

2020-013562

Klamath County, Oregon

10/21/2020 08:14:01 AM

Fee: \$132.00

Record and Return to:

Joseph Mangus
TitleVest Agency, LLC
110 E. 42nd Street, 10th Floor
New York, NY 10017
TitleVest Title No.: TOR752854

Prepared by:

Jon L. Lober
TPA IV, LLC
1170 Peachtree Street, Suite 1650
Atlanta, GA 30309

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

EASEMENT AGREEMENT

This telecommunication easement and lease assignment agreement ("Agreement") is made and shall be effective on the 17 day of September, 2020 ("Effective Date"), by and between CLV Properties, LLC ("Grantor") and TPA IV, LLC, a Delaware limited liability company ("Grantee").

- 1. Grantor's Property and the Telecom Tenant Lease.** Grantor represents and warrants that it holds fee simple title to certain real property located at 5500 Running Y Road, Klamath Falls, Oregon, as more fully described in the legal description attached hereto as Exhibit A (the "Parent Property"). Grantor and Verizon Wireless ("VAW") LLC (the "Telecom Tenant") are parties to that certain lease agreement, including all amendments and modifications thereto, cited in Exhibit B and incorporated by reference herein (the "Telecom Tenant Lease").
- 2. Grant of Easement.** For the sum of TEN AND NO/100 DOLLARS and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge as paid on or about the Effective Date along with the purchase price pursuant to the settlement statement executed contemporaneously with this Agreement ("Purchase Price"), Grantor grants and conveys unto Grantee, its successors and assigns, an exclusive easement (subject to the Telecom Tenant Lease) for the

Permitted Use defined herein, together with a non-exclusive access easement for ingress and egress to and from the exclusive easement, seven days per week, twenty-four hours per day and a non-exclusive utility easement to install, replace and maintain utilities servicing the exclusive easement, including, but not limited to the installation of power and telephone service cable, wires, switches, boxes and the like as may be required by the Permitted Use (collectively "Easement") as further described in Exhibit C). Grantor shall permit Grantee, Easement Tenant(s), and any of their affiliates, customers, tenants, subtenants, lessees, sublessees, licensees, successors and/or assigns together with any of the employees, contractors, consultants, and or agents of the foregoing to use the Easement for the installation, construction, operation, maintenance, repair, modification, relocation, replacement and removal of improvements and equipment ("Equipment") for the facilitation of telecommunications and other related uses, including, but not limited to, any uses permitted by the Telecom Tenant Lease ("Permitted Use"). Notwithstanding the foregoing, Grantor shall have the right to use any portion of the Parent Property not leased to an Easement Tenant (defined below) subject to the non-interference obligations of Grantor contained in Section 6 herein. Grantor represents that there is no pending or threatened action that would adversely affect Grantor's ability to enter into this Agreement or grant the Easement and that entering into this Agreement will not violate or conflict with any provision of Grantor's organizational documents (if Grantor is an organization) or conflict with the provisions of any agreement to which Grantor is a party. Grantor further represents and warrants that Grantee shall have peaceful and quiet possession and enjoyment of the Easement during the term of this Agreement without any disturbance of Grantee's possession or Permitted Use hereunder.

3. **Term.** Commencing on the Effective Date, the term of this Agreement and the Easement shall be for ninety-nine (99) years (the "Term") and this Agreement and the Easement shall terminate on September 17, 2119. Upon notice to Grantor as provided herein, Grantee may surrender the Easement to Grantor and execute such documents reasonably required to terminate the Agreement and the Easement. Grantor may not unilaterally terminate the Agreement or Easement, but if the Easement is not used for the Permitted Use for a period of three (3) years the Easement shall be deemed abandoned and shall terminate upon Grantor's notice of such default to Grantee as provided herein. **Sections 11 and 12** shall survive expiration or termination of this Agreement and shall remain in effect in perpetuity, subject to applicable law.
4. **Assignment of Lease, Renewal and Right of Replacement.** Grantor hereby assigns to Grantee all of Grantor's right, title and interest in the Telecom Tenant Lease for the Term, including the right to renew the Telecom Tenant Lease throughout the Term hereof. Except as provided herein, Grantee agrees to assume all of Grantor's rights and obligations under the Telecom Tenant Lease. If Telecom Tenant is obligated under the Telecom Tenant Lease to pay to Grantor any fees (other than base rent and any escalations thereto) for the purpose of utility service or access or tax reimbursement, Grantor shall continue to be entitled to such fees, although Grantee may collect and distribute same to Grantor. Grantor shall continue to perform all obligations of the lessor under the Telecom Tenant Lease which relate to the use, ownership, and maintenance of the Parent Property so that Grantee may fulfill all the obligations under the Telecom Tenant Lease without breaching any provision therein, including, but not limited to, Grantor maintaining the Parent Property in a commercially reasonable condition to allow the Permitted Use of the Easement. Grantor represents and warrants that it has delivered to Grantee true and correct copies of the Telecom Tenant Lease and that Grantor owns 100% of the lessor/landlord's interest in the Telecom Tenant Lease, including the right to collect all rent thereunder. To the best of Grantor's knowledge, no party to the Telecom Tenant Lease has breached or is in default of their respective obligations under the Telecom Tenant Lease and **no party has requested or discussed a modification or termination of the Telecom Tenant Lease.** If during the Term the Telecom Tenant terminates the Telecom Tenant Lease or otherwise vacates the Parent Property, Grantee may lease all or a portion of the Easement to a replacement telecommunications tenant ("Replacement Telecom Tenant") on terms consistent with the Telecom Tenant Lease and such Replacement Telecom Tenant

shall occupy the Easement rather than locating on other portions of the Parent Property ("Replacement Telecom Tenant Lease"). For any Replacement Telecom Tenant, Grantor shall have the right to review and approve construction plans for Replacement Telecom Tenant prior to commencement of construction and such approval shall not be unreasonably conditioned, delayed or withheld and such approval shall be without further compensation to Grantor. Approval shall be deemed given by Grantor where Grantor has failed to respond within twenty (20) days of notice as provided herein.

5. Rent Sharing.

- a. **Rent Share Tenant.** When a new telecommunications tenant ("Rent Share Tenant"), other than a Replacement Telecom Tenant, executes a lease for space within the Easement outside the Telecom Tenant or Replacement Telecom Tenant lease premises and commences rent payment, Grantee will collect such rent with Grantee retaining forty percent (40%) of the rent collected and Grantee remitting sixty percent (60%) of the rent collected to Grantor. Notwithstanding the foregoing, Grantee shall be entitled to collect and retain rent from all telecommunications tenants within the Easement in an amount equal to the rent scheduled in the existing Telecom Tenant Lease and any Replacement Telecom Tenant Lease, including scheduled escalators ("Minimum Scheduled Rent"). Should the rent collected equal an amount less than the Minimum Scheduled Rent, such deficit ("Minimum Scheduled Rent Deficit") shall accrue and shall be applied against any and all future rents collected within the Easement, until collected rent payments fully offset the total Minimum Scheduled Rent Deficit. Grantee is permitted and authorized to enter into leases with Rent Share Tenants subject to the requirements for leasing to Replacement Telecom Tenants as set forth in **Section 4**.
 - b. **Replacement Telecom Tenant.** If Grantee enters into a Replacement Telecom Tenant Lease, and such Replacement Telecom Tenant commences rent payment ("Replacement Telecom Tenant Rent"), Grantee will collect and retain all Replacement Telecom Tenant Rent until the rent payments collected fully offset the total Minimum Scheduled Rent Deficit. Once any Minimum Scheduled Rent Deficit is satisfied, the difference between the Minimum Scheduled Rent and the Replacement Telecom Tenant Rent shall be deemed "Excess Rent". Grantee will remit sixty percent (60%) of the Excess Rent collected to Grantor.
- 6. Grantor Cooperation and Non-interference.** Grantor hereby agrees to cooperate with Grantee and/or Telecom Tenant, Replacement Telecom Tenant and Rent Share Tenant (collectively, "Easement Tenants") in obtaining all licenses, permits or authorizations from all applicable governmental and/or regulatory entities and in acquiring any necessary upgrades to or relocation of utility service to support the Permitted Use. Grantor's cooperation shall be at no cost to Grantor and without requiring payment of additional rent or fees by Grantee or Easement Tenants. Grantor shall not interfere with any construction in the Easement so long as such construction is to support the Permitted Use and is proceeding pursuant to a building permit or other required municipal or governmental approvals. Grantor shall not, nor shall Grantor permit its lessees, licensees, employees, invitees or agents to, use any portion of the Parent Property or the Easement in a way which materially interferes with the operations of the Easement Tenants who shall have peaceful and quiet possession and enjoyment of the Easement. Grantor may not directly or indirectly induce, invite, or conspire to induce or invite any Easement Tenants to use or lease space in direct competition with Grantee's Easement.
- 7. Assignment.** Grantee may pledge, assign, mortgage, grant a security interest, or otherwise encumber its interest created by this Agreement. Grantee may freely assign this Agreement in part or in its entirety, and any or all of its rights hereunder, including the right to receive rent payments. Upon the absolute assumption of such assignee of all of the obligations of Grantee under this Agreement, then Grantee will be relieved of all obligations and liabilities hereunder.

- 8. Taxes and Other Obligations.** Except as provided for in the applicable Easement Tenant Lease or otherwise herein, all taxes and other obligations that are or could become liens against the Parent Property or any subdivision of the Parent Property containing the Easement, whether existing as of the Effective Date or hereafter created or imposed, shall be paid by Grantor prior to delinquency or default. Grantor shall be solely responsible for payment of all taxes and assessments now or hereafter levied, assessed or imposed upon the Parent Property, or imposed in connection with the execution, delivery, performance or recordation hereof, except that Grantee shall pay transfer taxes and recording fees. Grantee shall use commercially reasonable efforts to enforce the tax payment obligations of Easement Tenants as such may appear under the applicable Easement Tenant lease. If Grantor fails to pay when due any taxes or other obligations affecting the Parent Property, Grantee shall have the right but not the obligation to pay such and demand payment therefor from Grantor, which payment Grantor shall make within ten (10) days of such demand by Grantee. Notwithstanding the foregoing, Grantee shall pay all taxes assessed against any equipment that Grantee installs on the Parent Property.
- 9. Insurance.** During the Term of this Agreement, Easement Tenants shall maintain general liability insurance as required under their respective lease. Grantor shall maintain any insurance policies in place on the Parent Property or as required under the Telecom Tenant Lease.
- 10. Subordination and Non-Disturbance.** Grantee agrees to subordinate this Agreement to any existing or future mortgage or deed of trust on the Parent Property ("Security Instrument"), provided the beneficiary or secured party ("Secured Party") under the Security Instrument agrees for itself and its successors in interest and assigns that Grantee's rights under this Agreement and rights to the Easement shall remain in full force and effect and shall not be affected or disturbed by the Secured Party in the exercise of Secured Party's rights under the Security Instrument during the term of the Agreement, including Grantee's right to collect and retain, in accordance with the terms of this Agreement, all rents, fees and other payments due from Easement Tenants. Such non-disturbance agreement must apply whether Secured Party exercises its rights under the Security Instrument, including foreclosure, sheriff's or trustee's sale under the power of sale contained in the Security Instrument, and any other transfer, sale or conveyance of Grantor's interest in the Parent Property under peril of foreclosure, including, without limitation to the generality of the foregoing, an assignment or sale in lieu of foreclosure.
- 11. Mutual General Indemnification.** Grantor and Grantee shall each indemnify and hold harmless the other against any and all claims, damages, costs and expenses (including reasonable attorney's fees and disbursements) caused by or arising out of the indemnifying party's breach of this Agreement or the negligent acts or omissions or willful misconduct on the Parent Property by the indemnifying party or the employees, agents, or contractors of the indemnifying party.
- 12. Environmental Representations and Indemnification.**
- a. Grantor represents and warrants that, to the best of Grantor's knowledge, no pollutants or other toxic or hazardous substances, as defined under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 et seq., or any other federal or state law, including any solid, liquid, gaseous, or thermal irritant or contaminant, such as smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste (including materials to be recycled, reconditioned or reclaimed) (collectively, "Hazardous Substances") have been, or shall be discharged, disbursed, released, stored, treated, generated, disposed of, or allowed to escape or migrate (collectively referred to as the "Release") on or from the Parent Property. Neither Grantor nor Grantee shall introduce or use any Hazardous Substances on the Parent Property or the Easement in violation of any applicable federal, state or local environmental laws.

- b. Grantor and Grantee each agree 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 Substances on the Parent Property caused by the other party. Grantee shall not be responsible for and shall not defend, indemnify or hold harmless Grantor for any Release of Hazardous Substances on or before the Effective Date.

13. Dispute Resolution and Notice.

- a. Jurisdiction and venue under this Agreement shall be in the state and county the Parent Property is located. The parties may enforce this Agreement and their rights under applicable law, and may seek specific performance, injunction, appointment of a receiver and any other equitable rights and remedies available under applicable law. Money damages may not be an adequate remedy for the harm caused to Grantee by a breach or default by Grantor hereunder, and Grantor waives the posting of a bond. Damages as against Grantee shall be limited to the amount of consideration received by Grantor under this Agreement, following any insurance settlement which may have effect. The prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs. Neither party shall be liable to the other for consequential, indirect, speculative or punitive damages.
- b. The non-defaulting party shall provide written notice of a default under this Agreement or under an Easement Tenants' lease, not more than thirty (30) days from discovery of the default. From the date of such notice, the defaulting party shall have thirty (30) days to cure the default, unless the default cannot reasonably be cured within thirty (30) days in which case the defaulting party shall have such additional time as necessary to cure the default so long as the defaulting party has commenced to cure the default and is diligently pursuing completion of the cure.
- c. All communications shall be delivered by certified mail, return receipt requested or a nationally recognized overnight courier to the address beneath each party's signature block or such other address as advised to the other party pursuant to this paragraph. Notice shall be deemed given upon receipt if by certified mail, return receipt requested or one (1) business day following the date of sending, if sent by nationally recognized overnight courier service or upon attempted delivery if delivery is refused or if delivery is impossible because of failure to provide reasonable means for accomplishing delivery.

14. Miscellaneous.

- a. **Utility Easement Relocation.** In the event that Grantor seeks to redevelop portions of the Parent Property and Grantor desires to relocate the utilities that support the Permitted Use, then Grantee shall use commercially reasonable efforts to cooperate with Grantor in facilitating a relocation of the utilities so long as the Permitted Use is not interrupted or diminished during the proposed relocation and the applicable Easement Tenant agrees to such relocation. Grantee will reasonably cooperate with Grantor in obtaining all licenses, permits or authorizations from all applicable governmental and/or regulatory agencies to relocate the utility service to support the Permitted Use. Any proposed relocation will be upon six (6) months written notice to Grantee, and performed exclusively by the Easement Tenant's contractors. During the relocation, Easement Tenant shall have the right to install and operate a temporary cell on

wheels ("COW") on the Parent Property to ensure no loss of quality, coverage and capacity of the applicable Easement Tenant's operations during such relocation. All relocation costs, including but not limited to the installation and operation of the COW, shall be at Grantor's sole expense. Upon relocation, the utility easements provided to Easement Tenant will be relocated as required, in the reasonable discretion of Easement Tenant. Grantor agrees to execute an amendment to the Agreement, memorializing the location of the utility easement following any relocation of the utilities supporting the Permitted Use.

- b. The terms and conditions of the existing Telecom Tenant Lease shall govern over any conflicting term of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, Grantor and Grantee acknowledge that this Agreement is subject and subordinate to the Telecom Tenant Lease.
- c. 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. It is the intention of the parties hereto that all of the various rights, obligations, restrictions and easements created in this Agreement shall run with the Parent Property upon which the Easement is located and be binding upon all future owners and lessees of the Parent Property and all persons claiming under them for the Term of this Agreement.
- d. Casualty and Condemnation. In the event of any casualty or condemnation of the Easement in whole or in part, Grantee shall be entitled to receive any insurance proceeds or condemnation award attributable to the value of the Easement.
- e. Severability. If any provision contained in this Agreement (or any portion of such provision) shall be held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement (or any portion of any such provision.)
- f. Counterparts. This Agreement may be executed in separate counterparts with each counterpart deemed an original and all of which together shall constitute a single agreement.
- g. Entire Agreement. This Agreement and any documents, certificates, instruments and agreements referred to herein constitute the entire agreement between Grantor and Grantee. Without limiting the generality of the foregoing, Grantor acknowledges that it has not received or relied upon any advice of Grantee or its representatives regarding the merits or tax consequences of this Agreement.

[Signature pages and exhibits follow.]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date on page one above.

CLV PROPERTIES, LLC

By:


William D. Lynch, Manager

Grantor Notice Address:

CLV Properties, LLC

P. O. Box 2207

Rancho Santa Fe, CA 92067

ACKNOWLEDGMENT BY NOTARY PUBLIC

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

) ss.

COUNTY OF SAN DIEGO)

On September 16, 2020, before me, Samantha Johansen, a Notary Public, personally appeared WILLIAM D. LYNCH, who 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 executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person 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.

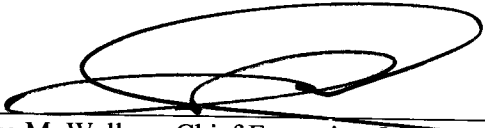


Notary Public



IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date on page one above.

GRANTEE: TPA IV, LLC


Jesse M. Wellner, Chief Executive Officer

Grantee Notice Address:
TPA IV, LLC
1170 Peachtree Street, Suite 1650
Atlanta, GA 30309
Attn: Chief Executive Officer

With a copy to:
TPA IV, LLC
1170 Peachtree Street, Suite 1650
Atlanta, GA 30309
Attn: General Counsel

STATE OF GEORGIA

COUNTY OF FULTON

} ss.

On this 14th day of September, 2020, before me, the undersigned notary public, personally appeared Jesse M. Wellner, and proved to me through satisfactory evidence of identification, which was personal knowledge/driver's license/passport/_____ (circle one), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as Chief Executive Officer of TPA IV, LLC.

{affix notary seal or stamp}

Pamela R Martin
NOTARY PUBLIC
Cherokee County, GEORGIA
My Commission Expires 10/19/2022

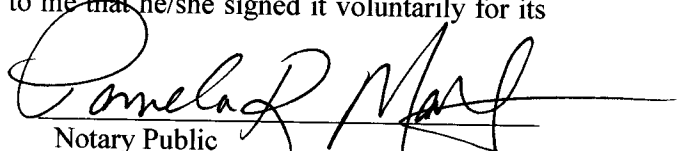

Notary Public
My Commission Expires: 10-19-2022

EXHIBIT A

LEGAL DESCRIPTION OF THE PARENT PROPERTY

Parcel 1 Land Partition No. 33-07, a replat of Parcel 1 of Land Partition 53-06, located in the South 1/2 of Section 9, Township 38 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon.

EXHIBIT B

TELECOM TENANT LEASE

That certain Building and Rooftop Lease Agreement dated January 5, 2007 by and between Running Y Resort, Inc., an Oregon corporation and Verizon Wireless (VAW) d/b/a Verizon Wireless; amended by a certain First Amendment to Building and Rooftop Lease Agreement dated August 6, 2007, aforesaid parties.

EXHIBIT C

EASEMENT AREA DESCRIPTION

In the event of a discrepancy between the area actually occupied by the Telecom Tenant's equipment and the area described below, the described area shall be understood to also include any portion of the actual used area not captured by the description or as may have been granted to the Telecom Tenant that is currently outlined in each Telecom Tenant Lease referenced in Exhibit B. Grantor or Grantee may elect to engage a professional surveyor, the product of which may be substituted upon the other party's acceptance for the contents herein. The part of the Parent Property described in Exhibit A hereto, on which any equipment exists on the Effective Date together with the portion of the Parent Property used and leased by Grantor as the existing lease premises under each Telecom Tenant Lease including but not limited as follows:

The entire rooftop of that certain building commonly known as 5500 Running Y Road, Klamath Falls, Oregon 97601; and legally known as 5500 Running Y Road, Klamath Falls, Oregon 97601; including the portion of the upper façade of the building to allow for installation of antennas, comprising a band extending approximately six feet down from the top edge of the parapet, and continuing around all the facades of the building.

NON-EXCLUSIVE UTILITY EASEMENT and NON-EXCLUSIVE ACCESS EASEMENT SPACE

The part of the Parent Property, described in Exhibit A hereto, on which any equipment exists on the Effective Date together with the portion of the Parent Property used by utility providers and leased by Grantor as the lease premises under each Telecom Tenant Lease including but not limited as follows:

Utilities and Telecommunications. Grantee is herein granted, consistent with each Telecom Tenant Lease, a non-exclusive easement in, to, under and over the portions of the Parent Property for ingress and egress to the Easement, shaft ways, chase ways, soffits, risers, columns, crawl spaces, rafters, or any other space for placement of cables, wiring, etc., which is necessary to install, operate and maintain the telecommunications equipment and/or personal property, together with the right to use such easement for the development, repair, maintenance and removal of utilities and/or cables providing service to the Easement and any related activities and uses.

Access. Grantee is herein granted, consistent with each Telecom Tenant Lease, all rights of ingress and egress to and from the Easement, across the Parent Property described in Exhibit A hereto, providing access to a publicly dedicated roadway, including but not limited to Running Y Road, along with the right to use such access easement for the development, repair, maintenance and removal of utilities providing service to the Easement and any related activities and uses.