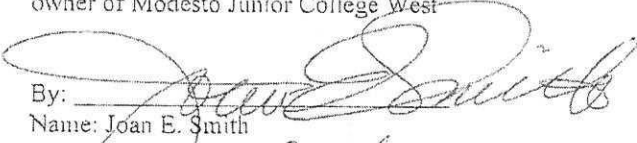
(m) Landlord shall have the right, on not less than forty-eight (48) hours telephonic notice, to enter the Premises on such reasonable conditions as Tenant may require.

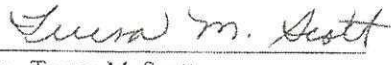
[Signatures to immediately follow.]

IN WITNESS WHEREOF, and intending to be legally bound, Landlord and Tenant have executed this Agreement.

LANDLORD:


Yosemite Community College District,  
California community college district, as  
owner of Modesto Junior College West

By:   
Name: Joan E. Smith  
Title: Interim Chancellor  
Date: 12/9/10

By:   
Name: Teresa M. Scott  
Title: Executive Vice Chancellor  
Date: 12/13/2010

TENANT:

Shamrock BGM, LLC, a  
Delaware limited liability company

By:   
Name: John P. Lemmon  
Title: Vice President and General  
Counsel  
Date: 12/15/10