

2018-011019

Klamath County, Oregon



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09/11/2018 10:58:52 AM

Fee: \$122.00

PREPARED BY AND  
WHEN RECORDED MAIL TO:

David C. Bruening, Esq.  
EIP Communications I, LLC  
c/o Everest Infrastructure Partners  
1435 Bedford Ave., Suite 108  
Pittsburgh, PA 15219

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

**EASEMENT AGREEMENT**

**THIS EASEMENT AGREEMENT** ("Agreement") is made as of the 26<sup>th</sup> day of July, 2018 ("Effective Date") by and between **BK RANCH, LLC**, an Oregon limited liability company ("Grantor") and **EIP COMMUNICATIONS I, LLC**, a Delaware limited liability company ("Grantee"). Grantor and Grantee are at times collectively referred to hereinafter as the "Parties" or individually as a "Party".

**RECITALS:**

**WHEREAS**, Grantor is the owner of that certain real property located at or about 22450 Campbell Road, Bly, Oregon 97622 ("Property"), which Property is more particularly described on Exhibit "A" attached hereto and made a part hereof; and

**WHEREAS**, Grantor and Grantee have entered into that certain Letter Agreement last executed the 10th day of May, 2018 ("Letter Agreement"), in which Grantor has agreed to grant to Grantee certain rights to the Property in accordance with the terms herein.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Grantor and Grantee hereby agree and covenant to and with each other the following:

1. **Recitals; Letter Agreement.** The recitals and definitions set forth above and the Letter Agreement are incorporated herein by reference and made a part of this Agreement.

2. **Grant of Easement.** Grantor grants and conveys to Grantee:

(a) an easement ("Site Easement") in, to, under and over the portions of the Property leased and/or otherwise utilized pursuant to the leases or other agreements listed on Exhibit "B" ("Current Agreements"), for the transmission and reception of any and all wireless communication signals and the construction, maintenance, repair, replacement, improvement, operation and removal of towers, antennas, cabinets, buildings, ice bridges, fences, gates and all related facilities (collectively "Facilities"), and any and all activities and uses of the Site Easement related to the operation of a wireless communications site, which Site Easement shall be exclusive except for any contrasting rights granted prior to the Effective Date via the Current Agreements and exclusive upon the expiration or earlier termination of the Current Agreements; and

(b) non-exclusive easements ("Access and Utility Easements") in, to, under and over the portions of the Property leased and/or otherwise utilized pursuant to the Current Agreements for ingress and egress to and from the Site Easement and a publicly dedicated roadway, and for the construction, installation, maintenance, repair, replacement, improvement, operation and removal of utilities providing service to and from the Site Easement and the Facilities, and any related activities and uses (the Site Easement and Access and Utility Easements are collectively referred to herein as the "Easement").

3. **Current Agreements.** Grantor transfers and assigns to Grantee, as of the Effective Date, any and all of Grantor's beneficial rights, title and interest in, to and under the Current Agreements, including but not limited to (i) the right to receive any and all rents and other monies due thereunder and (ii) the right to modify, extend, expand and/or terminate the Current Agreements. Grantor is not assigning and shall continue to comply with all of Grantor's obligations as lessor under the Current Agreements. During the term of the Current Agreements, maintenance of the Easement is the responsibility of any tenants under the Current Agreements, and Grantee shall not be responsible for any default thereof by any tenants under the Current Agreements nor obligated to cure or seek remedy for such default.

4. **Use of Easement.** Subject to the remaining term of the Current Agreements, Grantor shall provide to Grantee the quiet enjoyment and use of the Easement. Grantee shall have the exclusive, unrestricted right to lease, sublease, license, transfer, assign or encumber, in whole or in part, or grant the use of the Easement and/or Grantee's rights under this Agreement to any parties, including but not limited to (i) any lessee, sublessee or licensee under the Current Agreements, (ii) communication service providers or tower owners or operators, (iii) the affiliates, subsidiaries, parents and successors of Grantee, and (iv) holders of security interests (collectively, including successors and assigns, "Customers"). Grantee and its Customers shall have the right to enter and access the Easement at any time, twenty-four (24) hours a day, seven (7) days a week.

5. **Term.** This Agreement and the Easement shall commence on the Effective Date and extend until terminated in accordance with the terms herein.

6. **Termination.** In the event Grantee and its Customers cease all use of all portions of the Easement for a period of more than five (5) consecutive years (for reasons other than casualty or force majeure) subsequent to the expiration of the Current Agreements, the Easement shall be deemed abandoned and this Agreement shall be terminated. Limited or partial use of the Easement by Grantee or any Customers shall not be deemed a surrender or abandonment of the Easement or any unused portion

thereof, nor prevent Grantee from benefiting from the full use and enjoyment of the entirety of the Easement. Grantee may terminate this Agreement upon written notice to Grantor. This Agreement may not be terminated by Grantor. Upon termination Grantee and Grantor shall cooperate in the execution and recordation of any document reasonably required to evidence such termination.

7. **Improvements.** Grantee and its Customers may construct improvements in, to, under and over the Easement, all of which shall be deemed part of the Facilities. The Facilities shall remain the personal property of Grantee and its Customers, as applicable, and Grantor shall possess no right, title or interest therein.

8. **Taxes.** Upon the expiration of the Current Agreements, Grantee shall thereafter pay as a site expense all taxes directly attributable to the Facilities as evidenced by an applicable tax bill. Grantor shall pay all other taxes that are not directly attributable to the Facilities.

9. **Exclusive Use; Interference.** Except for Grantee's use or the use of any Customers or third parties with Grantee's permission or as otherwise permitted by the Current Agreements, no portion of the Property, or any other property owned by Grantor or any reasonably related party and located within a one (1) mile radius of the Property, shall be used in any manner for communications towers, facilities and/or transmissions without the prior written consent of Grantee, which consent may be withheld in Grantee's sole discretion. Grantor shall not install or permit to be installed any structure or equipment which causes measurable interference to the equipment of Grantee or its Customers, or otherwise permit any portion of the Property to be used in a manner which materially interferes with the operations of Grantee or its Customers. Grantor and Grantee acknowledge that there will not be an adequate remedy at law for non-compliance with the provisions of this section and therefore, Grantee shall have the right to specifically enforce the provisions herein in a court of competent jurisdiction.

10. **Environmental Covenants and Indemnity.** Grantor warrants to Grantee that Grantor has no knowledge of any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation ("Hazardous Materials") located on, under or about, or otherwise affecting, the Property or the Easement. Neither Grantor nor Grantee will introduce or use any Hazardous Materials on, under or about the Property or the Easement in violation of any applicable law or regulation. Grantor and Grantee shall each indemnify, defend and hold the other Party harmless from and against any and all losses, costs, claims, enforcement actions and expenses, including reasonable attorneys' fees, arising out of the presence of Hazardous Materials upon or affecting the Property or the Easement and caused by the indemnifying Party. The foregoing indemnity shall survive any termination of this Agreement.

11. **General Indemnity.** Grantor and Grantee shall each indemnify, defend and hold the other Party harmless from and against any and all losses, costs, claims and expenses, including reasonable attorneys' fees, arising out of (i) the breach of any representation, warranty or covenant of such indemnifying Party set forth herein, or (ii) the use and/or occupancy of the Property or the Easement by the indemnifying Party, except to the extent arising from the negligence or intentional misconduct of the indemnified Party. The foregoing indemnity shall survive any termination of this Agreement.

12. **Transfer of the Property; Assignment.** The provisions and covenants contained in this Agreement shall run with the land and shall bind and inure to the benefit of the Parties and their respective successors and assigns. Should Grantor sell or otherwise convey all or any part of the Property, such sale or conveyance shall be under and subject to the terms contained in this Agreement and Grantee's rights hereunder. Notwithstanding the foregoing, this Agreement and the Easement are for the benefit of Grantee and its successors and assigns, rather than for the benefit of any other tract of land, and may be assigned freely, in whole or in part, by Grantee and its successors and assigns.

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

14. **Condemnation.** In the event of any condemnation of the Easement in whole or in part, Grantee shall be entitled to file claims against the condemning authority for, and to receive, the value of the portion of the Property so taken on which the Easement is located, business dislocation expenses and any other award or compensation to which Grantee may be legally entitled.

15. **Notices.** All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given one (1) day after posting with a nationally recognized overnight courier service, or the earlier of receipt or ten (10) days after posting by registered or certified mail, return receipt requested, to the addresses of Grantor and Grantee as set forth on the signature pages. Either Party may change its notice address by providing notice as set forth herein.

16. **Miscellaneous.**

- (a) This Agreement, including all exhibits attached hereto and the Letter Agreement, constitutes the entire agreement and understanding of both Parties with respect to the subject matter of this Agreement, and supersedes all offers, negotiations and any other written or verbal agreements, and any amendments to this Agreement must be in writing and executed by both Parties;
- (b) this Agreement is governed by the laws of the state in which the Property is located;
- (c) in the event that either Party fails to pay when due any taxes, loans, judgments or payments attributable to or encumbering the Property, Easement or this Agreement, the other Party shall have the right, but not the obligation, to pay such sums on behalf of the non-paying Party, and the non-paying Party shall thereafter reimburse the paying Party for the full amount of such sums paid within five (5) business days of the non-paying Party's receipt of an invoice from the paying Party, or at the paying Party's option the paying Party may offset such amount, plus reasonable interest thereon, against any sums due from the paying Party to the non-paying Party;
- (d) if any term of this Agreement is found to be void, invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed modified to the minimum extent necessary to be operative, valid and enforceable to most closely reflect the intent of the Parties as expressed herein, or if such modification is not practicable, such provision shall be deemed deleted from this Agreement, and the other provisions of this Agreement shall remain in full force and effect;
- (e) the Parties shall perform, execute and/or deliver promptly any and all such further acts and documents as may be reasonably required to consummate and continue to effectuate the transaction contemplated in this Agreement, including recordation of this Agreement and acquisition of title insurance on the Easement;

- (f) the section headings of this Agreement have been inserted for convenience of reference only, and shall in no way modify or restrict the terms of this Agreement;
- (g) this Agreement has been negotiated at arm's-length, and in the event of any ambiguity in any of the terms and provisions, this Agreement shall be interpreted in accordance with the intent of the Parties and shall not be interpreted against or in favor of either Grantor or Grantee;
- (h) each Party acknowledges that neither Party has provided any legal or tax advice to the other regarding the transaction contemplated in this Agreement or in connection with the execution of this Agreement or any ancillary documents, and each Party has had the full opportunity to avail itself of legal and financial representation;
- (i) if any Party files an action for the enforcement or breach of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and court costs;
- (j) any Party, at its own expense, may record this Agreement upon the full execution hereof; and
- (k) this Agreement may be executed in any number of counterparts, each of which shall, when executed, be deemed to be an original and all of which shall be deemed to be one and the same instrument.

**[Signatures to immediately follow.]**

IN WITNESS WHEREOF, and intending to be legally bound, Grantor and Grantee have executed this Agreement.

**GRANTOR:**

**BK Ranch, LLC,  
an Oregon limited liability company**

William Vince Hill  
Printed Name: William Vince Hill  
Title: owner

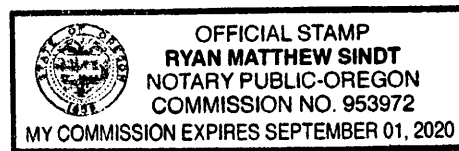
61645 Highway 19  
Condon, OR 97823

STATE OF OREGON )  
COUNTY OF Deschutes ) SS:  
~~KLAMATH~~

On this 5 day of July, 2018, before me, a Notary Public, the undersigned officer, personally appeared William Vince Hill, who acknowledged himself to be the OWNER of BK Ranch, LLC, an Oregon limited liability company, and that he, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing his name on behalf of said limited liability company by himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Ryan Matthew Sindt  
Notary Public  
My Commission Expires: 09/01/2020



**EIP Communications I, LLC,  
a Delaware limited liability company**

Printed Name: Michael Mackey  
Title: President

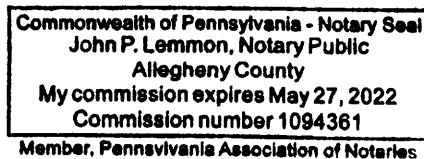
1435 Bedford Ave., Suite 108  
Pittsburgh, PA 15219

COMMONWEALTH OF PENNSYLVANIA )  
 ) SS:  
COUNTY OF ALLEGHENY )

On this 26<sup>th</sup> day of July, 2018, before me, a Notary Public, the undersigned officer, personally appeared Michael Mackey, who acknowledged himself to be the President of EIP Communications I, LLC, a Delaware limited liability company, and that he, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing his name on behalf of said limited liability company by himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public  
My Commission Expires: 5/27/2022



**Exhibit "A"**

Property

In the County of Klamath, Oregon

Legal Description:

Parcel One:

Situated in Township 36 South, Range 14 East of the Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Section 10: All

Section 15: ALL EXCEPT portion conveyed to Klamath County, Oregon by Deed recorded in Volume 288 at Page 189

Section 20: E1/2 NE1/4, that portion of SE1/4 SE1/4 lying Northeasterly of Sprague River

Section 21: E1/2 NW1/4, E1/2, W1/2 NW1/4, SW1/4

Section 22: All

Section 23: ALL EXCEPT the following described portion thereof:

Beginning at a point 100 feet West of the Southeast corner of SW1/4 SE1/4 of said Section 23, thence North 200 feet, thence West 200 feet, thence South 200 feet, thence East 200 feet to the place of beginning, and ALSO EXCEPTING the portion conveyed to Klamath County, Oregon by Deed recorded in Volume 288 at Page 189

Section 28: Beginning at the Northeast corner of said Section 28, thence West on the North line of said Section 28, 160 rods to the Northwest corner of the NE1/4 of Section 28, thence South on the West line of said NE1/4 of Section 28, 120 feet, thence in a Northeasterly direction in a straight line to a point on the East line of said Section 28, 86 feet South of the place of beginning, thence North on the East line of said Section 28 to the place of beginning

That portion of the NW1/4 NW1/4 lying Northerly of Sprague River and Northwesterly of the BK Canal

Parcel Two:

N1/2 S1/2 NE1/4 NE1/4 of Section 9, Township 36 South, Range 14 East of the Willamette Meridian, Klamath County, Oregon

EXCEPT those portions lying in County road right of ways

Parcel/Tax Number: R363706



## **Exhibit "B"**

### **Current Agreements**

1. That certain Site Lease Agreement initially entered into by and between William V. Hill, Sr. and Lillian M. Hill, Co-Trustees of the William V. Hill, Sr. and Lillian M. Hill Trust, dated July 15, 1992 as landlord and Central Oregon Cellular, Inc., an Oregon corporation, d/b/a Cellular One, as tenant, dated January 9, 1996, including any amendments thereto.
2. Any other leases, licenses or agreements respecting the Easement to which Grantor is a party.