

ATTACHMENT 4

PETITION FOR RESOLUTION OF §
 COMPLAINT OF CONSOLIDATED §
 COMMUNICATIONS OF FORT BEND §
 COMPANY AGAINST BLUECAP, LTD. , §
 CAPRICORN, LTD. AND FREEWAY §
 PROPERTIES, LLC D/B/A KATY RANCH §
 CROSSING REGARDING A §
 COMPENSATION DISPUTE FOR §
 BUILDING ACCESS AT THE §
 COMMERCIAL DEVELOPMENT §
 KNOWN AS KATY RANCH CROSSING §
 AND REQUEST FOR EMERGENCY AND §
 INTERIM RELIEF §

2011 FEB 1 PM 1:31
PUBLIC UTILITY COMMISSION

PUBLIC UTILITY COMMISSION
FILING CLERK

OF

TEXAS

**SECOND SUPPLEMENT TO PETITION
 AND REQUEST FOR COMMISSION INVESTIGATION**

Consolidated Communications of Fort Bend Company (hereinafter "Consolidated") files its Second Supplement to its above-styled petition against Bluecap, Ltd., Capricorn, Ltd. and Freeway Properties, LLC d/b/a Katy Ranch Crossing (hereinafter collectively referred to as "Landlord") and request for building access at the Commercial Development Known as Katy Ranch Crossing (hereinafter referred to as "Katy Ranch Crossing" or the "Development"). In support of its Second Supplement to its Petition (its "Second Supplement"), Consolidated respectfully shows as follows:

RELIEF REQUESTED

1. Consolidated continues to respectfully request all relief plead in its Petition for Resolution of Complaint of Consolidated Communications of Fort Bend Company Against Bluecap, Ltd., Capricorn, Ltd. and Freeway Properties, LLC d/b/a Katy Ranch Crossing Regarding a Compensation Dispute and Building Access at the Commercial Development

Known as Katy Ranch Crossing and Request for Emergency and Interim Relief (its "Original Petition") and all relief plead in its First Supplement to Petition Requesting Emergency and Interim Relief" (its "First Supplement").

2. In connection with its request the Commission find that Landlord's proposed terms are unreasonable and discriminatory, Consolidated respectfully requests that the Commission determine that the "Broadband Service and Marketing Agreement" (the "En-Touch Agreement") between Landlord and En-Touch Systems, Inc. ("En-Touch") dated July 1, 2012 and any associated pacts, understandings and other arrangements between Landlord and En-Touch violate §§ 54.259 and 54.260 of the Public Utility Regulatory Act ("PURA") and P.U.C. Substantive Rule 26.129.

3. Consolidated respectfully requests that the Commission initiate an investigation to determine whether Landlord or any telecommunications utility providing service at Katy Ranch Crossing has committed a violation or continuing violation of the PURA and assess administrative penalties as the Commission deems appropriate.

(1) JURISDICTION: A STATEMENT OF THE JURISDICTION OF THE COMMISSION OVER THE PARTIES AND SUBJECT MATTER

The Commission has jurisdiction over the subject matter of this dispute under §§ 54.259 and 54.260 of PURA and P.U.C. Substantive Rule 26.129 and Procedural Rules 22.73 and 22.78.

P.U.C. Substantive Rule 26.129 implements §§ 54.259 and 54.260 of PURA. It provides that upon receiving a tenant request for service which would require building access, a carrier (telecommunications utility) must notify the property owner "not fewer than [thirty (30)] calendar days before the proposed date on which installation of telecommunications equipment needed to provide the ... services requested by a tenant is to commence." P.U.C. SUBST. R. 26.129(e)(3)(A). Thereafter, the carrier and the property owner must negotiate for thirty (30)

days. P.U.C. SUBST. R. 26.129(f). If the parties are unable to reach an agreement within the negotiation period, either party may file for resolution with the Commission. P.U.C. SUBST. R. 26.129(f)(2).

Consolidated sent its Notice of Intent to Install Telecommunications Equipment (the “Notice”) on December 17, 2012. *See* Original Petition at Exhibit C. The thirty (30) day negotiation period expired on January 18, 2013 (30 days from Landlord’s receipt of the Notice). After Consolidated filed its Original Petition activating Commission review, the tenant referenced in Consolidated’s Notice withdrew its request for service. However, this controversy is not moot – Consolidated has since received additional requests for service and anticipates future requests. *See e.g.* Original Petition at Exhibit E-2. Therefore, Consolidated needs the Commission to rule on the legality of the Landlord’s proposed terms for the tenant referenced in the Notice in order to inform both existing and future negotiations between Consolidated and Landlord.

Further, the Commission’s failure to address this issue would ignore the well-known exception to the doctrine of mootness – namely, that an issue is not “moot” if it is “capable of repetition yet evading review.” *See In re Uresti*, 377 S.W. 696, 696 (Tex. 2012). It is not uncommon for Consolidated to receive a request for service within a thirty (30) day time frame. *See e.g.* Original Petition at Exhibit E-2. If Consolidated is forced to submit to the thirty (30) day negotiation period for every new tenant request, Consolidated may well lose each request in turn (and would be unable to secure Commission review under the mootness doctrine). Therefore, even if the Commission believes the mootness doctrine applies here, Consolidated should be entitled to proceed under this well known exception.

Finally, in its Order adopting Substantive Rule 26.129, the Commission stated:

The purpose of the statute and adopted rule is to promote competition in the telecommunications market by effectuating a tenant's choice of telecommunications utility. This purpose is advanced by ensuring the reasonable access of the telecommunications utility to the owner's property to provide service to a requesting tenant that has chosen such company as its telecommunications provider.

Order Adopting New § 26.129, Project No. 21400, 25 Tex.Reg. 10134 (Oct. 6, 2000).

Three separate tenants have requested service from Consolidated and have given up that request following the actions, delays and refusals of Landlord to allow the tenant's choice of provider to be respected and facilitated. Landlord is financially motivated to engage in its exclusionary conduct as a result of the En-Touch Agreement which includes, among other things, a kickback - like scheme diverting 2% of each tenant's telecommunications revenues back to the Landlord and granting the Landlord potentially improper access to the tenant's confidential telecommunications records (known as "customer proprietary network information" or "CPNI") to validate such payments. The En-Touch Agreement violates the statute and rules in its inception and as deployed through the arrangement between Landlord and En-Touch, creates an exclusive agreement in violation of Substantive Rule 26.129(d)(4). The En-Touch Agreement is repugnant to the central purpose of the statute and rules and should be adjudicated as such pursuant to the Commission statutory jurisdiction to enforce § 54.259 of PURA. *See* Public Utility Regulatory Act, TEX. UTIL. CODE § 54.259(c) (Vernon 1998 and Supp. 2005) (PURA).

(2) PARTIES: A LIST OF ALL THE KNOWN PARTIES, CLASSES OF CUSTOMERS, AND TERRITORIES, IF APPLICABLE, WHICH WOULD BE AFFECTED IF THE REQUESTED RELIEF WERE GRANTED.

Consolidated would note that in addition to the parties and specific customers identified in its Original Petition, each existing commercial tenant at Katy Ranch Crossing along with

every future commercial tenant at Katy Ranch Crossing will be affected by the PUC's ruling in this matter.

(3) PARTY AGAINST WHOM RELIEF IS SOUGHT: THE NAME AND ADDRESS OF EACH PARTY AGAINST WHOM SPECIFIC RELIEF IS SOUGHT.

Consolidated does not name any additional parties against whom it specifically seeks relief in this proceeding. However, Consolidated understands that the investigation requested will likely extend to both Landlord and other telecommunications providers at Katy Ranch Crossing.

(4) FACTS: A CONCISE STATEMENT OF THE FACTS RELIED UPON BY THE PLEADING PARTY.

In light of the evolving facts in this matter, Consolidated offers a complete recitation of the facts leading to this dispute:

Consolidated's first interaction with Landlord was in August 2012 after Consolidated received a tenant request for service from Main Event Entertainment ("Main Event"). Main Event had leased space from Landlord at Katy Ranch Crossing and requested telecommunications service from Consolidated. When Consolidated attempted to coordinate installation of its facilities (both exterior and interior) at Katy Ranch Crossing, Landlord demanded that Consolidated enter into a license agreement in exchange for access to the property. In support of its position, Landlord produced the En-Touch Agreement.¹ See Broadband Service and Marketing Agreement between Landlord and En-Touch *attached hereto and incorporated herein as Exhibit A.*² Consolidated declined to enter into such an agreement

¹ En-Touch intervened in the subsequent court action and filed a motion to quash the production of the Broadband Service and Marketing Agreement. A redacted version was ultimately produced. After numerous requests by Consolidated during the course of this action, Landlord finally produced an un-redacted copy of its Broadband Service and Marketing Agreement with En-Touch on January 28, 2013.

² Landlord has produced an un-redacted copy of its Agreement with En-Touch (in this footnote, the "Agreement") to both the undersigned and the Commission, without asserting that the En-Touch Agreement is confidential in any way. It is vital that Consolidated be able to make specific reference this Agreement for the

and ultimately secured a temporary injunction against Landlord preventing it from interfering with Consolidated's statutory right to construct a telephone line at Katy Ranch Crossing. *See Original Petition* at Exhibit B. As a result of this Order, Consolidated was able to install its exterior facilities at Katy Ranch Crossing. However, despite this vindication, Main Event ultimately withdrew its request for service from Consolidated because of the delay.³

On November 29, 2012, Consolidated was contacted by Level 3 Communications ("Level 3"), who requested service at Katy Ranch Crossing on behalf of its client, Goodwill Industries ("Goodwill"). Level 3 noted that it was placing the service request due to Landlord's refusal to allow Goodwill to "build out" to Consolidated's exterior demarcation point (a "demarc") located behind the Goodwill tenant space. The service order required the installation of conduit from Goodwill's lease premises to the Consolidated demarc. However, Consolidated was unable to perform the necessary construction because Katy Ranch Crossing denied Consolidated access from its demarc to Goodwill's leased space in the building.

On December 17, 2012, Consolidated sent Landlord a "Notice of Violation of Injunction and Notice of Intent to Install Telecommunications Equipment." *See Original Petition* at Exhibit C. After waiting twenty-four (24) days out of the thirty (30) day negotiating period, Consolidated received a response on January 10, 2013, proposing a limited license agreement under which Consolidated would pay two percent (2%) of the gross receipts from the requesting tenant to Landlord. *See Original Petition* at Exhibit D; Landlord's Proposed License and Access Agreement is attached hereto and incorporated herein as **Exhibit B** for the convenience of the

purposes of its argument, and as such, it attaches it here. However, in light of En-Touch's motion to quash production of the Agreement in the prior injunction action and in an abundance of caution, Consolidated files this Agreement under seal. However, please note that Consolidated does not consider the Agreement as confidential in any way, as it has received the unredacted Agreement without any assertion (by Landlord or En-Touch) that the same is confidential.

³ We presume that Main Event is now receiving telecommunications service through En-Touch, the only remaining provider at Katy Ranch Crossing.

Commission. Consolidated responded to this offer on January 11, 2013 by requesting an unredacted version of the En-Touch Agreement to determine whether Landlord's proposed terms were discriminatory. *See Original Petition* at Exhibit G. Despite numerous requests, Consolidated would not receive an unredacted version of the En-Touch Agreement until January 28, 2013.

On January 18, 2013, Consolidated filed its Original Petition against Landlord. In it, Consolidated respectfully requested an emergency ruling issuing an Interim Order granting it access to Katy Ranch Crossing so that it could timely serve requesting tenants at that property and avoid losing more customers to En-Touch.

On January 22, 2013 – before the Commission was able to grant emergency relief – Consolidated was contacted by Level 3 on behalf of Goodwill with respect to telecommunication service at Katy Ranch Crossing. Level 3 cancelled the request for service initially placed with Consolidated on November 29, 2012. *See Original Petition* at Exhibit E-1. Consolidated believes that Level 3 is now using En-Touch, the only other telecommunications provider at Katy Ranch Crossing, to satisfy Goodwill's request for service.

As of the date of this filing, Consolidated's only remaining request is from Guitar Center, another tenant at Katy Ranch Crossing. Guitar Center placed its service request after Consolidated sent its Notice of Intent to Install Telecommunications Facilities (for the benefit of Goodwill) but prior to the filing of Consolidated's Original Petition. *See Original Petition* at Exhibit E-2. As such, Consolidated made full disclosure of its installation plans with respect to Guitar Center in its Original Petition. *See Original Petition* at Exhibit F. Guitar Center's request was overdue as of January 18, 2013, and as such, Guitar Center has already cancelled its request

for POTS service. See Original Petition at Exhibit E-2. Only Guitar Center's request for a T-1 line remains.

In light of its receipt of the unredacted En-Touch Agreement, Consolidated offers a more complete version of its position as follows:

A. Landlord's Proposed Terms Violate § 54.259 of PURA .

Section 54.259 of PURA provides the following:

If a telecommunications utility holds a consent, franchise, or permit as determined to be the appropriate grants of authority by the municipality and holds a certificate if required by this title, a private property owner may not:

(1) prevent the utility from installing on the telecommunications service facility a owner's property a tenant requests;

(2) interfere with the utility's installation on the owner's property of a telecommunications service facility a tenant requests;

(3) discriminate against such a utility regarding installation, terms, or compensation of a telecommunications service facility to a tenant on the owner's property; ...

Public Utility Regulatory Act, TEX. UTIL. CODE § 54.259(a)(1)- (3) (Vernon 1998 and Supp. 2005) (PURA).

Section 54.260 of PURA allows property owners to impose certain limited conditions. See PURA § 54.260. However, § 54.260 confirms that if property owners require telecommunication utilities to remit compensation for access to property, such compensation must be both *reasonable* and *nondiscriminatory among telecommunications utilities*. PURA § 54.260(a)(6).

1. Landlord's proposed compensation scheme is unreasonable.

Landlord has proposed a "License and Access Agreement" under which Consolidated would be forced to remit two percent (2%) of its gross receipts from the requesting tenant to Landlord in exchange for the requested access. See **Exhibit B** at Section 3. This is a clear

divergence from the Commission's position on the limits of compensation that can be charged by a property owner. In its Order on the *Complaint of Time Warner Telecom of Texas, LP. Against Tanglewood Property Management and Emissary Group*, the Commission concluded that "the best approach to determine the reasonable amount of compensation would use market-based rates" for the space proposed to be occupied by the utility. *Complaint of Time Warner Telecom of Texas, L.P. Against Tanglewood Property Management and Emissary Group*, Docket No. 24604, Order on Appeal at 9 (February 18, 2003). Where the "character of the evidence" prevented the Commission from divining a market based rate, it used the property owner's lost opportunity cost (*i.e.*, the average rental rate for the space used by the utility) to determine reasonable compensation. Docket No. 24604, Order on Appeal at 9-10 (February 18, 2003).

Here, the "market-based rate" for the negligible amount of conduit space above the ceiling required by Consolidated is unclear, but Landlord's "lost opportunity cost" *is* clear -**zero**. Consolidated is merely seeking limited access to a suite which Landlord has already successfully leased to connect the requesting tenant's infrastructure to an external demarcation point located outside of Landlord's building. Landlord is not losing otherwise rentable space. Rather, it is gaining standard utility infrastructure free of any cost or obligation. Landlord should not be allowed to demand the arbitrary and excessive "percentage of gross receipts" in exchange for Consolidated's fulfillment of its statutory obligation to a requesting tenant.

2. Landlord's proposed terms discriminate against Consolidated in favor of En-Touch.

Landlord's proposed terms are also discriminatory in light of the unredacted En-Touch Agreement. Under this Agreement, En-Touch was permitted to construct an "optical fiber interactive broadband communications, entertainment and security network" (the "En-Touch System") which would terminate at each "customer premises" (presumably, every tenant space).

See **Exhibit A** at 1.01(a). The En-Touch System includes conduits into the customer premises. See **Exhibit A** at 1.01(a). Further, the En-Touch Agreement provides that Landlord and En-Touch will create a “joint marketing plan” with respect to En-Touch’s service and that Landlord will “forward requests for new service . . . to [En-Touch].” See **Exhibit A** at 2.02. As consideration for this arrangement, the En-Touch Agreement provides that Landlord receives two percent (2%) of En-Touch gross receipts from tenants at Katy Ranch Crossing. See **Exhibit A** at 2.02.

In light of the En-Touch Agreement, the Landlord is clearly discriminating against Consolidated as to **installation, terms, and compensation**. PURA § 54.259(a)(3); P.U.C. SUBST. R. 26.129(d)(2)(B)(iii). In evaluating whether discrimination has occurred, the Commission “targets the behavior of the building owner.” Docket No. 24604, Order on Appeal at 10 (February 18, 2003).

a. Landlord’s proposed installation terms are discriminatory.

Landlord has offered limited access to Consolidated to install facilities to serve only a single requesting tenant. See **Exhibit B** at Section 1.01(a). En-Touch, however, received the right to install its facilities into each customer premises. See **Exhibit A** at 1.01(a). Despite repeated requests by Consolidated, Landlord has refused any term which would allow Consolidated to promptly install facilities upon a tenant request.

In response, Consolidated has proposed a blanket license and access agreement which would give Landlord a three (3) day review period for any new installation plans. However, Landlord has taken the position that Consolidated should forward all new installation plans to Landlord for a thirty (30) day review period. In support of this position, Landlord cites Section 1.01(b) of the En-Touch Agreement which gives Landlord a thirty (30) day window to review

proposed installation plans. *See Exhibit A* at Section 1.01(b). However, Landlord ignores two vital provisions in the En-Touch Agreement which mandate a shortened review period for Consolidated. First, En-Touch has already been allowed to install facilities that terminate to each customer premise. *See Exhibit A* at 1.01(a). This would allow En-Touch to “turn up” service almost immediately upon request. Conversely, because Landlord insists that Consolidated serve requesting tenants piecemeal (as the requests come in), a thirty (30) review period will allow Landlord to continue delaying Consolidated’s ability to fulfill new service requests (as many requests for service require “turn-up” within 30 days). *See e.g. Original Petition* at Exhibit E-2. Second, Landlord ignores the requirement that En-Touch complete necessary installations within five (5) days of a service request. *See Exhibit A* at Exhibit A, Section 3. This provision both (a) gives En-Touch greater leeway to install the necessary facilities to serve a requesting tenant and (b) indicates that a thirty (30) waiting period is unworkable for a competing provider at the Development.

Under this service scheme, Landlord can continue to drive tenants to En-Touch by simply sitting on new installation plans until the request for service expires.

b. Landlord’s other proposed terms are discriminatory.

As discussed, under the En-Touch Agreement, En-Touch receives full access to Katy Ranch Crossing along with installation privileges into each customer premises. *See Exhibit A* at Section 1.01(b). Additionally, pursuant to the marketing provisions of the En-Touch Agreement, Landlord has agreed to:

- Create a joint marketing plan to market En-Touch services;
- Brand all Landlord materials with En-Touch insignia;
- Provide a display of En-Touch products and promotional materials relating to En-Touch services in Landlord’s sales office;

- “Introduce” En-Touch services to all prospective commercial tenants; and
- Forward all new requests to service to En-Touch.

See **Exhibit A** at Section 2.02.

In exchange, En-Touch has agreed to remit two percent (2%) of all gross revenues received from a tenant to Landlord. See **Exhibit A** at Exhibit C. In contrast, Landlord has offered limited access and installation rights (under which Consolidated would *still* be unable to timely serve requesting tenants) to Consolidated for the same fee. See **Exhibit B** at Section 3. There is no question that these terms discriminate against Consolidated under § 54.259 of PURA (prohibiting landowners from discriminating against a utility as to installation, terms, or compensation).

Even the proposed terms that do not involve access or compensation operate harshly against Consolidated. For example, Landlord has requested that Consolidated arbitrate all disputes involving service requests outside of this docket. See **Exhibit B** at Section 7. While En-Touch is similarly bound, En-Touch already has full access to the Development. See **Exhibit A** at Section 1.01. In light of En-Touch’s unrestricted access and marketing agreement, it seems unlikely that any dispute would arise between Landlord and En-Touch. Consolidated, however, has only been offered limited access and has already been forced to avail itself of the courts and the Commission to enforce its rights. A term that forces Consolidated into arbitration would severely restrict Consolidated’s ability to serve requesting tenants and would shield Landlord’s conduct from his tenants and the Commission alike.

As an additional example, Landlord had initially proposed compensation which would have given Landlord full audit rights as to Consolidated’s accounts with its customers at Katy Ranch Crossing. See **Exhibit B** at Section 3. These audit rights would have, among other things,

allowed Landlord to inspect “service contracts” between Consolidated and its customers. *See Exhibit B* at Section 3. This type of term further impedes Consolidated’s ability to secure licensed access to the Development, as the unauthorized disclosure of such customer proprietary network information is in probable violation of FCC regulations regarding the unauthorized disclosure of such information. *See generally* 47 C.F.R. 64.2001 - 64.2011. En-Touch’s assent to this provision in its agreement with Landlord further indicate the questionable status of the En-Touch Agreement. *See Exhibit A* at Exhibit C.

B. Consolidated Believes an Investigation into Landlord’s and En-Touch’s Conduct is Warranted Under These Circumstances.

P.U.C. Substantive Rule 26.129(d)(4) provides that a telecommunications utility shall not enter into an “agreement, contract, pact, understanding or other like arrangement” with the property owner to be the exclusive provider of telecommunications services to tenants on the property. P.U.C. SUBST. R. 26.129(d)(4). This rule is a natural extension of the legislature’s intent that tenants have the same right to choose their provider of telecommunications services as other residential and business customers. *See Tex. Bldg. Owners & Managers Ass’n v. P.U.C.*, 110 S.W.3d 524, 529 (Tex. App. – 3rd, 2003). The Legislature attempted to achieve this goal by prohibiting a property owner from discriminating between service providers and barring a utility’s entry to property. *See id.* In short, the Legislature was clearly concerned with protecting *consumer choice* in enacting the subject legislation.

To ensure that landowners and utilities comply with this provision, P.U.C. Substantive Rule 26.129(j) provides that the Commission’s power to levy administrative penalties “shall apply to any violation of [P.U.C. Substantive Rule 26.129] whether by a **property owner, property manager, or telecommunications utility.**” P.U.C. SUBST. R. 26.129(j) (emphasis added).

Consolidated urges the Commission to investigate the conduct of Landlord and En-Touch in light of the facts alleged. From Consolidated's standpoint, Landlord is engaged in a kickback-like scheme in which it receives revenue generated by the only telecommunications provider at the Development while using proffers of unreasonable and discriminatory terms to keep other providers out. These terms include:

- A limited offer of access which would require constant and prolonged negotiation by a requesting utility with Landlord (*See e.g. Exhibit B* at Section 1.01);
- An arbitration provision which would limit a utility's access to the Commission and the courts while cloaking the developer's conduct in confidentiality (*See e.g. Exhibit B* at Section 7); and
- Compensation terms which require the utility to remit a percentage of customer revenue and which give Landlord access to customer proprietary network information in a probable violation of federal law (*See e.g. Exhibit B* at Section 3).

These terms are even more offensive where a license agreement would be wholly unnecessary absent the conduct of the property owner. Here, Consolidated is already situated to provide service at its demarc behind the tenant space. Landlord has barred requesting tenants from building out to the Consolidated demarc and is using unreasonable and discriminatory terms of access to prevent Consolidated from building in to the tenant space. As a direct result, Consolidated is unable to gain access to the Development, tenants are robbed of their choice in utility provider, and En-Touch becomes the de-facto exclusive provider of telecommunications services at Katy Ranch Crossing.

Consolidated believes that Landlord's course of conduct was the exact conduct the Legislature intended to prevent through § 54.259 of PURA and that administrative penalties should be levied as necessary to correct this course of conduct.

(5) **A CONCISE STATEMENT OF THE SPECIFIC RELIEF, ACTION, OR ORDER DESIRED BY THE PLEADING PARTY**

Consolidated requests the following relief:

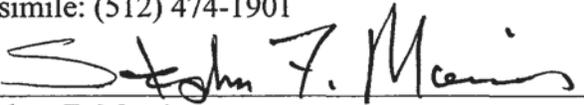
1. Consolidated continues to respectfully request all relief plead in its Original Petition and all relief plead in its First Supplement.

2. In connection with its request the Commission find that Landlord's proposed terms are unreasonable and discriminatory, Consolidated respectfully requests that the Commission determine that the En-Touch Agreement dated July 1, 2012 and any associated pacts, understandings and other arrangements between Landlord and En-Touch violate §§ 54.259 and 54.260 of PURA and P.U.C. Substantive Rule 26.129.

3. Consolidated respectfully requests that the Commission initiate an investigation to determine whether Landlord or any telecommunications utility providing service at Katy Ranch Crossing has committed a violation or continuing violation of the Public Utility Regulatory Act and assess administrative penalties as the Commission deems appropriate.

Respectfully submitted,

NAMAN, HOWELL, SMITH & LEE, PLLC
8310 Capital of Texas Highway North, Suite 490
Austin, Texas 78731
Telephone: (512) 479-0300
Facsimile: (512) 474-1901

By: 

Stephen F. Morris
State Bar No. 14501600
Keith E. Gamel
State Bar No. 07606550
Curtis J. Kurhajec
State Bar No. 11767200
James T. Howard
State Bar No. 24078693

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

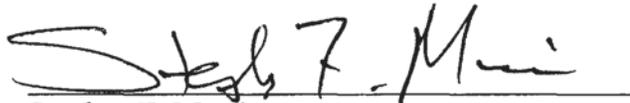
I, Stephen F. Morris, counsel for Petitioner, certify that a true and correct copy of this document was served on the foregoing parties of record in this proceeding via the methods identified below, on this 1st day of February, 2013:

VIA FACSIMILE AND CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Bluecap, Ltd.
Mr. C. Brian Cassidy, counsel
Locke Lord LLP
100 Congress Avenue, Suite 300
Austin, Texas 78701
(512) 305-4855 (P)
(512) 391-4885 (F)

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Freeway Properties, LLC d/b/a Katy Ranch Crossing
Attn. Mike Baker
24401 Katy Freeway
Katy, Texas 77450



Stephen F. Morris

EXHIBIT B

LICENSE AND ACCESS AGREEMENT

This license and access agreement (the "Agreement") is made by _____ (hereinafter called "Owner") with its principle place of business at 8554 Katy Freeway, Suite 301, Houston, Texas 77024, and Consolidated Communications of Fort Bend Company, a _____ (hereinafter called "Licensee") with its principle place of business at _____, to be effective as of _____, 2013 (the "Effective Date").

RECITALS

- A. Owner is the owner (subject to the terms of applicable leases and other covenants, conditions, restrictions, and encumbrances, known or unknown, and which may exist or come into existence during the term of this Agreement) of the commercial and multi-family development known as Katy Ranch Crossing (the "Development"), located at the southeast corner of Katy-Fort Bend Road and Interstate 10.
- B. Licensee is a provider of telecommunications services. Such services may be provided directly by Licensee, its affiliated companies, or in partnership or business alliance with other licensed or certified providers both domestic and/or international. All services will comply with local, state, and federal regulations and laws.
- C. Upon request for service from a tenant, Licensee has a right under Section 54.259 of the Texas Utilities Code and 16 Tex. Admin. Code § 26.129 to access property in the Development for purposes of providing telecommunications services to the requesting tenant, subject to reasonable terms and conditions.
- D. Licensee has received a request for service from Goodwill Industries International, Inc. ("Tenant"), and Licensee has agreed to access the property necessary to provide such service on the terms and conditions set forth below.

Therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, including the agreements set forth below, Owner and Licensee agree as follows:

AGREEMENT

- 1. **Obligations of Licensee.** For and in consideration of the obligations of the Owner and in reliance upon strict compliance therewith, Licensee agrees to undertake and perform, either through its own employees or through the services of affiliated companies, subsidiaries, or contractors, for the term of this Agreement, the duties and obligations set forth below:
 - 1.01 Licensee shall provide telecommunication services to Tenant in the space leased by the Tenant in the Development (the "Tenant Space"), the location of which is reflected on the Site Plan attached hereto as Exhibit "A". Licensee shall install and maintain a phone

line and other telecommunications equipment (hereinafter "Equipment") necessary to provide such services at the Tenant Space. Subject to any regulatory requirements or limitations, Licensee shall use the Equipment solely to make available and provide telecommunications services to Tenant.

Licensee shall, at its sole expense, design, construct, install, upgrade, modify, operate, repair, replace, and maintain the Equipment in a good and workmanlike manner using its own employees, third party contractors and agents, or both. Licensee shall use commercially reasonable efforts to complete the installation and perform all necessary testing of the Equipment within 10 days of initiating such installation and testing. Licensee shall provide Owner with an actual "as-built" map of all elements of the Equipment located on the Development (including in risers and raceways) promptly upon the installation thereof. Licensee shall update and revise the as-built map promptly upon the making of any additions to, replacements of, or changes in the Equipment from time to time.

- 1.02 Licensee must obtain Owner's approval of the plans for the original installation of, and any material modifications, replacements, or upgrades to, the Equipment prior to doing any work on the same, including without limitation the size, location, and screening of all above ground equipment that Licensee proposes to install at the Development. Owner's approval of the plan of the original Equipment and for any upgrades or modifications to the Equipment may not be unreasonably withheld or delayed, except that Owner's approval of the installation of (and location of the screening for) any above ground equipment at the Development is in the Owner's sole discretion. If the Owner does not respond with approval or requested changes within thirty (30) days of confirmed receipt of the plans, then Owner will be deemed to have approved the submitted plans. No approval by Owner waives or otherwise affects Licensee's representations warranties, liabilities, indemnities, and other obligations to Owner under this Agreement.
- 1.03 Licensee shall install all necessary hardware, software, and interconnection equipment required to interconnect the Equipment to the local, national, and worldwide networks. Licensee shall obtain and keep current all necessary local, state and federal permits and approvals for construction and maintenance of the Equipment and the provision of all services required under this Agreement.
- 1.04 Licensee may use independent contractors, subcontractors, or other non-employees (collectively, "Non-Employees") to perform any of its obligations or act on behalf of Licensee; provided, however, that such Non-Employees shall comply with all requirements of Licensee under this Agreement, including the insurance requirements. Licensee's use of Non-Employees does not release Licensee from any of its liabilities or

obligations under this Agreement. Licensee remains responsible for all actions and omissions of Non-Employees.

- 1.05 All work performed by Licensee or its Non-Employees under this Agreement, including provision of services, must be performed in a good and workmanlike manner, in accordance with all current local, state, and federal laws, rules, and regulations, including, without limitation, all building and electrical codes and any then-current amendments or revisions thereto ("Applicable Laws"), and must meet or exceed all applicable industry standards including National Fire Protection Association (National Electric Code), Federal Communications Commission, Society of Cable Telecommunications Engineers standards, and ANSI/TIA/EIA standards (TIA 568, 570-B, and 607).
- 1.06 The terms, conditions, charges, and fees for the services provided to Tenant shall be contained in a contract between Licensee and Tenant. Owner assumes no liability or responsibility for service charges contracted for by Tenant, and Licensee's sole recourse is against Tenant. All billings and collections from Tenant will be accomplished by Licensee. Licensee will endeavor to ensure that Licensee's bills to Tenant are prompt and accurate.
- 1.07 Licensee will be an independent contractor in providing services to Tenant under this Agreement, and neither Licensee nor its employees or contractors will be considered to be an agent, servant, or representative of Owner. No employee, subcontractor, or independent contractor of Licensee will be subject to the control or direction of Owner.
- 1.08 EXCEPT TO THE EXTENT FINALLY ADJUDICATED TO BE CAUSED BY THE GROSS NEGLIGENCE OF OWNER, ITS EMPLOYEES, CONTRACTORS, OR AGENTS, LICENSEE SHALL INDEMNIFY, DEFEND, PROTECT, AND HOLD OWNER AND ITS PARTNERS AND PROPERTY MANAGEMENT COMPANY AND THEIR RESPECTIVE OFFICERS, DIRECTORS, OWNERS, SHAREHOLDERS, ATTORNEYS, AFFILIATES, EMPLOYEES, AND AGENTS, HARMLESS FROM ANY AND ALL LIABILITIES, JUDGMENTS, CLAIMS, LOSSES, OBLIGATIONS, DAMAGES, PENALTIES, ACTIONS, OR OTHER PROCEEDINGS, SUITS, COSTS, FEES, EXPENSES, AND DISBURSEMENTS, WHETHER BY JUDGMENT OR SETTLEMENT, (INCLUDING WITHOUT LIMITATION REASONABLE LEGAL FEES) (COLLECTIVELY "CLAIMS") ARISING OUT OF, RELATING TO OR RESULTING FROM ALLEGATIONS OF (A) ITS DESIGN, CONSTRUCTION, INSTALLATION, OPERATION, MAINTENANCE, REPLACEMENT, REPAIR, OR UPGRADE OF THE EQUIPMENT, (B) ANY NEGLIGENT OR WILLFUL ACT OR OMISSION OF LICENSEE IN CONNECTION WITH ITS PROVISION OF SERVICES UNDER THIS AGREEMENT, OR (C) A DEFAULT UNDER THIS AGREEMENT. LICENSEE SHALL REIMBURSE OWNER WITHIN 30 DAYS AFTER DEMAND FOR REASONABLE COSTS INCURRED BY OWNER IN REPAIRING ANY DAMAGE TO THE EQUIPMENT CAUSED BY LICENSEE, ITS AGENTS, OR EMPLOYEES, AND REPAIRED BY, OR AT THE EXPENSE OF, OWNER.

- 1.09 Licensee shall promptly return the buildings and improvements (including, without limitation, replacement and restoration of all fences, walls, or other structures and vegetation, shrubs, trees, or other landscaping which may have been relocated, removed, or damaged) on the Development, as well as all surface and underground areas within the Development, that have been altered or affected in any way by virtue of Licensee's construction, installation, maintenance, repair, replacement, upgrade, modification, or removal of the Equipment, to substantially the same state and condition that existed prior to the work, ordinary wear and tear excepted.
 - 1.10 Licensee shall comply with the insurance requirements set forth on Exhibit "B" at all times during the term of this Agreement.
 - 1.11 Licensee may not cause, suffer, or permit any lien or claim of lien to attach to or encumber the Development or any portion of the Development as a result of or in connection with Licensee's construction, installation, maintenance, operation, upgrade, modification, or repair of the Equipment installed at the Development, or the exercise of any right or privilege of Licensee under this Agreement. If any lien is filed against the Development by anyone claiming through Licensee, Licensee shall cause the lien to be removed and bonded around to Owner's reasonable satisfaction within twenty (20) days after demand by Owner.
 - 1.12 Licensee represents and warrants to Owner that Licensee has full power and authority to enter into this Agreement and to meet the terms and conditions of this Agreement, and the person or persons signing this Agreement on behalf of Licensee are authorized to bind Licensee, and Licensee is under no obligation, contractual or otherwise, and may not, unless otherwise permitted or required by law, enter into any agreement that might in any way interfere with the performance of its obligations or the rights of the Owner under this Agreement.
2. **Obligations of Owner.** For and in consideration of the obligations of the Licensee and in reliance upon strict compliance therewith, Owner agrees to undertake and perform for the term of this Agreement the duties and obligations set forth in this Agreement, as enumerated below:
- 2.01 Owner represents that it is the owner (subject to the terms of applicable leases and other covenants, conditions, restrictions, and encumbrances, known or unknown, and which may exist or come into existence during the term of this Agreement) of the Development and that it is not prohibited by any restriction or agreement from entering into this Agreement.
 - 2.02 Licensee will be allowed access to the Tenant Space for service and installation calls only with the prior written consent of the Tenant, or if the Tenant is present. Neither Owner nor its on-site property manager will accompany Licensee on its service or installation calls to the Tenant Space.

2.03 Owner grants to Licensee a non-exclusive easement in, on, over, under, through, and across all necessary portions of the Development (subject to the terms of applicable leases and senior restrictions or encumbrances of record) for the purposes of installing, upgrading, maintaining, repairing, relocating, and replacing the Equipment. Notwithstanding anything herein to the contrary, Licensee will not interfere with other utility providers, such as other telecommunication providers, water systems, natural gas distribution and electrical distribution.

3. **Owner Compensation.** During the term of this Agreement, Licensee will pay to the Owner an amount equal to two (2) percent of the Gross Receipts from the Tenant on a quarterly basis. "Gross Receipts" means all amounts actually received by Licensee and/or any of its affiliates, directly or indirectly, from the Tenant and third parties on behalf of the Tenant, but excluding all non-recurring charges, equipment charges and any Federal, State or Local fees or taxes.

Licensee will provide Owner with a statement of billing and receipts from Tenant during the previous calendar quarter, which will be certified as correct by Licensee or an authorized employee of Licensee. Licensee will maintain full and complete financial records of such customer activity in accordance with generally accepted accounting practices and copies of all service contracts at its principal business office located in Harris County, Texas, and those books, records and copies will be open for inspection by Owner or its authorized representatives during regular business hours. Owner, at its sole cost and expense, shall have the right to audit all records and accounts of such receipts, which audit may be conducted by accountants retained by Owner. Licensee will maintain all records relating to the Gross Receipts for a period of two (2) years after the end of the calendar year to which those receipts relate. In the event Owner elects to audit, Licensee will cooperate fully with Owner or any third party engaged by Owner in connection with an audit review.

4. **Term of Agreement.** This Agreement shall have an initial term of five (5) years commencing on the Effective Date. Provided that Licensee is not in default beyond any applicable cure period under this Agreement and has Tenant as a customer at the time the renewal term commences, this Agreement will automatically renew for additional one (1) year periods unless Owner receives written notices from Licensee not less than thirty (30) days prior to the expiration of the initial term of this Agreement that Licensee does not intend to renew. Notwithstanding the foregoing, in the event that Tenant ceases to occupy the Tenant Space or ceases using Licensee as its telecommunications provider, this Agreement shall terminate immediately.
5. **Ownership and Operation.** The Equipment shall be owned by Licensee, its permitted successors and assigns, during the term of this Agreement. Within sixty (60) days following the expiration or earlier termination of this Agreement, Licensee may, but is not obligated to, remove all or any electronic equipment that is part of the Equipment (the "Removable Equipment"), specifically excluding all underground conduit, fibers, and cables at the Development, and all wires, fibers, cabling, and other equipment located within the walls of the buildings at the Development and any connections located within the Tenant Space or in common areas (collectively, the "Non-Removables"). Licensee shall restore those portions of the Development where any Removable Equipment was located to the condition that said portion of the Development was in prior to the termination of the Agreement, including without limitation,

replacement and restoration of all fences, walls, or other structures and vegetation, shrubs, trees, or other landscaping which may have been relocated, removed, or damaged by the removal of the Removable Equipment. The Non-Removables include all parts of the Equipment other than the Removable Equipment. Title to any Non-Removables not already owned by Owner passes to Owner automatically upon the expiration or proper earlier termination of this Agreement in accordance with its terms, free and clear of all liens, claims, and encumbrances. Furthermore, any Removable Equipment then owned by Licensee and not removed from the Development within sixty (60) days following termination or expiration of this Agreement automatically becomes the property of Owner free and clear of all liens, claims, and encumbrances without any payment by Owner. Within ten (10) days after written request by Owner and receipt of same by Licensee, Licensee shall execute and deliver to Owner a bill of sale evidencing the transfer of title to all parts of the Equipment to which Owner acquires title under this Section 5.

6. Default and Remedies.

6.01 An event of default exists under this Agreement upon the occurrence of any of the following events:

- a) If Owner or Licensee does not perform any material term, provision, covenant, agreement, or obligation under this Agreement, and then does not cure the default within twenty (20) days after receiving written notice of the default from the other party. If any non-monetary default cannot be cured within the 20-day period, an event of default does not occur if the defaulting party commences to cure the default within the 20-day period and diligently completes the cure as soon as reasonably practicable, but in any event within forty (40) days after receiving the default notice.
- b) If Owner or Licensee becomes a debtor in a bankruptcy proceeding or similar action that is not permanently dismissed or discharged within sixty (60) days (for voluntary proceedings) or one hundred-twenty (120) days (for involuntary proceedings).
- c) If Owner or Licensee becomes insolvent.

6.02 If an event of default by either party occurs, the non-defaulting party may do any or all of the following:

- a) Terminate this Agreement without penalty or fee by giving thirty (30) days' notice to the defaulting party.
- b) Bring an action against the defaulting party for damages.
- c) Seek any other available legal or equitable remedy.

6.03 Except with respect to third party claims under the indemnity provisions of this Agreement, neither party is liable for, and each party waives any liability of the other party for, any special, consequential, indirect, punitive, statutory, and other damages from the other party, other than actual direct damages.

7. **Arbitration.** If any dispute shall arise between Owner and Licensee with reference to the interpretation of this Agreement or their rights with respect to any transaction involved whether such dispute arises before or after termination of this Agreement, such dispute, upon the written request of either party, shall be submitted to binding arbitration. If arbitration of the dispute is requested by either party, the dispute shall be submitted to three arbitrators, all of whom must be reasonably familiar with the provision of telecommunications services to multi dwelling unit developments, one to be chosen by each party, and the third by the two arbitrators so chosen. If either party refuses to appoint an arbitrator within thirty (30) days after the receipt of notice from the other party requesting it to do so, the requesting party may appoint two arbitrators. If the two arbitrators fail to agree in the selection of a third arbitrator within thirty (30) days of their appointment, each of them shall name two, of whom the other shall decline one and the decision shall be made by drawing lots from the remaining named arbitrators. The arbitrators shall adopt or promulgate rules to interpret this Agreement based upon the Commercial Arbitration Rules of the American Arbitration Association. A hearing shall be held within thirty (30) days after the appointment of the third arbitrator. The arbitrators shall render their decision within thirty (30) days after completion of the hearing. The decision in writing of any two arbitrators, when filed with the parties hereto, shall be final and binding on both parties. Judgment may be entered upon the final decision of the arbitrators in any court having jurisdiction. The prevailing party in any such arbitration shall be entitled to collect from the non-prevailing party all costs and expenses of the arbitration, including, without limitation, reasonable attorneys' fees and arbitration costs. Said arbitration shall take place in Houston, Texas unless some other place is mutually agreed upon by the parties hereto. Any award arising out of this Agreement shall include interest at a rate not in excess of the prime rate of interest as determined by such panel or court, court or arbitration costs, attorney fees, or any other reasonable expenses.

This arbitration provision shall not, however, preclude recourse to the courts where neither party so requests arbitration, nor shall it preclude injunctive relief in a court of competent jurisdiction. In the event any such legal action is properly commenced, the right of a party to request arbitration shall terminate. If dispute shall arise between Owner and Licensee with reference to the interpretation of this Agreement or their rights with respect to any transaction involved and it is submitted to a legal proceeding other than arbitration, then the party prevailing in such suit or proceeding shall be entitled to collect from the other party the reasonable legal fees and court costs incurred in the prosecution or defense of that suit or proceeding.

8. General Provisions.

- 8.01 This Agreement and the Exhibits attached hereto contain the entire agreement of the parties, with respect to the Development, are binding on Owner and Licensee and their permitted successors and assigns from and after the Effective Date, and may be modified or amended only by a written agreement signed by the parties. The relationship of Owner and Licensee is that of independent contractors and neither Owner nor Licensee, nor their agents or employees, will be deemed to be the employees or agents of the other, nor may Owner or Licensee bind the other, transact any business in the other's name, or in its behalf, in any manner or form, make any promise or representation, or incur any liability, direct or indirect, contingent or fixed, for or on behalf of the other.

8.02 This Agreement may not be assigned by Licensee without the prior written consent of Owner, except to a solvent affiliate of Licensee or to a solvent entity that purchases all or substantially all of Licensee's assets, which affiliate or entity must possess the appropriate skills to perform Licensee's obligations under this Agreement. Owner may, without Licensee's consent, assign its interest in this Agreement to any entity that is owned by, controlled by, under common control with, or that owns Owner, and to any subsequent owner of the Development.

- a) If Owner sells, conveys, or transfers the Development, the sale, conveyance, or transfer will be made subject to this Agreement and Owner shall cause any transferee to assume the duties and obligations of Owner hereunder. Owner will have no liability for any obligations arising under this Agreement after any sale, conveyance, assignment or transfer if proper notice is delivered and documented to all the parties involved in the transfer or assignment and the transferee agrees to be bound by the terms hereof.
- b) The party assigning this Agreement shall notify the other party of any assignment, and provide written evidence of the assignment, within thirty (30) days after the assignment.

8.03 Any notice required or permitted to be delivered hereunder shall be delivered to the parties identified below and shall be deemed to be delivered (a) three (3) days after depositing the same in the U.S. Mail, postage prepaid, certified mail, return receipt requested, (b) one (1) day after depositing it with an overnight delivery service guaranteeing next day delivery, (c) the day of delivery if by personal delivery; or (d) the day of delivery if delivered by facsimile prior to 3:00 P.M., with confirming copy sent by one of the other methods of notices set forth above. The parties may change their respective addresses by giving at least five (5) days written notice to the other party.

Notices to Licensee: Consolidated Communications of Fort Bend Company

Attr:

Telephone:

Facsimile:

Notices to Owner: Bluecap Ltd

8554 Katy Freeway, Suite 301

Houston, TX 77024

Attr: O.N. Baker

Telephone: 713.975.0292

Facsimile:

With a copy to:

Attn:

Telephone:

Facsimile:

- 8.04 Words of any gender used in this Agreement shall be held to include any other gender and words in singular number shall be held to include the plural and vice versa, unless context requires otherwise.
- 8.05 This Agreement is executed in and shall be construed and interpreted under the laws of the State of Texas without reference to its conflicts of laws provisions. Venue for any claim or cause of action brought by any party to this Agreement will be in Harris County, Texas. The judicial doctrine that provides that documents are to be construed against the drafter or provider of such document shall not apply to this Agreement, as each party has had reasonable opportunity to obtain and consult with their own legal counsel regarding this Agreement.
- 8.06 In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. Any failure by a party to insist upon strict performance by the other party of any material provision of this Agreement will not be deemed a waiver thereof or of any other provision and such party may at any time thereafter insist upon strict performance of any and all of the provisions of this Agreement.
- 8.07 Time is of the essence under this Agreement.
- 8.08 All reference in this Agreement to "date hereof", "Effective Date" or similar references shall refer to the date written in the first paragraph of this Agreement.
- 8.09 Owner and Licensee may execute a recordable memorandum of this Agreement, in a form mutually agreed upon by the parties, to be placed of record in the county in which the Development is located (the "Memorandum"). In the future, if any conflict is found to exist between the provisions of this Agreement and the Memorandum, the provisions of this Agreement control, and the parties shall amend and modify the provisions of the Memorandum accordingly upon the request of Licensee or Owner. If the parties execute the Memorandum, within ten (10) days after the expiration or earlier termination of this Agreement, Licensee shall execute and deliver to Owner a recordable Release of the Memorandum and its rights under this Agreement.

- 8.10 This Agreement may be executed in multiple counterparts, each of which shall be considered an original document for all purposes and constitute one and the same instrument. Facsimile signatures are acceptable and deemed originals by the parties for all purposes.
- 8.11 Subject to Section 8.13, upon the expiration (if this Agreement is not renewed) or any earlier termination of this Agreement, Licensee shall cooperate with Owner and the new provider to enable the new provider to commence providing telecommunications services to Tenant with a minimum of interruption and disruption.
- 8.12 The following provisions survive the expiration or early termination of the Agreement: Sections 1.05, 1.08, 1.09, 1.10 (for 60 days), 1.11, 5, 6.02, 6.03, 7, 8.05, 8.09, 8.11, 8.12, and 8.14.
- 8.13 Licensee represents that: (1) Owner has requested Licensee to perform and Licensee has performed, a criminal history background check on Licensee's officers or employees, and has required Licensee's subcontractors to perform criminal history background checks on its officers or employees, whose duties involve providing services at the Development; (ii) no such officers and employees have ever had a criminal history involving a felony conviction or, within the past ten (10) years, have had a criminal history involving a misdemeanor conviction classified in Texas (or similarly classified in another jurisdiction) as an offense against the person or family, an offense against property or public indecency; and (iii) Licensee will perform and maintain criminal history background checks on Licensee; future officers and employees (and require Licensee's subcontractors to perform such criminal background checks) to assure that Licensee maintains compliance with the foregoing.
- 8.14 If at the expiration or earlier termination of this Agreement, Licensee is the "carrier of last resort" for telephone services (and/or other services, if then subject to similar regulations), then the applicable Sections of this Agreement will be reformed to the extent reasonably necessary and as required by Applicable Laws to permit Licensee to satisfy its obligations as the "carrier of last resort".
- 8.15 Licensee agrees to comply with any rules and regulations adopted by Owner in connection with the Development. All employees or subcontractors of Licensee shall wear name tags and uniforms that identify such person with Licensee (or such subcontractor) and shall check-in and check-out with the Owner's onsite management personnel before performing any work at the Development.

[Signature Page to Follow.]

EXECUTED effective the date first written above.

LICENSEE:

Consolidated Communications of Fort Bend Company

By: _____

Name: _____

Title: _____

Date: _____

OWNER:

By: _____

Name: _____

Title: _____

Date: _____

EXHIBITS:

Exhibit "A": Site Plan

Exhibit "B": Insurance Requirements

**EXHIBIT "A"
SITE PLAN**

EXHIBIT B

INSURANCE REQUIREMENTS

Licensee shall:

- Carry the insurance listed below with companies reasonably acceptable to Owner.
- Furnish Certificates of Insurance to Owner evidencing required coverages at least five (5) days prior to Licensee's initial entry on the Development, when requested by Owner, and upon renewal of any policy.

Certificates of Insurance must:

- Be given on ACORD Form 25 certificate for liability coverage's, and on ACORD Form 28 (2003 Edition) certificate for property coverage's, modified as necessary.
 - Provide for at least thirty (30) days' prior written notice of cancellation, non-renewal, or material reduction in coverage to Owner.
 - Explicitly confirm that the deductible amount or any self-insured retention in connection with the policy is \$10,000 or less.
1. **Workers' Compensation:** Workers' Compensation Insurance with statutory limits, or if there are no statutory limits or Licensee is qualified to opt out of coverage, then limits of at least \$500,000.
 2. **Employers' Liability:** With the following minimum limits:

\$1,000,000	Each Accident
\$1,000,000	Disease Policy Limit
\$1,000,000	Disease Each Employee
 3. **Commercial General Liability:** (1986 ISO Form or its replacement): Insurance must provide contractual liability coverage and a general aggregate limit on a per location or per property basis. The minimum limits must be \$2,000,000 general aggregate and \$1,000,000 per occurrence.
 4. **Automobile Liability:** Insurance for claims arising out of ownership, maintenance, or use of owned, non-owned and hired motor vehicles at, upon, or away from the Development with the following minimum limits:

\$1,000,000	Each Accident Single Limit Bodily Injury and Property Damage combined
-------------	-----------------------------------------------------------------------
 5. **Umbrella:** At least following form liability insurance, in excess of the Commercial General Liability, Employers' Liability, and Automobile Insurance above, with the following minimum limits:

\$2,000,000	Each Occurrence
\$2,000,000	Aggregate Where Applicable

6. General Requirements: All policies must:

- Except for the Workers' Compensation Insurance, include Owner, its property management company, and their respective partners, members, officers, successors, and assigns as "additional insured's," using ISO additional insured form CG 20 09 10 93, without modification.
- Be written on an occurrence basis and not on a claims made basis.
- Be endorsed to waive any rights of subrogation against Owner, its property management company, and their respective partners, members, successors, and assigns.
- Be written by an insurance company or companies with a current A.M. Best rating of A and Financial Size Category of Class DC or better and be admitted to do business in the State where the Development is located.

EXHIBIT C

AFFIDAVIT OF MICHAEL SHULTZ

STATE OF TEXAS §
 §
Montgomery COUNTY §

BEFORE ME, the undersigned authority, personally appeared Michael Shultz, who, being by me duly sworn, deposed and said:

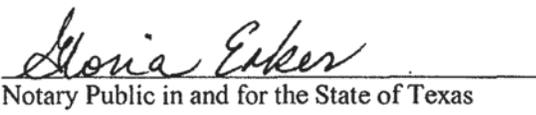
1. My name is Michael Shultz. I am over the age of twenty-one (21), of sound mind and competent to testify to the matters stated herein. I am the Vice President for Regulatory and Public Policy for Consolidated Communications of Fort Bend Company. My business address is 350 S. Loop 336 W., Conroe, Texas 77304.

2. I have read the Second Supplement to Petition and Request for Commission Investigation. I have personal knowledge of the facts stated therein, and each such fact is true and correct.



Michael Shultz

SUBSCRIBED AND SWORN TO BEFORE ME on February 1, 2013, to certify which witness my hand and official seal.



Notary Public in and for the State of Texas

