

After recording return to

Mountain West Small Business Finance
2595 East 3300 South
Salt Lake City, UT 84109

Parcel No. 33-11-402-002

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12/13/2016 9:46:00 AM \$29.00
Book - 10510 Pg - 3112-3121
Gary W. Ott
Recorder, Salt Lake County, UT
BARTLETT TITLE INS AGCY
BY: eCASH, DEPUTY - EF 10 P.

BT-14741

**SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT ("**Agreement**") is made as of November 22, 2016, by and between Mountain West Small Business Finance, its successors and assigns ("**Lender**"), whose address is 2595 East 3300 South Salt Lake City, UT 84109, and Telecom and Development Services, Inc., a Utah corporation, whose address is 10256 S. Sage Spring Circle, South Jordan, Utah 84009 ("**Tenant**");

RECITALS

A. Tenant leases or has an option to lease a portion of the property located in Salt Lake County, Utah, and more particularly described on EXHIBIT A attached hereto (the "**Property**") pursuant to the provisions of a certain Option and Land Lease Agreement dated July 28, 2016 between RIDGE ROCK, INC. ("**Landlord**"), as landlord and assignee of BIG ROCK PROPERTIES, LLC, a Utah limited liability company ("**Borrower**"), and Tenant, as tenant (as amended, supplemented, or extended, the "**Lease**"). The portion of the Property leased by Tenant is referred to herein as the "**Leased Property**."

B. BIG ROCK PROPERTIES, LLC, a Utah limited liability company, ("**Borrower**") is the owner in fee simple of the Property.

C. Lender is making or has made a loan to Borrower evidenced or to be evidenced by a U.S. Small Business Administration Note made by Borrower to the order of Lender (the "**Note**") and secured or to be secured by a Deed of Trust, Assignment of Leases and Rents, Security Agreement, and Fixture Filing (the "**Security Instrument**") granted by Borrower to or for the benefit of Lender recorded against the Property. The Note, Security Instrument, and all other documents evidencing, governing, or securing the Loan are collectively referred to herein as the "**Loan Documents**."

D. Tenant has agreed to subordinate the Lease to the lien of the Security Instrument, and Lender has agreed not to disturb Tenant's tenancy under the Lease on the terms and conditions set forth below.

AGREEMENT

For good and valuable consideration, Tenant and Lender agree as follows:

1. **SUBORDINATION.** The Lease and all of the terms, covenants and provisions thereof and all rights, remedies, and options of Tenant thereunder, including, without limitation, any rights to payment following a default by Landlord under the Lease or casualty or condemnation with respect to the Property, are and shall at all times continue to be subject and subordinate in all respects to the terms, covenants and provisions of the Security Instrument and to the lien thereof, including, without limitation, all renewals, increases, modifications, spreading agreements, consolidations, replacements and extensions thereof and to all sums secured thereby and advances made thereunder with the same force and effect as if the Security Instrument had been executed, delivered and recorded prior to the execution and delivery of the Lease.

2. **NON-DISTURBANCE.** If any action or proceeding is commenced by Lender for the foreclosure of the Security Instrument or the sale of the Property, Tenant shall not be named as a party therein unless Tenant is in default under the Lease at the time such action or proceeding is commenced or unless joinder is required by law. As long as Tenant is not in default under any of the terms, covenants or conditions of the Lease or of this Agreement beyond any applicable cure period both at the time of the commencement of any such action or proceeding and at the time of any foreclosure sale or the exercise of any other rights or remedies of Lender under the Security Instrument, (a) such joinder shall not result in the termination of the Lease or disturb the Tenant's possession or use of the Leased Property, and (b) the sale of the Property in any such action or proceeding and the exercise by Lender of any of its other rights under the Loan Documents shall be made subject to all rights of Tenant under the Lease, as expressly modified by this Agreement.

3. **ATTORNMEN**

3.1. If (a) Lender or any other purchaser of the Property becomes the owner of the Property by reason of the foreclosure of the Security Instrument or the acceptance of a deed or assignment in lieu of foreclosure or by reason of any other enforcement of the Security Instrument (Lender or such other purchaser being hereinafter referred to as "Purchaser"), and (b) there was no default by Tenant permitting Purchaser to terminate the Lease in connection with its foreclosure action in accordance with Section 2 above, then upon Purchaser's acquisition of the Property, the Lease shall not be terminated or affected by Purchaser's acquisition, but shall continue in full force and effect as a direct lease between Purchaser and Tenant upon all of the terms, covenants

and conditions set forth in the Lease. Tenant agrees to attorn to Purchaser, and Purchaser, by virtue of acquiring the Property, shall be deemed to have agreed to accept such attornment.

3.2. Subject to the observance and performance by Tenant of all the terms, covenants and conditions of the Lease, and subject to Purchaser's termination right in Section 2 above, Purchaser shall recognize the leasehold estate of Tenant for the remaining balance of the term with the same force and effect as if Purchaser were the lessor under the Lease; *provided, however*, that Purchaser shall not be:

3.2.1. liable for the failure of any prior landlord (any such prior landlord, including Borrower, Landlord, and any of their respective successors-in-interest, being hereinafter referred to as a "Prior Landlord") to perform any of its obligations under the Lease that accrued prior to the date on which Purchaser became the owner of the Property, but this limitation of liability does not limit Purchaser's obligations under the Lease to correct any conditions that (i) existed as of the date Purchaser became the owner of the Property, (ii) violate Purchaser's obligations as landlord under the Lease, and (iii) Purchaser received written notice of such condition and had the opportunity to cure the same pursuant to the terms and conditions of Section 5 of this Agreement;

3.2.2. subject to any offsets or other monetary obligations, defenses, abatements, or counterclaims that have accrued in favor of Tenant against any Prior Landlord prior to Purchaser's acquisition of the Property;

3.2.3. liable for the return of security deposits, if any, paid by Tenant to any Prior Landlord in accordance with the Lease unless Purchaser actually receives such security deposits from a Prior Landlord;

3.2.4. bound by any payment of rents, additional rents or other sums Tenant may have prepaid more than one (1) month in advance to any Prior Landlord unless (i) such sums are actually received by Purchaser and (ii) such prepayment was expressly approved by Purchaser in writing;

3.2.5. bound by any agreement terminating the Lease or any voluntary surrender of the Leased Property made without Lender's or Purchaser's prior written consent prior to Purchaser's acquisition of the Property;

3.2.6. bound by any amendment or modification of the rent or any other material economic term of the Lease, the commencement date of the Lease, the Lease term, or any of landlord's rights or obligations under the Lease made without Lender's or Purchaser's prior written consent prior to the time Purchaser succeeded to Borrower's interest in the Property;

3.2.7. responsible for the making of repairs in or to the Property in the case of damage or destruction to the Property or any part thereof due to fire or other casualty or by reason of condemnation;

3.2.8. bound by any representations or warranties of any Prior Landlord; or

3.2.9. bound by any indemnity or defense obligations of any Prior Landlord.

In the event that any liability of Purchaser arises pursuant to this Agreement or under the Lease, such liability shall be limited and restricted to Purchaser's interest in the Property and shall in no event exceed such interest.

4. **NOTICE TO TENANT.** After notice is given to Tenant by Lender that Borrower or Landlord is in default under the Loan Documents and that the amounts due from Tenant under the Lease should be paid to Lender, Tenant shall thereafter pay directly to Lender or as otherwise directed by Lender, all rents and other amounts due or to become due to Borrower under the Lease, and Borrower and Landlord hereby expressly authorize Tenant to make such payments to Lender and hereby release and discharge Tenant from any liability to Borrower or Landlord on account of any such payments.

5. **NOTICE TO LENDER AND RIGHT TO CURE.** Tenant agrees to notify Lender by certified mail, return receipt requested, with postage prepaid, of any default of Landlord under the Lease that would entitle Tenant to cancel or terminate the Lease or to abate or reduce the rent payable thereunder. Tenant further agrees that, notwithstanding any provisions of the Lease, no cancellation or termination of the Lease, and no abatement or reduction of the rent payable thereunder, shall be effective unless (a) Lender has received notice of the default and (b) Lender has failed, within thirty (30) days after both Lender's receipt of such notice and the time when Lender became entitled under the Security Instrument to remedy such default, to (i) commence to cure the default and thereafter diligently prosecute such cure to completion or (ii) if Lender cannot commence a cure without possession of the Property, to commence judicial or non-judicial proceedings within the 30-day period to obtain possession of the Property and thereafter diligently prosecute such efforts and cure to completion. However, if such default is not susceptible of cure by Lender, and Lender or an affiliate of Lender obtains possession of the Property, such default shall be waived. Notwithstanding the foregoing, Lender shall have no obligation to cure any default by Borrower except as specifically provided in Section 3.2.1 upon Lender's acquisition of the Property.

6. **NOTICES.** Any notice, demand, request, or other communication that any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed properly given (a) if hand delivered, when delivered; (b) if mailed by

United States Certified Mail (postage prepaid, return receipt requested), three Business Days after mailing; (c) if by Federal Express or other nationally recognized overnight courier service, on the next Business Day after delivered to such courier service for delivery on the next Business Day; or (d) if by e-mail transmission, on the day of transmission so long as a copy is sent on the same day by Federal Express or other nationally recognized overnight courier, to the addresses set forth below, or at such other address as the party to be served with notice has furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice:

If to Tenant:

Telecom and Development Services, Inc.
10256 S. Sage Spring Circle
South Jordan, Utah 84009

If to Lender:

Mountain West Small Business Finance
2595 East 3300 South
Salt Lake City, UT 84109
Reference: Ridge Rock, Inc.

For purposes of this Section 6, the term "Business Day" means any day other than Saturday or Sunday on which commercial banks are required or authorized to be open in Salt Lake City, Utah.

7. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon and inure to the benefit of Lender, Tenant and Purchaser and their respective successors and assigns.

8. **GOVERNING LAW.** This Agreement shall be governed by federal law applicable to Lender or the U.S. Small Business Administration and, to the extent not preempted by federal law, the laws of the state of Utah without regard to its conflicts of law provisions.

9. **ASSIGNMENT.** Tenant shall not, without Lender's prior written consent, assign its interest in the Lease or sublet its interest in the Property if the assignment or sublease will result in a release of Tenant's liability under the Lease.

10. **AUTHORITY.** The individuals signing this Agreement represent and warrant that they are authorized to do so on behalf of the parties for whom they are signing.

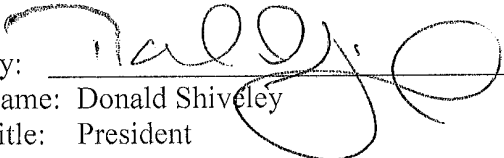
11. **MISCELLANEOUS.** This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto. If any provision of this Agreement is finally adjudicated to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement.

**[Remainder of page intentionally left blank;
signatures appear on the following page]**

Executed as of the date of this Agreement.

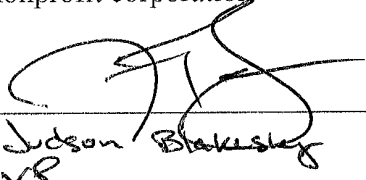
TENANT:

TELECOM AND DEVELOPMENT SERVICES, INC.,
a Utah corporation

By: 
Name: Donald Shiveley
Title: President

LENDER:

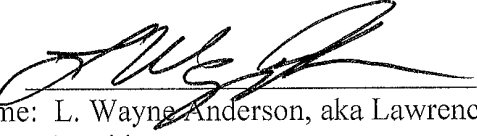
MOUNTAIN WEST SMALL BUSINESS FINANCE
A Utah nonprofit corporation

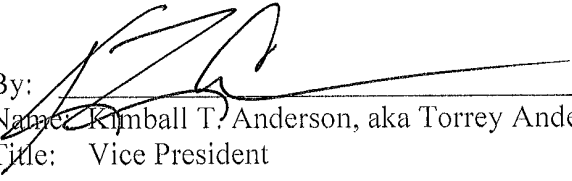
By: 
Name: Judson Blakesley
Title: VP

The undersigned hereby joins in the execution of this Agreement in order to evidence its acceptance of, and agreement to be bound by, Section 4 of the Agreement.

BORROWER:

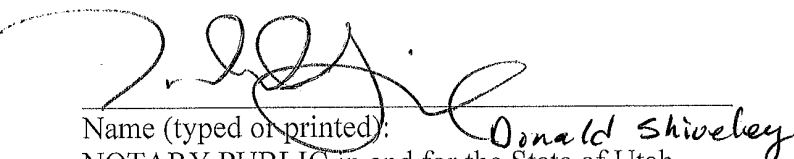
BIG ROCK PROPERTIES, LLC,
a Utah limited liability company

By: 
Name: L. Wayne Anderson, aka Lawrence W. Anderson
Title: President

By: 
Name: Kimball T. Anderson, aka Torrey Anderson
Title: Vice President

STATE OF UTAH)
 : SS
COUNTY OF SALT LAKE)

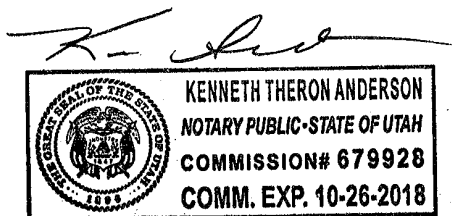
On the 9th day of December, 2016, personally appeared before me Donald Shiveley, who being duly sworn, did say that he is the President of Telecom and Development Services, Inc., a Utah corporation, and that said instrument was signed on behalf of said company, and acknowledged to me that he executed the same.


Name (typed or printed): Donald Shiveley
NOTARY PUBLIC in and for the State of Utah

Residing at


My appointment expires:

10-26-18



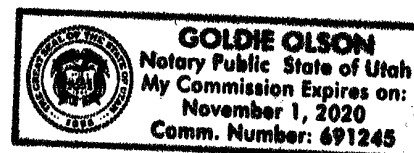
STATE OF UTAH)
 : SS
COUNTY OF SALT LAKE)

On the 9th day of December, 2016, personally appeared before me Goldie Olson, who being duly sworn, did say that she/he is the Mountain West Small Business Finance, and that said instrument was signed on behalf of said company, and acknowledged to me that she/he executed the same.


Name (typed or printed): Goldie Olson
NOTARY PUBLIC in and for the State of Utah

Residing at

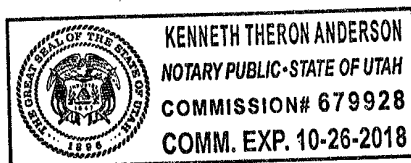
My appointment expires:



STATE OF UTAH)
 : ss
COUNTY OF SALT LAKE)

On the 5th day of December, 2016, personally appeared before me L. Wayne Anderson, aka Lawrence W. Anderson, who being duly sworn, did say that he is the President of Big Rock Properties, LLC, a Utah limited liability company, and that said instrument was signed on behalf of said company, and acknowledged to me that he executed the same.

Ken Anderson
Name (typed or printed):
NOTARY PUBLIC in and for the State of Utah
Residing at
My appointment expires:



STATE OF UTAH)
 : ss
COUNTY OF SALT LAKE)

On the 5th day of December, 2016, personally appeared before Kimball T. Anderson, aka Torrey Anderson, who being duly sworn, did say that he is the Vice President of Big Rock Properties, LLC, a Utah limited liability company, and that said instrument was signed on behalf of said company, and acknowledged to me that he executed the same.

Ken Anderson
Name (typed or printed):
NOTARY PUBLIC in and for the State of Utah
Residing at
My appointment expires:

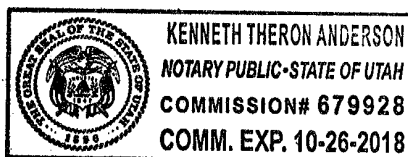


EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

The following real property is located in Salt Lake County, Utah:

Beginning at a point which is West 2227.23 feet from the East Quarter Corner of Section 11, Township 4 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 00°05'10" West 541.05 feet (540.247 feet by deed); thence South 89°36'28" West 409.59 feet; thence North 00°59'54" East 499.60 feet (498.89 feet by deed); thence North 84°12'50" East 142.07 feet (143.4 feet by deed); thence North 30.00 feet; thence East 260.35 feet (260.353 feet by deed) to the point of beginning.

Together with a 50 foot private right of way described as follows: Beginning at a point which is West 2512.45 feet and South 32.52 feet from the East Quarter Corner of Section 11, Township 4 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 49°13'42" West 155.87 feet; thence South 00°59'54" West 1276.67 feet; thence North 89°00'06" West 50.00 feet; thence North 00°59'54" East 1299.03 feet; thence North 49°13'42" East 106.84 feet; thence North 84°12'50" East 87.18 feet to the point of beginning.

Less and excepting that portion of land conveyed to City of Bluffdale by that certain Warranty Deed recorded January 20, 2015 as Entry No. 12208854 in Book 10396 at Page 9118.

Parcel No. 33-11-402-002