

PREPARED BY:  
LANDMARK DIVIDEND LLC  
1700 E. WALNUT AVE., SUITE 400  
EL SEGUNDO, CA 90245  
ATTN: LEGAL DEPT.

RETURN TO:  
M. CATER  
FIDELITY NATIONAL TITLE  
7130 GLEN FOREST DRIVE #300  
RICHMOND, VA 23226

DOC# 220451

05/15/2012

10:40AM

Official Record

Requested By  
LAWYERS TITLE INSURANCE CORPORATI

Eureka County - NV

Mike Rebaleati - Recorder

Page: 1 of 8 Fee: \$49.00  
Recorded By FS RPTT: \$0.00  
Book- 0531 Page- 0395



0220451

APN: 04-360-17

### EASEMENT AND ASSIGNMENT OF LEASE AGREEMENT

This Easement and Assignment of Lease Agreement dated March 20, 2012 (this "Agreement") is by and between **NEW NEVADA LANDS, LLC**, a Mississippi limited liability company, with principal offices at 9550 Prototype Drive, Suite 103, Reno, NV 89521 ("Grantor") 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 ("Property") 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.

**2. TERM.** Commencing on March 20, 2012, and terminating on March 19, 2062, (the "Termination Date"), the term of this Agreement shall be for a period of fifty (50) years (the "Term").

**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.

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**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.

**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



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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: 9550 Prototype Drive, Suite 103  
Reno, NV 89521

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 SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS IN WHICH THE PROPERTY IS LOCATED, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS THEREOF.



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(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 SUPERIOR COURT OF LOS ANGELES COUNTY AND THE UNITED STATES DISTRICT COURT FOR THE STATE OF CALIFORNIA, 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:

NEW NEVADA LANDS, LLC, a Mississippi limited liability company  
by and through CONDUIT, LLC, a Florida limited liability company  
and the sole Member of New Nevada Lands, LLC

By: [Signature]  
Name: Heath A. Rushing  
Its: Authorized Member

Date: March 19, 2012

STATE OF Louisiana )  
Parish ) ss.  
COUNTY OF St. Tammany )

On March 19, 2012, before me, Della J. Steinhauer, a Notary Public in and for said County and State, personally appeared Heath A. Rushing, 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 Louisiana that the foregoing paragraph is true and correct.

WITNESS my hand and official Seal.

Della J. Steinhauer  
Notary Public  
My Commission Expires: at death

[SEAL]

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DELLA J. STEINHAUER  
Notary Public, I. D. No. 11801  
St. Tammany Parish, LA  
Commission Issued for Life

GRANTEE:

LD HOLDINGS LLC,  
a Delaware limited liability company

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

By: 

Name: DANIEL R. REBECK

Title: AUTHORIZED SIGNATORY

Date: 3/20/12

STATE OF California )  
COUNTY OF Los Angeles ) ss.

On 3/20/, 2012, before me, ROCIO VELINOV, a Notary Public in  
and for said County and State, personally appeared DANIEL R. REBECK,  
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.



My Commission Expires: 5/8/2015 Notary Public



[SEAL]

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EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

All that property situated in Eureka County, NV, more particularly described as:

Township 32 North, Range 51 East, M.D.M.

Section 17 100' X 100' parcel within Lot 3

Acres:

0.23

COPY



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**EXHIBIT B**

**EASEMENT AREA DESCRIPTION**

Union Pacific Railroad Company Communications Lease #189031

All that property situated in Eureka County, NV, more particularly described as:

**Township 32 North, Range 51 East, M.D.M.**

**Acres:**

Section 17 Tower on 100' X 100' parcel within Lot 3

0.23

Acres leased in Eureka County:

0.23

Total Acres in Communications Lease #189031

0.23

Total Acres for Union Pacific Railroad Company

0.23

Grantor acknowledges and agrees that Grantee may survey the 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 shall amend, append, revise or replace this Exhibit B to include the approved survey of the Easement Area in Exhibit B.



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EXHIBIT C

LEASE DESCRIPTION

That certain Communication License (#189031) by and between New Nevada Lands, LLC, a Mississippi limited liability company, successor-in-interest to Nevada Land and Resource Company, LLC, a Delaware limited liability company, as Licensor, and Southern Pacific Transportation Company, a Delaware corporation, as Licensee, dated as of July 1, 1997, together with all modifications and memoranda related thereto, and of which a Memorandum of Communications License is duly recorded on August 18, 2000, in Book 336, Page 279, Document No. 175053 of the Official Records of Eureka County, Nevada (LD Reference TC120689).



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