

TX IN 06-037-0174

Record and Return to:

Nana Brenyah
TitleVest Agency, LLC
44 Wall Street, 10th Floor
New York, NY 10005
TitleVest Title No.: OR-UT-531617

Prepared by:

TowerPoint Acquisitions, LLC
Six Concourse Parkway, Suite 1450
Atlanta, GA 30328

MNT 52335

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

TELECOMMUNICATION EASEMENT AND LEASE ASSIGNMENT AGREEMENT

THIS TELECOMMUNICATION EASEMENT AND LEASE ASSIGNMENT AGREEMENT ("Agreement") is made and shall be effective on the 30th day of September, 2016, 2016 ("Effective Date"), by and between BARTON CREEK PARTNERS, L.L.C., a Utah limited liability company ("Grantor") and TowerPoint Acquisitions, 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 801 North 500 West, Bountiful, Utah 84010, as more fully described in the legal description attached hereto as Exhibit A (the "Parent Property"). Grantor and Sprint Spectrum Realty Company, LP, a Delaware limited partnership, successor in interest to Sprint Spectrum L.P., a Delaware limited partnership (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, its lessees, sublessees, licensees, successors and assigns 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 ("Permitted Use"). 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 shall maintain the Parent Property in a commercially reasonable condition to allow the Permitted Use of the Easement. 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 a perpetual term (the "Term"). 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 five (5) 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 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").
5. **Revenue Sharing.**
 - a. **Revenue Sharing.** When a new telecommunications tenant ("Revenue 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 fifty percent (50%) of the rent collected and Grantee remitting fifty percent (50%) 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 Revenue Share Tenants subject to the requirements for leasing to Replacement Telecom Tenants as set forth in **Section 4**.
6. **Grantor Cooperation and Non-interference.** Grantor hereby agrees to cooperate with Grantee and/or Telecom Tenant, Replacement Telecom Tenant and Revenue 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. In furtherance of the foregoing, Grantor hereby appoints Grantee as Grantor's attorney-in-fact to execute all land use applications, permits, licenses and other approvals on Grantor's behalf in connection with 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 lessee or licensee, including 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.** 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, including without limitation any sales, income, documentary or other transfer taxes. 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.
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 mortgage or deed of trust on the Parent Property, ("Security Instrument") on the Parent Property, 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. Grantor shall have thirty (30) days to cure the default. Grantee shall have thirty (30) days to commence cure of the default, unless the default constitutes a threat to human life.
- c. Provided that Grantee has advised Grantor in writing of the name and address of the holder of any loan which is secured by a lien on Grantee's interest in this Agreement and/or the Easement ("Grantee's Lender"), Grantor shall also notify Grantee's Lender of any default by Grantee under this Agreement. Grantee's Lender shall be given the same rights to cure as Grantee. Notwithstanding the foregoing, Grantee's Lender shall have no obligation to cure any such default. Grantee's Lender shall be a third party beneficiary to the provisions of this Agreement.
- d. 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.

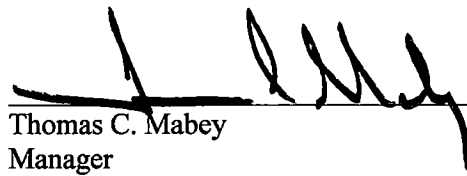
14. Miscellaneous.

- a. **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.
- b. **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.
- c. **Bankruptcy.** Grantee does not consent to rejection in bankruptcy, and Grantor shall provide notice and a copy of any bankruptcy or related filing to Grantee and Grantee's Lender.
- d. **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.)
- e. **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.
- f. **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.

GRANTOR: BARTON CREEK PARTNERS, L.L.C.



Thomas C. Mabey
Manager

Grantor Notice Address:

Thomas C. Mabey
136 South Main Street, Suite 1000
Salt Lake City, Utah 84101

STATE OF Utah
COUNTY Davis } ss.

On this 29th day of September, 2016, before me, the undersigned notary public, personally appeared Thomas C. Mabey, 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 Manager of Barton Creek Partners, L.L.C.

{affix notary seal or stamp}

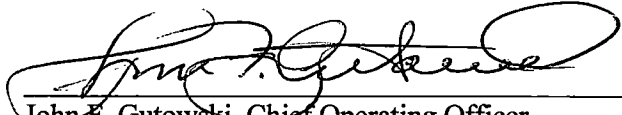


Notary Public
My Commission Expires:



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

GRANTEE: TOWERPOINT ACQUISITIONS, LLC, a Delaware limited liability company



John F. Gutowski, Chief Operating Officer

Grantee Notice Address:
TowerPoint Acquisitions, LLC
Six Concourse Parkway, Suite 1450
Atlanta, GA 30328
Attn: Chief Operating Officer

With a copy to:
TowerPoint Acquisitions, LLC
Six Concourse Parkway, Suite 1450
Atlanta, GA 30328
Attn: General Counsel

STATE OF GEORGIA

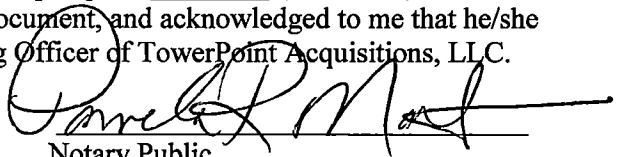
COUNTY OF FULTON

} ss.

On this 27th day of September, 2016, before me, the undersigned notary public, personally appeared John F. Gutowski, 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 Operating Officer of TowerPoint Acquisitions, LLC.

{affix notary seal or stamp}

Pamela R Martin
NOTARY PUBLIC
Fulton County, GEORGIA
My Commission Expires 10-19-18



Notary Public
My Commission Expires: 10-19-2018

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

PARCEL 1:

A parcel of land lying within Section 24, Township 2 North, Range 1 West, Salt Lake Base and Meridian, more particularly described as follows:

Beginning at a point on the West line of 500 West Street, said point being North 0°08'30" West a distance of 1749.09 feet along the Section line and South 89°51'30" West a distance of 162.91 feet from the East Quarter Corner of said Section 24, said point also being North 0°22'48" East a distance of 1352.51 feet along the centerline of 500 West Street, and North 89°37'12" West a distance of 40.00 feet from the centerline monument found at the intersection of 400 North Street and 500 West Street, and running thence North 89°37'12" West a distance of 425.00 feet to a point on the Easterly right of way line of Interstate 15, said point also being on a 2776.90 foot radius curve to the right (radius bears South 68°58'44" East); thence along the arc of said curve 226.43 through a central angle of 04°40'19"; thence South 89°37'12" East a distance of 336.62 feet; thence South 00°22'48" West a distance of 208.40 feet to the point of beginning.

Less and Excepting therefrom Parcel 1 the following:

Beginning at a point on the West line of 500 West Street, said point being North 00°8'30" West 1943.51 feet along the Section line and South 89°51'30" West 161.15 feet from the East Quarter Corner of Section 24, Township 2 North, Range 1 West, Salt Lake Base and Meridian, said point also being North 00°22'48" East 1547.01 feet along the centerline of 500 West Street and North 89°37'12" West 40.00 feet from the centerline monument found at the intersection of 400 North Street and 500 West Street and running thence North 89°37'12" West 310.38 feet; thence North 65°05'01" West 29.67 feet to the Easterly right of way line of Interstate 15 and a 2776.90 foot radius curve to the right (radius bears South 64°20'25" East); thence along the arc of said curve 1.75 feet; thence South 89°37'12" East 336.63 feet to the West line of 500 West Street; thence along said West line South 00°22'49" West 13.90 feet to the point of beginning.

Parcel 1A:

Together with the beneficial easements as disclosed by that certain Declaration of Reciprocal Easements and Covenants recorded August 28, 1998 as Entry No. 1435347 in Book 2349 at page 594 of official records.

PARCEL 2:

Beginning at a point on the West line of 500 West Street, said point being North 00°8'30" West 1749.09 feet along the Section line and South 89°51'30" West 162.91 feet from the East Quarter Corner of Section 24, Township 2 North, Range 1 West, Salt Lake Base and Meridian, said point also being North 00°22'48" East 1352.51 feet along the centerline of 500 West Street and North 89°37'12" West 40.00 feet from the centerline monument found at the intersection of 400 North Street and 500 West Street, and running along said West line South 0°23'02" West 97.08 feet; thence North 89°37'12" West 462.92 feet to a point on the Easterly right of way line of Interstate 15; thence North 21°35'58" East 104.14 feet, more or less, along said right of way; thence South 89°37'12" East a distance of 425.00 feet to thence East point of beginning.

Parcel 2A:

Together with the beneficial easements as disclosed by that certain Declaration of Reciprocal Easements and Covenants recorded August 28, 1998 as Entry No. 1435347 in Book 2349 at page 594 of official records.

EXHIBIT B

TELECOM TENANT LEASE

That certain PCS Site Agreement dated June 18, 1999 by and between Barton Creek Partners, L.L.C, a Utah limited liability company and Sprint Spectrum, L.P., a Delaware limited partnership, as evidenced by a certain Memorandum of PCS Site Agreement, aforesaid date and parties, recorded June 29, 1999 in Book 2525, Page 434, Official Public Records of Davis County, Utah; amended by a certain First Amendment to PCS Site Agreement dated December 9, 2005 by and between Barton Creek Partners, L.L.C., a Utah limited liability company and Sprint Spectrum Realty Company L.P., a Delaware limited partnership, successor in interest to Sprint Spectrum L.P., a Delaware limited partnership, as evidenced by a certain Memorandum of Amendment to PCS Site Agreement, aforesaid date and parties, recorded November 16, 2006 in Book 4161, Page 655, aforesaid records.

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 Property described in Exhibit A hereto, on which any equipment exists on the Effective Date together with the portion of the 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 801 North 500 West, Bountiful, Utah 84010; and legally known as 801 North 500 West, Bountiful, Utah 84010; 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 Property, described in Exhibit A hereto, on which any equipment exists on the Effective Date together with the portion of the 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 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 Property described in Exhibit A hereto, providing access to a publicly dedicated roadway, including but not limited to North 500 West, 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.