



\*W2864953\*

E# 2864953 PG 1 OF 10  
Leann H. Kilts, WEBER COUNTY RECORDER  
28-Jun-17 09:43 AM FEE \$28.00 DEP DAC  
REC FOR: FIDELITY NATIONAL TITLE INSURANCE  
ELECTRONICALLY RECORDED

**TELECOM EASEMENT AGREEMENT**

STATE OF: UTAH  
COUNTY OF: WEBER

Document Date: 6/27/2017

**GRANTOR:** BEN LOMOND SUITES OWNERS ASSOCIATION  
Address: 2510 Washington Boulevard  
Ogden, UT 84401

**GRANTEE:** LANDMARK INFRASTRUCTURE HOLDING COMPANY LLC  
Address: P.O. Box 3429  
El Segundo, CA 90245

Legal Description  
and Tax Parcel Numbers: Attached as Exhibit A.

**Prepared by:**  
Landmark Dividend LLC  
2141 Rosecrans Ave, Suite 2100  
El Segundo, CA 90245  
TC175966

Return after recording to:  
Fidelity National Title Group  
Attn: Melissa Cater  
7130 Glen Forest Drive #300  
Richmond, VA 23226  
FTC Order No: 25 146 566 (2)

**TELECOM EASEMENT AGREEMENT**

(City of Ogden, County of Weber, State of Utah)

This Telecom Easement Agreement ("Agreement") is made as of 6/27, 2017 ("Effective Date") by and between BEN LOMOND SUITES OWNERS ASSOCIATION, a Utah nonprofit corporation ("Grantor"), and LANDMARK INFRASTRUCTURE HOLDING COMPANY LLC, a Delaware limited liability company ("Grantee").

A. Grantor is the owner's association for that certain real property commonly known as 2510 Washington Boulevard, Ogden, Utah and more particularly described on Exhibit A attached hereto and incorporated by this reference herein (the "Property"), and Grantor has control of all common areas, including the rooftop of the building at the Property;

B. Grantor and Grantee are parties to that certain Purchase and Sale of Telecom Easement and Assignment and Assumption of Lease Agreement dated as of the date hereof ("Purchase Agreement"), the terms and conditions of which are incorporated herein by reference; and

C. Pursuant to the terms of the Purchase Agreement, Grantor intends to grant to Grantee an exclusive easement (the "Telecom Easement") in, to, under and over the portion of the Property described in Exhibit B attached hereto (the "Telecom Easement Area") for telecommunications purposes, and a non-exclusive easement (the "Access Easement") in, to, under and over certain portions of the Property (including through the building) for ingress, egress, and utility service for and to the Telecom Easement (the Telecom Easement and the Access Easement may be collectively referred to herein as the "Easement").

D. Pursuant to the terms of the Purchase Agreement, Grantor is assigning to Grantee all of Grantor's right, title and interest in and to that certain Rooftop Lease Agreement dated November 1, 1987, between Grantor, as successor in interest to Radisson Suite Hotel Ogden, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as successor in interest to Salt Lake City Cellular Telephone Company, as amended by that certain Amendment to Rooftop Lease Agreement dated August 25, 1989, that certain Second Amendment to Rooftop Lease Agreement dated August 8, 2006, that certain Third Amendment to Rooftop Lease Agreement dated January 3, 2012, and that certain Fourth Amendment to Rooftop Lease Agreement dated December 1, 2014 (as amended and assigned, the "Lease").

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee agree as follows:

Grant of Telecom Easement. Grantor hereby grants to Grantee an exclusive easement over the Telecom Easement Area for the purpose of leasing space on the Property to telecommunications tenant(s) and uses associated with the exercise rights of telecommunications tenants under such leases.

Grant of Non-Exclusive Access Easement. Grantor hereby grants to Grantee a non-exclusive Access Easement in, to, under and across the Property adequate to allow ingress and egress and utility service to the Telecom Easement Area for its permitted uses.

Term. Subject to the terms of the Purchase Agreement, this Agreement shall terminate on June 24, 2067 (the "Termination Date"). Grantor may not terminate this Agreement prior to such date; provided, however, in the event the Lease expires or terminates prior to the Termination Date (including without limitation, a termination resulting from a default or breach by Tenant or rejection of the Lease in bankruptcy), and Grantee, or its successor-in-interest, thereafter fails, for a period of three (3) years, to enter into a Replacement Lease with a Replacement Tenant (as such terms are defined in the Purchase Agreement), then the Easement shall be deemed abandoned, the Easement and this Agreement shall automatically terminate and Grantee, or its successor-in-interest, shall promptly provide Grantor with a termination of the Easement and a release of this Agreement in a recordable form. In the event

that Grantee fails to deliver a release or termination of this Agreement or other documentation required by this Section 3, within thirty (30) days after delivery of Grantor's written request, Grantor may unilaterally execute and record such release, termination or similar documentation.

**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. This Agreement shall run with the land upon which the Easement is located. Grantor hereby expressly acknowledges and agrees that Grantee may from time to time sell, convey, assign, mortgage, pledge, encumber, hypothecate, securitize or otherwise transfer some or all of Grantee's right, title and interest in and to this Agreement, the Easement, the Telecom Easement Area and/or the Access Easement Area without notice to or consent of Grantor.

5. **Representations and Covenants of Grantor.** Grantor represents and warrants to Grantee, as of the Effective Date, that:

a. This Agreement constitutes the legal, valid and binding obligation of Grantor, enforceable against Grantor in accordance with its terms.

b. The execution, delivery and performance by Grantor of this Agreement (i) does not and will not violate or conflict with any provision of Grantor's organizational documents, (ii) does not and will not violate or conflict with any agreement to which Grantor is a party, including, without limitation, permits, mortgages and deeds of trust, or by which Grantor or the Property is bound, such that it would materially adversely affect Grantor's ability to grant the Easement or to perform its obligations hereunder or limit Grantee's ability to use the Easement as contemplated herein, and (iii) to Grantor's actual knowledge, will not violate or conflict with any law, rule, regulation, judgment, order or decree to which Grantor is subject.

c. Grantor has not received written notice of any pending or threatened action, judgment, order decree or proceeding (including any bankruptcy, insolvency, eminent domain, zoning or other land use regulation actions) that, if determined against Grantor, would materially adversely affect Grantor's ability to grant the or to perform its obligations hereunder, or limit Grantee's ability to use the Easement as contemplated herein. Grantor has received no written notice from any governmental or quasi-governmental authority either that the Property or the use thereof violates any statutes, ordinances, orders or regulations affecting any portion of the Property.

d. Grantor is the owner's association for the Property has control of all common areas, including the rooftop of the building at the Property.

e. Grantor has not previously deeded, granted, assigned, mortgaged, pledged, hypothecated, alienated or otherwise transferred any of its right, title and interest in and to the Lease, or any portion of the Property the Easement occupies, except as expressly disclosed to Grantee in writing. Except for the Lease and any other telecommunications leases being assigned to Grantee, Grantor has not executed or otherwise entered into any leases, tenancies, license or concession agreements, occupancy agreements or other agreements with respect to rights that would adversely affect Grantee's, or Grantee's tenants, possession or occupancy of any portion of the Easement or use of the Property pursuant to this Agreement.

f. Grantor shall comply with all applicable laws which may affect the Property.

g. Grantor shall not, nor shall Grantor permit its lessees, licensees, employees, invitees or agents to use any portion of the Property, or the Easement in a way which materially interferes with the operations of Grantee's lessees or licensees, or to interfere with the Access Easement. Such interference shall be deemed a material breach by Grantor.

6. **Environmental Representations.**

a. **Grantor Environmental Representation.** Grantor represents that as of the Effective Date it has no actual knowledge of any substance, chemical or waste (collectively "**Hazardous Substance**") on the Property that is in violation of any applicable federal, state or local law or regulation. Grantor shall

not introduce or use (or permit the use of) any Hazardous Substance on the Property in violation of any applicable federal, state or local environmental laws. Grantor shall be responsible for (and shall promptly conduct any investigation and remediation as required by any applicable environmental laws) all spills or other releases of any Hazardous Substance caused by Grantor that have occurred or which may occur on the Property.

b. Grantee Environmental Representations. Grantee shall not introduce or use any Hazardous Substance on the Property or the Easement in violation of any applicable federal, state or local environmental laws. Notwithstanding the foregoing, Grantee shall not be responsible for any Hazardous Substances arising or present on or before the Effective Date. Liability of Grantee for any claims with respect to any Hazardous Substances at the Property or the Easement shall be limited to contamination which is shown to have been caused by Grantee after the Effective Date, and in violation of any applicable federal, state or local environmental laws.

c. Mutual Indemnification. Each party agrees 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 actual and reasonable damages, costs, expenses, assessments, penalties, fines, cleanup, remedial, removal or restoration work required by any governmental authority, losses, judgments and reasonable and actual outside attorneys' fees that the indemnified party may suffer or incur due to the existence or discovery of any Hazardous Substance in violation of the law on the Property caused by the other party. This indemnification shall also apply to the migration of any Hazardous Substance to other properties, and the release of any Hazardous Substance into the environment that relate to or arise from the indemnitor's activities on the Property. This indemnification shall survive the termination or expiration of this Agreement.

7. Default. It shall be an "Event of Default" if either Grantor or Grantee fails to observe or perform any of the terms, conditions or its respective obligations set forth in this Agreement. Upon receiving written notice of such a default or breach of this Agreement, the defaulting party shall have sixty (60) days to cure such default. Notwithstanding anything herein to the contrary, if the required cure of the noticed default cannot reasonably be completed by the defaulting party within such 60-day period, such party's failure to perform shall not constitute an Event of Default so long as the applicable party undertakes to cure the failure promptly and diligently and continuously pursues the cure thereof to completion. In the event that the defaulting party fails to cure such default within the cure period, the non-defaulting party shall be entitled to exercise any rights permitted by applicable law.

8. Notices. Any notice, request, demand, offer or communication required or permitted to be given by any provision of this Agreement shall be deemed to have been sufficiently given or served for all purposes if sent by registered or certified mail, postage and charges prepaid, or by Federal Express, or similar overnight carrier addressed as follows:

To Grantor: Landmark Infrastructure Holding Company LLC  
c/o Landmark Dividend LLC  
P.O. Box 3429  
2141 Rosecrans Ave, Ste. 2100  
El Segundo, CA 90245

To Grantee: Ben Lomond Owners Association  
2510 Washington Boulevard  
Ogden, UT 84401

Any such notice shall be deemed to be given on the date of delivery to the address set forth above as may be changed from time to time, or the date of refusal of delivery.

Agreement Fully Performed. Notwithstanding anything herein to the contrary, this Agreement is deemed to be fully performed by Grantee as of the Commencement Date. In no event shall this Agreement be deemed an executory contract for purposes of the United States Bankruptcy Code, as amended (the "Code"), and this Agreement may not be rejected pursuant to Section 365 of the Code.

**Severability.** In the event any term, covenant, condition, provision, or Agreement contained herein is held to be invalid, void, or otherwise unenforceable, by any court of competent jurisdiction, such holding shall in no way affect the condition, provision, or Agreement contained herein.

**Governing Law.** This Agreement and the obligations of the parties hereunder shall be interpreted, construed, and enforced in accordance with the laws of the State of Utah.

**Captions.** Articles and section titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any provisions hereof.

**Exhibits.** The following exhibits are attached to this Agreement:

- Exhibit A - Legal Description of Property
- Exhibit B - Telecom Easement Area

[Signatures on Following Page]





**EXHIBIT A**  
Description of Property

A portion of the Common Elements, being part of the rooftop, of Ben Lomond Suites Condominium Project, as established and defined by Declaration of Condominium recorded September 18, 1984 in Deed Book 1454, Page 71.



**EXHIBIT B**  
Telecom Easement Area

The Telecom Easement Area is limited to the location of the Tenant's equipment as of the Effective Date, within the following described area, as demised pursuant to the Lease (see also attached survey for a depiction of Tenant's equipment as of the Effective Date):

**BEING A PORTION OF THE SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 6 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, OGDEN CITY, WEBER COUNTY, UTAH AND ALSO BEING A PORTION OF LOTS 5 AND 6, BLOCK 17, PLAT "A", OGDEN CITY SURVEY AND BEING DESCRIBED AS FOLLOWS:**

**COMMENCING AT THE NORTHWEST CORNER OF LOT 6, BLOCK 17, PLAT A OF THE OGDEN CITY SURVEY; THENCE ALONG THE EASTERLY LINE OF WASHINGTON BOULEVARD AND THE WESTERLY LINE OF THE PARENT PARCEL, 62.57 FEET; THENCE DEPARTING SAID LINE SOUTH 88°02'00"EAST, 134.98 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 88°27'18"EAST, 13.72 FEET; THENCE SOUTH 00°49'49"WEST, 40.05 FEET; THENCE NORTH 88°27'18"WEST, 13.72 FEET; THENCE NORTH 00°49'49"EAST, 40.05 FEET TO THE POINT OF BEGINNING.**

**ROOF TOP SURVEY**  
 IN SECTION 29,  
 TOWNSHIP 6 NORTH, RANGE 1 WEST

FOR: LANDMARK DIVIDEND  
 ASSOCIATION

SITE: BEN LOMOND SUITES OWNERS

SITE ID: TC175986

ADDRESS: 2510 WASHINGTON BLVD.,  
 OGDEN CITY, UTAH

LANDMARK  
 DIVIDEND

**GEOLINE**  
 SURVEYING, INC.

1430 NW 10th, Tallahassee, Fla. A  
 Phone: (904) 418-6200 Fax: (904) 482-2988  
 WWW.GEOSURV.COM

SURVEY NUMBER: 175986-175

PERKINS CONSULTING, L.L.C.  
 9087 S. 1300 W., STE 304  
 WEST JORDAN, UTAH 84098  
 801-550-3332 OFFICE

**SURVEYOR'S NOTES**

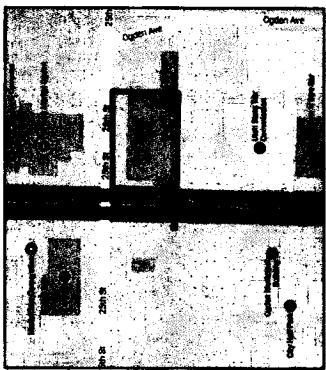
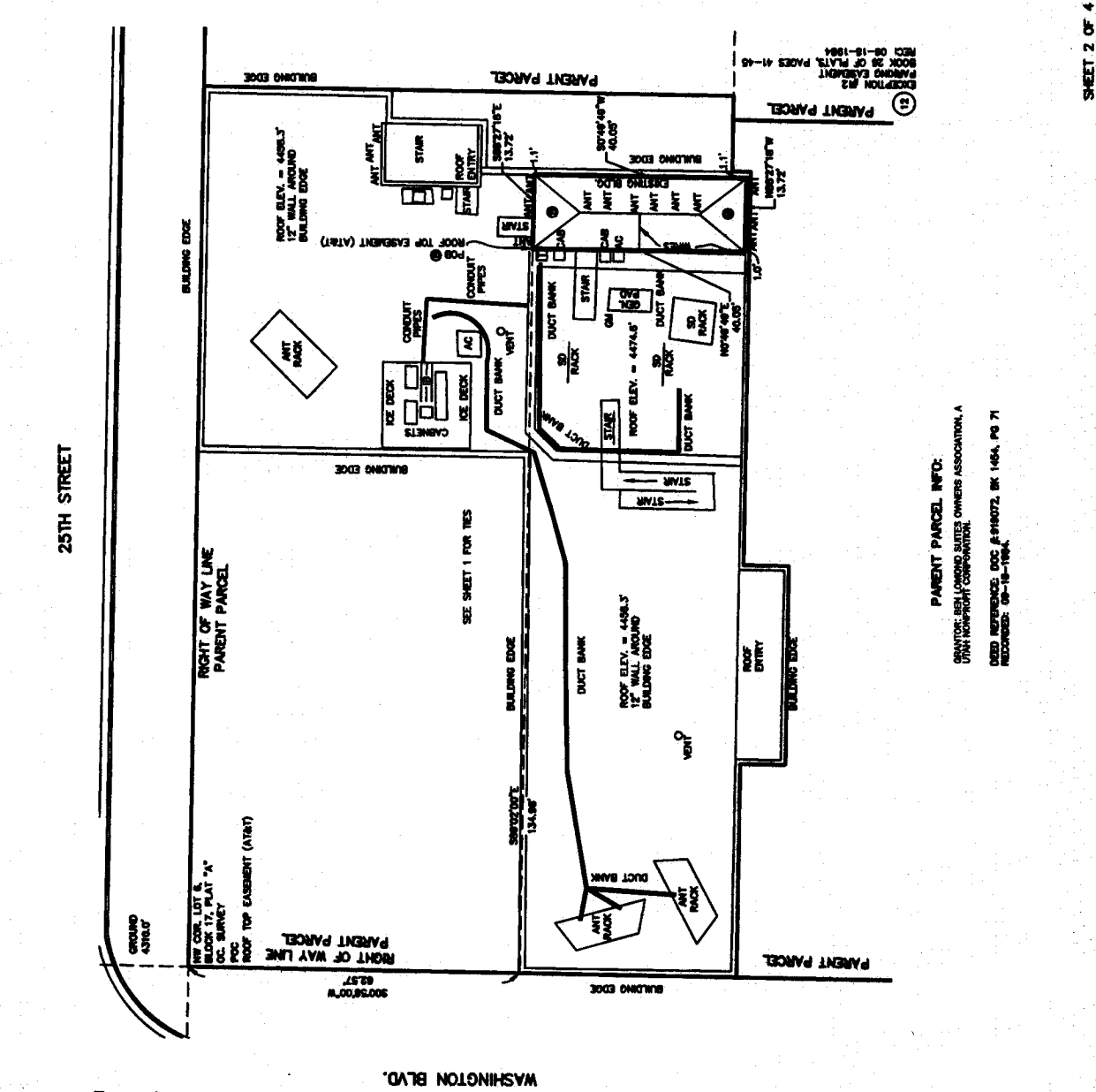
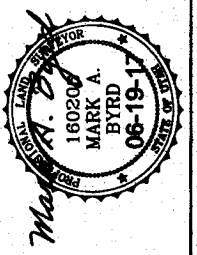
1. BASIS OF BEARING: 50056707" BEING THE MEASUREMENT LINE OF WASHINGTON BLVD. BETWEEN 25TH STREET AND 26TH STREET.
2. NO SURFACE INVESTIGATION WAS CONDUCTED TO LOCATE UNDERGROUND UTILITIES. UTILITIES ARE ASSUMED TO BE AT THE SURFACE ARE PER OBSERVED EVIDENCE ONLY.
3. THIS SURVEY DOES NOT REPRESENT A BOUNDARY SURVEY OF THE PARENT PARCEL.
4. ALL VISIBLE TOWER EQUIPMENT AND IMPROVEMENTS ARE CONTAINED WITHIN THE DESCRIBED AREA.

**SURVEYOR'S CERTIFICATION**

I HEREBY CERTIFY TO LANDMARK INFRASTRUCTURE HOLDINGS COMPANY LLC, ITS ASSOCIATION, AND LANDMARK DIVIDEND ASSOCIATION NATIONAL TITLE INSURANCE COMPANY.

PERKINS CONSULTING, L.L.C.  
 MARK A. BYRD  
 LAND SURVEYOR - UTAH # 190206

Date: 05-09-2017



**LEGEND**

- FOUND 1/2" REBAR AND CAP AS NOTED.
- (---) RECORD DESCRIPTION DATA.
- P.O.B. POINT OF BEGINNING.
- P.O.C. POINT OF COMMENCEMENT.
- FENCE AS NOTED.
- OVER HEAD UTILITY LINES.
- WOOD UTILITY POLE.
- ELECTRIC TRANSFORMER.
- TELECOM PEDestal.
- WATER METER.
- CABLE TELEVISION.
- SATELLITE DISH.
- SKY LIGHT.
- HVAC UNITS.
- PUBLIC UTILITY EASEMENT.
- ICE BRIDGE.
- ELECTRICAL SWITCH PANEL.
- METER RACK.
- ANTENNA RACK.
- ROOF DRAIN.
- VENT.
- ICE BRIDGE.
- GEN: GENERATOR.
- GM: GAS METER.

**AREA TABLE**

AREA TABLE	SCALE	AREA
1	1:20	13,72
2	1:20	13,72
3	1:20	13,72
4	1:20	13,72

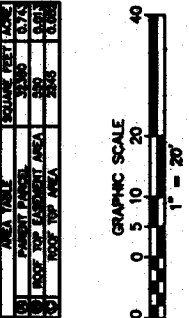
**FLOOD NOTE:** 4805208-12-16-2008 ZONE 'X'

**PARENT PARCEL INFO:**

GRANTOR: BEN LOMOND SUITES OWNERS ASSOCIATION, A UTAH NONPROFIT CORPORATION.

DEED REFERENCE: DEC # 916072, BK 1464, PG 71

RECORDED: 05-19-1994.



SHEET 2 OF 4