

TELECOMMUNICATIONS FACILITY LICENSE AGREEMENT

This Telecommunications Facility License Agreement (the "**License**") is entered into this _____ day of _____ 2011 ("**Effective Date**"), by and between The City of Milpitas, (the "**Landlord**"), with an address at 455 East Calaveras Boulevard, Milpitas, California, 95035, and Capital Telecom Acquisition LLC, a Delaware limited liability company (the "**Tenant**"), with an address of c/o Capital Telecom, LLC, 1500 Mt. Kemble Avenue, Suite 203, Morristown, New Jersey 07960.

RECITALS

WHEREAS, Landlord is the owner of a certain tract or parcel of land situated and known as 777 South Main Street, in the City of Milpitas, County of Santa Clara, State of California, more fully described on Exhibit A attached hereto and made a part hereof (the "**Landlord's Property**").

WHEREAS, Tenant has requested, and Landlord has agreed, to grant to Tenant a license to a portion of Landlord's Property for the purpose of constructing, installing, operating, repairing, maintaining, upgrading and/or replacing a Telecommunications Facility (as hereinafter defined).

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

1. Premises.

In consideration of the obligation of Tenant to pay rent and the other terms, provisions and covenants hereof, Landlord hereby licenses to Tenant for the exclusive use of Tenant, and Tenant hereby takes from Landlord, pursuant to the terms hereof, that certain area of land located within Landlord's Property, all as more fully shown on Exhibit "B", attached hereto and made a part hereof (the "**Land**"), designated as the Tower Lease Area. Landlord further grants to Tenant the following additional rights (which collectively with the Land shall be referred to as the "**Premises**") (i) a non-exclusive right to use in common with others entitled to use same, a twenty (20) foot wide ingress/egress easement as designated on Exhibit "B", and (ii) the right to install utilities on the Land as designated on Exhibit "B" from the nearest available utility service and/or nearest public right-of-way to the Land. The Tenant's use of Landlord's Property shall be subject, however, to the terms and conditions set forth herein and to reasonable written rules and regulations for the use thereof as prescribed from time to time by Landlord.

The parties understand and acknowledge that Exhibits "A" and "B" may be attached to this License and the Memorandum of License in preliminary form. Accordingly, the parties agree that upon the preparation of final, more complete exhibits, Exhibits "A" and/or "B", may be replaced by Tenant with such final, more complete exhibit(s).

2. Term and Renewals.

The term of this Agreement shall commence on the Effective Date and shall continue for a fifteen (15) year term expiring on and including the fifteenth (15th) anniversary of the day before the Rent Commencement Date (as hereinafter defined), if the Rent Commencement Date is the first day of a month, or fifteenth (15th) anniversary of the last day of the month in which the Rent Commencement Date occurs on any day other than the first day of a month (the “**Initial Term**”). The Term of this Agreement may be extended by Tenant for up to five (5) successive terms of five (5) years each (each a “**Renewal Term**,” and collectively, the “**Renewal Terms**”). The Term of this Agreement will automatically renew for each of the first three (3) of the five (5) year Renewal Terms unless Tenant gives Landlord written notice of its intention not to exercise a renewal option at least six (6) months prior to the end of the Initial Term, or the Renewal Term, as the case may be (the Initial Term and Renewal Terms for which Tenant has exercised its option to renew are hereinafter collectively called the “**Term**”). For the fourth (4th) and fifth (5th) Renewal Terms, the Term shall automatically renew unless either party gives written notice of its intention not to exercise a renewal option at least six (6) months prior to the end of the then current Term. Should Tenant hold over and not remove the Telecommunications Facility after the expiration of the Term hereof without the execution of a new or extended agreement, Tenant, shall be deemed to be using the Premises from month to month, subject to such use being terminated by either Landlord or Tenant upon thirty (30) days’ written notice, and subject to all of the other terms, covenants and conditions of the Agreement.

3. Rent and Rent Commencement Date.

The “**Rent Commencement Date**” shall be the earlier, assuming this Agreement has not been terminated in accordance with Section 4(g): (i) the first day of the month following ninety (90) days after the end of the Permit Contingency Period (as hereinafter defined); or (ii) the first day of the month following the commencement of construction of a Telecommunications Facilities for which Permits (as hereinafter defined) have been issued.

(a) Commencing on the Rent Commencement Date and during the Term, Tenant shall pay Landlord the following Rent:

- i. \$1,000.00 per month, payable in advance, (as defined below) for up to one Carrier, which amount shall increase by three and one-half percent (3.5 %) on each anniversary of the Rent Commencement Date; and
- ii. Assuming that two (2) or more Carriers have subleased or licensed the Premises and pay Sublease Fees during the immediately prior month, then in addition to the amount paid in clause (i), the Tenant shall pay Five Hundred Dollars (\$500.00) per month for each additional Carrier that Tenant collects Sublease Fees, which amount shall increase by three and one-half percent (3.5%) on each anniversary of the rent commencement date.
- iii. In the event Tenant does not sublease or license the Premises to a second Carrier within twelve (12) months from the date construction of the

Telecommunications Tower has been completed, Base Rent shall increase, at that time to Twelve Hundred Fifty Dollars (\$1,250.00) per month until such time as a second Carrier commences paying rent.

- iv. In the event Tenant does not sublease or license the Premises to a second Carrier within twenty-four (24) months from the date construction of the Telecommunications Tower has been completed, Base Rent shall increase, at that time, to Fifteen Hundred Dollars (\$1,500.00) per month until such time as a second Carrier subleases the Premises and commences paying rent.
- v. At any time Tenant does sublease or license the Premises to a second Carrier and the Carrier commences paying Rent, Base Rent shall be paid in accordance with the provisions of 3(a)ii above.

(b) The Rent shall be paid by Tenant to Landlord on the first (1st) day of each month.

(c) The Rent shall be paid by Tenant, payable to the City of Milpitas and sent to Jane Corpus, Finance Department, 455 E. Calaveras Blvd, Milpitas, CA 95035, without any prior demand therefor and without any deduction or offset whatsoever. In the event that the Term of this License shall commence on a day other than the first day of a month, with respect to the portion of the Rent payable pursuant to clause (i), Tenant shall pay Rent in advance for the fractional month on a per diem basis calculated on the basis of a thirty (30) day month.

4. Use.

(a) The Premises are licensed for the purposes of constructing, installing, operating, repairing, maintaining, upgrading and replacing one or more communications towers, poles, guy wires and anchors, equipment shelters, buildings, utility lines, communication equipment, signs, personal property and related facilities and improvements including without limitation all technological evolutions of the any of the foregoing (the “**Telecommunications Facility**”). Tenant shall have the right to use the Telecommunications Facility for its business purposes, which shall include, without limitation, subleasing or licensing all or any portion of the Premises and/or the Telecommunications Facility to third parties (“**Carriers**”), without Landlord consent.

(b) At all times during the Term of this License, Tenant and its employees, agents, customers, and invitees shall have access to the Premises seven (7) days a week, twenty-four (24) hours a day by first contacting the on-duty Battalion Chief at Fire Station One to obtain permission to enter the Premises. The Landlord shall not unreasonably withhold access to the Premises.

(c) Tenant shall have the right to construct fencing around and within the Premises and to otherwise secure the Premises and the Telecommunications Facility. Tenant may enter upon Property for the purpose of making surveys, conducting tests and investigations, and to construct temporary anchors and guys in connection with the construction of any communications tower or pole on the Premises. If the construction or maintenance of the

Telecommunications Facility results in damage to Property, Tenant shall promptly repair the same to its prior condition, normal wear and tear and insured casualty excepted.

(d) At all times during the Term, Tenant will, and will cause its Carriers to, observe and conform to, in all material respects, all laws, ordinances, orders, rules and regulations now or hereafter applicable to the Premises, the Telecommunications Facility, and the use of either.

(e) Tenant is responsible to ensure that the Telecommunications Facility complies with all applicable rules and regulations of the Federal Communications Commission (“**FCC**”), Federal Aviation Administration (“**FAA**”) and any and all applicable codes and regulations of the relevant federal, municipal, county and state with respect to the installation, use, maintenance and removal. Landlord assumes no responsibility for the licensing, operation and/or maintenance of the Telecommunications Facility. Tenant shall obtain the necessary permits, licenses and approvals from all governmental authorities having jurisdiction. If at any time during the Term of this License the FAA, FCC, or other federal, state or governmental agency changes its regulations and requirements so that Tenant may no longer use the Premises for the Telecommunications Facility, Tenant shall have the right to terminate this License upon sixty (60) days’ written notice to Landlord. Upon the exercise of such right by Tenant this License shall become null and void and neither party shall have any further liability or obligation to the other.

(f) Tenant agrees that Tenant and/or any Carriers will be permitted to install only such equipment that is of the type and frequency which will not cause measurable interference to Landlord. In the event Landlord notifies Tenant in writing of any such interference, Tenant shall modify or cease its use of the Telecommunications Facility, as necessary, to promptly eliminate such interference. Tenant shall have the opportunity to relocate the Telecommunications Facility on the Property if such relocation shall remedy the events described, whereupon this License shall be modified accordingly.

(g) The Permit Contingency Date ("Permit Contingency Date") is herein defined as two hundred seventy (270) days following the Effective Date wherein Tenant shall use its commercially reasonable efforts to obtain the final, unappealable (and for which no appeal is pending) certificates, permits and other approvals that are required by federal, state, local governmental or quasi-governmental authorities (collectively, the "**Permits**"). Provided that the Tenant is diligently pursuing the Permits, the Tenant shall have the right upon written notice to Landlord (to be delivered prior to the expiration of the last day of the then Permit Contingency Date), to be able to extend the Permit Contingency Date for up to two (2) ninety (90) day periods. If Tenant is in the process of appealing or contesting an appeal, Tenant has the additional right to extend the Permit Contingency Date until said appeal(s) has run its course, but in no event more than 24 months following the Effective Date and so long as Tenant is diligently prosecuting such appeal. Tenant shall bear the responsibility and cost of obtaining the Permits. However, Landlord agrees to use reasonable efforts to cooperate with Tenant's efforts to obtain the Permits, including signing proper applications in a timely manner, and/or joining in all such applications as may be necessary. Tenant shall use its commercially reasonable diligent efforts to obtain the Permits and shall copy Landlord on all submissions to and responses from governmental agencies relevant to the Permits.

(h) In the event Tenant has not satisfied (which shall be evidenced by a written notice to Landlord from Tenant), or has waived in writing, the Permit Contingency on or before the expiration of the Permit Contingency Date (which may be extended by the 2 – 90-day periods) Tenant shall have the right to terminate this License on the Permit Contingency Date or on such earlier date that Tenant has determined the Permits are not likely to be issued. Upon such termination, no further liability shall attach to either party under this License. at any time prior to the Permit Contingency Date, the Tenant shall have the right upon thirty (30) days prior written notice to Landlord to terminate this License, if Tenant shall determine that the Tenant's proposed use and/or business in respect of the Premises shall not be feasible. Should either Tenant or Landlord exercise said termination right, then the terminating Party will give immediate notice of the termination and neither Party shall have any further liability.

(i) Tenant's use and access of the Premises shall not interfere with the operation of Landlord's property, including but not limited to training and use of the Emergency Operations Center.

5. Utility Services/Taxes.

(a) Tenant shall pay all charges incurred for the use by Tenant of utility services at the Premises including, without limitation, gas, electricity, water, sewer and telephone. Landlord shall cooperate with Tenant in Tenant's efforts to obtain utility services along the Right of Way by signing such documents or easements as may be reasonably required by Tenant's utility service provider. Tenant shall bear the costs of any additional installations to provide utilities.

(b) Tenant will be responsible for payment of all personal property taxes assessed directly upon the Telecommunications Facility and arising solely from its use. Tenant will pay to Landlord any increase in real property taxes attributable solely to the Telecommunications Facility within sixty (60) days after receipt of satisfactory documentation indicating calculation of Tenant's share of such real estate taxes and payment of the real estate taxes by Landlord. Landlord will pay when due all real estate taxes and assessments attributable to Property of which the Premises is a part, subject to reimbursement by Tenant as required above.

6. Insurance.

Tenant will, at its own cost and expense, obtain and maintain (or cause its Carriers to obtain and maintain) during the Term, the insurance detailed in Exhibit C.

7. Liability and Indemnification.

Landlord shall not be liable for any injury to person or damage to property on or about the Premises caused by the negligence or willful misconduct of Tenant, its Carriers, employees, customers or agents, or of any other person entering upon Landlord's Property or the Premises under express or implied invitation of Tenant (other than Landlord or Landlord's employees, contractors, agents or invitees), or a breach of this License by Tenant, and Tenant agrees to indemnify and hold harmless Landlord from any loss, claim, damage, cost, or expense suffered or incurred by Landlord by reason of any such damage or injury. Tenant shall not be liable for any injury to person or damage to property on or about Property caused by the negligence or

willful misconduct of Landlord, its employees, contractors, or agents, or of any other person entering upon Property under express or implied invitation of Landlord (other than Tenant or Tenant's Carriers, employees, customers, agents or invitees), or a breach of this License Agreement by Landlord, and Landlord agrees to indemnify and hold harmless Tenant and its Carriers from any loss, claim, damage, cost, or expense suffered or incurred by Tenant or its Carriers by reason of any such damage or injury.

For purposes of Section 2782 of the Civil Code, the parties hereto recognize and agree that this Agreement is not a construction contract. For purposes of Section 282.8 of the Civil Code, the parties hereto recognize and agree that this Agreement is not for design professional services.

8. Quiet Enjoyment; Condition of Property.

(a) Landlord covenants and agrees that Tenant, on paying rent and performing its obligations hereunder, shall peaceably and quietly hold and enjoy the Premises for the Term of this License, including any Renewal Terms, without any hindrance, molestation or ejection by Landlord, its successors or assigns, or those claiming through any of them. Tenant shall not cause or permit any hazardous material to be brought upon, kept or used in or about the Premises by Tenant, its agents, employees, contractors or invitees. Tenant shall not construct or place on the Premises any additional structure or property other than that shown on Exhibit B, except for the Carrier's ground equipment or antennas within the Premises. Throughout the Term, the Landlord shall not permit a competing Telecommunications Facility to operate in the Property.

(b) As used herein, the term "**hazardous material**" means any hazardous or toxic substance, material or waste (including, without limitation, asbestos) which is determined by any state, federal or local governmental authority to be capable of posing a risk of injury to health, safety or property and/or the use and/or disposal of which is regulated by any governmental authority. Tenant shall be responsible for all obligations of compliance with all environmental laws and regulations of any governmental authority regulating standards of liability or standards of conduct as may now or at any time hereinafter be in effect that are any way related to the Telecommunications Facility or Tenant's activities conducted upon or about the Premises. Tenant hereby agrees to indemnify, defend and hold harmless Landlord (and its affiliates and their officers, employees, directors, managers, trustees and shareholders) from all fines, suits, procedures, claims, actions and costs in any way growing out of or connected with (i) any breach by Tenant of the foregoing covenants, (ii) any hazardous material introduced into the Property by Tenant or its employees, contractors, agents, licensees or subtenants, and/or (iii) the Telecommunications Facility.

(c) Landlord represents and warrants that Property is in compliance with any and all applicable federal, state or local statutes, ordinances, codes, administrative orders, rules or regulations relating to or concerning hazardous, toxic or dangerous waste, substance or material, including, without limitation, the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, and the National Environmental Protection Agency requirements (collectively, "**Environmental Laws**").

9. Assignment, Sublicense, Mortgage.

(a) Tenant may assign this License, at any time without the prior written consent of Landlord, provided the Assignment is to a Qualified Assignee (as hereinafter defined). A "**Qualified Assignee**" shall mean a reputable owner and operator of at least fifty (50) Telecommunication Facilities in the United States with at least three (3) years experience in the management and operation of Telecommunications Facilities. After delivery by Tenant to Landlord of an instrument of assumption by an assignee that assumes all of the obligations of Tenant under this License, Tenant will be relieved of all liability hereunder, without necessity of any further writing. Tenant may sublease or license all or any part of the Premises, at any time without prior consent. Landlord recognizes the subleases and licenses of all of Tenant's Carriers now or hereafter in effect and will permit each Carrier of Tenant to remain in occupancy of and use the Premises, so long as Tenant is not in default under this License.

(b) With Landlord's written consent, to be provided within ten (10) days of Tenant's request, Tenant shall have the right to mortgage, pledge or grant a security interest in this License (the document or instrument evidencing and/or securing the mortgage, pledge or security interest shall be referred to individually or collectively as the "**Security Instrument**" and the holder thereof shall be referred to as the "**Tenant's Lender**"), or to assign, pledge or hypothecate the same as security for such Security Instrument. No such Security Instrument shall be binding upon Landlord in the enforcement of its rights and remedies herein and by law provided, unless and until an executed counterpart thereof, together with the address of the Tenant's Lender, shall have been delivered to Landlord.

(i) Provided that Tenant has advised Landlord in writing of the name and address of Tenant's Lender, Landlord shall notify Tenant's Lender of any default by Tenant under the Agreement and agrees that, notwithstanding any provisions of this Agreement to the contrary, no notice of termination of this Agreement shall be effective unless Tenant's Lender shall have received notice of default giving rise to such termination and (i) in the case of any default that can be cured by the payment of money until thirty (30) days shall have elapsed following the giving of such notice or (ii) in the case of any other such default, until a reasonable period for remedying such default shall have elapsed following the giving of such notice and following the time when Tenant's Lender shall have become entitled under its Security Instrument to remedy the same, including such time as may be necessary to acquire possession of the Premises if possession is necessary to effect such cure, provided Tenant's Lender, with reasonable diligence, shall (a) pursue such remedies as are available to it under its security instrument so as to be able to remedy the default, and (b) thereafter shall have commenced and continued to remedy such default or cause the same to be remedied. Notwithstanding the foregoing, Tenant's Lender shall have no obligation to cure any such default.

(ii) Upon any rejection of this License in any bankruptcy, reorganization, arrangement or similar proceeding which would, if it were not for this Paragraph 9, cause this License to terminate, without any action or consent by Landlord, Tenant or any Tenant's Lender, the transfer of Tenant's interest hereunder to such Tenant's Lender or its nominee shall automatically occur. Such Tenant's Lender may terminate this License

upon any such transfer upon giving written notice thereof to Landlord no later than thirty (30) days after notice from Landlord of such transfer. Upon any such termination such Tenant's Lender shall have no further obligations hereunder (including any obligations which may have accrued prior to such termination) except in the event that said Tenant's Lender shall request a new License as provided for herein below, in which event all prior obligations accruing to the effective date of the new License shall be payable at the date of its effectiveness notwithstanding the earlier rejection and termination.

(iii) In the event of the termination of this License, or of any succeeding License made pursuant to the provisions of subparagraph (ii) above prior to its stated expiration date, the Landlord will enter into a new License of the Premises with the Tenant's Lender for the remainder of the term, effective as at the date of such termination, at the Rent and upon the covenants, agreements, terms, provisions and limitations herein contained, provided:

a. such Tenant's Lender makes written request upon the Landlord for such new License within sixty (60) days from the date of such termination and such written request is accompanied by payment to the Landlord of all amounts then due to the Landlord; and

b. such Tenant's Lender pays or causes to be paid to the Landlord at the time of the execution and delivery of said new Tenant any and all sums which would at the time of the execution and delivery thereof be due under this Agreement but for such termination, and pays or causes to be paid any and all expenses, including reasonable counsel fees, court costs and disbursements incurred by the Landlord in connection with any such default and termination as well as in connection with the execution and delivery of such new License.

(iv) Upon the execution and delivery of a new License in accordance with the provisions of the preceding subparagraph (iii) of this Paragraph 9(b) all sublicenses or Licenses which theretofore may have been assigned and transferred to the Landlord shall thereupon be assigned and transferred, without recourse by the Tenant's Lender, to the Tenant's Lender as the new Tenant.

(v) No Tenant's Lender shall become personally liable under the agreements, terms, covenants or conditions of this Agreement or any new License entered into in accordance with the provisions of subparagraph 9(b)(iii) unless and until it becomes, and then only for as long as it remains, the holder of the Licensed estate.

10. Telecommunications Facility Ownership and Maintenance.

(a) The Telecommunications Facility, when located on the Premises and even if installed on or attached to the Premises, shall not be deemed to be part of the Premises, but shall be separately owned by Tenant and/or its Carriers, as the case may be. At any time during the Term of this License, Tenant and its Carriers shall have the right to remove all or any portion of the Telecommunications Facility from the Premises. Tenant shall remove the Telecommunications Facility and related improvements from the Premises within one hundred eighty (180) days of the termination this License, with any foundations to be removed to two (2)

feet below grade. Upon termination of this License, the Premises shall be restored as closely as is practical to its condition existing on the date of this License, normal wear and tear and insured casualty excepted. Landlord shall provide Tenant with a written declaration stating that Landlord does not have an ownership interest in the Telecommunications Facility, or any part thereof, located on the Premises and that same are owned by Tenant or its Carriers, as the case may be, within fifteen (15) days after receipt of a written request therefor from Tenant. Tenant, at its sole cost and expense, shall maintain the Telecommunications Facility in good condition and repair, during the duration of this Agreement. Tenant shall, at its sole cost and expense, repair and replace any property of Landlord, including, but not limited to, the roof or any property of any other tenant or occupant in the Property, which is damaged or adversely affected by reason of the installation, maintenance, use, or removal by Tenant of the Telecommunications Facility. Tenant shall assume all risk of loss or damage to the Telecommunications Facility, its related equipment and all of Tenant's property used in connection with the installation, maintenance, repair, use and removal of the Telecommunications Facility. Landlord shall in no event be liable or responsible for any damage to any of Tenant's property, including without limitation, the Telecommunications Facility. If the Premises shall be damaged by fire or other casualty not covered by Tenant's policies of fire and broad form extended coverage insurance, and Tenant decides not to repair and restore the Premises, or sufficient funds are not made available by Tenant's lender/mortgagee, Tenant shall have the right to be exercised by notice in writing delivered to Landlord within sixty (60) days from and after the occurrence of such damage or destruction, to elect to cancel and terminate this License. If the Property shall be damaged by fire or other casualty not covered by Landlord's policies of fire and broad form extended coverage insurance, and Landlord decides not to repair and restore the Property, or sufficient funds are not made available by Landlord's lender/mortgagee, Landlord shall have the right to be exercised by notice in writing delivered to Tenant within sixty (60) days from and after the occurrence of such damage or destruction, to elect to cancel and terminate this License.

11. Right of Inspection.

Upon request and in the presence of Tenant or its employee or agent, Landlord and its agents and representatives shall be entitled to enter upon and inspect the Premises at any time during normal business hours, provided only that such inspection shall not unreasonably interfere with Tenant's business and the operation of the Telecommunications Facility.

12. Notices.

All notices, demands, requests, or other communications which are required to be given, served or sent by one party to the other pursuant to this Agreement shall be in writing, and shall be mailed, postage prepaid, by certified mail, or by a reliable overnight courier service for next business day delivery and with delivery verification, to the following addresses or at such other address as may be designated in writing by either party:

<p><i>If to Landlord:</i></p> <p>Fire Chief 777 South Main Street Milpitas, CA 95035</p>	<p><i>If to Tenant:</i></p> <p>Capital Telecom Acquisition LLC, c/o Capital Telecom, LLC 1500 Mt. Kemble Avenue, Suite 203, Morristown, New Jersey 07960 ATTN: Leasing</p>
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Notice given by certified mail or by reliable overnight courier shall be deemed delivered on the date of receipt (or on the date receipt is refused) as shown on the certification of receipt or on the records or manifest of the U.S. Postal Service or such courier service.

13. Default.

Either party hereunder shall be in default (“Default”) under this Lease if that party fails to perform any of its material obligations under this License and such failure continues for thirty (30) days (“Cure Period”) after the other party gives written notice thereof to the defaulting party; provided, however, that if more than thirty (30) days shall be required in order to cure any such default, the defaulting party shall have sufficient time as is reasonably required if the defaulting party shall have commenced and is diligently pursuing corrective action within the Cure Period.

14. Condemnation

(a) If all of the Premises (or if less than all, if Tenant determines that the Telecommunications Facility cannot be operated on the remaining portion as a communications tower site) shall be acquired by the right of condemnation or eminent domain for any public or quasi-public use or purpose, or transferred to a condemning authority under threat of condemnation, then the Term of this License shall cease and terminate as of the date of title vesting in such proceeding (or sale) and all rent shall be paid or refunded to that date, as the case may be, with no further liability or obligation arising hereunder.

(b) In the event of a partial taking or condemnation of less than a substantial portion of the Premises and Tenant determines that the Telecommunications Facility can be operated on the remaining portion as a communications tower site, this License shall continue in full force and effect, but with an equitable reduction or abatement of rent.

(c) In the event of any condemnation, taking or sale, whether whole or partial, Landlord and Tenant shall each be entitled to seek, receive and retain such separate awards and portions of lump sum awards as may be allocated to their respective interests in any condemnation proceedings, or as may be otherwise agreed. Termination of this License shall not affect the right of the parties to such awards.

15. Force Majeure.

The time for performance by Landlord or Tenant of any term, provision, or covenant of this License shall be deemed extended by time lost due to delays resulting from acts of God, strikes, civil riots, floods, material or labor restrictions, any acts or failure to act by governmental authority, and any other cause not within the control of Landlord or Tenant.

16. Recording.

A short-form memorandum of this License (or the License if such is the local custom) setting forth the Initial Term, the Renewal Term options, and such other provisions hereof as Landlord or Tenant shall reasonably deem to be pertinent, which Tenant, shall execute, acknowledge and deliver to Landlord in recordable form and subject to revisions by the Landlord prior to construction or installation of the Telecommunication Facility. Landlord shall record the memorandum of the License.

17. Exclusivity. Landlord agrees not to License or develop a telecommunications facility on any part of Landlord's Property as defined in this Agreement while this Agreement is in effect.

18. Miscellaneous.

(a) The captions used in this License are for convenience only and shall not be deemed to amplify, modify, or limit the provisions hereof.

(b) Words of any gender used in this License shall be construed to include any other gender, and words in the singular shall include the plural and vice versa, unless the context otherwise requires.

(c) This License shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and permitted assigns.

(d) This License, and every Exhibit attached hereto, contains the entire agreement of the parties hereto with respect to the subject matter hereof and can be altered, amended or modified only by written instrument executed by all such parties.

(e) The unenforceability of any provision hereof shall not affect the remaining provisions of this License, but rather such provision shall be severed and the remainder of this License shall remain in full force and effect.

(f) All rights and remedies available to any party hereunder in equity or at law shall be cumulative.

(g) This Agreement has been executed by the undersigned in his capacity as an officer of Landlord, not individually, and neither the officer executing this Agreement nor the elected officials, partners, members, officers, employees of Landlord, or of any of Landlord's parents or affiliates shall be bound or have any personal liability hereunder. The party contracting with Landlord will not seek recourse or commence any action against the officer executing this Agreement or any of the elected officials, partners, members, officers, employees of Landlord, or of any of Landlord's parents or affiliates, or any of their personal assets.

(h) In addition to other events permitting termination hereunder, this License may be terminated, without any penalty or further liability, if after the completion of construction, Tenant loses all of its subtenants provided that loss is not attributable to action or inaction by Tenant.

(i) This License may be executed in any number of separate counterparts, all of which counterparts taken together shall constitute the entirety of this License.

(j) From time to time, upon the request of either party to this License, each of Landlord and Tenant shall promptly provide to the other an estoppel letter confirming that this License is in full force and effect and such other matters as may be reasonably agreed to.

(k) This License shall be governed by and construed in accordance with the laws of the state of in which the Premises are located, without regard to conflict of laws.

(l) This License shall be effective as of the date of last execution by all parties hereto.

[Remainder of page left blank – signature page follows]

IN WITNESS WHEREOF, the parties hereto have duly executed this License to be effective as of the latest date shown below.

LANDLORD: City of Milpitas _____

By: _____

Name: Thomas C. Williams

Title: City Manager

Date: _____

Tax ID/SS Number: _____

ATTEST:

Mary Lavelle, City Clerk

APPROVED AS TO FORM:

Mike J. Ogaz, City Attorney

TENANT: Capital Telecom Acquisition LLC

By: _____

Name: _____

Title: Member

Date: _____

Tax ID/SS Number: 26-3777792

EXHIBIT "A"

PROPERTY

Premises located in the City of Milpitas, County of Santa Clara, and State of California.

APN: 086-11-008

Latitude: 37.419313 Longitude: -121.904477

Being commonly known and designated as 777 South Main Street, Milpitas, California

(METES AND BOUNDS PROPERTY DESCRIPTION TO BE PROVIDED)

EXHIBIT "B"

PREMISES

[The attached sketch of the Premises will be replaced at Tenant's option by a scale drawing and/or legal description.]

(TO BE PROVIDED)