

# CITY OF WASHINGTON

## PLANNING & DEVELOPMENT DEPARTMENT

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### MEMORANDUM

TO: Mayor Manier and Committee of the Whole  
FROM: Jon R. Oliphant, AICP, Planning & Development Director  
SUBJECT: Landmark Dividend Cell Lease Buyout Consideration  
DATE: November 8, 2018

**Summary:** Landmark Dividend LLC presented a proposal to the City to buyout the two currently applied cell tower antenna agreements for \$530,000 for a 35-year period. Michael Henschel from Landmark attended the September Committee of the Whole meeting to present this and to take any questions. The draft agreement provided by Mr. Henschel, a spreadsheet offering a summary of the City's current agreements, and an example of an agreement from a Landmark client community are attached. Also included is Landmark's boilerplate Easement & Assignment Agreement that presents their general conditions associated with this offer.

**Background:** The City currently has three lease agreements, one of which is not active to date:

- Verizon – Blumenshine Property (approved in January 2001): The current term is effective through September 2022. Verizon pays the City \$913 in monthly payments through that term. The agreement allows for annual extensions with a 3% increase at the end of each anniversary of the commencement period as long as neither party has submitted a termination notice at least six months prior to the end of the current term. The City is guaranteed \$44,737 through the current term.
- T-Mobile – Water Tower #1 (approved in April 2007): The current term is effective through July 2022. T-Mobile pays the City \$2,687.33 in monthly payments with a 3% increase at the end of each anniversary of the commencement period. The agreement allows for two more five-year extensions with the same 3% increase at the end of each anniversary of the commencement date. The City is guaranteed \$134,612.13 through the current term. If the two five-year extensions were applied through July 2032, the City would be paid a total of \$547,306.74.
- Verizon – Water Tower #1 (approved in April 2017): The City has not begun receiving monthly lease payments because the equipment has not been installed on the tower. The initial term would be for ten years. Verizon would pay the City \$2,000 in monthly payments with a 3% increase applied at the end of each anniversary of the commencement date. The agreement allows for four five-year extensions with the same 3% increase at the end of each anniversary of the commencement date. The City would be paid \$275,133.10 through the initial 10-year term. If the four five-year extensions were applied through 2048 (assuming a commencement date of January 1, 2019), the City would be paid a total of \$1,141,809.98.

The City is guaranteed **\$172,147.47** through the current terms of the Verizon (Blumenshine) and T-Mobile agreements. Should the Verizon (Water Tower #1) equipment be installed and that agreement be extended through 30 years and the T-Mobile agreement be extended through July 2032, the City would receive \$1,689,116.72. Additionally, the City is guaranteed \$44,737 through the current term of the Verizon (Blumenshine) agreement, which would bring the total to **\$1,732,027.72**, plus any possible annual extensions of that particular agreement.

Landmark Dividend has offered the City **\$530,000** for an initial 35-year term for the two active agreements. At the end of that term, Landmark, at its sole discretion, would have the option to extend the term an additional 35 years at an anticipated price of \$1,471,993.01. Mr. Henschel has indicated that the initial offer price would be increased to \$820,000 if the Verizon (Water Tower #1) equipment is installed and that lease becomes active.

Landmark would only be assuming the current City leases and would not have the ability to enter into any lease agreements with other cell providers on these facilities or others in the future. With continual technology updates and the passage of the Small Wireless Facilities Deployment Act, it is unknown what the future may be for "large cell" service and how reasonable it may be for extensions of the City's existing agreements to occur.

General discussion is planned for the November 12 Committee of the Whole meeting to see if there is interest in pursuing an agreement with Landmark. Per the Letter of Interest, Landmark has requested that the agreement be executed by November 29 if the City were interested in this current offer.

## Cell Tower Leases

**As of 11/2018**

	Current			Remaining	Through	Future				
	Monthly lease	Annual revenue	Term	2018 revenue	Current Term	Monthly lease	Annual revenue	Term	Total Possible Revenue	
<u>Verizon - Blumenshine property</u>										
Stormwater Mgmt. lease revenue	913.00	10,956.00	thru 9/2022	1,826.00	42,911.00	940.39	11,284.68	Annual	42,911.00	* plus any future annual extension
<u>T-Mobile - Water Tower #1</u>										
Water Tank Reserve lease revenue	2,687.83	32,253.96	thru 7/2022	5,375.66	129,236.47	2,768.46	33,221.58	**	547,306.74	
<u>Verizon - Water Tower #1</u>										
Water Tank Reserve lease revenue	***								1,141,809.98	
<b>TOTAL</b>					<b>172,147.47</b>				<b>1,732,027.72</b>	

\* lease expires 9/30/22, can be extended for indefinite annual extensions with a 3% increase applied each year.

\*\* lease began 8/1/07 and after first year term ending 8/1/12, can be extended for four (4) successive five (5) year terms with a 3% increase applied each year.

\*\*\* contract approved 4/3/17 with initial ten-year term; however lease payments have not begun because equipment not installed; first year lease amount \$2,000 per month, increasing 3% per year; can be extended for four (4) successive five (5) year terms

	T-Mobile	Monthly lease	Annual revenue	Future total revenue				Verizon Tower #1	Monthly lease	Annual revenue	Future total revenue			
	2019	2,768.46	33,221.58	33,221.58				2019	2,000.00	24,000.00	24,000.00			
	2020	2,851.52	34,218.23	67,439.80				2020	2,060.00	24,720.00	48,720.00			
	2021	2,937.06	35,244.77	102,684.58				2021	2,121.80	25,461.60	74,181.60			
	2022	3,025.18	36,302.12	138,986.69				2022	2,185.45	26,225.45	100,407.05			
	2023	3,115.93	37,391.18	176,377.87				2023	2,251.02	27,012.21	127,419.26			
	2024	3,209.41	38,512.92	214,890.79				2024	2,318.55	27,822.58	155,241.84			
	2025	3,305.69	39,668.30	254,559.09				2025	2,388.10	28,657.26	183,899.09			
	2026	3,404.86	40,858.35	295,417.44				2026	2,459.75	29,516.97	213,416.07			
	2027	3,507.01	42,084.10	337,501.54				2027	2,533.54	30,402.48	243,818.55			
	2028	3,612.22	43,346.63	380,848.17				2028	2,609.55	31,314.56	275,133.10			
	2029	3,720.59	44,647.02	425,495.19				2029	2,687.83	32,253.99	307,387.10			
	2030	3,832.20	45,986.43	471,481.63				2030	2,768.47	33,221.61	340,608.71			
	2031	3,947.17	47,366.03	518,847.66				2031	2,851.52	34,218.26	374,826.97			
	2032*	4,065.58	48,787.01	547,306.74				2032	2,937.07	35,244.81	410,071.78			
	*Through July 2032							2033	3,025.18	36,302.15	446,373.93			
								2034	3,115.93	37,391.22	483,765.15			
								2035	3,209.41	38,512.95	522,278.11			
								2036	3,305.70	39,668.34	561,946.45			
								2037	3,404.87	40,858.39	602,804.84			
								2038	3,507.01	42,084.15	644,888.99			
								2039	3,612.22	43,346.67	688,235.66			
								2040	3,720.59	44,647.07	732,882.73			
								2041	3,832.21	45,986.48	778,869.21			
								2042	3,947.17	47,366.08	826,235.29			
								2043	4,065.59	48,787.06	875,022.34			
								2044	4,187.56	50,250.67	925,273.01			
								2045	4,313.18	51,758.19	977,031.20			
								2046	4,442.58	53,310.94	1,030,342.14			
								2047	4,575.86	54,910.26	1,085,252.40			
								2048	4,713.13	56,557.57	1,141,809.98			



## LANDMARK DIVIDEND

2141 Rosecrans Ave, Ste. 2100 – El Segundo, CA 90245  
(866) 392-4200 - (310) 294-8160

August 31, 2018

Gary Manier  
City Of Washington  
301 Walnut St  
Washington, IL 61571-2649

### RE: Option Agreement – Lease Specific Easement Purchase

Landmark Dividend LLC ("Landmark") is pleased to offer you (the "Seller") the following proposal. Landmark has completed an initial analysis of the lease(s) and associated revenue for 2 lease(s) located on property owned by you (the "Premises") and identified in **Exhibit A** (the "Lease(s)"). Based on this preliminary analysis, upon your selection of one (1) of the following **Proposals** as set forth below, Landmark will provide the **Purchase Price** in exchange for an easement to the Premises (the "Easement"), and an assignment of your interest in the Lease(s) and associated rent revenue for the **Term** selected below by Seller. Landmark further agrees that in the event the Premises is decommissioned by Tenant, and Landmark is unable to replace the Tenant within 3 Years (36 months) of such decommission, the Easement shall be deemed abandoned and automatically terminate.

See **Schedule 1** for any additional terms for each **Proposal**. Please indicate your acceptance of the preferred Proposal by placing your initials in the corresponding column.

Proposal	Purchase Price	Term Purchased	Initial One
<b>A</b>	\$530,000.00	420 Months	

By signing below, you grant Landmark an option to complete the contemplated transaction and purchase from you the landlord interest in the Lease(s) (the "Option"). Landmark may exercise the Option granted herein at any time within 60 calendar days of the date of full execution of this letter and receipt of necessary due diligence items (the "Option Period"). Seller and Landmark agree that all scheduled rent as set forth in the Lease, whether paid on a monthly basis or annually, shall be prorated as of the closing date for the transaction contemplated herein. For illustrative purposes of calculating prorations, please refer to the example as set forth in Exhibit A. Landmark's right to exercise the Option granted herein shall be conditioned on the parties negotiating a mutually acceptable purchase and sale agreement.

You acknowledge that Landmark's commitment to expend time, effort and expense to evaluate this transaction are good, valuable and sufficient consideration for the Option granted herein. During the Option Period, you agree to cooperate fully with Landmark in connection with its evaluation of this transaction. Further, during the Option Period, you shall not, directly or indirectly, (a) offer the Lease(s) or the Premises for sale or assignment to any other person; (b) negotiate, solicit or entertain any offers to sell or assign any interest in the Lease(s) or Premises to any other person; or (c) modify, amend, supplement, extend, renew, terminate or cancel the Lease(s).

This letter is intended as and shall be a legally binding commitment. In the event of a breach of this letter agreement, Landmark shall, in addition to its other rights and remedies, be entitled to compensation for its time, effort and expense to evaluate this transaction and, in any action to enforce this letter agreement, to recovery of its reasonable attorneys' fees.

Your signature below will indicate your agreement to the foregoing and will provide authorization for Landmark to proceed with the evaluation of this transaction and completion of its due diligence including but not limited to verification with the tenants of the accuracy of the due diligence items. If this Option Agreement is not executed by you, by November 29, 2018, it shall be void and of no further cause or effect.

We look forward to working with you on this transaction. Should you have any questions, please feel free to contact me at any time.

AGREED TO AND ACCEPTED AS INDICATED BELOW AS OF THE \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_

**LANDMARK DIVIDEND LLC**

**City Of Washington**

\_\_\_\_\_

\_\_\_\_\_  
Gary Manier

## **Schedule 1**

### **Option A -Additional Terms**

#### **Short Term Additional Terms**

Based on this preliminary analysis, Landmark will provide \$530,000.00 (the Purchase Price) for a 420 Months assignment of your interest in and to the Lease(s) and associated rent revenue (the "Initial Term"). The parties further agree that at the end of the Initial Term, Landmark, in its sole and absolute discretion, shall have the right and option to extend the term for an additional 420 months at an anticipated price of \$1,471,993.01 (the Renewal Price).

## Exhibit A

Tenant/ Carrier	Current Rent	Rent Frequency	Escalation Rate	Escalation Frequency	Date of Next Escalation
American Tower	\$913.00	Monthly	15.00 %	Per Term	October 01, 2022
Crown Castle	\$2,687.83	Monthly	3.00 %	Annually	December 01, 2018

For Illustrative Purposes Only:

### Closing Proration of the Schedule Rent –

Landmark is entitled to receive all scheduled rents due on and after the closing date for the contemplated transaction. The scheduled rental revenue from the Leases shall be prorated between the Seller and Landmark based on a 365-day calendar year.

- **Monthly Proration Scenario** – If the monthly scheduled rent is \$1000/month and the contemplated transaction closes on the 15<sup>th</sup>, Landmark will be entitled to receive an amount equal to the rents owed for the time period from the 16<sup>th</sup> to the 31<sup>st</sup> or \$516.13 (equal to 16 days). This scenario was calculated based on a daily proration of the rent attributable for a full 31-day calendar month.
- **Annual Proration Scenario** – If the annual rent is \$12,000/year and due on April 1<sup>st</sup> of every year and the contemplated transaction closes on June 15<sup>th</sup>, Landmark will receive an amount equal to rents owed for the time period from June 16<sup>th</sup> to March 31<sup>st</sup> of the following year or \$9,501.37 (equal to 289 days).

**PURCHASE AND SALE OF TELECOM EASEMENT AND ASSIGNMENT AGREEMENT**

THIS PURCHASE AND SALE OF TELECOM EASEMENT AND ASSIGNMENT AGREEMENT ("**Agreement**") dated \_\_\_\_\_, 20\_\_\_\_ (the "**Effective Date**") is by and between ("**Grantor**") and LANDMARK INFRASTRUCTURE HOLDING COMPANY LLC, a Delaware limited liability company ("**Grantee**");

1. **PURCHASE AND SALE OF EASEMENT AND ASSIGNMENT OF TELECOM AGREEMENTS.** Grantor owns certain real property located at \_\_\_\_\_ as more fully described in the legal description attached hereto as **Exhibit A** (the "**Property**"). Grantor hereby grants and conveys to Grantee an exclusive easement (the "**Telecom Easement**") for the Term (as defined below) of this Agreement, in, to, under and over portion or portions of the Property as more fully described in **Exhibit B** attached hereto (the "**Leased Premises**") for the telecommunications-related activities set forth in the Existing Telecom Agreement(s). Grantor hereby sells, transfers and assigns to Grantee all of Grantor's right, title and interest in and to that certain lease(s) or license(s) copies of which are attached hereto as **Exhibit C** (the "**Existing Telecom Agreement(s)**"); provided however, Grantor shall retain and continue to faithfully perform and discharge any and all of Grantor's obligations as lessor under the Existing Telecom Agreement(s).
2. **PURCHASE PRICE.** On or about the Effective Date, Grantee shall pay to Grantor a one-time, lump-sum payment in an amount equal to \$ \_\_\_\_\_ (the "**Purchase Price**"). In the event that any tenant or tenants under the Existing Telecom Agreement(s) (each, a "**Telecom Tenant**") pay(s) to Grantor any fees other than base rent and any escalations thereto, for the purpose of utility service or taxes, such fees shall continue to be paid by Telecom Tenant(s) to Grantor, although Grantee may collect and distribute same.
3. **TERM.** Commencing on \_\_\_\_\_ (the "**Commencement Date**"), the term of this Agreement and the Telecom Easement shall be 99 years. Grantor may not terminate this Agreement. In the event that Grantee voluntarily ceases to use the Telecom Easement for a continuous period of five (5) consecutive years the Telecom Easement shall be deemed abandoned and automatically terminate.
4. **REPRESENTATIONS AND COVENANTS OF GRANTOR.** Grantor represents and warrants to Grantee, as of the date hereof, that: (a) the execution, delivery and performance by Grantor of this Agreement does not and will not violate any agreement to which Grantor is a party including mortgages and deeds of trust, or violate or conflict with any law, rule, regulation, judgment, order or decree to which Grantor is subject; (b) Grantor has not previously deeded, granted, assigned, mortgaged, pledged, hypothecated, alienated or otherwise transferred any of its right, title and interest in and to the Telecom Easement (or any portion thereof) or in and to the Existing Telecom Agreement(s); (c) Grantor has not breached or defaulted on any of Grantor's obligations under the Existing Telecom Agreement(s), and Telecom Tenant(s) has not breached or defaulted any of Telecom Tenant(s)' obligations under the Existing Telecom Agreement(s); (d) at no time prior to the date hereof has Grantor delivered or received notice of a breach or default by either Grantor or Telecom Tenant(s) under the Existing Telecom Agreement(s) or notice of any fact, condition or circumstance which would constitute a breach or default by either Grantor or Telecom Tenant(s) under the Existing Telecom Agreement(s); (e) neither Telecom Tenant(s), nor its agents or contractors has notified Grantor of any intention or desire to terminate the Existing Telecom Agreement(s) or surrender or abandon the Existing Telecom Agreement(s); and (f) Grantor will forward any rent payments received from Telecom Tenant(s) (excluding the rental amounts withheld from the disbursement and reflected on the Settlement Statement at Closing), to Grantee within 5 business days of receipt thereof. All representations and covenants by Grantor contained herein or made in writing pursuant to this Agreement are intended to and shall remain true and correct as of the time of closing, shall be deemed to be material, and shall survive the execution, commencement and delivery of this Agreement, the Easement Agreement (attached hereto as **Exhibit D**), and recordation thereof.
5. **LANDLORD ESTOPPEL.** The Grantor certifies that: (a) the Existing Telecom Agreement(s) are presently in full force and effect and unmodified, and Grantee has been provided with a full and complete copy thereof; (b) any improvements to be made by the Telecom Tenants have been completed to the satisfaction of the undersigned and any and all other special conditions to be performed by the Telecom Tenants pursuant to the Existing Telecom Agreement(s) have been performed and satisfied; (c) the Telecom Tenants' obligations to pay rent have commenced in full and the Telecom Tenants are currently paying the schedule rent set forth in the Existing Telecom Agreement(s); (d) except as set forth in the Existing Telecom Agreement(s), no rents have been paid more than thirty (30) days in advance of their due dates; and (f) the Telecom Tenants are not in default under the Existing Telecom Agreement(s), as of the Effective Date and have no claim of setoff under the Existing Telecom Agreement(s) or otherwise against rents or other charges due or to become due thereunder.
6. **REPRESENTATIONS OF GRANTEE.** Grantee represents and warrants to Grantor, as of the date hereof, that: (a) this Agreement and all other documents executed by Grantee constitute the legal, valid and binding obligation of Grantee, enforceable against Grantee in accordance with their terms; and (b) Grantee is a validly existing limited liability company and the signatory of this document has the authority to do so under the documents forming the existence of the limited liability company. The execution, delivery and performance by Grantee of this Agreement does not and will not violate or conflict with any provision of Grantee's organizational documents or of any agreement to which Grantee is a party or conflict with any law, rule, regulation, judgment, order or decree to which Grantee is subject.
7. **INDEMNIFICATION.** Grantor and Grantee shall each indemnify and hold harmless the other against any and all claims, damages, costs and expenses (including attorney fees) caused by or arising out of the negligent acts or omissions or willful misconduct in the operations or activities on the Property by the indemnifying party or the employees, agents, or contractors of the indemnifying party.
8. **FURTHER ASSIGNMENT.** Upon the Effective Date Grantee may pledge, assign, mortgage, grant a security interest, or otherwise encumber its interest in and to this Agreement. This Agreement and the Telecom Easement may be assigned to secured parties, successors-in-interest, acquiring entities or individuals, and any other party to whom Grantee may be required to provide collateral or demonstrate credit-worthiness.
9. **NOTICES.** All notices, requests, demands and other communications hereunder shall be delivered by Certified Mail Return Receipt Requested, and/or a nationally recognized Overnight courier. Notice shall be deemed accepted upon proof of delivery. Notices shall be delivered to Grantor at \_\_\_\_\_ and to Grantee: c/o Landmark Dividend LLC, P.O. Box 3429, 2141 Rosecrans Ave., Suite 2100, El Segundo, CA 90245.
10. **MISCELLANEOUS.**
  - a. **Governing Law; Severability.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. In the event that any provision of this Agreement is found to be invalid, illegal or unenforceable in any respect, by a court of competent jurisdiction, such provision shall only be ineffective to the extent of such invalidity, illegality or unenforceability. The remaining provisions of this Agreement shall remain in full force and effect.
  - b. **Amendments, Etc.** This Agreement may not be amended or modified unless in writing signed by the parties and consented to by any lender of Grantee that has delivered notice of its status and its notice address to Grantor. No act or failure to act shall be deemed to constitute an amendment, modification or termination hereof. This Agreement may be executed in counterparts each of which, when taken together, shall constitute a single agreement.
  - c. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and successors and assigns of the parties to this Agreement. The rights of Grantee under the Telecom Easement shall run with the land upon which the Telecom Easement is located.
  - d. **Recording and Memorandum.** Grantor and Grantee shall, on or after the Effective Date, acknowledge, execute and record the exchange of rights created under this Agreement in the Form of Telecom Easement attached as **Exhibit D**. Grantee's interest in this Agreement and the Telecom Easement is intended to be, and shall be, an interest in real property.
  - e. **Attorneys' Fees.** In any action or proceeding brought to enforce any provision of this Agreement, the prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs, whether through arbitration or a court of competent jurisdiction. All damages or other sums payable by one party to another hereunder shall bear interest from the date incurred or payable until paid at a rate equal to the greater of (a) ten percent (10%) per annum or (b) the highest rate permitted by applicable law.
  - f. **Further Assurances.** Grantor and Grantee hereby agree that Grantee shall, at any time and from time to time, in its reasonable discretion, require the Grantor to execute such documents or instruments and take such further actions as may be reasonably required or desirable to carry out the provisions hereof and consummate the transactions contemplated in the this Agreement. The covenant contained in this clause shall survive the execution, delivery and recordation of the Telecom Easement contemplated hereby.
  - g. **Specific Performance.** The parties understand and agree that the Telecom Easement is unique and for that reason, among others, Grantee will be irreparably damaged in the event that this Agreement is not specifically enforced. Accordingly, in the event of any breach or default in or of this Agreement or any of the warranties, terms or provisions hereof by Grantor, Grantee shall have, in addition and without prejudice to any right or remedy available at law or in equity, the right to demand and have specific performance of this Agreement



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

**GRANTOR:**

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**GRANTEE:**

LANDMARK INFRASTRUCTURE HOLDING  
COMPANY LLC, a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Authorized Signatory  
Date: \_\_\_\_\_

SAMPLE

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

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EXHIBIT B

EXISTING TELECOM LEASE AREA

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EXHIBIT C

EXISTING TELECOM AGREEMENT(S)

See Attached

SAMPLE

**EXHIBIT ONLY – NOT FOR EXECUTION**

**EXHIBIT D**

**FORM OF TELECOM EASEMENT**

**EASEMENT AND ASSIGNMENT OF LEASE AGREEMENT**

This Easement and Assignment of Lease Agreement (this "Agreement") dated \_\_\_\_\_, 201\_\_ (the "Effective Date") is by and between \_\_\_\_\_ ("Grantor"), and LANDMARK INFRASTRUCTURE HOLDING COMPANY LLC, a Delaware limited liability company ("Grantee"); and

WHEREAS Grantor owns certain real property located at: \_\_\_\_\_ ("Property"); and more particularly described in Exhibit A attached hereto; and

WHEREAS Grantor intends to grant to Grantee an exclusive easement (the "Telecom Easement") in, to, under and over a certain portion of the Property described in Exhibit B attached hereto (the "Telecom Easement Area") for telecommunications purposes, and a non-exclusive easement (the "Access Easement") in, to, under and over certain portions of the Property described in Exhibit C attached hereto (the "Access Easement Area") for ingress, egress, maintenance and utility service for and to the Telecom Easement (the Telecom Easement and the Access Easement may be collectively referred to herein as the "Easement"); and

WHEREAS Grantor intends to sell, assign, set over, convey and transfer the existing telecommunications lease(s) or license(s) ("Lease(s)") more particularly described in Exhibit D to Grantee; and

WHEREAS Grantor intends to allow Grantee to use the Easement in order that Grantee may lease space to Tenants in the telecommunications business; and

NOW THEREFORE, In consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **GRANT OF EASEMENT.** Grantor hereby grants to Grantee an exclusive easement over the Telecom Easement Area for the purpose of leasing space on the Property to telecommunications tenant(s) and uses associated with the exercise rights of telecommunications tenants under such leases.
2. **TERM.** Commencing on \_\_\_\_\_, 20\_\_ (the "Commencement Date"), the Term of this Agreement shall be 99 years.
3. **TERMINATION.** Grantor may not terminate this Agreement, provided however, that in the event that Grantee voluntarily ceases to use the Easement for a continuous period of five (5) years, the Easement shall be deemed abandoned and this Agreement shall automatically terminate.
4. **ASSIGNMENT OF LEASE(S).** As part of the consideration provided for this Agreement, Grantor hereby assigns and conveys all of its right, title and interest in and to the Lease(s), more particularly described in Exhibit D. Grantor shall retain and continue to faithfully perform and discharge any and all of Grantor's obligations as lessor under the Lease(s) and Grantee assumes no obligations thereunder.
5. **NON-EXCLUSIVE ACCESS EASEMENT.** As part of the consideration for this Agreement, Grantor hereby grants to Grantee the Access Easement in, to, under and across the Property adequate to allow ingress and egress, operation, maintenance of and utility service to the Telecom Easement Area.
6. **REPRESENTATIONS AND COVENANTS OF GRANTOR.** Grantor represents and warrants to Grantee, as of the date hereof, that:
  - a. This Agreement and any other documents executed by Grantor in connection with it constitute the legal, valid and binding obligation of Grantor, enforceable against Grantor in accordance with their terms.
  - b. The execution, delivery and performance by Grantor of this Agreement does not and will not violate or conflict with any provision of Grantor's organizational documents (if Grantor is an organization) or of any agreement to which Grantor is a party including, without limitation, permits, mortgages and deeds of trust, or by which Grantor or the Property is bound and will not violate or conflict with any law, rule, regulation, judgment, order or decree to which Grantor is subject.
  - c. There is no pending or threatened action, judgment, order decree or proceeding (including any bankruptcy, insolvency, eminent domain, zoning or other land use regulation actions) that, if determined against Grantor, would adversely affect Grantor's ability to grant the Easement or such other documents or to perform its obligations hereunder or thereunder, or limit Grantee's ability to use the Easement as contemplated herein. Grantor has received no notice from any governmental or quasi-governmental authority either that the Property or the use thereof violates any statutes, ordinances, orders or regulations affecting any portion of the Property.
  - d. Grantor owns one hundred percent (100%) of the fee title to the Property and the lessor's interest in and to the Lease(s).
  - e. Grantor has not previously deeded, granted, assigned, mortgaged, pledged, hypothecated, alienated or otherwise transferred any of its right, title and interest in and to the Lease(s), or any portion of the Property the Easement occupies, except as expressly disclosed to Grantee in writing. Except for the Lease(s), Grantor has not executed or otherwise entered into any leases, tenancies, license or concession agreements, occupancy agreements or other agreements with respect to rights that would adversely affect Grantee's, or Grantee's tenants, possession or occupancy of any portion of the Easement or use of the Property pursuant to this Agreement or the Lease(s).
  - f. Grantor shall not allow or permit a breach or default to occur under the Leases and Grantor shall comply with all applicable laws which may affect the Property.
  - g. Grantor shall not settle or compromise any insurance claim or condemnation award relating to the Easement without Grantee's prior written approval, which shall not be unreasonably withheld.
  - h. Grantor shall not, nor shall Grantor permit its lessees, licensees, employees, invitees or agents to use any portion of the Property, or the Easement in a way which interferes with the operations of tenants under the Lease(s), or any other of Grantee's future lessees or licensees, or to interfere with the Access Easement. Such interference shall be deemed a material breach by Grantor.

7. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors and assigns of the parties to this Agreement. This Agreement shall run with the land upon which the Easement is located, and Grantor shall, in any and all deeds or other documents related to the sale, conveyance, assignment, mortgage, pledge, or other encumbrance or transfer of the Property, expressly provide that the Property is subject to all rights, liabilities and obligations under this Agreement (including without Purchase and Sale of Telecom Easement and Assignment Agreement - 99 [Sample v.2013.1]

TID: /

limitation, with respect to the Easement). Grantor hereby expressly acknowledges and agrees that Grantee may from time to time sell, convey, assign, mortgage, pledge, encumber, hypothecate, securitize or otherwise transfer some or all of Grantee's right, title and interest in and to this Agreement, the Easement, the Telecom Easement Area and/or the Access Easement Area without notice to or consent of Grantor.

#### 8. ENVIRONMENTAL REPRESENTATIONS.

a. **Grantor Environmental Representation.** Grantor represents that it has no knowledge of any substance, chemical or waste (collectively "Hazardous Substance") on the Property that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Grantor shall not introduce or use (or permit the use of) any Hazardous Substance on the Property in violation of any applicable federal, state or local environmental laws. Grantor shall be responsible for (and shall promptly conduct any investigation and remediation as required by any applicable environmental laws) all spills or other releases of any Hazardous Substance not caused solely by Grantee, that have occurred or which may occur on the Property.

b. **Grantee Environmental Representations.** Grantee shall not introduce or use any Hazardous Substance on the Property or the Easement in violation of any applicable federal, state or local environmental laws. Notwithstanding the foregoing, Grantee shall not be responsible for any Hazardous Substances arising or present on or before the Effective Date. Liability of Grantee for any claims with respect to any Hazardous Substances at the Property or the Easement shall be limited to contamination which is shown by clear evidence to have been solely caused by a release of a Hazardous Substance by Grantee after the Effective Date, and in violation of any applicable federal, state or local environmental laws.

c. **Mutual Indemnification.** Each party agrees to defend, indemnify, and hold harmless the other from and against any and all administrative and judicial actions and rulings, claims, causes of action, demands and liability including, but not limited to damages, costs, expenses, assessments, penalties, fines, cleanup, remedial, removal or restoration work required by any governmental authority, losses, judgments and reasonable attorneys' fees that the indemnified party may suffer or incur due to the existence or discovery of any Hazardous Substance on the Property caused by the other party. This indemnification shall also apply to the migration of any Hazardous Substance to other properties, and the release of any Hazardous Substance into the environment that relate to or arise from the indemnitor's activities on the Property. Grantor agrees to defend, indemnify, protect and hold Grantee harmless from claims resulting from actions on the Property not caused by Grantee prior to, and during the Term of, this Agreement. This indemnification shall survive the termination or expiration of this Agreement.

9. **NOTICES.** All notices, requests, demands and other communications hereunder shall be delivered by Certified Mail Return Receipt Requested, and/or a nationally recognized Overnight courier. Notice shall be deemed accepted upon proof of delivery. Notices shall be delivered:

As to Grantor:

\_\_\_\_\_  
\_\_\_\_\_

As to Grantee:

c/o Landmark Dividend LLC  
P.O. Box 3429  
2141 Rosecrans Ave., Suite 2100  
El Segundo, CA 90245  
Attn: Legal Dept.

10. **DEFAULT.** It shall be an "Event of Default" if either Grantor or Grantee fails to observe or perform any of the terms, conditions or its respective obligations set forth in this Agreement. Upon receiving written notice of such a default or breach of this Agreement, the defaulting party shall have sixty (60) days to cure such default. Notwithstanding anything herein to the contrary, if the required cure of the noticed default cannot reasonably be completed by Grantee within such 60-day period, Grantee's failure to perform shall not constitute an Event of Default so long as Grantee undertakes to cure the failure promptly, and diligently and continuously pursues the cure thereof to completion. In the event that the defaulting party fails to cure such default within the cure period, the non-defaulting party shall be entitled to exercise any rights permitted by applicable law.

11. **AGREEMENT FULLY PERFORMED.** Notwithstanding anything herein to the contrary, this Agreement is deemed to be fully performed by Grantee as of the Commencement Date. In no event shall this Agreement be deemed an executory contract for purposes of the United States Bankruptcy Code, as amended (the "Code"), and this Agreement may not be rejected pursuant to Section 365 of the Code.

#### 12. GOVERNING LAW; CERTAIN WAIVERS.

(a) THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH THE PROPERTY IS LOCATED, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS THEREOF. (b) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY WAIVES ANY RIGHT TO A JURY TRIAL IN ANY ACTION OR PROCEEDING TO ENFORCE OR INTERPRET THIS AGREEMENT.

(c) EACH PARTY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE APPLICABLE UNITED STATES DISTRICT COURT FOR THE DISTRICT THE PROPERTY IS LOCATED IN, AND EACH PARTY WAIVES ANY OBJECTION WHICH IT MAY HAVE TO THE LAYING OF VENUE IN SUCH COURT, WHETHER ON THE BASIS OF INCONVENIENT FORUM OR OTHERWISE.

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

GRANTOR:

WITNESSES:

By:

Name:

Its:

Date:

Name:

Name:

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 201\_\_\_\_, before me, \_\_\_\_\_, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official Seal.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

[SEAL]

SAMPLE

GRANTEE:

WITNESSES:

LANDMARK INFRASTRUCTURE HOLDING  
COMPANY LLC, a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Authorized Signatory

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

Date: \_\_\_\_\_

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

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF LOS ANGELES )

On \_\_\_\_\_, 201\_\_\_\_, before me, \_\_\_\_\_, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official Seal.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

[SEAL]

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

---

EXHIBIT B

TELECOM EASEMENT AREA DESCRIPTION

Grantor acknowledges and agrees that Grantee may survey the Telecom Easement Area, at Grantee's expense, and provide Grantor with a copy of such survey for Grantor's review and approval, which approval shall not be unreasonably denied, delayed or conditioned. Upon receipt of Grantor's approval, Grantee may amend, append, revise or replace this Exhibit B to include the approved survey of the Telecom Easement Area in Exhibit B.

---

EXHIBIT C

ACCESS EASEMENT AREA DESCRIPTION

Grantor acknowledges and agrees that Grantee may survey the Access Easement Area, at Grantee's expense, and provide Grantor with a copy of such survey for Grantor's review and approval, which approval shall not be unreasonably denied, delayed or conditioned. Upon receipt of Grantor's approval, Grantee may amend, append, revise or replace this Exhibit C to include the approved survey of the Access Easement Area in Exhibit C.

---

EXHIBIT D

LEASE DESCRIPTION

That certain Lease Agreement dated \_\_\_\_\_, by and between \_\_\_\_\_ ("Lessor") and \_\_\_\_\_ ("Lessee"), for the property located at \_\_\_\_\_, together with any amendments, modifications or assignments, together with all amendments, modifications and/or assignments, for which a Memorandum of Agreement is duly recorded on \_\_\_\_\_, as Instrument No. \_\_\_\_\_, of the \_\_\_\_\_ County Registry.



LANDMARK  
DIVIDEND

1700 E Walnut Ave - Suite 400 - El Segundo, CA 90245  
(866) 392-4200 - (310) 294-8160

September 21, 2012

Mayor Jay Nolan  
City of Harvard  
201 W. Diggins St.  
Harvard, IL 60033  
USA

**RE: Option Agreement – Lease Easement Purchase**

Landmark Dividend LLC ("Landmark") and the City of Harvard ("City") agree to the following: Landmark has completed an initial analysis of the lease(s) and associated revenue for 1 lease(s) located on property owned by you (the "Premises") and identified in **Exhibit A** (the "Lease(s)"). Based on this preliminary analysis, Landmark will provide **\$325,000.00** in exchange for a perpetual easement to the Premises and assignment of the City's interest in the Leases and associated rent revenue, to the extent such easements and assignments are permitted and/or limited by law and subject to Verizon's approval as provided in the lease(s).

By signing below, the City grants Landmark an 90-day option to complete the contemplated transaction and purchase from the City the landlord interest in the Leases. Landmark may exercise the option granted herein at any time within 30 calendar days of the establishment of clear title and receipt of necessary due diligence items.

The City acknowledges that a \$100 non-refundable cash deposit by Landmark and Landmark's commitment to expend time, effort and expense to evaluate this transaction are good, valuable and sufficient consideration for the option granted herein. The City agrees to cooperate fully with Landmark in connection with its evaluation of this transaction. The City shall not, directly or indirectly, (a) offer the Leases or the Premises for sale or assignment to any other person; (b) negotiate, solicit or entertain any offers to sell or assign any interest in the Leases or Premises to any other person; or (c) modify, amend, supplement, extend, renew, terminate or cancel the Leases.

The City's signature below indicates the City's agreement to the foregoing and provides authorization for Landmark to proceed with the evaluation of this transaction and completion of its due diligence including but not limited to verification with the tenants of the accuracy of the due diligence items.

AGREED TO AND ACCEPTED AS INDICATED BELOW AS OF THE 12<sup>th</sup> DAY OF October, 2012

LANDMARK DIVIDEND LLC

City of Harvard

David A. Nelson City Administrator



### Exhibit A

Tenant/ Carrier	Term Purchased	Current Rent	Rent Frequency	Escalation Rate	Escalation Frequency	Date of Next Escalation
Verizon	Perpetual	\$2,185.00	Monthly	3.00 %	Annually	September 01, 2018

---

**EASEMENT AND ASSIGNMENT OF LEASE AGREEMENT**

STATE OF: ILLINOIS  
COUNTY OF: MCHENRY

PIN: 01-36-126-006

Document Date: \_\_\_\_\_

**GRANTOR:**

Address:

THE CITY OF HARVARD ILLINOIS, AN ILLINOIS  
MUNICIPAL CORPORATION  
PO BOX 310  
Harvard, IL 60033-0310

**GRANTEE:**

Address:

LD HOLDINGS LLC  
1700 E. Walnut Ave., Suite 400  
El Segundo, CA 90245

Legal Description:

Attached as Exhibit A.

**Prepared by:**

Landmark Dividend LLC  
1700 E Walnut Ave, Suite 400  
El Segundo, CA 90245

**Return after recording to:**

Fidelity National Title Group  
Attn: Melissa Cater  
7130 Glen Forest Drive #300  
Richmond, VA 23226

## **EASEMENT AND ASSIGNMENT OF LEASE AGREEMENT**

This Easement and Assignment of Lease Agreement dated \_\_\_\_\_, 2012 (this "**Agreement**") is by and between **THE CITY OF HARVARD ILLINOIS, AN ILLINOIS MUNICIPAL CORPORATION ("Grantor")**, with principal offices at PO BOX 310, Harvard, IL, 60033-0310 and **LD HOLDINGS LLC**, a Delaware limited liability company ("**Grantee**") with principal offices at 1700 E. Walnut Ave., Suite 400, El Segundo, CA 90245; and

**WHEREAS** Grantor owns certain real property located at: 1008 Harvard Hills Rd, Harvard IL 60033 ("**Property**"); and more particularly described in Exhibit "A" attached hereto; and

**WHEREAS** Grantor intends to grant to Grantee an exclusive easement (the "**Easement**") in, to, under and over a certain portion of the Property described in Exhibit "B" attached hereto (the "**Easement Area**") for telecommunications purposes; and

**WHEREAS** Grantor intends to sell, assign, set over, convey and transfer the existing telecommunications lease(s) or license(s) ("**Lease(s)**") more particularly described in Exhibit C to Grantee; and

**WHEREAS** Grantor intends to allow Grantee to use the Easement in order that Grantee may lease space to Tenants in the telecommunications business; and

**NOW THEREFORE, In consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:**

1. **GRANT OF EASEMENT.** Grantor hereby grants to Grantee an exclusive easement over the Easement Area for the purpose of leasing space on the Property to telecommunications tenant(s) and uses associated with the exercise rights of telecommunications tenants under such leases, namely those uses associated with installation, construction, maintenance, repair and upgrading of the facilities. Grantor shall retain any and all protections under said Agreements, including protections afforded pursuant to any and all indemnification and additional insured provisions.
2. **TERM.** Commencing on \_\_\_\_\_, 2012, the Term of this Agreement shall be perpetual.
3. **TERMINATION.** Grantor may not terminate this Agreement; provided however, that in the event that Grantee voluntarily ceases to use the Easement for a continuous period of five (5) years, the Easement shall be deemed abandoned and this Agreement shall automatically terminate.
4. **ASSIGNMENT OF LEASE(S).** As part of the consideration provided for this Agreement, Grantor hereby assigns and conveys all of its right, title and interest in and to the Lease(s), more particularly described in Exhibit C. Grantor shall retain and continue to faithfully perform and discharge any and all of Grantor's obligations as lessor under the Lease(s) and Grantee assumes no obligations thereunder.
5. **NON-EXCLUSIVE ACCESS EASEMENT.** As part of the consideration for this Agreement, Grantor hereby grants to Grantee an easement in, to, under and across the Property adequate to allow ingress and egress to the Easement Area.
6. **REPRESENTATIONS AND COVENANTS OF GRANTOR.** Grantor represents and warrants to Grantee, as of the date hereof, that:

a. This Agreement and any other documents executed by Grantor in connection with it constitute the legal, valid and binding obligation of Grantor, enforceable against Grantor in accordance with their terms.

b. The execution, delivery and performance by Grantor of this Agreement does not and will not violate or conflict with any provision of Grantor's organizational documents (if Grantor is an organization) or of any agreement to which Grantor is a party including mortgages and deeds of trust, or by which Grantor or the Property is bound and will not violate or conflict with any law, rule, regulation, judgment, order or decree to which Grantor is subject.

c. There is no pending or threatened action, suit or proceeding that, if determined against Grantor, would adversely affect Grantor's ability to grant this easement or such other documents or to perform its obligations hereunder or thereunder.

d. Grantor owns one hundred percent (100%) of the fee title to the Property and the lessor's interest in and to the Lease(s).

e. Grantor has not previously deeded, granted, assigned, mortgaged, pledged, hypothecated, alienated or otherwise transferred any of its right, title and interest in and to the Lease(s), to any other person.

f. Grantor shall comply with all applicable laws which may affect the Property.

g. Grantor shall not, nor shall Grantor permit its lessees, licensees, employees, invitees or agents to use any portion of the Property, or the Easement in a way which interferes with the operations of tenants under the Leases, or any other of Grantee's future lessees or licensees, or to interfere with the Non-Exclusive Access Easements. Such interference shall be deemed a material breach by Grantor.

**7. SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors and assigns of the parties to this Agreement. This Agreement shall run with the land upon which the Easement is located, and Grantor shall, in any and all deeds or other documents related to the sale, conveyance, assignment, mortgage, pledge, or other encumbrance or transfer of the Property, expressly provide that the Property is subject to all rights, liabilities and obligations under this Agreement (including without limitation, with respect to the Easement and the Non-Exclusive Easement). Grantee may from time to time sell, convey, assign, mortgage, pledge, encumber, hypothecate, securitize or otherwise transfer some or all of Grantee's right, title and interest in and to this Agreement, the Easement, the Non-Exclusive Easement and/or the Easement Area but not without the prior written consent of Grantor. This consent requirement shall not apply if the transfer is made to any entity that is an Affiliate of Grantee or a Lender of Grantee. For purposes of this Agreement, Affiliate shall be defined as any entity related to Grantee that is either a parent or subsidiary and is characterized by identity of ownership of capital stock or membership interests.

## **8. ENVIRONMENTAL REPRESENTATIONS.**

a. **Grantor Environmental Representation.** Grantor represents that it has no knowledge of any substance, chemical or waste (collectively "**Hazardous Substance**") on the Property that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Grantor shall not introduce or use (or permit the use of) any Hazardous Substance on the Property in violation of any applicable federal, state or local environmental laws. Grantor shall be responsible for (and shall promptly conduct any investigation and remediation as required by any applicable environmental laws) all spills or other releases of any Hazardous Substance not caused solely by Grantee, that have occurred or which may occur on the Property.

b. **Grantee Environmental Representations.** Grantee shall not introduce or use any Hazardous Substance (hereinafter defined) on the Property or the Easement in violation of any applicable federal, state or local environmental laws. Notwithstanding the foregoing, Grantee shall not be responsible for any Hazardous Substances arising or present on or before the Effective Date. Liability of Grantee for any claims with respect to any Hazardous Substances at the Property or the Easement shall be limited to contamination which is shown by clear evidence to have been solely caused by a release of a Hazardous Substance by Grantee after the Effective Date, and in violation of any applicable federal, state or local environmental laws.

c. **Mutual Indemnification.** Each party agrees to defend, indemnify, and hold harmless the other from and against any and all administrative and judicial actions and rulings, claims, causes of action, demands and liability including, but not limited to damages, costs, expenses, assessments, penalties, fines, cleanup, remedial, removal or restoration work required by any governmental authority, losses, judgments and reasonable attorneys' fees that the indemnified party may suffer or incur due to the existence or discovery of any Hazardous Substance on the Property caused by the other party. This indemnification shall also apply to the migration of any Hazardous Substance to other properties, and the release of any Hazardous Substance into the environment that relate to or arise from the indemnitor's activities on the Property. Grantor agrees to defend, indemnify, protect and hold Grantee harmless from claims resulting from actions on the Property not caused by Grantee prior to, and during the Term of, this Agreement. This indemnification shall survive the termination or expiration of this Agreement.

9. **NOTICES.** All notices, requests, demands and other communications hereunder shall be delivered by Certified Mail Return Receipt Requested, and/or a nationally recognized Overnight courier. Notice shall be deemed accepted upon proof of delivery. Notices shall be delivered:

As to Grantor: PO BOX 310  
Harvard, IL 60033-0310  
Attn: City Administrator

Copy to: City Attorney  
Zukowski, Rogers, Flood & McArdle  
50 Virginia Street  
Crystal Lake, IL 60014

As to Grantee: c/o Landmark Dividend LLC  
1700 E. Walnut Ave., Suite 400  
El Segundo, CA 90245  
Attn: Legal Dept.

10. **DEFAULT.** It shall be an "Event of Default" if either Grantor or Grantee fails to observe or perform any of the terms, conditions or its respective obligations set forth in this Agreement. Upon receiving written notice of such a default or breach of this Agreement, the defaulting party shall have sixty (60) days to cure such default. In the event that the defaulting party fails to cure such default within the cure period, the non-defaulting party shall be entitled to exercise any rights permitted by applicable law.

11. **GOVERNING LAW; CERTAIN WAIVERS.**

(a) THIS AGREEMENT AND THE PERFORMANCE THEREOF SHALL BE GOVERNED, INTERPRETED, CONSTRUED AND REGULATED BY THE LAWS OF THE STATE OF ILLINOIS

AND ANY ACTION TO ENFORCE IT SHALL BE COMMENCED IN THE 22<sup>ND</sup> JUDICIAL CIRCUIT, MCHENRY COUNTY, ILLINOIS.

(b) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY WAIVES ANY RIGHT TO A JURY TRIAL IN ANY ACTION OR PROCEEDING TO ENFORCE OR INTERPRET THIS AGREEMENT.

**12. INDEMNIFICATION.** Grantor and Grantee shall each indemnify and hold the other harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of the indemnifying Party, its employees, contractors or agents, except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of the other Party, or its employees, contractors or agents. Grantee shall also indemnify and hold harmless Grantor against any and all claims, damages, costs and expense (including attorneys fees) or loss from personal injury or property damage caused by or arising out of the negligent acts or omissions or willful misconduct of any current or future lease holders/tenants except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of Grantor or its employees, contractors, or agents.

**13. INSURANCE.**

(a) Grantee shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with Grantee's use of the Premises. The costs of such insurance shall be borne by Grantee. Coverage shall include, but shall not be limited to the following:

- i. Broad Form Comprehensive General Liability Coverage:
- ii. Workers' Compensation Insurance as required by state statute and Employers Liability insurance
- iii. Grantee shall maintain limits of no less than:
  1. General Liability: \$2,000,000 combined single limit per occurrence for bodily injury, personal injury or death and property damage with a \$4,000,000 umbrella policy;
  2. Workers' Compensation and Employers Liability Workers Compensation limits as required by state and statute and Employers Liability limits of \$1,000,000 per accident and \$1,000,000 for disease.

(b) Grantor is to be covered as an additional insured with respect to liability arising out of activities performed by or on behalf of Grantee. The Premises included in the policy shall include the Telecom easement property and access easement area.

(c) Grantee's insurance coverage shall be primary with respect to Grantor, but only with respect to liability assumed by Grantee under this Lease subject to standard policy provisions and exclusions. Any insurance or self insurance maintained by Grantor shall be in excess of Grantee's insurance and shall not contribute to it, but only with respect to liability assumed by Grantee under this Agreement.

(d) Any errors and omissions by Grantee shall not affect coverage provided to the Grantor.

(e) Grantee's liability insurance shall contain a Severability of Interests/Cross Liability clause or language stating Grantee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insured's liability.

(f) To the extent damages are covered by property insurance during the term of this Agreement, the parties waive all rights against each other and employees of the other for the property damage, except such rights they may have to the proceeds of such insurance.

(g) Grantee shall provide Grantor thirty (30) days prior written notice in the event any insurance policy required by this clause cancelled (10 days notice shall apply to situations where the policy is canceled for non-payment) .

(h) Insurance is to be placed with insurers with the Best's rating of no less than A-, VII and authorized to do business in the State of Illinois.

(i) Grantee shall furnish the Grantor with certificates of insurance naming the Grantor as an additional insured on the liability policy. Grantee represents it will obtain the appropriate endorsement to any master policy of liability Grantee maintains, which endorsement shall extend additional insured coverage as required by this clause. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf."

**14. TAXES.** Grantee shall pay all taxes assessed or levied against the Property related to Grantee's use and/or rental or leases of the Property to tenants in telecommunications business and/or installation, maintenance and operation of any improvements thereon. If Grantor receives notice of any personal property or real property tax assessment against the Property, which may affect Grantee and is directly attributable to Grantee's Premises and permitted use under this Agreement, Grantor shall provide timely written notice of the assessment to Grantee sufficient to allow Grantee to consent to or challenge such assessment, whether in a Court, administrative proceeding, or other venue, on behalf of Grantor and/or Grantee. Grantee may challenge any such assessment provided that it does not result in the removal of the tax exempt status of the Grantor's Property. Further, Grantor shall provide to Grantee any and all documentation associated with the assessment and shall execute any and all documents reasonably necessary to effectuate the intent of this Section 14. It is understood that any such challenge of an assessment directly related to Grantee's use of the Property shall be entirely at the cost and burden of Grantee and any direct costs to Grantor as a result of its obligation pursuant to this Section 14 shall be reimbursed to Grantor by Grantee within thirty (30) days following Grantor's written request and invoice.

REMAINDER OF PAGE LEFT INTENTIONALLY BLANK

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

GRANTOR:

WITNESSES:

The City of Harvard Illinois, an Illinois municipal corporation

By:

Name: Jay T. Nolan

Its: Mayor

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

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

Date: \_\_\_\_\_

STATE OF Illinois )

COUNTY OF McHenry ) ss.

On December 10, 2012, before me, Lorella A Moller, a Notary Public in and for said County and State, personally appeared Jay T Nolan who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official Seal.

Lorella A Moller  
Notary Public

My Commission Expires: 7-24-15

[SEAL]





GRANTEE:

WITNESSES:

LD HOLDINGS LLC, a Delaware limited liability  
Company

By: Landmark Dividend LLC, a Delaware limited  
liability company, its sole member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Authorized Signatory

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

Date: \_\_\_\_\_

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

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF LOS ANGELES )

On \_\_\_\_\_, 201\_\_\_\_, before me, \_\_\_\_\_, a Notary  
Public in and for said County and State, personally appeared  
\_\_\_\_\_, who proved to me on the basis of satisfactory  
evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged  
to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their  
signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed  
the instrument.

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

WITNESS my hand and official Seal.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

[SEAL]

## EXHIBIT A

### LEGAL DESCRIPTION OF THE PROPERTY

#### PARCEL 1:

The southeast quarter (except the north 548.65 feet thereof) of the southwest quarter of Section 25 and the northeast quarter of the northwest quarter of Section 36, Township 46 North, Range 5 East of the Third Principal Meridian, in McHenry County, Illinois. Also

#### PARCEL 2:

The north 358 1/2 feet of the following described property: That part of the southeast quarter of the northwest quarter of Section 36, Township 46 North, Range 5 East of the Third Principal Meridian, described as follows: beginning at a point on the quarter line 5 rods east of the southwest corner of the said southeast quarter of the northwest quarter; thence north, parallel with the West line of said section, 80 rods; thence east parallel with said quarter line, 5 rods; thence south parallel with the west line of said section, 80 rods to said quarter line; thence west along said quarter line, 5 rods to the place of beginning, in McHenry County, Illinois. Also

#### PARCEL 3:

The north 358 1/2 feet of the following described property: the southeast quarter of the northwest quarter of Section 36, Township 46 North, Range 5 East of the Third Principal Meridian (excepting therefrom that part thereof conveyed to the State of Illinois for road purposes; also excepting therefrom the west 10 rods thereof), in McHenry County, Illinois. Also

#### PARCEL 4:

That part of the southeast quarter of the northwest quarter of Section 36, Township 46 North, Range 5 East of the Third Principal Meridian, described as follows: beginning in the center of Highway No. 173 where the same is intersected by the north and south center line of Section 36 and running thence due north, along the center of the road which runs north and south along the east side of the northwest quarter of Section 36 to a point 427 feet north of the place of beginning; thence westerly parallel with the south line of Section 36, a distance of 204 feet to a point; thence southerly, parallel with the east line of said Section 36 to the center of Highway No. 173; thence northeasterly along the center of said highway to the place of beginning (excepting and reserving therefrom that part thereof conveyed to the State of Illinois for road purposes), in McHenry County, Illinois.

LESS AND EXCEPT that portion of property conveyed to Board of Education of Harvard Community Unit School District No. 50 from City of Harvard by Quit Claim Deed - Corporation dated May 06, 1996 and recorded May 13, 1996 in Instrument No. 96R 024547.

LESS AND EXCEPT that portion of property conveyed to Delos F. Diggins Library, an Illinois not-for-profit corporation from City of Harvard Illinois, a municipal corporation by Quit Claim Deed dated June 26, 1997 and recorded July 30, 1997 in Instrument No. 97R 036027.

LESS AND EXCEPT that portion of property conveyed to Harvard School District Number 50 from The City of Harvard, an Illinois municipal corporation by Warranty Deed dated December 21, 1998 and recorded March 05, 1999 in Instrument No. 1999R0017645.

AND BEING a portion of the same property conveyed to Ernest Hansow and Irene Hansow from Charlotte M. Boese by Quit-Claim Deed dated November 19, 1958 and recorded December 01, 1958 in Deed Book 582, Page 351; AND FURTHER CONVEYED to Motorola, Inc., a Delaware corporation from Thomas W. Schmitt, Administrator with Will Annexed of the Estate of Ernest Hansow by Administrator's Deed dated June 17, 1994 and recorded June 20, 1994 in Instrument No. 94R 037794; AND FURTHER CONVEYED to Carol Hansow from Thomas W. Schmitt, as Administrator with Will of Ernest Hansow, deceased by Administrator's Deed dated June 17, 1994 and recorded June 20, 1994 in Instrument No. 94R 037795; AND FURTHER CONVEYED to Steven Hansow from Thomas W. Schmitt, as Administrator with Will Annexed of the Estate of Ernest Hansow, deceased by Administrator's Deed dated June 17, 1994 and recorded June 20, 1994 in Instrument No. 94R 037796; AND FURTHER CONVEYED to Gerald Hansow from Thomas W. Schmitt, as Administrator with Will Annexed of the Estate of Ernest Hansow, deceased by Administrator's Deed dated June 17, 1994 and recorded June 20, 1994 in Instrument No. 94R 037797; AND FURTHER CONVEYED to Richard Hansow from Thomas W. Schmitt, as Administrator with Will Annexed of the Estate of Ernest Hansow by Administrator's Deed dated June 17, 1994 and recorded June 20, 1994 in Instrument No. 94R 037798; AND FURTHER CONVEYED to Merilynn Haak from Thomas W. Schmitt, as Administrator with Will Annexed of the Estate of Ernest Hansow by Administrator's Deed dated June 17, 1994 and recorded June 20, 1994 in Instrument No. 94R 037799; AND FURTHER CONVEYED to Diane Smith from Thomas W. Schmitt, as Administrator with Will Annexed of the Estate of Ernest Hansow by Administrator's Deed dated June 17, 1994 and recorded June 20, 1994 in Instrument No. 94R 037800; AND FURTHER CONVEYED to Motorola, Inc., a Delaware corporation, an undivided one-eighth (1/8) interest from Carol Hansow by Quit Claim Deed dated June 17, 1994 and recorded June 20, 1994 in Instrument No. 94R 037801; AND FURTHER CONVEYED to Motorola, Inc., a Delaware corporation, an undivided one-eighth (1/8) interest from Richard Hansow by Quit Claim Deed dated June 17, 1994 and recorded June 20, 1994 in Instrument No. 94R 037802; AND FURTHER CONVEYED to Motorola, Inc., a Delaware corporation, an undivided one-eighth (1/8) interest from Merilynn Haak by Quit Claim Deed dated June 17, 1994 and recorded June 20, 1994 in Instrument No. 94R 037803; AND FURTHER CONVEYED to Motorola, Inc., a Delaware corporation, an undivided one-eighth (1/8) interest from Diane Smith by Quit Claim Deed dated June 17, 1994 and recorded June 20, 1994 in Instrument No. 94R 037804; AND FURTHER CONVEYED to Motorola, Inc., a Delaware corporation, an undivided one-eighth (1/8) interest from Steven Hansow by Quit Claim Deed dated June 17, 1994 and recorded June 20, 1994 in Instrument No. 94R 037805; AND FURTHER CONVEYED to Motorola, Inc., a Delaware corporation, an undivided one-eighth (1/8) interest from Gerald Hansow by Quit Claim Deed dated June 17, 1994 and recorded June 20, 1994 in Instrument No. 94R 037806; AND FURTHER CONVEYED to The City of Harvard Illinois, an Illinois municipal corporation from Motorola, Inc. by Corporate Quit Claim Deed dated August 25, 1995 and recorded September 13, 1995 in Instrument No. 95R 038644.

Tax Parcel No. 01-36-126-006

EXHIBIT B

EASEMENT AREA DESCRIPTION

A 50.00 FOOT BY 85.00 FOOT LEASE TRACT AND UTILITY EASEMENT BEING A PART OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 38, TOWNSHIP 46 NORTH, RANGE 6 EAST OF THE THIRD PRINCIPAL MERIDIAN, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 38; THENCE SOUTH: 00'-00'-34' EAST (BEARINGS ASSUMED FOR THE PURPOSE OF DESCRIPTION ONLY) ALONG THE WEST LINE OF THE NORTHWEST QUARTER, A DISTANCE OF 471.57 FEET; THENCE SOUTH 89'-54'38" EAST, A DISTANCE OF 1,217.85 FEET TO A POINT ON THE WEST RIGHT OF WAY LINE OF HARVARD HILLS ROAD; THENCE SOUTH 00'-00'-40" WEST ALONG THE WEST RIGHT OF WAY LINE OF HARVARD HILLS ROAD, A DISTANCE OF 488.42 FEET; THENCE NORTH 90'-00'-00" WEST, A DISTANCE OF 52.25' FEET TO THE POINT OF BEGINNING OF THE TRACT TO BE DESCRIBED, THENCE CONTINUING NORTH 90'-00'-00' WEST, A DISTANCE OF 50.00 FEET; THENCE NORTH 00'-00'-00" EAST, A DISTANCE OF 85.00 FEET; THENCE SOUTH 00'-00'-00" EAST, A DISTANCE OF 50.00 FEET; THENCE SOUTH 00'-00'-00" WEST, A DISTANCE OF 85.00 FEET TO THE POINT OF BEGINNING CONTAINING 0.10 ACRE, MORE OR LESS, SITUATED IN THE COUNTY OF MCHENRY AND STATE OF ILLINOIS.

TOGETHER WITH A 25 FOOT WIDE INGRESS, EGRESS AND UTILITY EASEMENT OVER, ACROSS AND THROUGH A PART OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 36, THE CENTERLINE OF WHICH BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF BEGINNING OF THE ABOVE DESCRIBED TRACT OF LAND; THENCE NORTH 00'-00'-00' WEST, A DISTANCE OF 50.00 FEET; THENCE NORTH 00'-00'-00' EAST, A DISTANCE OF 85.00 FEET; THENCE SOUTH 90'-00'-00' EAST, A DISTANCE OF 23.77 FEET TO THE POINT OF BEGINNING OF SAID CENTERLINE TO BE DESCRIBED; THENCE NORTH 00'-00'-00' EAST, A DISTANCE OF 109.48 FEET; THENCE NORTH 00'-13'-24' EAST, A DISTANCE OF 55.14 FEET; THENCE SOUTH 89'-59'-20' EAST, A DISTANCE OF 55.14 FEET; THENCE SOUTH 89'-59',20' EAST, A DISTANCE OF 27.16 FEET TO A POINT ON THE WEST RIGHT OF WAY LINE OF HARVARD HILLS ROAD AND THE TERMINUS OF SAID CENTERLINE.

EXHIBIT C

LEASE DESCRIPTION

That certain Lease Agreement dated May 12, 2009, by and between The City of Harvard Illinois, an Illinois municipal corporation ("Lessor"), whose address is PO BOX 310, Harvard, IL, 60033-0310, and Chicago SMSA Limited Partnership, d/b/a Verizon Wireless ("Lessee"), whose address is 180 Washington Valley Road, Bedminster NJ 07921, for the property located at 1008 Harvard Hills Rd, Harvard IL 60033, for which a Memorandum of Agreement is duly recorded on May 12, 2009, at Instrument No. 2009R0024857, of the McHenry County Registry.