



RESOLUTION No. 05-09

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

Tower Lease Space Agreement With Ubiqui Tel

WHEREAS, lease documents were prepared for Ubiqui Tel, an affiliate of Sprint, to lease space on the existing Nevada County owned tower located above the Madelyn Helling Library, 980 Helling Way, Nevada City, Ca and;

WHEREAS, the lease amount will be \$1,500.00 per month for the initial 5 year period, with options for 4 additional 5 year lease periods. Rent starts upon commencement of construction and;

WHEREAS, Ubiqui Tel will be responsible for obtaining proper permits and installing their antennas and other equipment.

Now, THEREFORE, BE IT RESOLVED that the Nevada County Board of Supervisors hereby directs that:

1. The Chair is authorized to execute a lease on behalf of Nevada County with Ubiqui Tel upon receipt of insurance certificates as required in the lease documents.
2. All rents are to be deposited into 0101 10702 415 1000 430200 (Facilities Management)

PASSED AND ADOPTED by the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the 4th day of January, 2005, by the following vote of said Board:

Ayes: Supervisors Nate Beason, Sue Horne, John Spencer, Robin Sutherland & Ted Owens.

Noes: None.

Absent: None.

Abstain: None.

ATTEST:

CATHY R. THOMPSON
Clerk of the Board of Supervisors

By: Cathy R. Thompson

Ted Owens

Chair Ted Owens

DATE	COPIES SENT TO
01/05/05	A-C* (Unsigned)
	GS <u>al</u>
04/07/05	GS <u>al</u> (2)
05/20/05	GS
	A-C*

Site Name: Nevada City

Site I. D.: SF03UB400

1. **Premises and Use.** Owner leases to UbiquiTel Leasing Company, a Delaware corporation ("UbiquiTel"), the site described below: [Check appropriate box(es)]

- Land consisting of approximately 144 square feet upon which UbiquiTel will construct its
- equipment base station and its antenna structure;
- Building interior space consisting of approximately _____ square feet;
- Building exterior space for attachment of antennas;
- Building exterior space for placement of base station equipment;
- Tower antenna space 85- foot level on the Tower;
- Space required for cable runs to connect PCS equipment and antennas,

in the location(s) ("Site") shown on Exhibit A, together with a non-exclusive easement for reasonable access thereto and to the appropriate, in the discretion of UbiquiTel, source of electric and telephone facilities. The Site will be used by UbiquiTel for the purpose of installing, removing, replacing, modifying, maintaining and operating, at its expense, a personal communications service system facility ("PCS"), including, without limitation, antenna equipment, cable wiring, back-up power sources (including generators and fuel storage tanks), related fixtures and, if applicable to the Site, an antenna structure. UbiquiTel will use the Site in a manner which will not unreasonably disturb the occupancy of Owner's other tenants. UbiquiTel will have unrestricted access to the Site 24 hours per day, 7 days per week.

2. **Term.** The term of this Agreement (the "Initial Term") is 5 years, commencing on the date ("Commencement Date") both UbiquiTel and Owner have executed this Agreement. This Agreement will be automatically renewed for four additional terms (each a "Renewal Term") of 5 years each, unless UbiquiTel provides Owner of its notice of intention not to renew prior to the expiration of the Initial Term or any Renewal Term.

3. **Rent.** Rent will commence upon the Construction start date. Thereafter, the annual rent of \$18,000.00 will be paid in equal monthly installments in advance (until increased as set forth herein), with all partial periods to be prorated. Rent for each Renewal Term will be the annual rent in effect for the final year of the Initial Term or prior Renewal Term, as the case may be, increased by ten percent (10%). Rent payments will be sent to the address beneath Owner's signature. All rent payments not posted within 365 days after date of issuance shall be considered null and void.

4. **Title and Quiet Possession.** Owner represents and agrees (a) that it is the Owner of the Site; (b) that it has the right to enter into this Agreement; (c) that the person signing this Agreement has the authority to sign; (d) that UbiquiTel is entitled to access to the Site at all times and to the quiet possession of the Site throughout the Initial Term and each Renewal Term so long as UbiquiTel is not in default beyond the expiration of any cure period; (e) that Owner shall not have unsupervised access to the PCS equipment; and (f) that Owner will upon sale or transfer of the underlying property, provide an assignment letter to UbiquiTel that instructs UbiquiTel to make future rent payments to the transferee. Owner further agrees to defend, indemnify and assume all liability for failure to provide UbiquiTel with proper transfer information or required documentation pertaining to subsequent Owner.

5. **Assignment/Subletting.** UbiquiTel may not assign, sublease or otherwise transfer all or any part of its interest in this Agreement, or in the Facility without the prior written consent of Owner, said consent not to be unreasonably withheld, conditioned or delayed; provided, however, that UbiquiTel may assign or otherwise transfer upon notice but without consent such interest to its parent company, any subsidiary or affiliate or to any successor-in-interest or entity acquiring a controlling interest in its stock or assets.

6. **Notices.** All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested or sent by recognized overnight carrier to the addresses specified below. Notices, requests, demands and other communications may also be given by

facsimile transmission, provided that notice is concurrently given by one of the above methods. Communication by electronic or computerized mail shall not be accepted as effective notice under this Agreement. Notices are to be sent to: UbiquiTel Leasing Company, One West Elm Street, Suite 400, Conshohocken, PA 19428, Attention: Engineering Property Management, with a copy to Vice President and General Counsel. Notices to Owner must be sent to the address shown underneath Owner's signature.

7. **Improvements.** UbiquiTel may, at its expense, make such improvements on the Site, as it deems necessary from time to time, for the operation of the PCS facility with approval of the Owner, such approval shall not be unreasonably withheld, conditioned or delayed. Upon termination or expiration of this Agreement, UbiquiTel shall remove its equipment and improvements and will restore the Site to substantially the condition existing on the Commencement Date, except for ordinary wear and tear and casualty loss.

8. **Compliance with Laws.** Owner represents that Owner's property (including the Site), and all improvements located thereon, are in substantial compliance with building, life/safety, disability and other laws, codes and regulations of applicable governmental authorities. UbiquiTel will substantially comply with all applicable laws relating to its possession and use of the Site. Owner agrees to cooperate with UbiquiTel with respect to obtaining any required zoning approvals for the Site and such improvements.

9. **Interference.** UbiquiTel will resolve technical interference problems with other equipment located at the Site on the Commencement Date or any equipment that becomes attached to the Site at any future date when UbiquiTel desires to add additional equipment to the Site. Likewise, Owner will not permit or suffer the installation of any future equipment, which (a) results in technical interference problems with UbiquiTel's then existing equipment or (b) encroaches onto the Site.

10. **Utilities.** UbiquiTel will pay for all utilities installation and use at the Site. Owner will cooperate with UbiquiTel in UbiquiTel's efforts to obtain utilities from any location provided by Owner or the servicing utility, including signing any easement or other instrument reasonably required by the utility company.

11. **Termination.** UbiquiTel may terminate this Agreement at any time by notice to Owner without further liability if UbiquiTel does not obtain all permits or other approvals (collectively, "approval") required from any governmental authority, quasi governmental authority or any easements required from any third party to operate the PCS, or if any such approval is canceled, expires or is withdrawn or terminated, or if Owner fails to have proper ownership of the Site or authority to enter into this Agreement, or if UbiquiTel, for any other reason including technical, regulatory and business reasons, in its sole discretion, determines to terminate this Agreement. Upon termination, all prepaid rent will be retained by Owner unless such termination is due to Owner's failure of proper ownership or authority, or such termination is a result of Owner's default.

12. **Default.** If either party is in default under this Agreement for a period of (a) 15 days following receipt of notice from the non-defaulting party with respect to a default which may be cured solely by the payment of money, or (b) 30 days following receipt of notice from the non-defaulting party with respect to a default which may not be cured solely by the payment of money, then, in either event, the non-defaulting party may pursue any remedies available to it against the defaulting party under applicable law, including, but not limited to, the right to terminate this Agreement. If the non-monetary default may not reasonably be cured within a 30-day period, this Agreement may not be terminated if the defaulting party commences action to cure the default within such 30-day period and proceeds with due diligence to fully cure the default.

13. **Indemnity.** Owner and UbiquiTel each indemnifies the other against and holds the other harmless from any and all costs (including reasonable attorneys' fees) and claims of liability or loss which arise out of the ownership, use and/or occupancy of the Site by the indemnifying party. This indemnity does not apply to any claims arising from the sole negligence or intentional misconduct of the indemnified party. The

indemnity obligations under this Paragraph will survive termination of this Agreement.

14. Hazardous Substances. Owner represents that it has no knowledge of any substance, chemical or waste (collectively, "substance") on the Site that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. UbiquiTel will not introduce or use any such substance on the Site in violation of any applicable law.

16. Taxes. UbiquiTel will be responsible for payment of all personal property taxes assessed directly upon and arising solely from its use of the communications facility on the Site. UbiquiTel will pay to Owner any increase in real property taxes attributable solely to any improvements to the Site made by UbiquiTel within 60 days after receipt of satisfactory documentation indicating calculation of UbiquiTel's share of such real estate taxes and payment of the real estate taxes by Owner. Owner will pay when due all other real estate taxes and assessments attributable to the property of Owner of which the Site is a part and will provide UbiquiTel with proof of such payments.

17. Insurance. UbiquiTel will procure and maintain commercial general liability insurance, with limits of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage liability, with a certificate of insurance to be furnished to Owner upon execution of the contract. The policy must name the County of Nevada as additional insured and UbiquiTel must provide a properly executed endorsement to that effect. This insurance shall be primary and other insurance maintained by the County shall be excess only and not contributing with UbiquiTel's insurance. Such policy will provide that cancellation will not occur without at least 30 days prior written notice to Owner. At all times, Contractor shall keep and maintain in full force and effect throughout the duration of this Contract, policies of insurance required by this Contract which policies shall be issued by companies with a Best's Rating of B+ or higher (B+, B++, A-, A, A+ or A++), or a Best's Financial Performance Rating (FPR) of 6 or higher (6, 7, 8 or 9) according to the current Best's Key Rating Guide, or shall be issued by companies approved by the County Risk Manager. In the event the Best's Rating or Best's FPR shall fall below the rating required by this paragraph, Contractor shall be required to forthwith secure alternate policies which comply with the rating required by this paragraph, or be in material breach of this Contract. Failure to provide and maintain the insurance policies (including Best's ratings), endorsements, or certificates of insurance required by this Contract shall constitute a breach of this agreement and, in addition to any other remedy available at law or otherwise, shall serve as a basis upon which County may elect to suspend payments hereunder, or terminate this Contract, or both, provided that UbiquiTel fails to immediately cure upon notice by the County. UbiquiTel and Owner agree that insurance carried or required to be carried by either of them against loss or damage to property by fire, Flood, earthquake, acts of terrorism, acts of war or other casualty shall contain a clause whereby the insurer waives its right to subrogation against the other party, its elected officials, directors, employees, volunteers, and agent, and each party shall indemnify the other against any loss or expense, including reasonable attorneys fees, resulting from the failure to obtain such waiver.

18. Maintenance. UbiquiTel will be responsible for repairing and maintaining the PCS facility and any other improvements installed by UbiquiTel at the Site in a proper operating and reasonably safe condition; provided, however if any such repair or maintenance is required due to the acts of Owner, its agents or employees, Owner shall reimburse UbiquiTel for the reasonable costs incurred by UbiquiTel to restore the damaged areas to the condition which existed immediately prior thereto. Owner will maintain and repair all other portions of the property of which the Site is a part in a proper operating and reasonably safe condition.

19. Miscellaneous. (a) This Agreement applies to and binds the heirs, successors, executors, administrators and assigns of the parties to this

Agreement, including any successor by merger or sale of assets; (b) this Agreement is governed by the laws of the state in which the Site is located; (c) If required by UbiquiTel, Owner agrees promptly to execute and deliver to UbiquiTel a recordable Memorandum of this Agreement in the form of Exhibit B; (d) this Agreement (including the Exhibits) constitutes the entire agreement between the parties and supersedes all prior written and verbal agreements, representations, promises or understandings between the parties. Any amendments to this Agreement must be in writing and executed by both parties; (e) if any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, will not be affected and each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law; and (f) the prevailing party in any action or proceeding in court or mutually agreed upon arbitration proceeding to enforce the terms of this Agreement is entitled to receive its reasonable attorneys' fees and other reasonable enforcement costs and expenses from the non-prevailing party.

20. Non-Binding Until Fully Executed. This Agreement is for discussion purposes only and does not constitute a formal offer by either party. This Agreement is not and shall not be binding on either party until and unless it is fully executed by both parties.

The following Exhibits are attached to and made a part of this Agreement: Exhibits A (Site Description) and B (Memorandum of PCS Site Agreement).

OWNER:

County of Nevada

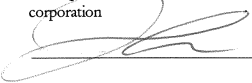
By: 

Its: Chairman of the Board, Ted S. Owens

Address:
950 Maidu Ave, Nevada City Ca 95959
Taxpayer ID#: 94-6000526

Date: 4/26/05

UBIQUITEL LEASING COMPANY, a Delaware corporation

By: 
Its: Director of Implementation

Date: 5/11/05

EXHIBIT A

Site Name: Nevada City

PCS Site Agreement

Site I. D. SF03UB400

Site Description

Site situated in the City of Nevada City, County of Nevada, State of California commonly described as follows:

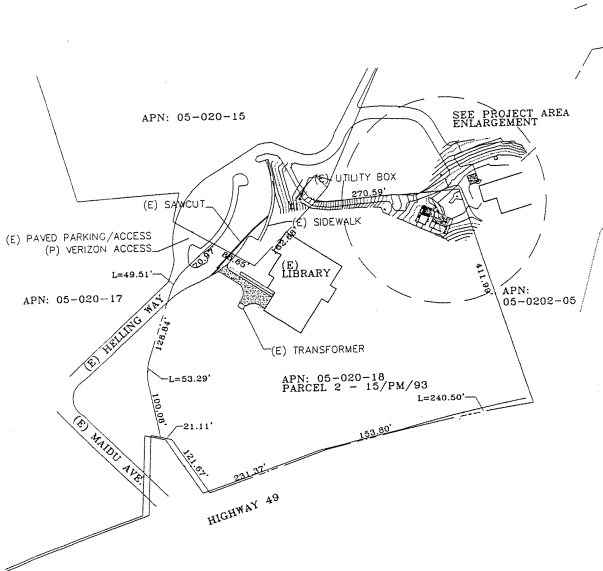
Legal Description:

Beginning at the most westerly corner of the Stone property as recorded in Book 781 Page 245 of Official Records of Nevada County. Also being a 5/8" rebar tagged RS4370 as shown on the Record of Survey Mao recorded in Book 10 if Surveys at Page 27; Thence from said point of beginning N 43 degrees 12 feet East 35.83 feet along the westerly line of said Stone property; Thence S 84 degrees 25 feet 55 inches East 155.86 feet to a point in the southwesterly line of said Stone property; Thence along said line S 86 degrees 30 feet West 180.00 feet to the point of beginning.

Grant Deed dated June 6, 1991, record # 91 16440

APN# : 05-020-18

Coordinates: 39-16-12.4N/121-01-23.9W



Owner Initials AD

UbiquiTel Initials JA

Note: Owner and UbiquiTel may, at UbiquiTel's option, replace this Exhibit with an exhibit setting forth the legal description of the

EXHIBIT B

Site Name Nevada City

PCS Site Agreement

Site I. D. SF03UB400

Memorandum of PCS Site Agreement

This memorandum evidences that a lease was made and entered into by a written PCS Site Agreement dated May 11, 2005, between Nevada County ("Owner") and UbiquiTel Leasing Company, a Delaware corporation ("UbiquiTel").

Such Agreement provides in part that Owner leases to UbiquiTel a certain site ("Site") located at 980 Helling Way, City of Nevada City, County of Nevada, State of California, within the property of Owner which is described in Exhibit A attached hereto, with grant of easement for unrestricted rights of access thereto and to electric and telephone facilities for a term of five (5) years commencing on May 11, 2005, which term is subject to four (4) additional five (5) year extension periods by UbiquiTel.

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

Owner:

Nevada County

By: 

Name: Ted S. Owens

Title: Chairman of the Board

Address: 950 Maidu Avenue, Nevada City, CA 95959

UbiquiTel Leasing Company, a Delaware corporation

By: 

Name: Jim Ames

Title: Director of Implementation

Address: UbiquiTel Leasing Company, Attn: Engineering Property Management, One West Elm Street, Suite 400, Conshohocken, Pennsylvania, 19428

Owner Initials 

UbiquiTel Initials 

UbiquiTel:

ACKNOWLEDGEMENT

STATE OF California)

ss.

COUNTY OF Nevada)

On April 26, 2005, before me, Leann C. Whitaker, a Notary Public, personally appeared Ted S. Owens, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledge to me that he/~~she~~ executed the same in his/~~her~~ authorized capacity, and that by his/~~her~~ signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

My Commission Expires: Jan. 31, 2006

Leann C. Whitaker
Notary Public



STATE OF NEVADA)

ss.

COUNTY OF WASHOE)

On May 11, 2005, 2005 before me, Nichole Thomas, a Notary Public, personally appeared **Jim Ames, Director of Implementation**, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledge to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Nichole Thomas
Notary Public

My Commission Expires: August 1, 2008.

