

**TOWN OF  
APPLE VALLEY, CALIFORNIA**

**AGENDA MATTER**

**Subject Item:**

**LETTER OF AGREEMENT AUTHORIZING THE OPENING OF ESCROW FOR THE SALE OF THE TOWERCO CELL SITE CA2979, JAMES WOODY PARK**

**SUMMARY STATEMENT:**

As presented during the Budget presentation and included in the revenue projections were funds for the sale of the Cellular Tower Site at Corwin Park. Through negotiations, the Town has agreed to sell the site to TowerCo for \$290,000. Their proposed agreement contained restrictions and limitations that the Town Attorney felt were unacceptable for the Town.

After much communication and discussions between the Town attorneys and TowerCo attorneys, the adopted agreement had been developed to both our satisfaction and TowerCo. The Agreement on James Woody Park Site is identical to those on the Corwin Site.

Now TowerCo has approached the Town regarding an additional site that they have a cell tower on, James Woody Park. Staff has been negotiating with TowerCo on the James Woody site for several weeks and have agreed, upon council approval, on a price of \$305,000. These funds have not been included in projected revenues and could be used to subsidize existing revenues or dedicated, all or in part, to any special project the Town Council feels appropriate.

**Recommended Action:**

Authorize the Town Manager to sign the Letter Agreement authorizing the opening of Escrow for the Sale of the Cellular Site at James Woody Park and further authorize the Mayor to sign final Escrow sale documents when complete.

**Proposed by:** Kevin N. Smith, Interim Finance Director                      **Item Number** \_\_\_\_\_

**T.M. Approval:** \_\_\_\_\_ **Budgeted Item:** Budgeted Item  Yes  No  N/A

August 5, 2010

Town of Apple Valley  
14955 Dale Evans Parkway  
Apple Valley, CA 92307

**RE: Lease Agreement dated January 21, 2003 between Town of Apple Valley and TCO Assets Land LLC (as amended and assigned, the “Lease”).**

**Site ID / Site Name: CA2979 – James Woody Park**

Dear Town of Apple Valley:

This binding letter agreement (“Letter Agreement”) sets forth a proposal by TCO Assets Land LLC, a Delaware limited liability company (“Grantee”) to Town of Apple Valley, a municipal corporation (“Grantor”), to acquire from Grantor certain easements and to take assignment of the Lease, all as more particularly set forth in this Letter Agreement.

For and in consideration of Twenty Five and No/100’s Dollars (\$25.00) paid by Grantee to Grantor, the parties agree as follows:

1. Grantor owns the real property subject to the Lease located in San Bernardino County, California, more specifically described on Exhibit A attached hereto (the “Property”).
2. Grantor shall sell and grant to Grantee and Grantee shall purchase from Grantor a perpetual exclusive easement in and to that portion of the Property described on Exhibit B (the “Exclusive Easement”) and a perpetual non-exclusive easement for access and utilities in and to that portion of the Property described on Exhibit C (the “Access and Utility Easement(s)”) (collectively, the Exclusive Easement and the Access and Utility Easement(s) are referred to herein as, the “Easements”). Grantor shall further sell and assign to Grantee and Grantee shall accept and assume all of Grantor’s right, title and interest in and to the Lease.
3. Grantee and Grantor will enter into a grant of easement (the “Agreement”), pursuant to which Grantee will acquire the Easements from Grantor and Grantor will assign its interest in the Lease to Grantee for a purchase price of Three Hundred and Five Thousand Dollars (\$305,000.00) (the “Purchase Price”) (the “Acquisition”). The Agreement shall be in recordable form in substantially the form attached as Exhibit D. Subject to the satisfaction of the contingencies described in Section 4 of this Letter Agreement to the Grantee’s sole satisfaction, the parties hereby agree that the Acquisition shall occur on or before 120 days following the full execution of this Letter Agreement.
4. Consummation of the Acquisition will be subject to:
  - a. the execution of the Agreement and related documents mutually acceptable in form and substance;
  - b. receipt by Grantee of a survey, obtained by Grantee at its sole cost and expense, in form and substance satisfactory to Grantee, which survey shows easements located where the utility lines serving the Exclusive Easement, and an easement located solely on Grantor’s Property for vehicular and pedestrian access from the Exclusive Easement to a public right of way; and,
  - c. receipt by Grantee of a title commitment, with respect to the Property and to be obtained by Grantee at its sole cost and expense, stating that Grantor has good, indefeasible and marketable fee simple title to the Property, free and clear of all liens and encumbrances except such matters as may be acceptable to Grantee.
5. Upon satisfaction of the contingencies described in Section 4 of this Letter Agreement to the Grantee’s sole satisfaction Grantee shall prepare the Agreement at its sole expense, and Grantor shall execute same, following receipt of one or more copies of the Agreement containing original signatures from Grantee.

6. During the period in which this Letter Agreement is in effect, Grantor shall not directly or indirectly solicit, initiate or encourage submission of proposals or offers relating to any acquisition or purchase of the Property.
7. Irrespective of whether the transactions contemplated by this Letter Agreement are consummated, Grantee and Grantor each will pay their own out-of-pocket expenses, including their own attorneys fees, if any. In addition to the foregoing, unless otherwise provided in this Letter Agreement, Grantee agrees that it will pay all costs for administrative transactional fees for closing the Acquisition (including recording costs), and Grantor agrees to pay for any transfer fees.
8. Grantor agrees that the information contained in this Letter Agreement and other information conveyed by Grantee to Grantor concerning the Acquisition, whether written or oral, constitutes confidential information that will not be disclosed without the prior written consent of Grantee.
9. The parties hereby agree that if either party to this Letter Agreement breaches by non-performance of its obligations as required herein, then the non-breaching party, in its sole discretion, may elect to pursue any and all available remedies at both law and/or equity, which remedies may include, without limitation, specific performance of this Letter Agreement and costs associated with the pursuit of such action, and/or monetary damages.
10. Grantor represents and warrants as of the date of this Letter Agreement that:
  - a. Grantor is duly authorized and has the full power, right and authority to enter into this Letter Agreement and to perform all of its obligations under this Letter Agreement and to execute and deliver all documents required by this Letter Agreement;
  - b. Grantor has no knowledge of any pending or threatened condemnation proceedings or other proceedings in the nature of eminent domain in connection with the Property;
  - c. Grantor has no knowledge of any special or general assessment levied, pending or threatened against the Property;
  - d. There is no litigation or proceedings pending, or to Grantor's knowledge threatened, against or relating to the Property; and,
  - e. Grantor covenants that the foregoing representations and warranties will be true and correct as of the Closing. Grantor's representations, warranties and covenants shall survive the closing.\
  - f. Grantor shall cooperate with Grantee in satisfying any contingencies described in Section 4 or otherwise in this Letter Agreement.

If this Letter Agreement accurately sets forth our understanding regarding the foregoing, please so indicate by signing and returning to the undersigned the enclosed copy of this letter.

**Grantor:** Town of Apple Valley, a municipal corporation

**Grantee:** TCO Assets Land LLC, a Delaware limited liability company

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

By: TowerCo Acquisition LLC, a Delaware limited liability company, its sole member

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

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

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

Name: Daniel Hunt, VP/CFO

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

**Exhibit A**  
**The Property**

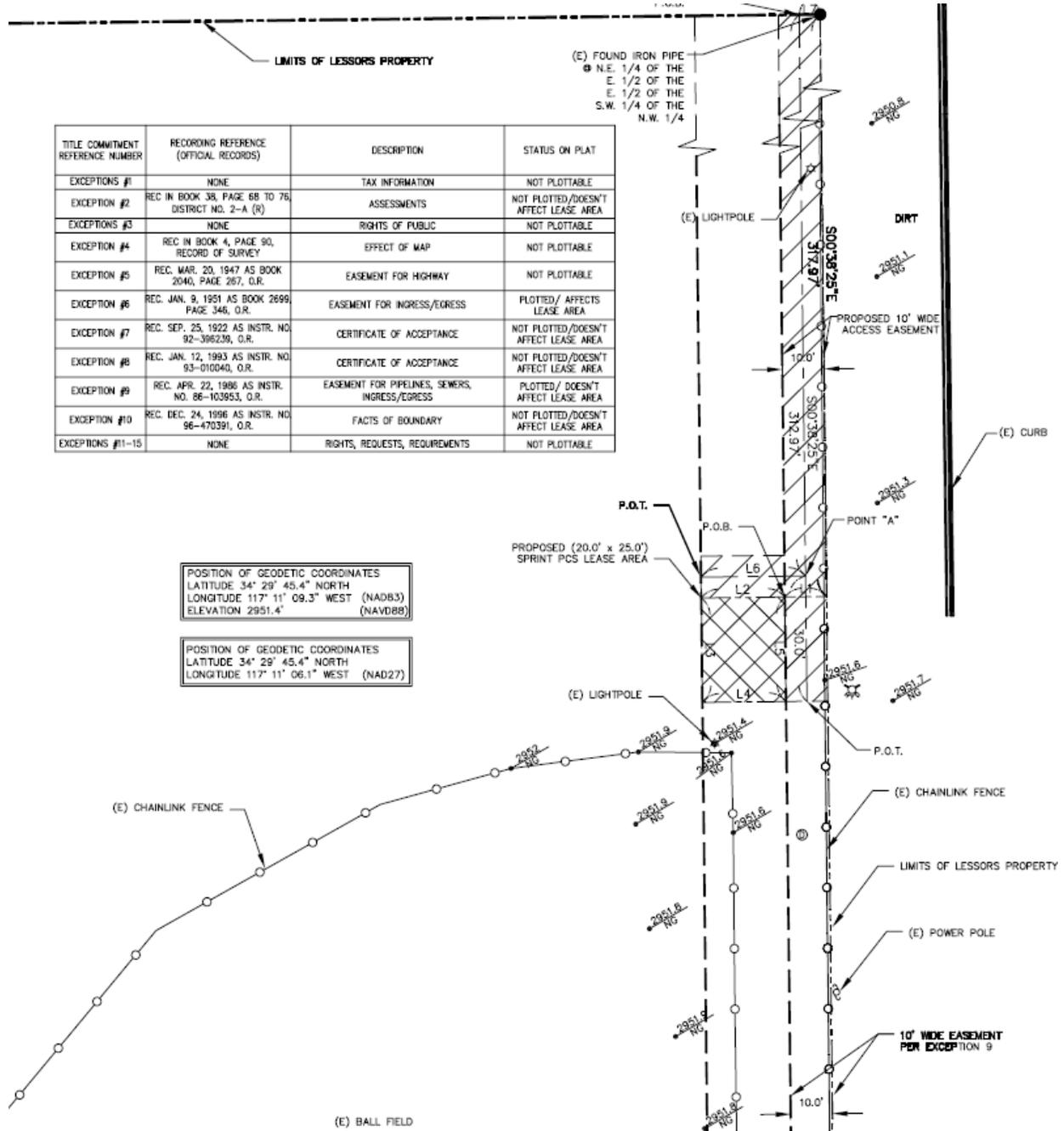
THE NORTH 1/2 OF THE EAST 1/2 OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF THE  
NORTHWEST 1/4 OF SECTION 27, TOWNSHIP 5 NORTH, RANGE 3 WEST, SAN  
BERNARDINO BASE AND MERIDIAN, IN THE TOWN OF APPLE VALLEY, COUNTY OF SAN  
BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL GOVERNMENT  
PLAT THEREOF.

EXCEPT AN UNDIVIDED 1/2 INTEREST IN ALL OIL, GAS AND OTHER HYDROCARBONS  
AND MINERALS AS RESERVED BY APPLE VALLEY RANCHOS, INC. IN DEED RECORDED  
MARCH 20, 1947 IN BOOK 2040, PAGE 267, OFFICIAL RECORDS.

APN: 3051-351-05

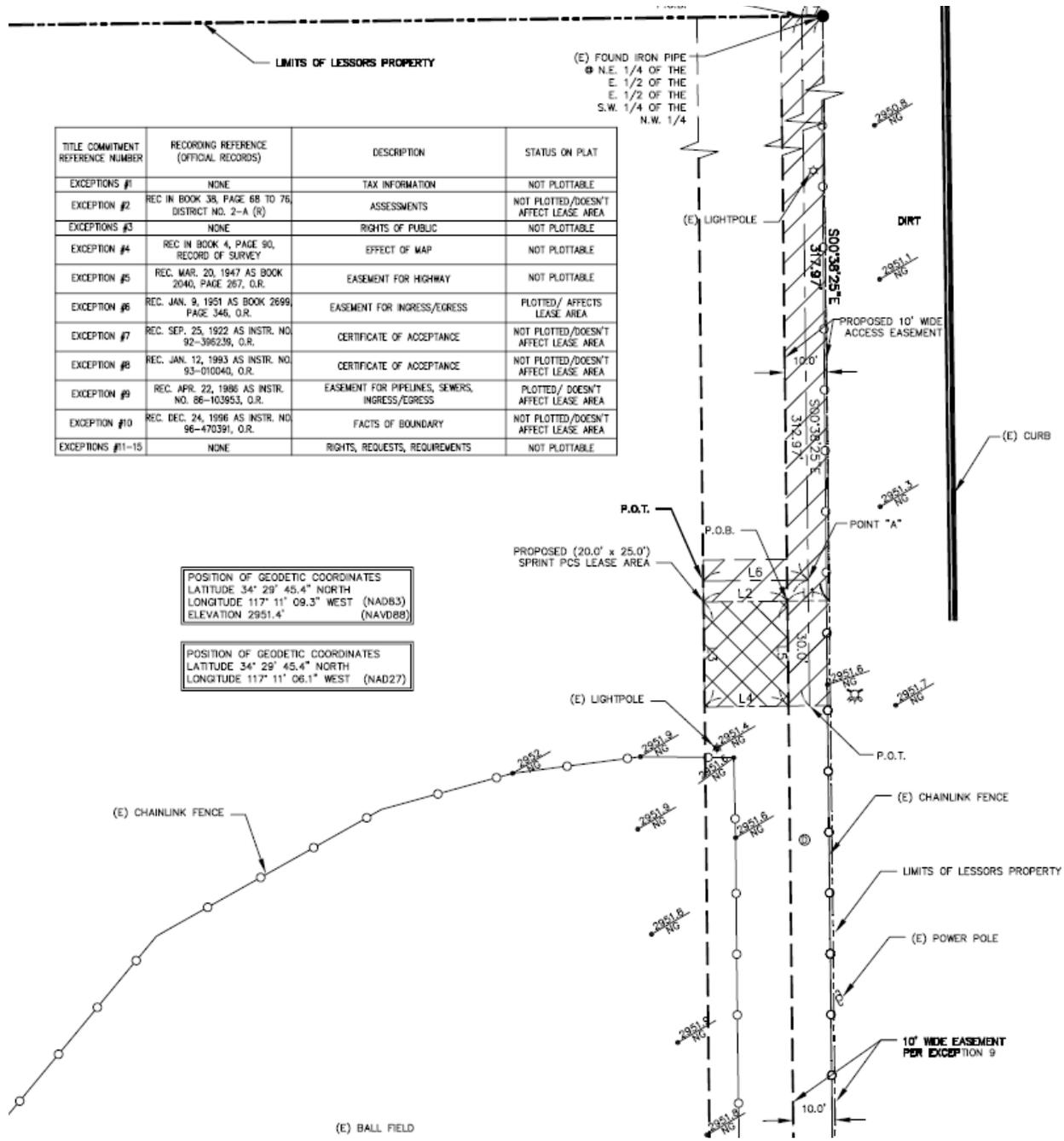
## Exhibit B Exclusive Easement

That 500 square foot area of land, being a part of the Property described on Exhibit A and depicted as follows:



The Easements shown hereon may be replaced by a legal description of such Easements to be obtained from a survey obtained by Grantee (at its sole cost and expense) and reasonably acceptable to Grantor.

## Exhibit C Access and Utility Easement(s)



The Easements shown hereon may be replaced by a legal description of such Easements to be obtained from a survey obtained by Grantee (at its sole cost and expense) and reasonably acceptable to Grantor.

**Exhibit D**  
**Form of Easement Agreement**

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

TCO Assets Land LLC  
Attn: GRPP Department  
5000 Valleystone Drive  
Cary, NC 27519  
919-469-5559

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SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

**GRANT OF EASEMENT**

**TowerCo Site ID:** CA0045

**Tax Parcel ID:**

**Instrument:** Easement Agreement

**Grantor (Seller):** Town of Apple Valley, a municipal corporation, with an address of 14955 Dale Evans Parkway, Apple Valley, CA 92307

**Grantee (Buyer):** TCO Assets Land LLC, a Delaware limited liability company, with an address of 5000 Valleystone Drive, Cary, NC 27519, Attention: GRPP Department

## **GRANT OF EASEMENT**

**THIS GRANT OF EASEMENT** (the "Easement") is made effective as of the latter signature date below by and between **Town of Apple Valley**, a municipal corporation, having a mailing address of 14955 Dale Evans Parkway, Apple Valley, CA 92307 ("Grantor") and **TCO Assets Land LLC**, a Delaware limited liability company with its national headquarters located at 5000 Valleystone Drive, Cary, NC 27519 ("Grantee").

### **1. Description of Grantor's Property.**

Grantor is the owner of that certain land and premises in Apple Valley, County of San Bernardino, State of California, by grant or conveyance described in the Public Records of San Bernardino County, California ("Registry"), at Official Records Book \_\_\_\_\_, Page \_\_\_\_\_, the description of said property is attached hereto as Exhibit "A" (hereinafter "Grantor's Property").

**2. Description of Easement.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged by Grantor and Grantee, Grantor grants and conveys unto Grantee, its successors and assigns, an exclusive, perpetual easement for the use of a portion of Grantor's Property (the "Easement Area") as such Easement Area is more particularly shown on Exhibit "B" attached hereto. The Grantor also grants to Grantee, its successors and assigns, as part of this Easement, a non-exclusive, perpetual right-of-way for ingress and egress, seven days per week, twenty-four hours per day, on foot or motor vehicle, including trucks, along a right-of-way extending from the nearest public right-of-way, together with the right to install, replace and maintain utility wires, poles, cables, conduits and pipes (the "Access Easement"), as is more particularly shown on Exhibit "C" attached hereto (hereinafter the term "Easement Area" shall be deemed to also include the Access Easement unless stated to the contrary). In the event any public utility is unable or unwilling to use the above-described Access Easement, Grantor hereby agrees to grant an additional right-of-way, in form satisfactory to Grantee, either to Grantee or directly to the public utility at no cost and in a location acceptable to either Grantee or the public utility (the "Revised Access Easement").

**3. Easement Area.** The Easement Area, excluding the Access Easement, shall be used for constructing, maintaining, operating, and replacing a wireless communications facility and uses incidental

thereto for Grantee's use and the use of its lessees and/or licensees (the "Permitted Use"). It is the intent of the parties that Grantee's communications facility shall not constitute a fixture. Grantee acknowledges that any development, installation or other improvements of any kind performed on the Easement Area by or on behalf of Grantee (including but not limited to any assignee, lessee, licensee of Grantee) shall be performed in compliance with all applicable land use and permitting laws or regulations lawfully established by, or otherwise enforced by, Grantor, in its capacity as a governmental entity. Other than consents and approvals required in connection with Grantor's lawful enforcement of its municipal land use and other regulatory laws, rules and regulations, as described above, Grantor and its licensees, lessees, or sublessees shall have the right to use the Easement Area for the Permitted Use, without any requirement for obtaining the consent of Grantor. Other than the fees applicable for submissions for the Town of Apple Valley permitting, zoning or other land use approval applications, and the cost of compliance with all lawful requirements associated with any approvals granted by Grantor in its municipal capacity, Grantor shall be entitled to no further consideration with respect to any improvements or development upon the Easement Area. Subject to the provisions of this paragraph, Grantor shall take no action that would adversely affect the status of the Easement Area with respect to the Permitted Use.

**4. Term of Easement Perpetual.** This Easement and Grantee's rights and privileges hereunder shall be perpetual and may be terminated only as provided for herein. Grantor acknowledges the receipt, contemporaneous with the execution hereof, of all consideration due hereunder and that no additional consideration shall be due from Grantee.

### **5. Grantee's Right to Terminate, Abandonment.**

**(a).** Grantee shall have the unilateral right to terminate this Easement for any reason. Said termination shall be effective upon Grantee providing written notice of termination to Grantor. Upon termination of this Easement, this Easement shall become null and void and all of the parties shall have no further obligations to each other. Upon termination of this Easement, Grantee shall, within a reasonable time, remove all building(s), tower and all above ground property and restore the surface of the Easement Area to its original condition, reasonable wear and tear excepted.

(b). During the term of this Easement, Grantee shall reasonably maintain the communications facility located on the Easement Area. If the Easements (the tower site or facilities located thereon) are abandoned by non-use for a consecutive period of two (2) years, and, following the expiration of such 2 year period, do not respond within forty-five (45) days of Grantor's written notice of such to Grantee, which notice shall assert that non-response will result in termination of the Easements, then this Easement shall be terminated, and Grantee shall, within a reasonable time, remove all building(s), tower and all above ground property and restore the surface of the Easement Area to its original condition, reasonable wear and tear excepted.

**6. Hazardous Substances and Hazardous Wastes.** Grantor represents that it has no knowledge of any substance, chemical or waste, including but not limited to, asbestos, polychlorinated biphenyls (PCBs), petroleum or other fuels (collectively, "hazardous substance") on or under the Site or Property that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Grantee will not introduce or use any such substance on the Easement Area in violation of any applicable law. Grantor shall indemnify and hold Grantee harmless from and against all claims, actions, damages, fines, liabilities, costs and expenses (including attorneys and expert fees) arising, directly or indirectly, from the presence of any substance on, under or around Grantor's Property or the Easement Area, unless said substance was actually brought onto Grantor's Property or the Easement Area by Grantee. This obligation to indemnify Grantee shall include damages, costs and expenses incurred in connection with any investigation, cleanup, remediation, monitoring, removal or restoration related to the presence of any substance. This indemnity shall survive the expiration or termination of this Easement. (c) For purposes of this Easement, the term "Hazardous Substances" shall be as defined in the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 *et seq.*, and any regulations promulgated pursuant thereto, and as used to define "Hazardous Wastes" in the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.*, and any regulations promulgated thereto.

**7. Insurance.** At all times, Grantee, at its sole expense, shall obtain and keep in force (i) a comprehensive general liability insurance policy on its operations in the Easement Area, which policy shall be in the amount of no less than \$2,000,000, and (ii) any additional insurance policy which may be required by

any federal, state or local statute or ordinance of any governmental body having jurisdiction in connection with the operation of Grantee's use in the Easement Area.

**8. Removal of Obstructions.** Grantee has the right to remove obstructions, including but not limited to vegetation, which may encroach upon, interfere with or present a hazard to Grantee's use of the Easement Area. Grantee shall be responsible for disposing of any materials related to the removal of obstructions.

**9. Possession of the Property.** The parties hereby acknowledge that Property is currently subject to that the certain Lease Agreement ("Lease Agreement") dated January 21, 2003 by and between TowerCo Assets LLC, as lessee, and Grantor, as lessor. Upon the execution and recording of the Easement in the Real Property Records of San Bernardino County, California. Grantor hereby assigns to Grantee all of Grantor's right, title and interest in the Lease.

**10. Right of First Refusal.** If Grantor elects to sell all or any portion of the Easement Area, whether separate or as part of a larger parcel of property, Grantee shall have the right of first refusal to meet any bona fide offer of sale on the same terms and conditions of such offer. If Grantee fails to meet such bona fide offer within thirty days after written notice thereof from Grantor, Grantor may sell that property or portion thereof to such third person in accordance with the terms and conditions of the offer, which sale shall be under and subject to this Easement and Grantee's rights hereunder. If Grantee fails or declines to exercise its right of first refusal as hereinabove provided, then this Easement shall continue in full force and effect, and Grantee's right of first refusal shall survive any such sale and conveyance and shall remain effective with respect to any subsequent offer to purchase the Easement Area, whether separate or as part of a larger parcel of property.

**11. Real Estate Taxes.** Grantor shall pay all real estate taxes on Grantor's Property; provided Grantee agrees to pay for any taxation of Grantee's possessory (easement) interest, and any documented increase in real estate taxes levied against Grantor's Property that are directly attributable to the improvements constructed by Grantee. Grantor agrees to provide Grantee any documentation evidencing the increase and how such increase is attributable to Grantee's use. Grantee reserves the right to challenge any such assessment, and Grantor agrees to cooperate with Grantee in connection with any such challenge.

Grantee hereby acknowledges that this Easement may create a possessory interest subject to property taxation pursuant to California Revenue & Taxation Code Section 107 *et seq*, and that Grantee may be subject to the payment of property taxes levied on such interest. Any such imposition of a possessory interest tax shall be a tax liability of Grantee solely, and shall be paid for by Grantee. In addition, Grantee shall pay any personal property taxes that may become due for equipment, fixtures, inventory, or other personal property installed, maintained, or present in the Easement Area. In the event that Grantor fails to pay all real estate taxes on Grantor's Property (but not taxes on Grantee's possessory interest therein) prior to such taxes becoming delinquent, Grantee may, at its option, pay such real estate taxes (the "Delinquent Taxes") and Grantee shall have the right to collect the Delinquent Taxes from Grantor together with interest on the Delinquent Taxes at the rate of 8% per annum (calculated from the date Grantee pays the Delinquent Taxes until Grantor repays such sums due to Grantee), provided that Grantee notifies Grantor within five (5) days of Grantee's payment of such Delinquent Taxes, and shall have a lien against Grantor's Property with respect thereto. If Grantee becomes delinquent in the payment of taxes assessed against its possessory interest, the delinquency shall constitute a material breach of this Easement.

**12. Waiver of Subrogation.** The parties hereby waive any and all rights of action for negligence against the other which may hereafter arise on account of damage to the Easement Area or any other portion of Grantor's Property resulting from any fire or other casualty of the kind covered by property insurance policies with extended coverage regardless of whether or not, or in what amount, such insurance is now or hereafter carried by the parties.

**13. Enforcement.** In the event either party hereto fails to cure any violation of the terms of this Easement within ten (10) days after written notice from the other party, the party not in violation shall have the right to injunctive relief, to require specific performance of this Easement, to collect damages from the party in violation, and to take such actions as may be necessary in the enforcing party's discretion to cure such violation and charge the party in violation with all reasonable costs and expenses incurred by the enforcing party as a result of such violation (including, without limitation, the enforcing party's reasonable attorneys' fees ("Reimbursable Costs")). All rights and remedies provided under this Easement are cumulative and may be pursued singularly, in any combination, and in any order. The failure to enforce any of the

terms and provisions contained herein shall in no event be deemed to be a waiver of the right to thereafter strictly enforce the terms and provisions hereof.

**14. Limitation on Damages.** In no event shall Grantee be liable to Grantor for consequential, indirect, speculative or punitive damages in connection with or arising from this Easement, the Permitted Use or the Easement Area. In no event shall Grantor be liable to Grantee for damages of any kind in connection with or arising from Grantor's lawful exercise of its land use and governmental regulatory authority, and in no event shall Grantor be liable to Grantee for consequential, indirect, speculative, or punitive damages in connection with or arising from this Easement.

**15. Recording.** Grantor acknowledges that Grantee intends to record this Easement with the appropriate recording officer upon execution of this Easement. Grantor shall cooperate with Grantee in executing any documents necessary to protect Grantee's rights under this Agreement.

**16. Hold Harmless.** Grantor and Grantee each indemnifies the other against and holds the other harmless from any and all costs (including reasonable attorneys' fees) and claims of liability or loss which arise out of the ownership, use and/or occupancy of the Easement Area (by Grantee) or Grantor's Property (by Grantor) by the indemnifying party. This indemnity does not apply to any claims arising from the sole negligence or intentional misconduct of the indemnified party. The indemnity obligations under this Section will survive the termination of this Easement.

**17. Grantor's Covenant of Title.** Grantor covenants: (a) Grantor is seized of fee simple title to the Grantor's Property of which the Easement Area is a part and has the right and authority to grant this Easement; (b) that this Easement is and shall be free and clear of all liens, claims, encumbrances and rights of third parties of any kind whatsoever; (c) subject to the terms and conditions of this Agreement, Grantee shall have quiet possession, use and enjoyment of the Easement Area; (d) there are no aspects of title that might interfere with or be adverse to Grantee's interests in and intended use of the Easement Area; and (e) that Grantor shall execute such further assurances thereof as may be required.

**18. Non-Interference.** From and after the date hereof and continuing until this Easement is terminated (if ever), Grantee shall have the exclusive

right to construct, install and operate communications facilities that emit radio frequencies on Grantor's Property. Grantor shall not permit (i) the construction, installation or operation of any communications facilities that emit radio frequencies on Grantor's Property other than the communications facility to be constructed, installed and operated on the Easement Area or (ii) any condition on Grantor's Property which interferes with Grantee's Permitted Use. Each of the covenants made by Grantor in this Section 18 is a covenant running with the land for the benefit of the Easement Area and shall be binding upon Grantor and each successive owner of any portion of Grantor's Property and upon each person having any interest therein derived through any owner thereof.

**19. Eminent Domain.** If the whole or any part of the Easement Area shall be taken by right of eminent domain or any similar authority of law, the entire award for the value of the Easement Area and improvements thereon so taken shall belong to the Grantee.

**20. Entire Agreement.** Grantor and Grantee agree that this Easement contains all of the agreements, promises and understandings between Grantor and Grantee. No verbal or oral agreements, promises or understandings shall be binding upon either Grantor or Grantee in any dispute, controversy or proceeding at law. Any addition, variation or modification to this Easement shall be void and ineffective unless made in writing and signed by the parties hereto.

**21. Construction of Document.** Grantor and Grantee acknowledge that this document shall not be construed in favor of or against the drafter and that this document shall not be construed as an offer until such time as it is executed by one of the parties and then tendered to the other party.

**22. Applicable Law.** This Grant of Easement and Rights-of-Way and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State where the Easement is located. The parties agree that the venue for any litigation regarding this Agreement shall be San Bernardino County, California.

**23. Notices.** All notices hereunder shall be in writing and shall be given by (i) established express delivery service which maintains delivery records, (ii) hand delivery, or (iii) certified or registered mail, postage prepaid, return receipt requested. Notices may also be given by facsimile transmission, provided that the notice is concurrently given by one of the above

methods. Notices are effective upon receipt, or upon attempted delivery if delivery is refused or if delivery is impossible because of failure to provide reasonable means for accomplishing delivery. The notices shall be sent to the parties at the following addresses:

Town of Apple Valley  
14955 Dale Evans Parkway  
Apple Valley, CA 92307

TCO Assets Land LLC  
Attn: GRPP Dept.  
5000 Valleystone Drive  
Cary, NC 27519

**24. Assignment.** The parties hereto expressly intend that the easements granted herein shall be easements in gross, and as such, are transferable, assignable, inheritable, divisible and apportionable. Grantee has the right, within its sole discretion, to sell, assign, lease, sublease, convey, license or encumber any of its interest in the Easement Area, without the consent of Grantor. Any such sale, assignment, lease, license, conveyance or encumbrance shall be binding upon the successors, assigns, heirs and legal representatives of the respective parties hereto. An assignment of this Easement shall relieve Grantee from any further liability or obligation accruing hereunder on or after the date of the assignment, provided that the assignee has provided to Grantor a written acceptance of all of Grantee's obligations herein.

**25. Partial Invalidity.** If any term of this Easement is found to be void or invalid, then such invalidity shall not affect the remaining terms of this Easement, which shall continue in full force and effect.

**26. Mortgages.** This Easement shall be subordinate to any mortgage given by Grantor which currently encumbers Grantor's Property including the Easement Area, provided that any mortgagee holding such a mortgage shall recognize the validity of this Easement in the event of foreclosure of Grantor's interest and Grantee's rights under this Easement. In the event that the Easement Area is or shall be encumbered by such a mortgage, Grantor shall obtain and furnish to Grantee a non-disturbance agreement for each such mortgage, in recordable form.

**27. Successors and Assigns.** The terms of this Easement shall constitute a covenant running with the Grantor's Property for the benefit of Grantee and its successors and assigns and shall extend to and bind the heirs, personal representatives, successors and assigns of the parties hereto and upon each person having any

interest therein derived through any owner thereof. Any sale, mortgage, lease or other conveyance of Grantor's Property shall be under and subject to this Easement and Grantee's rights hereunder.

**28. Construction of Easement.** The captions preceding the Sections of this Easement are intended only for convenience of reference and in no way define, limit or describe the scope of this Easement or the intent of any provision hereof. Whenever the singular is used, the same shall include the plural and vice versa and words of any gender shall include the other gender. As used herein, "including" shall mean "including, without limitation."

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, Grantor and Grantee, having read the foregoing and intending to be legally bound hereby, have executed this Easement as of the dates written below.

WITNESSES:

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

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

**GRANTOR:**  
**TOWN OF APPLE VALLEY,**  
a municipal corporation

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

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

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

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

This instrument was acknowledged before me by \_\_\_\_\_, who is the \_\_\_\_\_ of **Town of Apple Valley**, a municipal corporation, personally known to me (or 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/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

NOTARY SEAL

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

\*\*\*Remainder of Page Intentionally Left Blank – Grantee Signature on Following Page\*\*\*

WITNESSES:

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

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

**GRANTEE:**

**TCO LAND II LLC,**  
a Delaware limited liability company

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

Its: \_\_\_\_\_

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

State of North Carolina  
County of Wake

This instrument was acknowledged before me by Daniel Hunt, who is the Vice President and CFO, a Duly Authorized Individual, of **TCO Land II LLC**, a Delaware limited liability company, personally known to me (or 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/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_, 2010.

NOTARY SEAL

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

**Exhibits:**

Exhibit A – Premises

Exhibit B – Exclusive Easement

Exhibit C – Access and Utility Easement

ONTARIO\AMORRIS\310171.1