

2018-011020

Klamath County, Oregon



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09/11/2018 11:04:03 AM

Fee: \$117.00

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 \_\_\_\_\_

**NON-DISTURBANCE AGREEMENT**

THIS NON-DISTURBANCE AGREEMENT ("Agreement") is made and entered into this 26<sup>th</sup> day of July, 2018 by and between **EIP COMMUNICATIONS I, LLC** ("Grantee"), **BANNER BANK** ("Lender"), and **BK RANCH, LLC** ("Grantor").

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;

WHEREAS, Grantor and Grantee have entered into that certain Letter Agreement last executed the 10<sup>th</sup> day of May, 2018 ("Letter Agreement"), pursuant to which Grantor and Grantee have or shall enter into an Easement Agreement ("Easement Agreement") in the form shown as Exhibit "A" to the Letter Agreement, via which Grantor shall grant to Grantee an exclusive easement for certain easements further described on Exhibit "B" attached hereto ("Easements") and assign to Grantee the rents generated by such Easements;

WHEREAS, the Property is subject to certain security interests and rights in favor of Lender and/or a trustee on behalf of Lender pursuant to those certain (i) Deed of Trust dated October 9, 2015 and recorded on October 19, 2015 as Instrument Number 2015-011467, in the Official Records of Klamath County, Oregon; (ii) Modification of Deed of Trust dated April 14, 2016 and recorded on April 28, 2016 as Instrument Number 2016-004313, in the Official Records of Klamath County, Oregon; and (iii) any

other instruments granting Lender and/or a trustee on behalf of Lender any security interest in the Property (collectively the "Mortgage"); and

WHEREAS, the parties hereto desire to assure Grantee's rights under the Letter Agreement and Easement Agreement upon the terms and conditions therein contained.

NOW, THEREFORE, for and in consideration of the mutual covenants and promises herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

#### AGREEMENT:

1. The Letter Agreement and Easement Agreement are and shall be subject and subordinate to the Mortgage, and to all renewals, modifications, consolidations, replacements and extensions thereof, subject to this Agreement.

2. So long as Grantee is not in default as defined in the Letter Agreement or Easement Agreement, Grantee shall not be disturbed in Grantee's possession, enjoyment, use and occupancy of the Easements.

3. Should Lender become the owner of the Property or otherwise succeed to the interests of Grantor under the Letter Agreement and Easement Agreement, or should the Property be sold by reason of foreclosure or other proceedings pursuant to the Mortgage, or should the Property be transferred by deed in lieu of foreclosure, or should any portion of the Property be sold under a trustee's sale, the Letter Agreement and Easement Agreement shall continue in full force and effect as direct agreements between the then owner of the Property covered by the Mortgage and Grantee, upon, and subject to, all of the terms, covenants and conditions of the Letter Agreement and Easement Agreement. Grantee does hereby agree to attorn to Lender or to any such owner as its grantor, and Lender hereby agrees that it will accept such attornment.

4. Lender shall not be (a) liable for any default of any Grantor under the Letter Agreement and Easement Agreement, except to the extent of any ongoing defaults upon Lender becoming the owner of the Property or otherwise succeeding to the interests of Grantor; (b) subject to any offsets or defenses which have accrued prior to the date of foreclosure; or (c) bound by any amendment or modification of the Letter Agreement and Easement Agreement hereafter made without Lender's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed.

5. Grantee agrees that upon receipt of written notice from Lender of an uncured default by Grantor under the Mortgage or the loan secured by the Mortgage, all sums payable by Grantee under the Letter Agreement and Easement Agreement shall thereafter be paid by Grantee to Lender until such time as Lender or a court of competent jurisdiction directs otherwise. Grantee shall not have any liability or obligation to verify the existence of any default so alleged by Lender. Provided that Grantee pays Lender following Grantor's default and a notice from Lender, then Grantor relieves Grantee of all liability for the payment of any sums as required hereunder.

6. All notices and other communications hereunder shall be in writing and shall be deemed given when received, whether personally, by telegram, telex, facsimile transmission (followed by regular mail) or registered or certified mail (return receipt requested) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

If to Grantee:

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

If to Lender:

Banner Bank  
PO Box 1170  
Hermiston, OR 97838

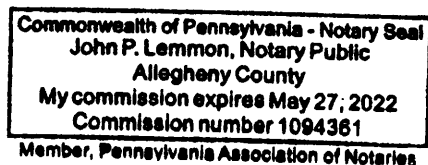
If to Grantor:

BK Ranch, LLC  
William Vince Hill  
61645 Highway 19  
Condon, OR 97823

7. Notwithstanding anything to the contrary in the Mortgage, Lender hereby acknowledges and grants its consent to the transaction contemplated by the Letter Agreement and Easement Agreement and the execution of such documents by Grantor and Grantee.

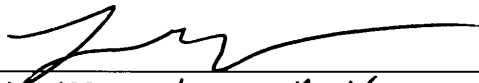
8. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors in interest, heirs and assigns and any subsequent owner of the Property secured by the Mortgage.

[Signatures to immediately follow.]



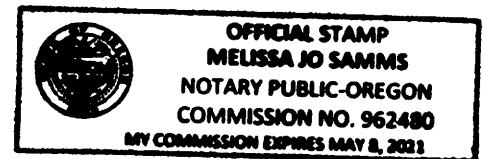
LENDER:

Banner Bank,  
a Commercial Bank

  
Printed Name: Lucas A. Wagner  
Title: Senior Vice President

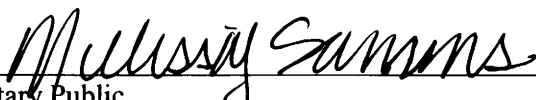
STATE OF Oregon )  
COUNTY OF Umatilla )

SS:



On this 29th day of May, 2018, before me, a Notary Public, the undersigned officer, personally appeared Lucas A. Wagner, who acknowledged himself/herself to be the SVP of Banner Bank, a Commercial Bank, and that he/she, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing his/her name on behalf of said Bank by himself/herself as such officer.

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

  
Notary Public  
My Commission Expires: 5/8/2021

GRANTOR:

BK Ranch, LLC,  
an Oregon limited liability company

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

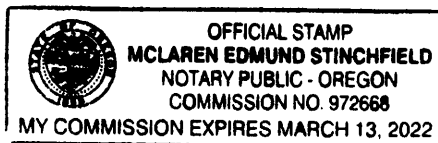
61645 Highway 19  
Condon, OR 97823

STATE OF OREGON )  
                    Gilliam )      SS:  
COUNTY OF ~~CLATSOP~~ )

On this 4th day of June, 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.

Mclaren Edmund Stinchfield  
Notary Public  
My Commission Expires: 3/13/22



**EXHIBIT A**

**THE 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**

### **THE EASEMENTS**

Those premises and access/utility easements previously leased pursuant to 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.