

## COMMUNICATIONS SITE LEASE AGREEMENT FOR BARTON MOUNTAIN

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**THIS LEASE AGREEMENT** (the "Lease") is entered into on September 1\_\_\_\_\_, 2019, between **SCHROCK RANCH LLC**, a California Limited Liability Company ("OWNER"), and the **COUNTY OF TULARE**, a political subdivision of the State of California ("COUNTY") (each a "Party" and together, the "Parties" to this Lease), who agree as follows:

1. **LEASE:** OWNER leases to COUNTY and COUNTY leases from OWNER, the real property located in the County of Tulare, State of California described as an approximately 0.19 acre portion of Assessor's Parcel No. 067-220-006 (the "Premises"), located at the summit of Barton Mountain, more particularly described as being near the Northwest corner of the Southeast quarter of the Southwest quarter of Section 14, Township 17 South, Range 28 East, Mount Diablo Base and Meridian, as depicted in *Exhibit A*.
2. **USE:** COUNTY shall have the right to place a temporary telecommunications repeater device on the Premises, with the Premises and the repeater together referred to as the "Communications Site." COUNTY shall use the Premises for all necessary and reasonable needs of COUNTY for the Communications Site, including but not limited to the construction and upkeep of a communications tower, both temporary and permanent, incidental buildings, communications devices and equipment, solar panels, and chain-link fencing around the Premises. COUNTY shall comply with all laws concerning such use of the Premises. COUNTY shall not use the Premises in any manner that may constitute waste or nuisance, including the use of standing propane or gasoline powered devices or storage containers on the Premises. COUNTY shall keep the Premises and all adjacent areas of the OWNER'S property in good condition and the fence's gate locked when the Communication Site is not manned. Further, OWNER understands that COUNTY has intentions of constructing a permanent communications site at this location and agrees to make good faith efforts to complete lease negotiations to enable such uses.
3. **TERM/EFFECTIVE DATE:** This Lease is for a month-to-month tenancy, effective upon execution of this Lease, and terminable on thirty (30) days' prior written notice given at any time by COUNTY. This Lease will commence upon approval by the Tulare County Board of Supervisors. During COUNTY'S tenancy, COUNTY shall pay all rent required by this Lease, and all other provisions of this Lease shall remain in effect, unless and until such provisions are amended in writing by both Parties.
4. **RENT:** COUNTY shall pay to OWNER a base monthly rent, without deduction, set off, prior notice, or demand of FIVE HUNDRED DOLLARS (\$500.00) payable in advance on the first day of each month, commencing on the date the term commences. However, for the first and last month, COUNTY shall pay rent only for the days of actual occupancy, at a rate of 1/30<sup>th</sup> of the monthly rent per day.
5. **AS-IS CONDITION:** COUNTY acknowledges that as of the commencement of the term of this Lease, the Premises are in good condition and suitable to COUNTY'S proposed uses and COUNTY accepts the Premises in "as-is" conditions as of said date.



6. **ALTERATIONS:** COUNTY shall have the right, at its own expense, to make such changes and alterations to, including but not limited to, COUNTY'S repeater equipment and fencing, in and on the Premises as its operations may require as long as there is no radio interference with other telecommunications equipment in the vicinity. Further, COUNTY shall have the right to complete renovation or replacement of its antenna and other equipment, provided that such changes or alterations are in conformance with reasonable, established engineering standards.
7. **MECHANICS LIENS:** COUNTY shall pay all costs for construction done by it or caused to be done by it on the Premises as permitted or required under this Lease. COUNTY shall keep the building, all radio equipment, other improvements, and land on which the Premises are located free and clear of all mechanics liens resulting from construction or repair work done by or for COUNTY, and shall hold OWNER harmless from and defend OWNER against any such lines or claims.
8. **UTILITIES:** COUNTY shall make all arrangements for, and pay for, all utilities and services furnished or to be used by COUNTY, including, without limitation, electricity, water, telephone and trash removal.
9. **INSURANCE:** OWNER acknowledges and agrees that COUNTY is a self-insured entity. OWNER further understands that COUNTY has property coverage for leased properties which provides for up to \$25,000,000 for all risk of direct physical loss or damage, including fire to the Property as well as an additional similar policy for earthquake damage.
10. **DEFAULT:** The occurrence of any of the following shall constitute a default by COUNTY:
  - a. Failure to pay rent when due, if the failure continues for ten (10) days after written notice has been given to COUNTY;
  - b. Abandonment and vacation of the Premises;
  - c. Failure to perform any other provision of this Lease if the failure to perform is not cured within a reasonable time after notice has been given of same to COUNTY.

Notices given under this section shall specify the alleged default and the applicable provisions of this Lease, and shall demand that COUNTY perform the provisions within the applicable period of time, or quit the Premises.

The purpose of the notice requirements set forth in this section is to extend the notice requirements of the unlawful detainer statutes of California.

In the event of a default, the Parties shall have the remedies now or later allowed by law.

11. **INTERFERENCE WITH COUNTY:** OWNER shall not interfere with the operations of COUNTY'S Communications Site. Such interference shall be deemed a material breach by OWNER. Should OWNER secure leases with other communication entities for the construction of a communications site, OWNER will ensure the other Parties' equipment does not interfere with COUNTY'S equipment and signals. In the event any such interference does not cease promptly, COUNTY shall have the right to terminate this Lease, which shall be COUNTY'S sole remedy in the event of such interference.

12. **INTERFERENCE WITH OWNER'S ACTIVITIES:** COUNTY must:

- a) Stay on designated roads at all times. Access to the Premises is off of North Fork Dr., Three Rivers, and the designated roads to the Premises pass through portions of Sections 14, 15, 16, 22, and 23, Township 17 South, Range 28 East, Mount Diablo Base and Meridian.
- b) Travel to and from the leased Premises directly and not wander or explore the hilltop or other sites.
- c) Not molest or disturb wildlife, cattle, bees or other agricultural activities.
- d) Never bring unauthorized persons to the Premises.
- e) Never provide access to unauthorized persons.
- f) Always keep gates to the Premises closed and locked at all times upon entering and leaving the Premises, unless otherwise specified by OWNER or OWNER'S employees. When passing through interior livestock gates the COUNTY must at each passing return the gate to the closed position if that is how it was found.

13. **TERMINATION FOR CAUSE:** Either Party may terminate this Lease for cause upon ten (10) days' prior written notice to the other Party. For purposes of this section, "cause" shall be defined as the failure of either Party to remedy any material breach of the Lease within thirty (30) days' written notice of the breach.

14. **SURRENDER:** On expiration or other termination of the tenancy, COUNTY shall surrender the Premises to OWNER in good condition, ordinary wear and tear excepted. COUNTY shall remove all of its improvements to the Premises, including but not limited to towers, generators, fuel tanks and communications equipment and perform all restoration made necessary by the removal of any improvements or fixtures.

15. **SUCCESSORS:** This Lease shall be binding on, and inure to, the benefit of the Parties, their successors and assigns, except as otherwise limited by this Lease.

16. **NOTICE:** Any notice, demand, request, consent, approval or other communication required or permitted under this Lease shall be in writing and either served personally or sent by prepaid, first class mail, certified return receipt requested, and addressed to the other Party at the address indicated below:

COUNTY:            Board of Supervisors  
                         County of Tulare  
                         Administration Building  
                         2800 W. Burrel Ave.  
                         Visalia, CA 93291

With a Copy to:    General Services Agency – Property Management  
                         County of Tulare  
                         2637 W. Burrel Ave. Suite 200.  
                         Visalia, CA 93291



OWNER: Schrock Ranch, LLC  
c/o Brent Huntington, Agent  
P.O. Box 1092  
Three Rivers, CA 93271-9622

Notice shall be deemed communicated four (4) days from the time of mailing as provided in this section.

17. **WAIVER:** OWNER'S consent to or approval of any act by COUNTY shall not be deemed to waive or render unnecessary OWNER'S consent to or approval of any subsequent act by COUNTY.

18. **EXHIBITS.** All Exhibits to this Lease are fully incorporated into and are integral parts of this Lease.

19. **INTEGRATION:** This instrument contains all the agreements of the Parties relating to the Premises and cannot be modified or amended except by a subsequent written amendment or other agreement in writing.

20. **NO THIRD-PARTY BENEFICIARIES:** Unless specifically set forth, the Parties to this Lease do not intend to provide any third-Party benefit or enforceable legal or equitable right or remedy.

21. **GOVERNING LAW:** This Lease shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles.

22. **HEADINGS:** Paragraph headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions of the headings.

23. **RELEASE:**

A. COUNTY has occupied the Premises prior to the execution of this Lease, and this Lease shall serve as a novation to any prior agreements or understandings between the Parties. OWNER hereby releases all claims, actual and potential in association with the COUNTY'S occupation of the Premises at any time prior to the execution and entering by the Parties into this Lease ("Prior Occupation") in return for payment of \$14,266.72 by the County of Tulare via a check made out to Schrock Ranch, LLC. Said release extends to all potential claims that were or could have been raised in relation to COUNTY'S occupation of the Premises prior to the execution of this Lease, including potential claims for damages, liquidated damages, attorneys fees, costs and any other potential claims for financial or equitable relief. OWNER hereby fully, finally and completely releases, waives, and discharges the COUNTY, and its officers, agents, employees, successors and assigns from any further claims arising out of or related to the accrual, calculation or crediting of rents owed by COUNTY to OWNER prior to the execution of this Lease.

B. Upon receipt of a counterpart copy of this Lease signed by the OWNER, and approval and execution of this Lease by COUNTY'S Board of Supervisors, COUNTY will have the check described in subsection A above delivered within ten (10) calendar days of



thereof to Brent Huntington, agent for service of process for OWNER, at 41761 N. FORK DR THREE RIVERS CA 93271.

- C. OWNER accepts this compromise, and understands that execution of this Lease constitutes a full and complete settlement of all possible claims against the County, known or unknown, foreseen or unforeseen, arising out of or related to the COUNTY'S occupation of the Premises prior to the execution of this Lease.
- D. OWNER understands that this is a compromise settlement of potential claims, and that nothing herein shall be deemed or construed at any time or for any purpose as an admission of the merits of any potential claim or defense.
- E. The Parties further acknowledge that any and all rights granted them under section 1542 of the California Civil Code are hereby expressly waived as to the matters described in subsection A of this section 23, RELEASE. Section 1542 of the California Civil Code provides as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

- F. OWNER represents that it has read this release and executed knowingly and voluntarily. OWNER has been advised that it has the right to seek legal advice with respect to this Lease, including the release, and has had the opportunity to consult with counsel. The Parties have investigated the facts pertaining to the settlement and the Release and all matters pertaining thereto as deemed necessary. The Parties have relied upon their judgment, belief, knowledge, understanding, and expertise after consultation with their counsel concerning the legal effect of the settlement and its terms. By signing this document OWNER signifies its full understanding, agreement, and acceptance of the terms of this release. OES  
LKS
- G. OWNER acknowledges that taxes owed on the OWNER'S monetary gains in this section 28, if there are any, are solely and completely the responsibility of the OWNER, and acknowledge that the Parties herein released have made no representation concerning the tax consequences of this release. OES  
LKS

24. **CONFLICT WITH LAWS OR REGULATIONS; SEVERABILITY:** This Lease is subject to all applicable laws and regulations. If any provision of this Lease is found by any court or other authority, or is agreed by the Parties, to be in conflict with any code or regulation governing its subject, the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Lease to either Party is lost, the Lease may be terminated at the option of the affected Party. In all other cases the remainder of the Lease shall continue in full force and effect.

25. **INTERPRETATION:** This Lease reflects the contributions of both Parties and accordingly the provisions of Civil Code Section 1654 shall not apply to address and interpret uncertainty.

26. **AUTHORITY:** Each person executing this Lease on behalf of a Party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind, and if such Party is a partnership, corporation or trustee, that such partnership, corporation or trustee has full right to enter into this Lease and perform all of its obligations hereunder.

27. **SEVERABILITY:** The unenforceability, invalidity, or illegality of any provision of this Lease shall not render the other provisions of the Lease unenforceable, invalid, or illegal.

28. **COUNTERPARTS:** This Lease may be executed in any number of counterparts and by the Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

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IN WITNESS WHEREOF, the Parties have executed this Lease as of the day and year first above written.

**OWNER**

Schrock Ranch, LLC

Date: 7/18/19

By: Donald E Schrock

Print Name DONALD E. SCHROCK

Title: OWNER, SCHROCK RANCH LLC

Date: 7/18/19

By: L Kay Schrock

Print Name L. Kay Schrock

Title: Owner, SCHROCK RANCH LLC

[Note: Contracts with a limited liability company shall conform to Corporations Code Section 17703.01, i.e., they shall be signed by at least two Managers, unless the contract is accompanied by a certified copy of the articles of organization stating that the LLC is managed by only one Manager.]

**COUNTY**

COUNTY OF TULARE

Date: \_\_\_\_\_

By \_\_\_\_\_  
Chairman, Board of Supervisors

ATTEST: JASON T. BRITT  
County Administrative Office/  
Clerk of the Board of Supervisors

By \_\_\_\_\_  
Deputy Clerk

Approved as to form:  
County Counsel

By \_\_\_\_\_  
Deputy  
Matter ID: 20181026



**EXHIBIT A**  
**Depiction of Barton Mountain Communication Site**  
**The Premises**

