



Meeting Date: 11 / 9 / 10

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input checked="" type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input type="checkbox"/> Public Hearing (Info/consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Prepared By: Mike More, Financial Services Manager Agenda Item No. I-8

Reviewed By: City Manager [Signature] City Attorney [Signature] Finance [Signature] Other (Specify) \_\_\_\_\_

**DATE:** October 28, 2010

**TO:** City Council

**FROM:** Mike More, Financial Services Manager [Signature]  
Finance

**SUBJECT:** Request from Horvath Towers, LLC for Consent to Assign its Interest in Cell Tower Site Lease to SBA Towers III LLC, at Beck Park, 600 West Kamala Street

**RECOMMENDATION**

That City Council approve and authorize the Mayor to execute a Landlord Estoppel Certificate, Consent and Agreement permitting Horvath Towers, LLC to assign its interest in a Site Lease with the City of Oxnard to SBA Towers LLC (A-7360).

**DISCUSSION**

On November 14, 2006, the City of Oxnard entered into a Site Lease with Royal Street Communications, LLC ("Royal Street"), as tenant, for a lease of specified areas in Beck Park located at 600 W. Kamala Street, Oxnard, California for use by the tenant as a wireless communications site. A Memorandum of Agreement is recorded as Document 20061124-00248442-0, records of Ventura County, State of California. On January 21, 2010, Royal Street assigned the Site Lease to its affiliate Royal Street Communications California, LLC ("Royal Street CA") as permitted by the terms of the Site Lease and on January 21, 2010, with the permission of the City of Oxnard, Royal Street CA assigned its interest in the Site Lease to Horvath Towers LLC by Assignment Agreement dated January 21, 2010.

Horvath Towers LLC, which is in compliance with the terms of the Site Lease, is in the process of selling substantially all of its communications sites including the site located in Beck Park to SBA Towers III LLC, a Florida limited liability company and requests consent to assign the Site Lease to SBA Towers III, which will continue to operate the site as wireless communications site. SBA Communications Corporation is a leading independent owner and operator of wireless communications infrastructure across North America. The transaction between Horvath Towers LLC and SBA Towers III is expected to occur in November 2010.

Finance Department staff has reviewed the transaction and financial information concerning SBA Towers III, and has determined that SBA Towers III will be able to perform under the Site Lease.

## **FINANCIAL IMPACT**

No financial impact is anticipated from this action.

Attachment #1 - Landlord Estoppel Certificate, Consent and Agreement

Note: Attachments #1, has been provided to City Council under separate cover. Copies for review are available at the Help Desk in the Library after 6:00 p.m. on Thursday prior to the Council meeting and in the City Clerk's Office after 8:00 a.m. on Friday prior to the Council meeting.

LANDLORD ESTOPPEL CERTIFICATE, CONSENT AND AGREEMENT  
(HVM\_LA0901: Oxnard)

THIS LANDLORD ESTOPPEL CERTIFICATE AND AGREEMENT (this "Agreement") is made as of \_\_\_\_\_, 2010 by the party identified as "Landlord" on the signature page hereof ("Landlord") for the benefit of Horvath Towers, LLC, a Delaware limited liability company ("Tenant"), SBA Towers III LLC, a Florida limited liability company ("Buyer"), and any Lender (defined below).

RECITALS:

A. Tenant is the lessee of a portion of certain real property more particularly described on Exhibit A attached hereto and made a part hereof (the "Premises"), pursuant to that certain Communications Site Lease Agreement dated November 14, 2006 by and between Landlord and Royal Street Communications, LLC, as tenant, as assigned to Royal Street Communications California, LLC, by Assignment Agreement dated January 21, 2010, as assigned to Tenant by Assignment Agreement dated January 21, 2010 (the "Lease"). The Lease is evidenced by a Memorandum of Lease, dated November 24, 2006, recorded as Document 20061124-00248442-0, records of Ventura County, State of California;

B. Pursuant to a Purchase and Sale Agreement dated July 20, 2010 between Tenant, as Seller, and Buyer (by assignment from SBA Towers II LLC) (the "Purchase Agreement"), Tenant will sell its interest in the Lease to Buyer; and

C. In connection with the transfer of the Lease to Buyer, Tenant and Buyer desire to have Landlord make certain certifications and agreements relating to the Lease.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged Landlord certifies and agrees as follows:

1. Consent. Landlord hereby consents to the acquisition by Buyer of Tenant's interest in the Lease.

2. Estoppel Certificate. Landlord certifies to Tenant, Buyer and any Lender that the following statements are true as of the date hereof:

(a) Tenant is the current tenant under the Lease (a full copy of which, including all amendments thereto, is annexed as Exhibit B);

(b) The Lease is in full force and effect, has not been assigned by Landlord to any other party and contains the entire agreement between Landlord and Tenant with respect to the Premises;

(c) Tenant's monthly base rent under the Lease is \$2,867.11 as of October, 2010. Tenant pays no additional monthly rent. All rent, additional rent and other charges due and

payable under the Lease have been paid through October, 2010. Rent will increase to \$2,890.05 on November 14, 2010;

(d) No default exists under the Lease on the part of Tenant, and, to Landlord's knowledge, no event or condition has occurred or exists which, with notice or the passage of time or both, would constitute a default by Tenant under the Lease; and

(e) The term of the Lease commenced on November 14, 2006 and the expiration date of the initial term of the Lease is November 13, 2011. Tenant commenced paying rent on May 14, 2007.

3. Tenant Financing; Agreement with Respect to the Lease. Tenant may from time to time grant to certain lenders selected by Tenant and its affiliates (the "Lenders") a lien on and security interest in Tenant's interest in the Lease and all assets and personal property of Tenant located on the leased space (the "Personal Property") as collateral security for the repayment of any indebtedness to the Lenders. Landlord hereby agrees that any security interest, lien, claim or other similar right, including, without limitation, rights of levy or distraint for rent, Landlord may have in or on the Personal Property, whether arising by agreement or by law, to the liens and/or security interests in favor of the Lenders, whether currently existing or arising in the future is subordinate to the lien and security interest of Lenders. Nothing contained herein shall be construed to grant a lien upon or security interest in any of Landlord's assets, including Landlord's interest in the Lease. If there shall be a monetary default by Tenant under the Lease, Landlord shall accept the cure thereof by Lenders within fifteen (15) days after the expiration of the notice period provided to Tenant under the Lease to cure such default, prior to terminating the Lease. If there shall be a non-monetary default by Tenant under the Lease, Landlord shall accept the cure thereof by Lenders within thirty (30) days after the expiration of the notice period provided to Tenant under the Lease to cure such default, prior to terminating the Lease. The Lease may not be amended in any respect which would be reasonably likely to have a material adverse effect on Lenders' interest therein or surrendered, terminated or cancelled, without the prior written consent of Lenders. In the event Landlord gives Tenant any notice of default under the terms of the Lease, Landlord shall simultaneously give a copy of such notice to Lender at the address set forth in paragraph 4 below. Tenant shall have the right to record of memorandum of the terms of this paragraph.

4. Notices. All notices sent to a Lender will be in writing and sent by United States mail postage prepaid or other reputable courier service to the address provided to Landlord for any Lender. The address of the current Lender, if any, is \_\_\_\_\_ [or state "None"]. Concurrent with making any loan or advance, a Lender, to obtain the benefits of this Agreement, must in writing notify Landlord of its interest in the Lease, specifically referring to the Lease and the nature of the interest, and providing an address for notice to be sent to the Lender.

5. Miscellaneous.

- (a) If this Agreement is inconsistent with the Lease, this Agreement will control.
- (b) This Agreement will be binding upon Landlord and its successors and assigns.
- (c) This Agreement may not be amended or modified except by a written agreement executed by Landlord, Buyer and the Lender, if any.

Executed as of \_\_\_\_\_, 2010.

LANDLORD:

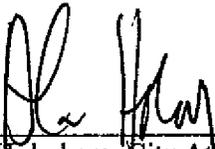
CITY OF OXNARD

By: \_\_\_\_\_

Name: Dr. Thomas E. Holden

Title: Mayor

APPROVED AS TO FORM:



\_\_\_\_\_  
Alan Holmberg, City Attorney

ATTEST:

\_\_\_\_\_  
Daniel Martinez, City Clerk

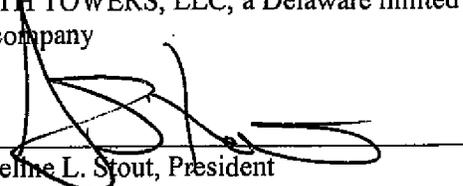
[Signatures continued on the following page]

[Signatures continued from the previous page]

ACCEPTED BY:

TENANT:

HORVATH TOWERS, LLC, a Delaware limited liability company

By:   
Jacqueline L. Stout, President

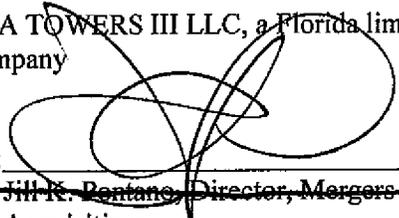
[Signatures continued on the following page]

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ACCEPTED BY:

BUYER:

SBA TOWERS III LLC, a Florida limited liability company

By: 

~~Jill K. Pontano, Director, Mergers & Acquisitions~~

COLEMAN PREWITT  
ASSOCIATE GENERAL COUNSEL  
MERGERS & ACQUISITIONS

[Signatures continued on the following page]

[Signatures continued from the previous page]

ACCEPTED BY:

LENDER:

a \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**

**DESCRIPTION OF PREMISES**

The land referred to herein is situated in the State of California, County of Ventura, described as follows:

Part of Subdivision 39 as the same is designated and delineated upon that certain map entitled, "Map of Rancho El Rio de Santa Clara O'La Colonia, partitioned by order of Dist. Court, 1<sup>st</sup> Jud. Dist. California," and filed in the office of the County Clerk of Ventura County in that certain action entitled, "Thomas A. Scott, et al., Plffs. vs. Rafael Gonzales, et al., Defs.," said action having been brought for the purpose of partitioning said Rancho El Rio de Santa Clara O'La Colonia, and more particularly described as follows:

Beginning at a point on the center line of "C" Street in the City of Oxnard, County of Ventura, State of California, said point being at the Southeast corner of the Sea Grove Tract as per map thereof recorded in Book 15, Page 71 of Maps in the office of the County Recorder of said county; thence,

1st: - South 0° 01' West 640.00 feet along the Southerly prolongation of the center line of said "C" Street to a point; thence,

2nd: - South 89° 59' 30" West 100.00 feet to a point, a radial line at said point bears South 0° 01' 30" East; thence,

3rd: - Following a curve concave southeasterly with a radius of 360.00 feet and a central angle of 32° a distance of 201.06 feet to a point, a radial line at said point bears South 32° 0' 30" East; thence,

4th: - South 57° 59' 30" West 168.16 feet to a point; a radial line at said point bears North 32° 0' 30" West; thence,

5th: - Following a curve concave northwesterly with a radius of 360.00 feet and a central angle of 32° a distance of 201.06 feet to a point, a radial line at said point bears North 0° 0' 30" West; thence,

6th: - South 89° 59' 30" West 224.18 feet to a point; thence,

7th: - North 0° 01' East 678.52 feet to a point; thence,

8th: - South 89° 59' 30" West 644.15 feet parallel with the northerly line of said Subdivision 39 and 160.00 feet there from to a point in the East line of the land conveyed to Ignatz Friedrich by deed recorded in Book 138, Page 292 of Deeds; thence along said East line,

9th: - North 0° 01' East 160.00 feet to the northerly line of said subdivision 39; thence,

10th: - North 89° 59' 30" East 1492.49 feet to the point of beginning.

Except that portion of said land granted to Q.D. Brewer, a Married Man and J.B. Yager, a Married Man in the deed recorded May 1, 1952 as Instrument No. 9884, of Official Records.

APN: 203-0-280-020

**EXHIBIT B**

**[ATTACH COMPLETE COPY OF LEASE]**

ROYAL STREET COMMUNICATIONS, LLC SITE LEASE

THIS SITE LEASE ("Lease") is entered into this 14<sup>th</sup> day of November 2006, between the City of Oxnard ("Landlord") and Royal Street Communications, LLC, a Delaware limited liability company ("Tenant").

1. Leased Premises. Landlord grants to Tenant a lease of specified areas within Beck Park, a public park owned by Landlord ("the Property"), located at 600 W. Kamala Street, Oxnard, California 93033, together with certain rights of access and a license as provided herein within Beck Park (altogether the "Premises"). The location and orientation of Tenant's space within Beck Park is as attached in Exhibit A attached hereto and incorporated herein by this reference.
2. Government Approvals. Tenant shall obtain and maintain, at Tenant's sole expense and as quickly as feasible, all land use approvals, licenses and permits required for Tenant's use of the Premises ("Governmental Approvals"). If Tenant does not receive all Governmental Approvals enabling Tenant to construct and operate a wireless communications facility on the Premises without conditions which are not standard or typical for premises where wireless communications facilities are located within six months from the Commencement Date, either Landlord or Tenant may terminate this Lease without liability except as to liability arising as a result of pre-termination events and obligations, by delivering written notice to the other. A copy of the plans approved by the Planning Division of the City of Oxnard for Tenant's Antenna Facilities on the Premises is attached hereto as Exhibit A and is incorporated herein by this reference.
3. Term. The term of this Lease shall be five (5) years, commencing on the date that both Tenant and Landlord execute the Lease ("Commencement Date"), and terminating at midnight on the last day of the month in which the fifth annual anniversary of the Commencement Date shall have occurred. Tenant shall have the right to extend this Lease for three additional five year terms ("Renewal Terms"). Each Renewal Term shall be on the same terms and conditions as set forth herein. This Lease shall automatically be renewed for each successive Renewal Term unless Tenant shall notify Landlord of Tenant's intention not to renew this Lease at least ten days prior to the expiration of the term or any Renewal Term.
4. Use.
  - a. The Premises may be used by Tenant only for the operation of a wireless communications site. Under this Lease, Tenant may install, place, use and operate on such antennas, radio transmitting and receiving equipment, conduits, wires, batteries, back-up generators, utility lines and facilities, supporting structures, storage facilities, telephone facilities, microwave equipment and related equipment (collectively "Antenna Facilities") as are permitted by the Government Approvals. Tenant, subject to the limitations of this Lease, may perform construction, maintenance, repairs, additions to, and replacement of Antenna Facilities as necessary and appropriate for its ongoing business and as required for Tenant's communications operations at the Property, subject to the provisions of Paragraph 7a.

COUNCIL APPROVAL

DATE: 11/14/06 AGENDA # I-3

Site: LA0901A Beck  
Address: 600 W. Kamala St., Oxnard, CA 93033

1

ATTACHMENT 1  
EXHIBIT B  
PAGE 2 OF 21

- b. In using the Premises, Tenant shall comply with all applicable local, state, and federal laws and regulations.
- c. Tenant shall maintain the Premises and all Antenna Facilities in good condition and repair, ordinary wear and tear excepted.

5. Rent.

- a. Upon the date Tenant starts construction of the antenna facilities with all of the required permits and approvals, or six (6) months after the Commencement Date of this Lease, whichever is sooner, Tenant shall pay Landlord, as rent, the sum of Two Thousand Seven Hundred Dollars (\$2,700.00) per month (the "Rent"). Rent shall be paid to Landlord within forty-five (45) days of the Commencement Date. Thereafter, Rent shall be paid to Landlord within ten (10) days of the first day of each month in advance at Landlord's address specified in Paragraph 16 below. If the Lease is commenced other than on the first day of a month, the Rent shall be prorated for that first month for the number of days from the Commencement Date to the end of the month.
- b. If this Lease is terminated at a time other than on the last day of a month, Rent shall be prorated as of the date of termination, and, in the event of termination for any reason other than nonpayment of Rent; all prepaid Rents shall be refunded to Tenant.
- c. One year after the Commencement Date, and on the same day each year thereafter that this Lease is in effect, the Rent shall be adjusted by the percentage change since the previous year in the Consumer Price Index prepared by the Bureau of Labor Statistics for the Los Angeles-Riverside-Orange County area relating to all urban consumers.
- d. Tenant acknowledges that late payment of Rent may cause Landlord to incur administrative costs and expenses which are difficult and impractical to fix. Therefore, if any installment of Rent or other payment due from Tenant is not received by Landlord within ten calendar days after due date, Tenant shall pay Landlord an additional sum equal to five percent of the past due obligation as a late charge which shall be deemed additional Rent. The parties agree that this late charge represents a fair and reasonable estimate of the administrative costs that Landlord may incur by reason of Tenant's late payment.

6. Interference.

- a. Landlord shall not use, nor shall Landlord permit its employees, tenants, licensees, invitees or agents to use any portion of the Property in any way which interferes with the physical or technological operations of Tenant. Such interference shall be deemed a material breach by Landlord, and Landlord shall have the responsibility to terminate said interference. In the event any such interference does not cease promptly, the parties acknowledge that continuing interference will cause irreparable injury to Tenant, and therefore Tenant shall have the right, in addition to any other rights that it may have at law or in equity, to bring action to enjoin such interference or to terminate this Lease.

Site: LA0901<sup>B</sup> Beck  
Address: 600 W. Kamala St., Oxnard, CA 93033

ATTACHMENT 1  
EXHIBIT B  
PAGE 3 OF 27

- b. Nothing in this Lease shall be construed to limit the Landlord's right to sell the Property (provided any purchaser of the Property acknowledges in writing that the Property is subject to this Lease), use the Property other than the Premises, or assign or lease the Property or portions thereof; provided, however, that Landlord shall include in any leases of portions of the Property a requirement that the tenants shall not interfere with the physical or technological operations of Tenant. Shared use by Tenant and other tenants of portions of the Property, other than the Premises, or use of the Property, other than the Premises, by a tenant that competes with Tenant shall not be deemed to be "interference."
- c. Nothing in this Lease shall be construed to limit or interfere with Landlord's right to repair, maintain and improve the Premises. Tenant agrees to cooperate with Landlord and its contractors as necessary to accomplish such repairs, maintenance and improvements, including, on reasonable notice from Landlord, temporarily relocating Tenant's Antenna Facilities and utilities, described in Section 4, to or installing temporary Antenna Facilities on another location on the Property while Landlord or its contractors perform such repairs, maintenance, or improvements. To the extent reasonably possible, Landlord shall cooperate with Tenant to minimize any inconvenience or disruption to Tenant in connection with any such repairs, maintenance, or improvements. Landlord shall, to the extent landlord may legally and properly do so, expedite any and all City of Oxnard permits and approvals for the allowance of Tenant's temporary facility. The responsibility for the costs and expenses associated with any temporary relocation of Tenant's Antenna Facilities as provided for in this subparagraph shall be allocated as follows: Landlord shall be responsible for the first \$1,000.00 of such costs and expenses; Landlord and Tenant shall each bear responsibility for one-half of such costs and expenses in excess of \$1,000.00.

7. Improvements; Utilities; Access.

- a. Tenant shall have the right, at its expense, to install, construct, repair and maintain the Antenna Facilities in the Premises. The installation and construction of the Antenna Facilities shall be in accordance with the design set forth in the Government Approvals allowing such installation and construction. The design permitted by the Government Approvals is attached hereto as Exhibit A. The design of the Antenna Facilities may not be altered without the prior written approval of the Landlord.
- b. The Antenna Facilities shall remain the exclusive property of Tenant, and Tenant shall have the right to remove all or any portion of the Antenna Facilities or any portion thereof during the Lease term and following any termination of this Lease. Tenant shall repair any and all damages to the Premises or Property caused by any such removal.
- c. Tenant shall have the right to install utilities and to improve the present utilities, all at Tenant's expense, on the Premises (including, but not limited to the installation of emergency power generators). Tenant shall have the right to permanently place utilities, at Tenant's expense, on (or to bring utilities across) the Property in order to serve the Premises and the Antenna Facilities, together with a right to enter the Property in order to maintain, repair and replace the utilities so long as the placement of such utilities and access do not interfere with Landlord's use of the Property. Landlord and Tenant shall

Site: LA0901<sup>B</sup>/Beck  
 Address: 600 W. Kamala St., Oxnard, CA 93033

act reasonably and cooperate concerning the placement of utilities. Landlord hereby grants a non-exclusive license to Tenant, which shall expire concurrent with the term of this Lease, as may be extended, for access and utilities.

- d. Landlord shall provide Tenant ingress and egress from an open and improved public road, and access over and across the Property adequate to service the Antenna Facilities at all times during the term of this Lease or any renewal thereof at no additional charge to Tenant. Tenant shall be entitled to 24 hour, seven days per week, access to the Premises, without the necessity of prior written notice to Landlord. Tenant may not conduct any activities in a manner which interferes with Landlord's use of the Property.
- e. Tenant shall keep the Premises free from all liens and stop notices arising from any work performed, materials furnished, or obligations incurred by or at the request of Tenant. If any lien or stop notice is filed against the Premises as a result of the acts or omissions of Tenant, or Tenant's employees, agents or contractors, Tenant shall discharge, bond, or otherwise secure the same to Landlord's satisfaction within 30 days after Tenant has notice that the lien or stop notice has been filed. If Tenant fails to commence steps to discharge, bond or secure any lien or stop notice within such period, then, in addition to any other right or remedy, Landlord may, at its election, upon five days' prior written notice to Tenant, discharge the lien or stop notice by either paying the amount claimed to be due, or obtaining the discharge by deposit with a court or a title company, or by bonding. Tenant shall pay on demand any amount so paid by Landlord and all reasonable attorneys' fees and other legal expenses of Landlord incurred in defending any action or in obtaining the discharge of such lien, together with all reasonable disbursements.

8. Default.

- a. Landlord shall be in default under this Lease if: (i) Landlord shall fail to cease any physical or technological interference within the cure periods set forth herein; or (ii) Landlord shall fail to observe or perform any of Landlord's other obligations under this Lease when such failure shall continue for 30 days after written notice from Tenant to Landlord; provided, however that if the nature of Landlord's default is such that it cannot be cured solely by payment of money and that more than a 30 day period may be reasonably required to effect such cure, then Landlord shall not be deemed to be in default under this clause (ii) if Landlord shall commence such cure within the 30 day period and shall thereafter diligently prosecute such cure to completion. In the event of any breach of this Lease by Landlord, Tenant shall have the right (but not the obligation), in addition to all remedies that may be available at law or in equity, to perform Landlord's obligations under this Lease. Tenant shall have the right to set off any expense incurred as a result of Landlord's default against any Rent or other payment due under this Lease.
- b. Tenant shall be in default under this Lease if: (i) Tenant shall fail to pay the Rent due under this Lease within ten days after written notice from Landlord that such Rent is overdue; or (ii) Tenant shall fail to observe or perform any of Tenant's other obligations under this Lease when such failure shall continue for 30 days after written notice from Landlord to Tenant. However, if the nature of Tenant's default is such that it cannot be

Site: LA0901<sup>6</sup> Beck  
Address: 600 W. Kamala St., Oxnard, CA 93033

cured solely by payment of money and that more than a 30 day period may be reasonably required to effect such cure, then Tenant shall not be deemed to be in default under this clause (ii) if Tenant shall commence such cure within the 30 day period and shall thereafter diligently prosecute such cure to completion. In the event of any breach of this Lease by Tenant, Landlord shall have the right (but not the obligation), in addition to all remedies that may be available at law or in equity, to perform Tenant's obligations under this Lease.

9. Termination. Except as otherwise provided herein, this Lease may be terminated, without any penalty or further liability, on 30 days written notice as follows: (a) by either party upon a default of any covenant or term hereof by the other party, which default is not cured within 60 days of receipt of written notice of default (without, however, limiting any other rights available to the parties pursuant to any other provisions hereof); (b) by Tenant if it is unable to obtain or maintain any license, permit or other Government Approval necessary to the construction and/or operation of the Antenna Facilities or Tenant's business; or (c) by Tenant if the Premises is or becomes unacceptable under Tenant's design or engineering specifications for its Antenna Facilities or the communications system to which the Antenna Facilities belong. In the event Tenant terminates this Lease under provision (c) of this section, Tenant will pay a termination fee to Landlord equal to twelve months of the then current Rent.
10. Condition of Premises Upon Termination. Upon termination, Tenant will return the Premises to their original condition, ordinary wear and tear excepted.
11. Taxes. This Lease may create a taxable property interest in the Premises. Tenant shall pay and be solely responsible for any personal property taxes, possessory interest tax or other leasehold interest tax assessed on, or any portion of such taxes attributable to, the Antenna Facilities or Tenant's use of the Premises. Landlord shall pay when due all real property taxes and all other fees and assessments attributable to the Premises. However, Tenant shall pay, as additional Rent, any increase in real property taxes levied against the Premises which is directly attributable to Tenant's use of the Premises, and Landlord agrees to furnish proof of such increase to Tenant, except for proof of possessory or other leasehold interest taxes, billings for which are submitted directly to Tenant by the taxing agency.
12. Insurance.
  - a. Tenant shall obtain and maintain during the performance of any services under this Agreement the insurance coverage specified in Exhibit INS-N, attached hereto and incorporated herein by this reference, issued by a company satisfactory to Landlord's Risk Manager, unless the Risk Manager waives, in writing, the requirement that Tenant obtain and maintain such insurance coverage.
  - b. Tenant shall, prior to the Commencement Date, file with the Risk Manager evidence of insurance coverage as specified in Exhibit INS-N. Evidence of insurance coverage shall be forwarded to the Risk Manager, addressed as specified in INS-N.
  - c. Maintenance of proper insurance coverage by Tenant is a material element of this Lease. Tenant's failure to maintain or renew insurance coverage or to provide evidence of renewal may be considered as a material breach of this Lease.

- d. All insurance standards applicable to Tenant shall also be applicable to Tenant's sub-consultants. Tenant agrees to maintain appropriate agreements with sub-consultants and to provide proper evidence of coverage upon receipt of a written request from the Risk Manager.
13. Destruction of Property. If the Property or the Premises are destroyed or damaged so as, in Tenant's judgment, to hinder the effective use of the Antenna Facilities, Tenant may elect to terminate this Lease as of the date of the damage or destruction by so notifying Landlord not more than 45 days following the date of damage. In such event, all rights and obligations of the parties shall cease as of the date of the damage or destruction and Tenant shall be entitled to the reimbursement of any Rent prepaid by Tenant.
14. Condemnation. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's determination, to render the Premises unsuitable for the use which Tenant was then making of the Premises, this Lease shall terminate as of the date the title vests in the condemning authority. It is the intention of the parties that neither Landlord nor the condemning authority shall have the right to terminate the Lease in the event of the condemnation of the Premises or any portion of the Property, unless Tenant's use of the Premises thereafter materially interferes with the condemning authority's use of the balance of the Property. The parties shall be entitled to share in the condemnation proceeds in proportion to the values of their respective interests in the Property (which for Tenant shall include, where applicable, the value of its Antenna Facilities, moving expenses, prepaid Rent, and business dislocation expenses) as set out by the condemning authority, or as agreed to by the parties. If the respective interests are not set forth by the condemning authority and the parties are unable to agree, their respective share shall be determined by mediation through an independent mediator or if mediation fails to resolve the controversy, then by arbitration under the provisions of the California Arbitration Act. Sale of all or part of the Property to a purchaser with the power of eminent domain in the face of the exercise of the power, shall be treated as a taking by condemnation.
15. Indemnity.
- a. Tenant agrees to indemnify, hold harmless and defend Landlord, its City Council, and each member thereof, and every officer, employee, representative or agent of Landlord, from any and all liability, claims, demands, actions, damages (whether in contract or tort, including personal injury, death at any time, or property damage), costs and financial loss, including all costs and expenses and fees of litigation or arbitration, that arise directly or indirectly from any acts or omissions related to this Agreement performed by Tenant or its agents, employees, contractors, consultants and other persons acting on Tenant's behalf. This agreement to indemnify, hold harmless and defend shall apply whether such acts or omissions are the product of active negligence, passive negligence, willfulness or acts for which Tenant or its agents, employees, contractors, consultants and other persons acting on Tenant's behalf would be held strictly liable.
- b. Landlord agrees to indemnify, hold harmless and defend Tenant, and every officer, employee, representative or agent of Tenant, from any and all liability, claims, demands, actions, damages (whether in contract or tort, including personal injury, death at any time, or property damage), costs and financial loss, including all costs and expenses and

fees of litigation or arbitration, that arise directly or indirectly from any acts or omissions related to this Agreement performed by Landlord or its agents, employees, contractors, consultants and other persons acting on behalf of Landlord. This agreement to indemnify, hold harmless and defend shall apply whether such acts are the product of active negligence, passive negligence, willfulness or acts for which Landlord or its agents, employees, contractors, consultants and other persons acting on Landlord's behalf would be held strictly liable.

16. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by overnight carrier to the following addresses:

If to Landlord, to: City of Oxnard, City Manager's Office  
300 West Third Street  
Oxnard, California 93030

With a Copy to: City of Oxnard, City Attorney  
300 West Third Street  
Oxnard, California 93030

Rent Payments to: City of Oxnard, Finance and Management Services  
300 West Third Street  
Oxnard, California 93030

If to Tenant, to: Royal Street Communications, LLC  
2913 El Camino Real, Suite 561  
Tustin, California 92782  
Attn: Property Manager  
Telephone: (714) 730-3100  
Facsimile: (714) 730-3201

With a Copy to: Royal Street Communications, LLC  
7557 Rambler Road, Suite 700  
Dallas, Texas 75231  
Attn: Property Manager

Either party may by written notice to the other party specify a different address for notice purposes.

17. Title and Quiet Enjoyment.

Landlord warrants that it (i) has full right, power and authority to execute this Lease; (ii) has good and unencumbered title to the Property free and clear of any ground leases, liens, mortgages or other encumbrances that would interfere with Tenant's intended use of the Premises; and (iii) has the power to grant the access rights as set forth in this Lease. Landlord further warrants that Tenant shall have the quiet enjoyment of the Premises during the term of this Lease.

Site: LA0901<sup>6</sup> Beck  
Address: 600 W. Kamala St., Oxnard, CA 93033

7

ATTACHMENT 1  
EXHIBIT B  
PAGE 8 OF 27

18. Emergency Measures. Landlord acknowledges that Tenant, as a telecommunications carrier, has an obligation to provide its services at all times, even in times of power failures, natural disaster, civil commotion and other emergencies. Accordingly, Landlord agrees that Tenant shall have the right to bring all equipment and personnel onto the Premises and the Property, to the extent necessary, as may be reasonably necessary to allow Tenant to continue its operations in the face of such emergencies.
19. Assignment. Tenant may not assign the Lease and its other rights under this Lease (including, without limitation, any options to extend the term of the lease), or sublet the Premises or any portion thereof, without the prior written consent of Landlord, which consent shall not be unreasonably withheld. Notwithstanding the preceding sentence, upon notice to Landlord, Tenant may assign this Lease to an affiliate, subsidiary, or parent of Tenant. Any sublease that is entered into by Tenant shall be subject to the provisions of the Lease.
20. Successors and Assigns. This Lease shall run with the Property, and shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.
21. Waiver of Landlord's Lien. Landlord hereby waives any and all lien rights it may have, statutory or otherwise, concerning the Antenna Facilities and other equipment or trade fixtures brought onto the Premises by Tenant, all which shall be deemed personal property for the purposes of this Lease, regardless of whether or not same is deemed real or personal property under applicable laws, and Tenant shall have the right to remove all or any portion of same from time-to-time in Tenant's sole discretion and without Landlord's consent.
22. Environmental Matters.
- a. Tenant represents and warrants to Landlord that Tenant will not generate, store or dispose of any hazardous materials on, under or about the Property in violation of any hazardous substance laws (as defined below). Tenant shall indemnify and hold Landlord, its Councilmembers, employees, officers and agents harmless from any losses, claims, damages, penalties and liabilities arising from any breach of the foregoing representations and warranties.
  - b. Landlord shall indemnify and hold harmless Tenant, its partners, directors, officers, employees, and agents, and any assignees, subtenants, or successors to Tenant's interest in the Premises, their partners, directors, officers, employees, and agents, from and against any and all losses, claims, damages, penalties, and liability, including all out-of-pocket litigation costs and the reasonable fees and expenses of counsel and experts, including without limitation all consequential damages directly or indirectly arising out of the use, generation, storage, release, or disposal of hazardous materials by Landlord, its agents, or contractors prior to execution of this Lease or at any time after execution, or by any prior owner or operator of the Property, and also from and against the cost of any required repair, cleanup, or detoxification and any closure or other required plans to the full extent that such action is attributable, directly or indirectly, to the presence or use, generation, storage, release, threatened release, or disposal of hazardous materials by any person on, under, or in the Property.

- c. If any cleanup, repair, detoxification, or other similar action is required by any governmental or quasi-governmental agency as a result of the storage, release, or disposal of hazardous materials by Landlord, its agents or contractors, at any time, or by any prior owner, possessor, or operator of any part of the Property, and such action interferes with Tenant's normal use of the Premises for greater than a 24 hour period, then the Rent will be abated entirely during the period beyond 24 hours; in addition, Tenant shall have the rights set forth in this Lease.
  - d. In this Paragraph, "hazardous materials" includes, but is not limited to, substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq.; and those substances defined as hazardous, toxic, hazardous wastes, toxic wastes, or as hazardous or toxic substances by any law or statute now or after this date in effect in the state in which the Premises are located; and in the regulations adopted and publications promulgated pursuant to those laws (all collectively "hazardous substance laws").
  - e. The provisions of this Paragraph will survive the expiration or termination of this Lease.
23. Relocation of Premises. Landlord shall be entitled to have the Premises permanently relocated to a different location pursuant to the following conditions: (i) the alternate location must satisfy Tenant's cell site requirements, and (ii) the costs of any such relocation of the Premises and the relocation of Tenant's facilities associated therewith shall be solely the responsibility of the Landlord. Within one year after agreeing to the relocation of the Premises and its facilities located thereon, Tenant shall complete the relocation, at the expense of the Landlord. Tenant shall be free to continue to use the original Premises during the period of relocation. In the event an alternate site cannot be agreed upon, or if Landlord declines to pay for the cost of any such relocation, then Landlord's ability to obtain a relocation of the Premises under this paragraph shall terminate and be of no effect.
24. Miscellaneous.
- a. The substantially prevailing party in any litigation or other proceeding arising under this Lease shall be entitled to its court costs and reasonable attorneys' fees (which, for Landlord, shall include the reasonable value of services rendered by the City Attorney's Office), including appeals, if any.
  - b. Each party agrees to furnish to the other such truthful estoppel information as the other may in writing reasonably request, upon not less than 30 days' prior notice.
  - c. This Lease and all addenda and exhibits attached hereto constitute the entire agreement and understanding of the parties, and supersede all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease must be in writing and executed by both parties.

Site: LA0901<sup>B</sup>A Beck  
 Address: 600 W. Kamala St., Oxnard, CA 93033

ATTACHMENT   7    
 EXHIBIT   B    
 PAGE   10   OF   27

- d. If either party is represented by a real estate broker in this transaction, that party shall be fully responsible for any fee due such broker, and shall hold the other party harmless from any claims for commission by such broker.
- e. Landlord agrees to cooperate with Tenant in executing (or obtaining the execution by third parties, as the case may be) any documents necessary to protect Tenant's rights under this Lease or Tenant's use of the Premises. Such documents may include, without limitation, a short-form memorandum of this Lease (which may reference the various option rights of Tenant under this Lease), a short form memorandum of the Lease, the easement agreements of this Lease, a waiver of Landlord's interest in the Antenna Facilities, or a non-disturbance agreement from any existing or future mortgagee or ground lessor assuring that Tenant may remain in possession of the Premises without reduction in its rights under this Lease should Landlord default under said mortgage or ground lease. All of the foregoing documents must be commercially reasonable in content and in a form suitable for recordation, and shall be executed by Landlord not later than 30 days after Tenant's request therefore.
- f. Upon expiration or earlier termination of this Lease, Tenant shall, if requested by Landlord, record a quitclaim deed to evidence the termination of Tenant's interest in the Property and the Premises.
- g. This Lease shall be construed in accordance with the laws of California. The provisions of this Lease shall be construed in accordance with the fair meaning of the language used and shall not be strictly construed against either party. If the parties delete any provisions appearing in the original draft of this Lease, this Lease shall be interpreted as if the deleted language were never a part of this Lease.
- h. If any term of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect.

Signatures

on

next

page.

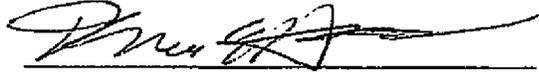
Site: LA0901<sup>6</sup> Beck  
Address: 600 W. Kamala St., Oxnard, CA 93033

10

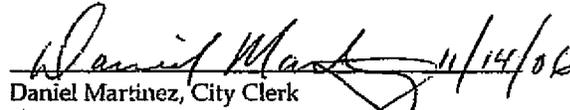
ATTACHMENT   1    
EXHIBIT   B    
PAGE   11   OF   21

DATED as of the date first set forth above.

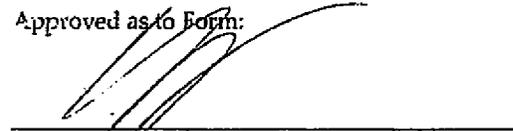
LANDLORD: City of Oxnard, a municipal corporation  
Tax ID: 95-6000756

  
Thomas E. Holden, Mayor

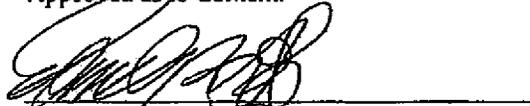
Attest:

  
Daniel Martinez, City Clerk

Approved as to Form:

  
Gary L. Giffig, City Attorney

Approved as to Content:

  
Edmund F. Sotelo, City Manager

TENANT: Royal Street Communications, LLC,  
a Delaware limited liability company

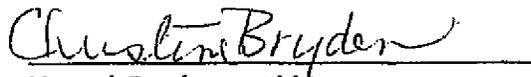
  
Christine Bryden  
Network Development Manager  
10/17/06

EXHIBIT A

DESCRIPTION OF THE TENANT'S PREMISES AND PLANNING DIVISION APPROVAL

Site: LA0901<sup>e</sup> Beck  
Address: 600 W. Kamala St., Oxnard, CA 93033

ATTACHMENT 2  
EXHIBIT B  
PAGE 13 OF 21



Planning and Environmental Services Division  
305 West Third Street • Oxnard, CA 93030 • (805) 385-7858 • Fax (805) 385-7417

September 26, 2006

Tricia Knight  
TEK Consulting  
368 Santa Fe Avenue  
Pismo Beach, CA 93449

RE: *Administrative Wireless Permit PZ 06-230-6; Non-Stealth Wireless Communication Facility at 600 West Kamala Street (APN 203-0-280-020); Light Pole at Beck Park*

The City of Oxnard has reviewed your request to install a non-stealth wireless communication facility at 600 West Kamala Street. The application includes the installation of 6 antennas mounted on a light pole that illuminates a sports field at a City of Oxnard park. The associated telecommunication equipment will be enclosed within a 12' X 18' structure adjacent to the subject light pole.

**Existing Land Use:** The subject property is 18.7 acres and is developed with the City of Oxnard's Beck Park. The park has two baseball diamonds that have 62-foot tall floodlights used for night games. There are several accessory structures on the site including restrooms, utility buildings, and spectator bleachers. A concession stand and a storage container used by the Parks and Recreational Department will be impacted by the development.

**General Plan & Zoning Conformity:** The City's 2020 General Plan designates the subject site for Park uses. "Park areas include those existing and proposed facilities which are under the jurisdiction of a park agency. This includes state beaches and beach parks, regional parks, and community and neighborhood parks and special purpose facilities administered by the City." The zoning for the site is R2 (Multi-Family Residential). Parks are a related use for the R2 zone district; therefore the current use of the site as a park is consistent with the General Plan. As designed, the wireless communication facility will not affect the recreational use of the site; therefore the project is consistent with the goals and policies of The City's 2020 General Plan and the standards of the City of Oxnard Zoning Ordinance.

**Environmental Determination:** In accordance with Section 15303 of Title 14 of the California Environmental Quality Act (CEQA) Guidelines, projects involving the "construction and location of limited numbers of new, small facilities or structures" may be found to be exempt from the requirements of CEQA. The installation of the wireless communication facility at the subject property requires the placement of antennas on a light pole and the installation of telecommunication equipment within a small building adjacent to the light pole. Neither the antennas nor the new structure will impact the recreational use of the site. Therefore, staff has determined that there is no substantial evidence that the project may have a significant effect on the environment.

ATTACHMENT 1  
EXHIBIT B  
PAGE 14 OF 27

**Analysis:** The proposed wireless communication facility consists of 6 antennas attached to a 62-foot tall light pole with the associated telecommunication equipment stored in an adjacent 18'X12' concrete block, roofed structure. The existing light pole will be replaced with a replica that will match the existing pole in all regards other than the subject antennas (see condition no.7). The antennas will be centered at 55-feet on the light pole and they will be evenly spaced around the pole. The structure that will store the associated telecommunication equipment is adjacent to the pole to the south and will be attached to an existing concession stand. As a condition of approval and as shown on the approved plans, the flat "torch-on" roof of the concession stand will be replaced with a sloping tile roof that will match the other accessory structures on-site (see condition no. 8). A storage container that is utilized by the Parks and Recreation Department will be displaced by the new structure. As a condition of approval and as shown on the approved plans, a 7'X12' storage space will be integrated into the new building and will be made available for the use of the Park and Recreation Department (see condition no. 9). A trash enclosure that is adjacent to the new equipment shelter will be relocated to the satisfaction of the Solid Waste Division, the Parks and Recreation Department, and the Building and Engineering Division. The new trash enclosure will match the existing trash enclosure in materials and design (see condition no. 10).

With a new roof on the affected concession stand and by utilizing building materials that match the existing structures on the site, the new development will integrate well into the park's setting. By removing the storage container and providing replacement storage, the wireless communication facility will have a negligible effect on the uses of the site. Additionally, the installation of the wireless communication facility shall be coordinated with the Parks and Recreation Department to avoid disruption of scheduled recreational activities (see condition no. 11).

The Planning Manager, in accordance with section 16-488(5) of the City Code, can approve a wireless communication facility on City owned property.

The Planning Division approves the requested administrative wireless permit, based upon the following findings:

**FINDINGS**

- A. Due to placement of the telecommunication equipment in a structure that matches the existing architecture of the site and the placement of the antennas on an existing light pole, the wireless communication facility will not affect the recreational uses of the park.
- B. As designed, the wireless communication facility is consistent with the goals of the 2020 General Plan and policies of the zone designation for the property.
- C. The installation of the wireless communication facility is categorically exempt from the provisions of Title 14 of the California Environmental Quality Act (CEQA), under Section 15303.

- D. The wireless communication facility conforms to the development standards established by Section 16-492 of the City Code.

**CONDITIONS**

1. Developer shall obtain a building permit for any new construction or modifications to structures, including interior modifications, authorized by this permit.
2. This permit is granted for the property described in the application on file with the Planning Division, and may not be transferred from one property to another. (PL, G-1).
3. This permit is granted for the plans stamped approved on file with the Planning Division. The project shall conform to the plans, except as otherwise specified in these conditions, or unless a minor modification to the plans is approved by the Planning and Environmental Services Manager. A minor modification may be granted for minimal changes or increases in the extent of use or size of structures or of the design, materials or colors of structures or masonry walls. A major modification shall be required for substantial changes or increases in such items. (PL, G-2)
4. This permit shall automatically become null and void 24 months from the date of its issuance, unless Developer has diligently developed the proposed project, as shown by the issuance of a building permit and the construction of substantial improvements, or the beginning of the proposed use. (PL, G-3)
5. Prior to the issuance of building permits, Developer shall negotiate a lease with the City of Oxnard that shall be approved by the City Council. A copy of the lease will be provided to the Planning Department for the file.
6. Prior to issuance of building permits, Developer shall pay a document-imaging fee for the Planning files in an amount calculated by Planning staff at the time of building permit review based on fees then in effect.
7. The existing light pole, upon which the antennas will be attached, will be replaced with a replica that will match the existing pole in all regards other than the subject antennas. Prior to issuance of building permits, specifications for the light pole shall be provided to the Planning Division.
8. Developer shall be responsible to repair any consequential damage that occurs to the park's landscaping or structures because of the installation of the antennas and/or equipment shelter. Any necessary repairs to the park's facilities shall be made prior to final inspection.

9. Prior to final inspection, the flat "torch-on" roof of the concession stand that the equipment shelter is attached to will be replaced with a sloping tile roof that will match the other accessory structures on-site in regards to materials and design. The Parks and Recreation Department shall approve the roofing tile utilized prior to building permit issuance.
10. A 7'X12' storage space shall be incorporated into the new equipment shelter as shown on the approved plans. The door opening into the storage space shall be constructed of steel to discourage vandalism and the locking mechanism shall be tamper resistant. The Parks and Recreation Department shall approve the door utilized prior to building permit issuance.
11. Prior to final inspection, the trash enclosure that is adjacent to the new equipment shelter will be relocated to the satisfaction of the Solid Waste Division, the Parks and Recreation Department, and the Building and Engineering Division. The new trash enclosure will match the existing trash enclosure in regards to materials and design.
12. The installation of the wireless communication facility shall be coordinated with the Parks and Recreational Department to avoid disruption of scheduled recreational activities. Prior to issuance of building permits, Developer shall contact the Parks and Recreation Department to schedule the timing of construction.
13. Prior to final inspection the wireless communication facility shall have a separate electrical meter installed dedicated to the operation of the equipment.

This letter serves as official approval of your administrative wireless permit request, and pertains only to the project described herein. Enclosed is a set of the approved plans, for your use and/or your records. Approval of this permit will expire two years from the date of this letter. If you have any questions about this letter, please call Winston Wright at (805) 385-7952.

Sincerely,



Susan I. Martin, AICP  
Planning and Environmental Services Manager

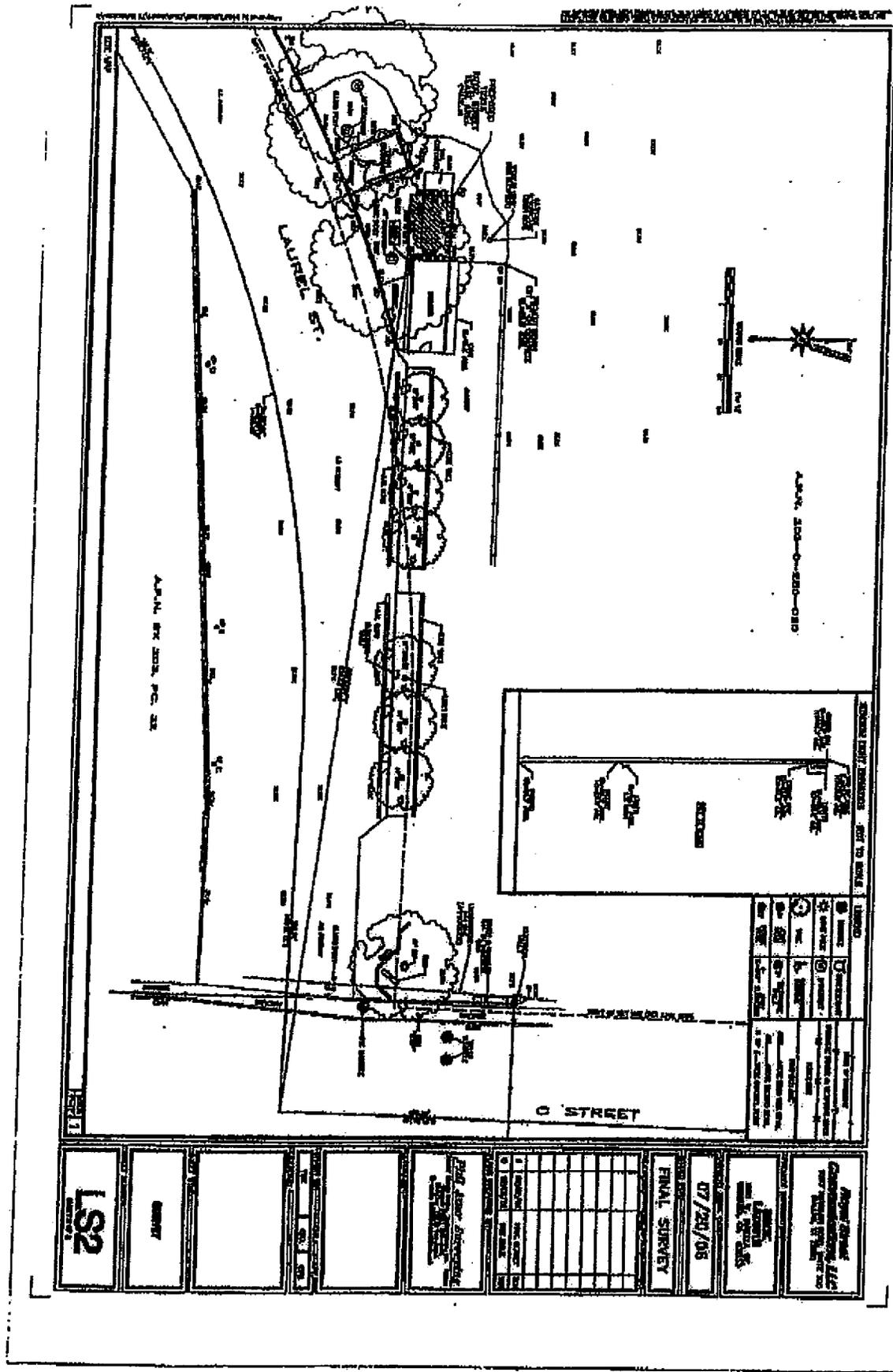
Attached: Project Plans

cc: Matthew Winegar, AICP, Development Services Director  
Rob Roshanian, Development Services Manager  
Dennis Scala, City Manager's Office  
Lori Rice, Parks and Recreation

ATTACHMENT   1    
EXHIBIT   B    
PAGE   17   OF   21







<b>LS2</b> LAND SURVEYING INCORPORATED 1000 W. 10TH ST. DENVER, CO 80202	PROJECT NO. 07-231/08 DATE 07/23/08 FINAL SURVEY	PREPARED BY J. L. [Name] CHECKED BY M. K. [Name]	APPROVED BY [Signature] DATE 07/23/08	SHEET NO. 1 OF 1
				TOTAL SHEETS: 1









A#5

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Oxnard  
Attn: City Clerk  
305 West Third Street  
Oxnard, CA 93030

20061124-00248442-0 1/3  
Ventura County Clerk and Recorder  
Philip J. Schnitt  
11/24/2006 03:09:59 PM  
20179 6.00 AR

A-6742

MEMORANDUM OF SITE LEASE

This Memorandum of Agreement is entered into on November 14, 2006, by and between the City of Oxnard, a municipal corporation, with an office at 300 W. Third Street, 4<sup>th</sup> Floor, Oxnard, California 93030 (hereinafter referred to as "Landlord"), and Royal Street Communications, LLC, a Delaware limited liability company, with an office at 2913 El Camino Real, #561, Tustin, California 92752 (hereinafter referred to as "Tenant").

1. Landlord and Tenant entered into a Site Lease ("Lease") on November 14, 2006 ("Commencement Date"), for the purpose of installing, operating and maintaining a communications facility and other improvements. All of the foregoing is set forth in the Lease.
2. The term of the Lease is for five (5) years beginning on the Commencement Date and terminating on the fifth anniversary of the Commencement Date, with three (3) successive five (5) year options to renew. In no event shall the term of the Lease exceed thirty-five (35) years.
3. The Land which is the subject of the Lease is described in Exhibit A annexed hereto.

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

LANDLORD:

City of Oxnard,  
a municipal corporation

By: [Signature]

Name: Thomas E. Holden

Title: Mayor

Date: 11/14/06

TENANT:

Royal Street Communications, LLC,  
a Delaware limited liability company

By: [Signature]

Name: Christine Bryden

Title: Network Development Manager

Date: 10/17/06

ATTEST:

By: [Signature]

Name: Daniel Martinez

Title: Clerk

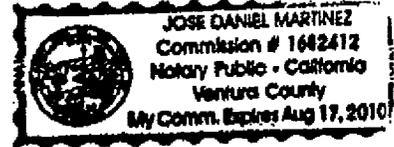
Date: 11/14/06

STATE OF California  
COUNTY OF Ventura

On Nov. 14, 2006, before me, Jose Daniel Martinez Notary Public, personally appeared THOMAS E. Holden personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Jose Daniel Martinez 11/14/06 (SEAL)  
Notary Public



STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public (SEAL)

STATE OF CALIFORNIA  
COUNTY OF ORANGE

On 10.17.06, before me, P. WEIGAND Notary Public, personally appeared CARISTINE BRYDEN personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

P. Weigand  
Notary Public (SEAL)

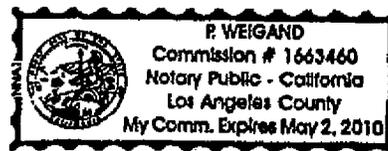


EXHIBIT A

DESCRIPTION OF LAND

to the Agreement dated November 14, 2006, by and between the City of Oxnard, a municipal corporation, as Lessor, and Royal Street Communications, LLC, a Delaware limited liability company, as Lessee.

The land referred to herein is situated in the State of California, County of Ventura, described as follows:

Part of Subdivision 39 as the same is designated and delineated upon that certain map entitled, "Map of Rancho El Rio de Santa Clara O'La Colonia, partitioned by order of Dist. Court, 1<sup>st</sup> Jud. Dist. California," and filed in the office of the County Clerk of Ventura County in that certain action entitled, "Thomas A. Scott, et al., Pliffs. vs. Rafael Gonzales, et al., Defts.," said action having been brought for the purpose of partitioning said Rancho El Rio de Santa Clara O'La Colonia, and more particularly described as follows:

Beginning at a point on the center line of "C" Street in the City of Oxnard, County of Ventura, State of California, said point being at the Southeast corner of the Sea Grove Tract as per map thereof recorded in Book 15, Page 71 of Maps in the office of the County Recorder of said county; thence,

- 1st: - South 0° 01' West 640.00 feet along the Southerly prolongation of the center line of said "C" Street to a point; thence,
- 2nd: - South 89° 59' 30" West 100.00 feet to a point, a radial line at said point bears South 0° 01' 30" East; thence,
- 3rd: - Following a curve concave southeasterly with a radius of 360.00 feet and a central angle of 32° a distance of 201.06 feet to a point, a radial line at said point bears South 32° 0' 30" East; thence,
- 4th: - South 57° 59' 30" West 168.16 feet to a point, a radial line at said point bears North 32° 0' 30" West; thence,
- 5th: - Following a curve concave northwesterly with a radius of 360.00 feet and a central angle of 32° a distance of 201.06 feet to a point, a radial line at said point bears North 0° 0' 30" West; thence,
- 6th: - South 89° 59' 30" West 224.18 feet to a point; thence,
- 7th: - North 0° 01' East 678.52 feet to a point; thence,
- 8th: - South 89° 59' 30" West 644.15 feet parallel with the northerly line of said Subdivision 39 and 160.00 feet there from to a point in the East line of the land conveyed to Ignatz Friedrich by deed recorded in Book 138, Page 292 of Deeds; thence along said East line,
- 9th: - North 0° 01' East 160.00 feet to the northerly line of said subdivision 39; thence,
- 10th: - North 89° 59' 30" East 1492.49 feet to the point of beginning.

Except that portion of said land granted to Q.D. Brewer, a Married Man and J.B. Yager, a Married Man in the deed recorded May 1, 1952 as Instrument No. 9884, of Official Records.

APN: 203-0-280-020

ATTACHMENT 1  
EXHIBIT C  
PAGE 1 OF 4

2

FIDELITY NATIONAL TITLE COMPANY

SPL

When Recorded, Return to:

Horvath Towers, LLC  
312 West Colfax Ave.  
South Bend, IN 46601  
(574) 237-0464

LA0901



20100128-00012647-0 1/5

Ventura County Clerk and Recorder  
James S. Becker, Assistant  
01/28/2010 08:00:00 AM  
386088 \$22.00 AR

DS

**MEMORANDUM OF ASSIGNMENT AND ASSUMPTION AGREEMENT**  
**(SHORT FORM)**

**(Unrecorded lease less than 35 years)**

This Short Form Memorandum of Assignment and Assumption Agreement (this "Agreement") is hereby made as of this 21<sup>st</sup> day of January, 2010 by and between ROYAL STREET COMMUNICATIONS CALIFORNIA, LLC, a Delaware limited liability company, ("Assignor") and HORVATH TOWERS, LLC, a Delaware limited liability company, ("Assignee").

**RECITALS**

**WHEREAS**, Assignor's predecessor in interest, Royal Street Communications, LLC, a Delaware limited liability company ("Assignor's Predecessor"), as Tenant, entered into a Communications Site Lease Agreement, dated the 14<sup>th</sup> day of November 2006 (the "Lease"), a memorandum of which was recorded on November 24, 2006 in the Official Records of Ventura County, California, as instrument number 20061124-00248442-0, with the City of Oxnard ("Landlord"), as Landlord, whereby Assignor's Predecessor leased from Landlord a portion of real property owned by Landlord located at 600 W. Kamala Street, Oxnard, California 93033 ("Premises"), together with necessary easements or rights for access and utilities. Lessor's real property is more particularly described in the attached Exhibit A (the "Site"). Assignor's Predecessor assigned its interest in the Site Lease to Assignor, a memorandum of which was filed in the Official Records simultaneously herewith (the Site Lease, with any respective amendments or assignments, together with the recorded memoranda hereinafter the "Lease"); and

Memorandum of Assignment and Assumption Agreement  
Site Number: LA0901  
Site Address: 600 W. Kamala Street, Oxnard, California 93033  
5064853

Page 1 of 5

ATTACHMENT 1  
EXHIBIT C  
PAGE 2 OF 4

WHEREAS, the aforementioned Lease, memoranda of leases, and all amendments or assignments to any of the foregoing, may be collectively referred to herein as the "Site Lease"; and

WHEREAS, Assignor desires to assign to Assignee all of Assignor's right, title, interest, duties, obligations and liabilities under the Site Lease and the Site; and

WHEREAS, subject to the Assignment and Assumption Agreement executed between the parties on January 24, 2010 (the "Assignment Agreement"), Assignee desires to assume all of Assignor's right, title, interest, duties, obligations and liabilities under the Site Lease and the Site.

NOW, THEREFORE, for good and valuable consideration, the parties hereto agree as follows:

1. Assignor hereby transfers and assigns to Assignee all of its right, title, interest, duties, obligations and liabilities under the Site Lease and the Site.
2. Assignee hereby accepts the assignment of the Site Lease and the Site as of the date the Assignment Agreement became fully executed and Assignee agrees to perform each and every term, covenant, condition of Assignor under the Site Lease.
3. Subject to the Assignment Agreement, Assignee accepts the Site on an "as is, where is" basis.
4. This Agreement is made for recording purposes only, it being acknowledged by the parties hereto that the Assignment Agreement contains all of the terms, conditions and provisions of the assignment and assumption referred to herein. If this Agreement is inconsistent with the Assignment Agreement, the Assignment Agreement will control.
5. This Agreement may be signed in counterparts, and shall be effective if executed in counterparts.

(Signatures continued on following pages)

0901

(Signature continued from previous page)

IN WITNESS WHEREOF, the undersigned parties, intending to be legally bound, have caused this Agreement to be duly executed as of the date first written above.

ASSIGNOR:

ROYAL STREET COMMUNICATIONS  
CALIFORNIA, LLC,  
a Delaware limited liability company

By: John R. Lister

Name: John R. Lister

Title: Vice President-Network Development

STATE OF TEXAS            )  
  ) SS:  
COUNTY OF COLLIN        )

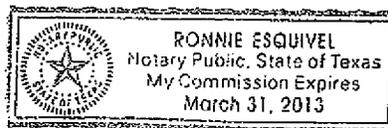
On January 15, 2010, before me, RONNIE ESQUIVEL, a Notary Public, personally appeared John R. Lister, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature [Handwritten Signature]

(Seal)



(Signature continued on following page)

This document prepared by: \_\_\_\_\_

(Signature continued from previous page)

ASSIGNEE:

HORVATH POWERS, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_

Name: Jacqueline L. Horvath

Title: President

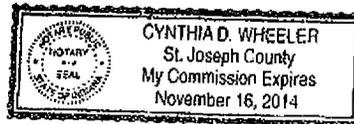
STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF ST. JOSEPH    )

On January 11, 2010, before me, Cynthia Wheeler, a Notary Public, personally appeared Jacqueline L. Horvath, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument, the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Cynthia Wheeler (Seal)



NATIONAL TITLE INSURANCE COMPANY  
HAS RECORDED THIS INSTRUMENT BY REQUEST AS  
AN ACCOMMODATION ONLY AND HAS NOT EXAMINED  
IT FOR REGULARITY AND SUFFICIENCY OR AS TO ITS  
EFFECT UPON THE TITLE TO ANY REAL PROPERTY  
WHICH MAY BE DESCRIBED THEREIN.

Memorandum of Assignment and Assumption Agreement  
Site Number: LA0901  
Site Address: 600 W. Kamala Street, Oxnard, California 93033  
5064853

ATTACHMENT 1  
EXHIBIT C  
PAGE 5 OF 6

**Exhibit A**  
**Description of Premises**

Site Address: 600 W. Kamala Street, Oxnard, California 93033

Assessor's Parcel Number: 203-0-280-020

**LEGAL DESCRIPTION**

The land referred to herein is situated in the State of California, County of Ventura, described as follows:

Part of Subdivision 39 as the same is designated and delineated upon that certain map entitled, "Map of Rancho El Rio de Santa Clara O'La Colonia, partitioned by order of Dist. Court, 1<sup>st</sup> Jud. Dist. California," and filed in the office of the County Clerk of Ventura County in that certain action entitled, "Thomas A. Scott, et al, Plffs. vs. Rafael Gonzales, et al., Defs.," said action having been brought for the purpose of partitioning said Rancho El Rio de Santa Clara O'La Colonia, and more particularly described as follows:

Beginning at a point on the center line of "C" Street in the City of Oxnard, County of Ventura, State of California, said point being at the Southeast corner of the Sea-Grove Tract as per map thereof recorded in Book 15, Page 71 of Maps in the office of the County Recorder of said county; thence,

1st: - South 0° 01' West 640.00 feet along the Southerly prolongation of the center line of said "C" Street to a point; thence,

2nd: - South 89° 59' 30" West 100.00 feet to a point, a radial line at said point bears South 0° 01' 30" East; thence,

3rd: - Following a curve concave southeasterly with a radius of 360.00 feet and a central angle of 32° a distance of 201.06 feet to a point, a radial line at said point bears South 32° 0' 30" East; thence,

4th: - South 57° 59' 30" West 168.16 feet to a point, a radial line at said point bears North 32° 0' 30" West; thence,

5th: - Following a curve concave northwesterly with a radius of 360.00 feet and a central angle of 32° a distance of 201.06 feet to a point, a radial line at said point bears North 0° 0' 30" West; thence,

6th: - South 89° 59' 30" West 224.18 feet to a point; thence,

7th: - North 0° 01' East 678.52 feet to a point; thence,

8th: - South 89° 59' 30" West 644.15 feet parallel with the northerly line of said Subdivision 39 and 160.00 feet there from to a point in the East line of the land conveyed to Ignatz Friedrich by deed recorded in Book 138, Page 292 of Deeds; thence along said East line,

9th: - North 0° 01' East 160.00 feet to the northerly line of said subdivision 39; thence,

10th: - North 89° 59' 30" East 1492.49 feet to the point of beginning.

Except that portion of said land granted to Q.D. Brewer, a Married Man and I.B. Yager, a Married Man in the deed recorded May 1, 1952 as Instrument No. 9884, of Official Records.

Memorandum of Assignment and Assumption Agreement  
Site Number: LA0901  
Site Address: 600 W. Kamala Street, Oxnard, California 93033  
5064853

Page 5 of 5

ATTACHMENT 1  
EXHIBIT C  
PAGE 10 OF 10

ATTACHMENT 1  
EXHIBIT D  
PAGE 1 OF 6

FIDELITY NATIONAL TITLE COMPANY

S.P.L.

When Recorded, Return to:

Patton Boggs LLP  
2550 M Street, NW  
Washington, DC 20037  
Attn: Paul C. Besozzi, Esq.  
(202) 457-5292

20100128-00012646-0 1/5  
Ventura County Clerk and Recorder  
James B. Becker, Assistant  
01/28/2010 08:00:00 AM  
366068 \$22.00 AR

LA0901

**MEMORANDUM OF ASSIGNMENT AND ASSUMPTION AGREEMENT**  
**(SHORT FORM)**

(Unrecorded lease less than 35 years)

This Short Form Memorandum of Assignment and Assumption Agreement (this "Agreement") is hereby made as of this 21<sup>st</sup> day of January, 2010 by and between ROYAL STREET COMMUNICATIONS, LLC, a Delaware limited liability company, ("Assignor") and ROYAL STREET COMMUNICATIONS CALIFORNIA, LLC, a Delaware limited liability company, ("Assignee").

**RECITALS**

**WHEREAS**, Assignor, as Tenant, entered into a Communications Site Lease Agreement, dated the 14<sup>th</sup> day of November 2006 (the "Lease"), a memorandum of which was recorded on November 24, 2006 in the Official Records of Ventura County, California, as instrument number 20061124-00248442-0, with the City of Oxnard ("Landlord"), as Landlord, whereby Assignor leased from Landlord a portion of real property owned by Landlord located at 600 W. Kamala Street, Oxnard, California 93033 ("Premises"), together with necessary easements or rights for access and utilities, more particularly described in the attached Exhibit A (the "Site"); and

**WHEREAS**, the aforementioned Lease, memoranda of lease, and all amendments to any of the foregoing, may be collectively referred to herein as the "Site Lease"; and

Memorandum of Assignment and Assumption Agreement (Internal)  
Site Number: LA0901  
Site Address: 600 W. Kamala Street, Oxnard, California 93033  
5065177

Page 1 of 5

ATTACHMENT 1  
EXHIBIT D  
PAGE 2 OF 12

**WHEREAS**, Assignor desires to assign to Assignee all of Assignor's right, title, interest, duties, obligations and liabilities under the Site Lease and the Site; and

**WHEREAS**, Assignee desires to assume all of Assignor's right, title, interest, duties, obligations and liabilities under the Site Lease and the Site.

**NOW, THEREFORE**, for good and valuable consideration, the parties hereto agree as follows:

1. Assignor hereby transfers and assigns to Assignee all of its right, title, interest, duties, obligations and liabilities under the Site Lease and the Site.
2. Assignee hereby accepts the assignment of the Site Lease and the Site and Assignee agrees to perform each and every term, covenant, condition of Assignor under the Site Lease.
3. Assignee accepts the Site on an "as is, "where is" basis.
4. This Agreement may be signed in counterparts, and shall be effective if executed in counterparts.

(Signatures continued on following pages)

Memorandum of Assignment and Assumption Agreement (Internal)  
Site Number: LA0901  
Site Address: 600 W. Kamala Street, Oxnard, California 93033  
5065177

Page 2 of 5

ATTACHMENT 1  
EXHIBIT D  
PAGE 3 OF 10

0901

(Signature continued from previous page)

IN WITNESS WHEREOF, the undersigned parties, intending to be legally bound, have caused this Agreement to be duly executed as of the date first written above.

ASSIGNOR:

ROYAL STREET COMMUNICATIONS, LLC,  
a Delaware limited liability company

By: John R. Lister

Name: John R. Lister

Title: Vice President-Network Development

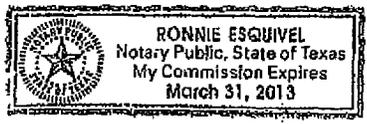
STATE OF TEXAS )  
                          ) SS:  
COUNTY OF COLLIN )

On January 15, 2010, before me, Ronnie Esquivel, a Notary Public, personally appeared John R. Lister, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Ronnie Esquivel



(Seal)

Memorandum of Assignment and Assumption Agreement (Internal)  
Site Number: LA0901  
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5065177

Page 3 of 5

ATTACHMENT 1  
EXHIBIT D  
PAGE 4 OF 10

(Signature continued from previous page)

ASSIGNEE:

ROYAL STREET COMMUNICATIONS  
CALIFORNIA, LLC,  
a Delaware limited liability company

By: John R. Lister

Name: John R. Lister

Title: Vice President-Network Development

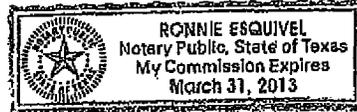
STATE OF TEXAS )  
                          ) SS:  
COUNTY OF COLLIN )

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

WITNESS my hand and official seal.

Signature Ronnie Esquivel



(Seal)

FIDELITY NATIONAL TITLE INSURANCE COMPANY  
HAS RECORDED THIS INSTRUMENT BY REQUEST AS  
AN ACCOMMODATION ONLY AND HAS NOT EXAMINED  
IT FOR REGULARITY AND SUFFICIENCY OR AS TO ITS  
EFFECT UPON THE TITLE TO ANY REAL PROPERTY  
THAT MAY BE DESCRIBED THEREIN.

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ATTACHMENT 1  
EXHIBIT D  
PAGE 5 OF 10

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5065177

Page 5 of 5

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EXHIBIT D  
PAGE 6 OF 10