

AGENDA ITEM NO. \_\_\_\_\_



COUNTY OF HUMBOLDT

For Meeting of:  
March 9, 2004

DATE: February 11, 2004  
TO: BOARD OF SUPERVISORS  
FROM: KIMBERLY A. KERR, GENERAL SERVICES DIRECTOR *KK*  
SUBJECT: LICENSE AGREEMENT FOR USE OF PRATT MOUNTAIN AND SUPPLEMENTAL BUDGET

RECOMMENDATIONS:

ON FILE WITH THE  
CLERK OF THE BOARD

THAT THE BOARD OF SUPERVISORS:

1. Approve and execute the License Agreement between the County of Humboldt and Norman and Deborah Jo Johannesen for the use of a portion of Pratt Mountain as a communication facility.
2. Direct the Clerk of the Board to return one executed original License Agreement to Real Property for transmittal to Licensor.
3. Adopt the following supplemental budget for Communications and direct the Auditor-Controller to make the recommended transfers:
  - a. Approve a supplemental budget in the amount of \$3515.
  - b. Transfer \$3515 from the Radio Capitalization Fund 4490-000-7-000 to 1100-707-140 Communications Trust.
  - c. Increase the revenue estimate in revenue account 1100-707-140 Communications Trust by \$3515.
  - d. Increase Communications line 1100-151-2-121 by \$3515.

PREPARED BY: Ronda Hollenbeck SR. REAL PROPERTY AGENT  
CAO Approval: K. Secker

REVIEW: Auditor MS County Counsel JS Personnel \_\_\_\_\_ Risk Manager KK Other \_\_\_\_\_

TYPE OF ITEM:  
 Consent  
 Department  
 Public Hearing  
 Other \_\_\_\_\_

PREVIOUS ACTION/REFERRAL:  
Board Order No. \_\_\_\_\_  
Meeting of: \_\_\_\_\_

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT  
Upon motion of supervisor **WOOLLEY NEELY**  
seconded by Supervisor  
and unanimously carried by those members present, the Board hereby adopts the Recommended action contained in this report.

Dated: MAR - 9 2004  
LORA CANZONERI, CLERK OF THE BOARD  
by: Lora Canzoneri

DISCUSSION:

In September, 1964 the County entered into a Lease Agreement with Arthur Tooby, George Tooby, Lela Tooby, Florence Tooby and Harold Prior for the use of a portion of Pratt Mountain for the purpose of maintaining and operating a radio and/or telephone broadcasting, transmitting or repeating station. A new lease was executed in March, 1975 between the County and Arthur Tooby that expired in 1981. Negotiations for a new lease started after 1981 with Arthur Tooby until his demise and then continued with the Estate of Arthur Tooby. There were numerous legal and monetary issues( the estate desired a higher annual rental amount) that continued to prevent an executed Lease Agreement. Although there has been no signed Lease Agreement since 1981, County continued to pay and the Estate of Arthur Tooby continued to accept \$485.00 annually for use of the site through the year 2000.

In October, 2000, the parcel was sold to Norman and Deborah Jo Johannesen (Licensor). County continued to pay \$485.00 annually as rental space for the site, but the Licensor refused to accept the payment because they desired a higher amount and there was no executed License Agreement. The uncashed checks were returned to the County. Since 2000, County staff and Licensor have been negotiating a new License Agreement and Licensor has continued to allow County use of the site, accepting no payment, with the understanding that once the License Agreement is signed the new rental amount would be retroactive to the year 2001. There have been numerous legal issues that needed resolution regarding the property prior to requesting approval from the Board for a new License Agreement.

County staff is now satisfied that these issues have been resolved. County continues to need the site for communications for the Humboldt County Sheriff's Department, Local Government departments including Public Works, Building Inspections, Health, Social Services, and Emergency Medical, for transmitting and receiving. Therefore, staff is requesting the Board approve of the attached License Agreement which will insure County's right to use the site for another ten (10) years with options to extend for two (2) additional (5) year periods.

The annual rental amount is One Thousand Dollars (\$1,000.00). With Board approval, including the annual rent for the years 2001, 2002, 2003 and 2004, the amount owed to Licensor equals Four Thousand Dollars (\$4,000.00). The rent thereafter on the anniversary of the month this License Agreement is executed will increase by three and one-half percent until the year 2014.

FINANCIAL IMPACT:

The Communications line for Rents and Leases this FY has already allocated \$485.00 for the Pratt License. The balance of the back payment and remainder of the current year payment will need to come from this supplemental budget request. Currently the Radio Capitalization Fund has a balance of \$151,386.00. This request will reduce that balance by \$3515.

OTHER AGENCY INVOLVEMENT:

Real Property; County Counsel; Communications

ALTERNATIVES TO STAFF RECOMMENDATIONS:

N/A

ATTACHMENT:

License Agreement

# ORIGINAL

## LICENSE AGREEMENT

between

NORMAN A. JOHANNESEN & DEBORAH JO JOHANNESEN  
"LICENSOR"

and

COUNTY OF HUMBOLDT, "LICENSEE".

for

PRATT MOUNTAIN RADIO FACILITY



## LICENSE AGREEMENT

THIS AGREEMENT, hereinafter referred to as "License", is entered into between Norman A. Johannesen & Deborah Jo Johannesen, their heirs, successors, or assigns, hereinafter referred to as the "Licensor", and the County of Humboldt, a political subdivision of the State of California, hereinafter referred to as the "Licensee".

IN CONSIDERATION of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

### ARTICLE 1. PREMISES

Section 1.01. Licensor herein licenses to Licensee, those certain premises owned by Licensor as shown and otherwise described on the attached Exhibit "A" (attached hereto and incorporated herein by reference) also known as Pratt Mountain and hereinafter referred to as the "Premises". Licensor, for the term, and upon conditions hereinafter set forth, agrees to allow Licensee to use the Premises as hereinafter set forth.

#### Subordination

Section 1.02. This License shall be subordinate and subject at all times to any existing mortgage or deed of trust covering the Premises or which at any time hereafter shall be made, and to all advances made, or hereafter to be made upon the security hereof.

### ARTICLE II. PERMITTED USE

#### Use

Section 2.01. The Premises are licensed to Licensee for the sole and express purpose of Licensee using the Premises for placement for tower and building for Licensee's communication facilities, including frequencies of:

Humboldt County Sheriff and/or other law enforcement departments under emergency situations - Transmit 154.740 & Receive 155.790 MHz;

Local Government (Public Works, Building Inspection, Health, Social Services and Other) - Transmit 153.905 & Receive 155.895 MHz;

Emergency Medical - Transmit 463.025 & Receive 468.025 MHz.

Except during a period that is determined to be an "emergency", use of frequencies other than those herein referenced will require the written approval of Licensor in advance of additional or new frequencies being used at the Premises, with approval for Licensee's use of additional frequencies subject to the requirements of following Section 2.03. Approval for additional frequencies shall not be unreasonably withheld.

#### Ingress & Egress to Premises

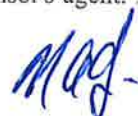
Section 2.02. Licensee and its agents shall have the right of ingress and egress to the Premises at all times during the term of this License for the limited purpose of carrying on the use as set out in Section 2.01 so long as Licensee is not in default under this License as herein defined in Article X. Licensee's right to ingress and egress shall be strictly limited in connection with the purposes set out in Section 2.01, and shall not include the right to pause, view, picnic, camp, hunt or use the right of way for any other purpose, nor to extend an invitation to anyone else to use the same. Licensee is restricted from trespassing or using any part of the land, other than the road and the Premises. Licensee herein understands, and Licensee herein agrees, that the rights and restrictions of this License, at all times, apply to employees and/or agents of Licensee.

The right to ingress and egress shall be restricted to the existing road to the Premises; provided, however, that if said road is changed, altered, or relocated at any time, the Licensee shall use the road as designated from time to time by Licensor. Licensee recognizes and agrees that the road to the site is only a partially improved road and traveling the road safely requires caution. Licensee, Licensee's employees and/or agents traveling the road agree to do so at their own risk with the understanding that the Licensor assumes no liability as result of Licensee's use of the road to the Premises. Licensee, Licensee's employees and/or agents agree that after opening the gate and driving through the gate to access or exit the Premises, Licensee, Licensee's employees and/or agents will immediately close and lock the gate.

#### Compliance With Law & Elimination of Interference

Section 2.03. Licensee shall comply with and conform to all laws and regulations, county, state and federal, and any and all requirements and order of any county, state or federal board authority, present or future, in any way relating to the condition use, or occupancy of the Premises throughout the entire Term of this License.

Licensee recognizes the right of Licensor to license space to other tenants within and upon the adjacent property owned by Licensor and upon the Premises of Licensor for FCC approved communications. Any licensee/tenant installing equipment and utilizing frequencies not previously in use, or previously authorized by Licensor, including the herein named Licensee, does so as a subordinate licensee to all other tenants who have pre-existing agreements with Licensor on Pratt Mountain. A subordinate licensee/tenant's transmission shall not interfere with any prior tenant's electronic operations, even where all parties believe they are operating consistent with FCC procedures. Should interference develop, upon subordinate licensee/tenant being informed (verbally and in writing, with copy to Licensor) of the interference by the licensee/tenant whose equipment and/or transmission is being impacted by a subordinate licensee/tenant's transmission, subordinate licensee/tenant will immediately cease and desist from transmitting, except Licensor, or Licensor's agent, may approve transmitting for short periods of time when testing is being done to determine if the interference has been cured, which test period will be as approved by Licensor, or Licensor's agent. If after ten (10)



days, or period of time as otherwise identified by Licensor, a subordinate licensee/tenant cannot eliminate or cure the interference causing a deterioration of another licensee/tenant's operations, Licensor reserves the right to deny Licensee the use of new frequencies and Licensor also reserves the right to terminate any license or agreement, if in the judgment of Licensor, termination of a license or other agreement is appropriate under the circumstances.

As used herein and throughout this License, interference with a broadcasting activity shall mean (a) a condition existing which constitutes interference within the meaning of the provisions of the recommended practices of the Electronics Industries Association (EIA) and the rules and regulations of the Federal Communications Commission (FCC) then in effect, or (b) there is a material impairment of the quality of either sound or picture signals on a broadcasting activity of any party authorized by the Licensor to use the Premises in any material portion of the protected service area of such activity as such area is or may be defined by the FCC at any hour during the period of operation of such activity, as compared with that which would be obtained if no other broadcasters were broadcasting from the tower or had any equipment on a tower or other support structure. In the case of any interference caused by the failure of any party's installations that use the Premises, the parties will comply with the recommended practices of EIA or the rules and regulations of the FCC. Each licensee/tenant, at licensee/tenant's cost, whose facility causes such interference, shall be required to remove such interference, regardless of which installation was first constructed. With respect to the initial installation by Licensee of its transmission facilities on the Premises, Licensee shall be responsible for taking such steps as may be necessary to prevent interference with the existing broadcasting facilities as well as those third parties either on the Premises or on adjacent property of Licensor.

#### Restrictions on Licensee's Use

Section 2.04. Licensee agrees, in using the Premises:

##### Waste

(a) Not to commit any waste or suffer any waste to be committed upon the Premises, or adjoining area;

##### Nuisance

(b) Not to commit any public or private nuisance or any other act or thing which might or would disturb the quiet enjoyment of any other tenant or Licensor or user of the Premises or any occupant of adjacent property;

##### Insurance Risks

(c) Not keep, use, or sell on the Premises any article, or conduct any activity thereon, which may be prohibited by standard form of fire insurance policy, such as flammable liquids, corrosive materials and/or similar hazardous materials;

##### Maintain Security of Site

(d) To refrain from handing out keys or codes to locks to the Premises to individuals without first being authorized by the Licensor or Licensor's agent, and further, Licensee agrees not to damage or allow any employees, agents, invitees or guests to examine, handle, or tamper with any other equipment on property of Licensor.

##### No Warranty by Licensor

Section 2.05. Licensee recognizes that other licensees/tenants will have access to the property of Licensor on Pratt Mountain and Licensee recognizes that it is Licensee's sole responsibility to provide for the security of Licensee's equipment, including security of the Premises in event Licensee considers Licensor's security of the premises inadequate, and Licensee herein accepts that Licensor does not extend any warranties concerning the security of the Premises or Licensee's equipment, and Licensor does not make any representations or warranties regarding Licensee's ability to gain access to the Premises in the event of inclement weather.

##### No Warranty on Continuity of Utility Services

Section 2.06. Licensee is herein made aware that Licensor has no responsibility or control over the delivery of electric and/or other utilities to the Premises; therefore, Licensor makes no representations or warranties regarding continuity of utility services to the Premises as the Premises is remotely located and subject to severe weather conditions which may cause periodic interruption of utility service.

#### ARTICLE III. TERM

##### Term

Section 3.01. The term of this License ("Term") shall commence upon the 1st day of the next month following the execution by Licensee with the initial Term to be ten (10) years. At the end of the herein referenced ten year term, assuming Licensee is not in default on any of the terms of this License at the end of any term, Licensee will have the option of extending or not extending this License for two (2) additional five (5) year terms upon Licensee providing Licensor written notice no less than ninety (90) days prior to the end of the then existing Term of the License.



## Holding Over

Section 3.02. If Licensee holds possession of the Premises after the Term of this License, Licensee shall be a tenant at sufferance only, but otherwise subject to all the terms and conditions of this License, whether or not Licensor shall accept any rent from Licensee while Licensee is so holding over. In event Licensee shall hold over without Licensor permission, unless the Licensor notifies the Licensee, in writing, the monthly rental due during such holding over period shall be an amount equal to one and one half (1 1/2) times the monthly rent as computed for the last month of the Term. In the event the holding over is for a period of less than a month, said 150% rent shall be prorated. Hold over rent, as referenced in this Section 3.02, will not apply to the one hundred eighty (180) days as referenced in Section 6.02 of this License.

## ARTICLE IV. RENT

### Rent

Section 4.01. The rental to be paid by Licensee to Licensor, in advance and payable within the first month of each year, shall be \$1000.00 (one thousand dollars) per year and increasing 3½% (three and one half percent) beginning on the anniversary of the signing of this License and each year thereafter. Licensor will reserve the right to establish the amount of rent that will be paid by Licensee for any period beyond the initial ten (10) year Term and shall notify Licensee within one hundred eighty (180) days prior to the end of the initial ten (10) year Term or any five (5) year term extension. The notice shall be in writing and Licensee shall have ninety (90) days from receipt of notification to approve or disapprove of dollar amount and to extend the term of the License as provided in Section 3.01 of this License.

## ARTICLE V. TAXES AND UTILITIES

### Taxes

Section 5.01. All real property taxes will be paid by Licensor, where applicable, unless some portion of Licensee's facility is included in the assessed value of Licensor's property tax billing. Any and all personal property taxes assessed on Licensee's facilities shall be paid directly by Licensee.

### Utilities

Section 5.02 Licensee agrees to obtain and pay any and all utilities used by Licensee directly from the utility companies with Licensor making no warranties or representations regarding the continuity of service at the Premises.

## ARTICLE VI. ALTERATIONS, REPAIRS, RESTORATION

### Consent of Licensor to Alterations

Section 6.01. Licensee shall make no installations, additions, or improvements in or to the Premises, except as otherwise authorized in this License without the prior written consent of Licensor or Licensor's agent. In event Licensee finds it necessary to make improvements to Licensee's facilities, upon Licensor approving plans submitted by Licensee, Licensee might make the necessary improvements.

### Abandoning Tower & Building in Place Upon Termination of License

Section 6.02 It is understood and agreed between the parties that all installations, additions, or improvements erected or installed at any time upon the Premises during the Term of this License by Licensee will be and remain the property of Licensee. Upon termination of this License, for whatever reason, within thirty (30) days after termination of this License, Licensee will commence to either remove the tower and building from the Premises or elect to conduct a surplus property sale. No rent shall accrue during this period. In the event Licensee determines the tower and building to be surplus property, Licensee may elect to conduct a surplus property auction on site. Licensor shall not unreasonably withhold consent for conduct of the auction on subject property. Regardless of Licensee's choice, the tower and building will be removed within one hundred eighty (180) days of termination of the License. All property not removed within one hundred eighty (180) days of termination of the License shall become the property of Lessor, unless Lessor agrees otherwise.

### Licensee's Duty to Repair

Section 6.03. In the event Licensee causes any damage to the property of Licensor or to property of other tenants located on the property of Licensor, Licensee shall within 72 hours commence all reasonable repairs at Licensee's expense. If, thirty (30) days after Licensor has duly noticed Licensee of the extent of damage and need for repairs and Licensee has not commenced repairs or otherwise responded, Licensor will arrange for the repairs and Licensee will be responsible for payment of same upon Licensor submitting invoice for same to Licensee.

### Mechanics Liens

Section 6.04. Licensee agrees to pay promptly for all labor done or materials furnished for any work or repair, maintenance, improvement, alteration, or addition done by Licensee in connection with the Premises, and to keep and to hold the Premises free, clear and harmless of and from all liens that could arise by reason of any such work. If any such lien shall at any time be filed against



the Premises, Licensee shall either cause the same to be discharged of record within twenty days after the date of filing the same, or if Licensee, in Licensee's discretion and in good faith, determines that such lien should be contested, Licensee shall furnish such security as may be necessary or required to prevent any foreclosure proceedings against the Premises during the pendency of such contest. If Licensee shall fail to discharge such lien within such period or fail to furnish such security, then, in addition to other right or remedy, Licensor may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit in court or by giving security or in such other manner as is or may be prescribed by law. Licensee shall repay to Licensor on demand all sums disbursed hereof, including Licensor's cost, expenses, and reasonable attorneys fees incurred by Licensor in connection therewith. Nothing contained herein shall imply any consent or agreement on the part of Licensor to subject Licensor's interest in the real property, of which the Premises are a part, to liability under any mechanic's lien law.

#### Notice of Non-responsibility

Section 6.05. Licensor shall at all times have the right to post and to keep posted on the Premises such notices provided for under the laws of the State of California for the protection of the Premises from mechanic's liens or liens of similar nature.

### ARTICLE VII. INDEMNIFICATION AND INSURANCE

#### Hold Harmless Indemnification by Licensor

Section 7.01. Licensor agrees to indemnify and hold harmless and, at his/its own risk, cost and expense, defend Licensee from and against any and all liability expense, including defense cost, legal fees, and claims for damages arising from Licensor, Licensor's employees and agents negligence, intentional acts or breaches of this License. Indemnification with respect to defense costs shall be made at the time Licensee incurs such costs.

#### Hold Harmless Indemnification by Licensee

Section 7.02. Licensee agrees to indemnify and hold harmless and, at its own risk, cost and expense, defend Licensor from and against any and all liability expense, including defense cost, legal fees, and claims for damages arising from Licensee, Licensee's officers, employees and agents negligence, intentional acts, or breaches of this License. Indemnification with respect to defense costs shall be made at the time Licensor incurs such costs.

#### Comprehensive/Liability Insurance

Section 7.03. Comprehensive or Commercial General Liability Insurance provided by Licensee shall be at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence form CG0001), in an amount of \$1,000,000 per occurrence. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this project or the general aggregate shall be twice the required occurrence limit. Said policy shall contain, or be endorsed with the following provisions:

(a) The Licensor, its officers, employees and agents, are covered as additional insured for liability arising out of the operations performed by or on behalf of Licensee. The coverage shall contain no special limitations on the scope of protection afforded to Licensor, its officers, agents and employees.

(b) The policy shall not be canceled or materially reduced in coverage without thirty (30) days prior written notice ten (10) days for non-payment of the premium) to Licensor by certified mail.

(c) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the insurer's liability.

(d) For claims related to this project, the Licensee's insurance is primary coverage to the Licensor, and any insurance or self-insurance programs maintained by Licensor are excess to Licensee's insurance and will not be called upon to contribute with it.

(e) Any failure to comply with reporting or other provisions of the parties, including breach of warranties, shall not affect coverage provided to Licensee, its officers, employees and agents.

#### Property Insurance

Section 7.04. Licensee agrees to provide property insurance for the building and its contents through Licensee's property insurance.

#### Provision of California Labor Code

Section 7.05. By its signature here under, Licensee certifies that Licensee is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and Licensee will comply with such provisions in connection with any work performed on the premises. Any persons providing services with or on behalf of Licensee shall be covered by workers' compensation (or qualified self-insurance).





## ARTICLE VIII. ASSIGNMENT OR SUBLETTING

Section 8.01. Licensee shall not have the right to assign this License or sublet the Premises or space on Licensee's tower or in Licensee's building without prior written approval of Licensor. It is stipulated between the parties that Licensor would not have entered into this License if Licensor did not have the express right to refuse to approve an assignment or subletting of this License. In the event of assignment of this License, all provisions of this License shall be fully binding upon, and inure to the benefit of, the parties and to each of their heirs, executors, successors and assigns.

## ARTICLE IX. EMINENT DOMAIN

Section 9.01. If the whole or any part of the Premises shall be taken by any public authority under the power of eminent domain, then the term of this License shall cease on the part so taken from the date possession of that part shall be required for any public purpose, and the rent shall be paid up to that date. In the event of an appropriation of all or a portion of the Licensed Premises, Licensee shall not be entitled to assert a claim against the entire award to Licensor based upon an assertion that there is a bonus value to the License.

## ARTICLE X. DEFAULT

Section 10.01. Any and all of the following actions shall constitute a default of this License:

- (a) Use of the Premises for any purpose other than as authorized in this License; or
- (b) Default in the payment of rent or any other sums owing when due; or
- (c) Abandonment or vacation of Licensee from the Premises for thirty (30) days or more; or
- (d) Assignment of the Premises by Licensee, either voluntarily or by operation of law, whether by judgment, executions, death, or any other means; or
- (e) The filing by Licensee or any other person of a voluntary or involuntary petition in bankruptcy or an arrangement by or against Licensee; the adjudication of Licensee as bankrupt or insolvent; the appointment of a receiver of the business or of the assets of Licensee, except a receiver appointed at the instance of request of Licensor; the general or other assignment by Licensee for the benefit of Licensee's creditors; or
- (f) A default in the performance of any of the terms, covenants, and conditions herein contained; or
- (g) The inability of Licensee to pay the rent herein specified or to perform any other of the terms, covenants, or conditions herein by Licensee to be kept or performed.

### Remedies of Licensor on Default

Section 10.02. If Licensee breaches this License, Licensor shall provide Licensee notice of the breach and thirty (30) days in which to begin to remedy the breach. Licensee shall proceed diligently to remedy the breach. If the Licensee has not commenced to remedy the breach within thirty (30) days, Licensor shall have, in addition to other rights or remedies, the right of reentry, after having given thirty (30) days notice and the right to take possession of all personal property from the Premises; Licensor may store the personal property in a public warehouse or auction yard or elsewhere at Licensee's expense and for Licensee's account. Licensor, at Licensor's election, shall become the owner of all personal property, of which Licensor has so taken possession, without being obligated to compensate Licensee for them.

If Licensor elects to re-enter, as provided above, or to take possession under legal proceedings or under any notice provided for by law, Licensor may:

- (1) terminate this License, or
- (2) from time to time, without terminating this License, re-let the entire or any part of the Premises for such terms (which may extend beyond the term of this License) and at such rentals and other conditions as Licensor, in Licensor's sole discretion, deems advisable. Licensor also has the right to make alterations and repairs to the Premises.

On each re-letting either subparagraph (a) or (b) shall apply:

(a) Licensee shall be immediately liable for payment to Licensor of: (1) Licensor's expenses of re-letting and making alterations and repairs, (2) the amount by which the rent specified in this License for the period of the re-letting (up to but not beyond the term of this License) exceeds the amount agreed to by the new Licensee to be paid as rent for the Licensed Premises, and (3) all other indebtedness due under the License; or

(b) At Licensor's option, rents received by Licensor from re-letting shall be applied: first, to the payment of any indebtedness, except rent, due under this License from Licensee to Licensor; second, to the payment of expenses of re-letting and of

alterations and repairs; third, to the payment of rent due under the License and unpaid, with its residue, if any, being held by Licensor and applied in payment of future rent as it becomes due and payable under the License.

If Licensee has been credited with rent to be received by re-letting under the option in subparagraph (a) above and the rent shall not be promptly paid to Licensor by the new tenant; or if the rentals received from re-letting under the option in subparagraph (b) above during any month are less than that to be paid during that month by Licensee under the License, Licensee shall pay the deficiency to Licensor. This deficiency shall be calculated and paid monthly.

No reentry or taking possession of the Premises by Licensor shall be construed as an election by Licensor to terminate this License unless written notice of such an intention is given to Licensee or the License is declared terminated by a court of competent jurisdiction. Even though the re-letting was without termination by Licensor, Licensor may at any future time elect to terminate the License for the previous breach by Licensee. If Licensor terminates the License for a breach, in addition to any other remedy Licensor may have, Licensor may recover from Licensee all damages Licensor incurs by reason of the breach, including both the cost of recovering the Premises and the worth, at the time of termination, of the excess of the amount of rent and charges equivalent to rent specified in this License, for the remainder of the stated term, over the then reasonable rental value of the Premises for the remainder of the term. All of these amounts shall be immediately due from Licensee to Licensor.

All of these shall be concurrent and cumulative and are in addition to, and not in derogation of, all other rights and remedies available to Licensor.

Nothing contained in this License, and no security or guarantee of the Licensee that Licensor holds now or in the future under the License, shall in any way constitute a bar or defense to an action by Licensor in unlawful detainer or for recovery of the Premises.

#### Waiver of Breach

Section 10.3. Licensor's failure to act upon any default or breach of covenant on the part of Licensee shall not be, or be construed as a waiver thereof, nor shall any custom or practice which may grow up between the parties in the course of administering this instrument be construed to waive or to lessen the right of Licensor to insist upon the performance by Licensee of any term, covenant, or condition hereof, or to exercise any rights given Licensor on account of any such default. A waiver of a particular breach, or default, shall not be deemed to be a waiver of the same or any other subsequent breach or default. The acceptance of rent here under shall not be, or be construed to be, a waiver of any term, covenant, or condition of this License.

The failure of Licensor to insist upon the strict performance of any or all of the terms, conditions, covenants and agreements herein contained, shall not constitute or be considered as a waiver of or relinquishment of the Licensor's right thereafter to enforce any such default or term, condition, covenant or agreement and the same shall continue in full force and effect.

#### ARTICLE XI. NOTICES

##### Notices

Section 11.01. Any notice, demand, or communication under, or in connection with, this License, may be served upon Licensor by personal service, or by mailing the same by certified mail in the United States Post Office, postage prepaid, and directed to the Licensor as follows, and the same may likewise be served on Licensee by personal service or by mailing the same addressed to Licensee as follows:

To Licensor: Norman A. Johannesen  
Deborah Jo Johannesen  
400 Harris Creek Road (personal service)  
P.O. Box 24  
Whitethorn, CA 95589

To Licensee: County of Humboldt  
General Services Department  
Real Property Division  
825 Fifth Street, Room 103  
Eureka, CA 95501

Licensor and Licensee may change the above referenced address by notifying the other party in writing as to such new address as Licensor or Licensee may desire to be used and which address shall continue as the address until further written notice. Notice shall be deemed communicated two (2) County working days from time of mailing if mailed as provided herein.

#### ARTICLE XII. GENERAL PROTECTIVE PROVISIONS

##### Surrender at End of Term

Section 12.01. Licensee shall peaceably give up and surrender to Licensor the Premises and every part thereof to Licensor at the termination of the Term of this License in as good a condition and repair as reasonable use and wear thereof will permit.

##### Release of Licensor After Sale

Section 12.02. In the event of a sale or conveyance by the Licensor of the Premises or any part containing the Premises, Licensor shall be released from any future liability upon any of the covenants or conditions, expressed or implied, in favor of Licensee, and in such event, the Licensee agrees to look solely to the responsibility of the successor in interest of the Licensor in and to this License.



#### Interest

Section 12.03. In the event any sums due to Licensor, whether for rent, repayment, or otherwise, are not paid within thirty (30) days of the due date, said sums shall bear interest at the highest rate allowable by law commencing with the first day after said sums became due.

#### Licensor's Right to Inspect and/or Use Portion of Premises

Section 12.04. Licensor shall be entitled, at all reasonable times, to go on the Premises for the purpose of inspecting the Premises, or for the purpose of inspecting the performance by Licensee of the terms and conditions of this License, or for the purpose of posting and keeping posted thereon notices of non-responsibility for any construction, alteration, or repair thereof, as required or permitted by any law or ordinance. Further, Licensor retains the right to install underground utilities and/or other facilities on and over the Premises rented by Licensee where, in the judgment of Licensor, there is, or will be, no interference with Licensee's operations.

#### Licensee's Quitclaim

Section 12.05. At the expiration or earlier termination of this License, Licensee shall execute, acknowledge and deliver to Licensor, within thirty (30) days after written demand from Licensor to Licensee, any quitclaim deed or other document required by any reputable title company to remove the cloud of this License from the real property shown and/or described in the attached Exhibit A.

#### Remedy for Breach

Section 12.06. In the event of breach of this License by Licensor or Licensee, Licensor and/or Licensee shall have all rights and remedies as provided by law.

#### Licensor Default

Section 12.07. Licensor shall be in default of this License if Licensor fails or refuses to perform any material provision of this License that Licensor is obligated to perform if the failure to perform is not cured within ten (10) days after written notice of the default has been given by Licensee to Licensor. If the default cannot reasonably be cured within ten (10) days, Licensor shall not be in default of this License if Licensor commences to cure the default within the ten (10) day period and diligently and in good faith continues to cure the default.

#### Licensee's Remedies on Licensor's Default

Section 12.08. Licensee, at any time after Licensor is in default, can terminate this License or can cure the default at Licensor's cost. If Licensee at any time, by reason of Licensor's default, pays any sum or does any act that requires the payment of any sum, the sum paid by Licensee shall be due from Licensor to Licensee within five (5) days of notice of such sum, and if paid at a later date shall bear interest at the maximum rate Licensee is permitted by law to charge from the date the sum is paid by Licensee until Licensee is reimbursed by Licensor. If Licensor fails to reimburse Licensee as required by this section, Licensee shall have the right to withhold from future rent due the sum Licensee has expended until Licensee is reimbursed in full for the sum and interest on it. The remedies set forth in this section are in addition to and do not in any manner limit other remedies set forth in particular sections of this License.

Section 12.09. Licensee reserves the right to terminate this License, upon seven (7) days written notice, for any cause or reason provided by the License itself, or by law, or upon the happening of one or more of the following:

- (a) The making by Licensor of any general assignment for the benefit of creditors that would materially affect Humboldt County as Licensee.
- (b) The failure of Licensor to pay promptly when due all charges, fees, or other payments in accordance with this License.
- (c) The failure of Licensor to remedy any default, breach, or violation of county, municipal, federal and/or state laws or regulations by Licensor or its employees in accordance with this License.
- (d) The violation of any of the provisions of this License.
- (e) The premises becomes damaged due to fire, flood, earthquake, or any other natural disaster.
- (f) Intentionally supplying Licensee with false or misleading information or misrepresenting any material fact on its application or documents or in its statement to or before Licensee, or intentional failure to make full disclosure on its financial statement or other documents as required by Licensee of Licensor in accordance with this License.

All advance-paid consideration covering periods subsequent to the effective date of such termination shall be refunded by Licensor within thirty (30) days after demand by the Licensee. In the event any sums due to Licensee are not paid within



thirty (30) days of the due date, said sums shall bear interest at the highest rate allowed by law commencing with the first day after said sums became due.

## ARTICLE XIII. GENERAL PROVISIONS

### Covenants

Section 13.01. It is mutually agreed that the letting hereunder is made under and subject to the terms, covenants and conditions of this License and that Licensee covenants as a material part of the consideration for this License to keep and perform each and all of said terms, covenants, and conditions by Licensee to be kept or performed, and that this License is made upon the condition of such performance.

### Provisions Deemed Covenants and Conditions

Section 13.02. The parties here agree that all the provisions hereof are to be construed as covenants and conditions as though the words importing such covenants and conditions were used in each instance and that all of the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

### Time of Essence

Section 13.03. Time is of the essence in the performance of each provision of this License, and after Licensee's receipt of notice by Licensor, a delay of 72 hours is agreed to be a material breach as it relates to compliance with Section 2.03 ("Elimination of Interference") and a delay of more than thirty (30) days is agreed to be a material breach as it relates to performance of other provisions of this License.

### Cumulative Remedies

Section 13.04. The specified remedies to which Licensor or Licensee may resort under the terms of this License are cumulative and not intended to be exclusive of any other remedies afforded by law. The waiver of the performance of any term, covenant, or condition of this License by Licensor and Licensee shall not be construed as a waiver of any subsequent breach of the same term, covenant, or condition.

### Attorney's Fees

Section 13.05. If either party shall commence any legal action or proceeding, including an action for declaratory relief, against the other by reason of the alleged failure of the other to perform or keep any provision of this License to be performed or kept, the party prevailing in said action or proceeding shall be entitled to recover court costs and reasonable attorneys' fees (including reasonable value of services rendered by County Counsel) to be fixed by the court, and such recovery shall include court costs and attorneys' fees (including reasonable value of services rendered by County Counsel) on an appeal, if any. As used herein, "the party prevailing" means the party who dismisses an action or proceeding in exchange for payment of substantially all sums allegedly due, performance of provisions allegedly breached, or other considerations substantially equal to the relief sought by said party, as well as the party in whose favor final judgment is rendered.

### Invalidity

Section 13.06. If any of the terms, covenants, conditions or provisions of this License are held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

### Agency

Section 13.07. Nothing contained in this License shall be deemed or construed by the parties hereto or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any other association other than Licensor and Licensee, except as set forth in the introduction.

### Extensions

Section 13.08. All references to the term of this License shall include any extensions of such term.

### Captions

Section 13.09. The captions of articles of this License are for reference only and are not to be construed in any way as a part of this License.

### Binding Effect; Counterparts

Section 13.10. This License shall not be binding and in effect until a counterpart hereof has been executed and delivered by the parties to each other. This License **supersedes** and replaces all other leases, licenses and/or documents, both written and oral, and shall not be modified without the mutual consent of the parties hereto, first agreed in writing.



Gender

Section 13.11. As used in this License, the masculine, feminine or neuter gender, and the singular or plural number shall each be deemed to include the others whenever the context so indicates.

Licensors Not Officer, Employee or Agent of Licensee

Section 13.12. While engaged in carrying out and complying with the terms and conditions of this License, Licensors are independent parties and not officers, employees, or agents of Licensee.

Compliance With Law for Loading, Marking & Lighting of Tower

Section 13.13. Licensee shall comply with all requirements, where applicable, of all governmental authorities in force either now or in the future as it relates to marking, lighting and loading of the tower with Licensee's equipment.

Governing Law

Section 13.14. This License and all documents referred to herein shall be interpreted, construed and enforced in accordance with the internal laws, and not the law of conflicts, of the State of California applicable to agreements made and to be performed in such state. The parties hereto agree that all actions and proceedings relating directly or indirectly hereto shall be litigated in the State of California and venue shall lie in the County of Humboldt, which shall have subject matter jurisdiction, and the parties hereto hereby expressly consent to the jurisdiction of any such court and to venue therein. This consent to jurisdiction and venue in Humboldt County shall not be construed as a waiver of either party's right to appeal a judgment from the Humboldt County Superior Court.

Modification of License

Section 13.15. This License may be modified only by subsequent written agreement executed by Licensors and Licensee.

Destruction of Licensee's Facilities

Section 13.16. In the event the tower, building and/or other facilities installed by Licensee are destroyed in whole or part by fire or other casualty to the extent that they are substantially unusable, Licensee reserves the right to forthwith terminate this License upon written notice within seven (7) days following the date of loss.

Nuclear Free Clause

Section 13.17. Licensors and Licensee certify by their execution below that Licensors and Licensee are not nuclear weapons contractors, in that Licensors and Licensee are not knowingly or intentionally engaged in the research, development, production, or testing of nuclear warheads, nuclear weapons systems, or nuclear weapons components as defined by the Nuclear Free Humboldt County Ordinance. Licensors and Licensee agree to each immediately notify the other if either becomes a nuclear weapons contractor, as defined above. Licensee may immediately terminate this License if it determines that the foregoing certification is false or if the Licensors become a nuclear weapons contractor.

Hazardous Materials

Section 13.18. Licensors and Licensee herein agree not to store, use, or cause to be used, any environmentally hazardous materials on the Premises, or on the adjacent property of Licensors in conjunction with Licensee's use of the Premises. Either party may immediately terminate this License if either party determines that the other is, or has been, engaged in the use of environmentally unsafe materials on the Premises or on property adjacent to the Premises. In event it is determined that either party engages in the use of environmentally hazardous material on the Premises, the party responsible for same will be responsible for the cost of cleanup of same, regardless of the disposition of this License.

IN WITNESS WHEREOF, this License has been executed by the parties hereto with this License commencing on the first

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day of the month following the date that Licensee executes this License, with the date of execution as shown below.

"Licensor"

By: *Norman A. Johannessen*  
Norman A. Johannessen  
*Deborah Jo Johannessen*  
Deborah Jo Johannessen

Executed this 21 day of JAN, 2004.

"Licensee"

(SEAL) ATTEST:

CLERK OF THE BOARD

By: *Lois Cameron*

MAR - 9 2004

APPROVED AS TO FORM:  
COUNTY COUNSEL

By: *Joyce Stigter*

Deputy County Counsel

COUNTY OF HUMBOLDT INSURANCE  
CERTIFICATE (REVIEW AND APPROVAL):

By: \_\_\_\_\_

Risk Management

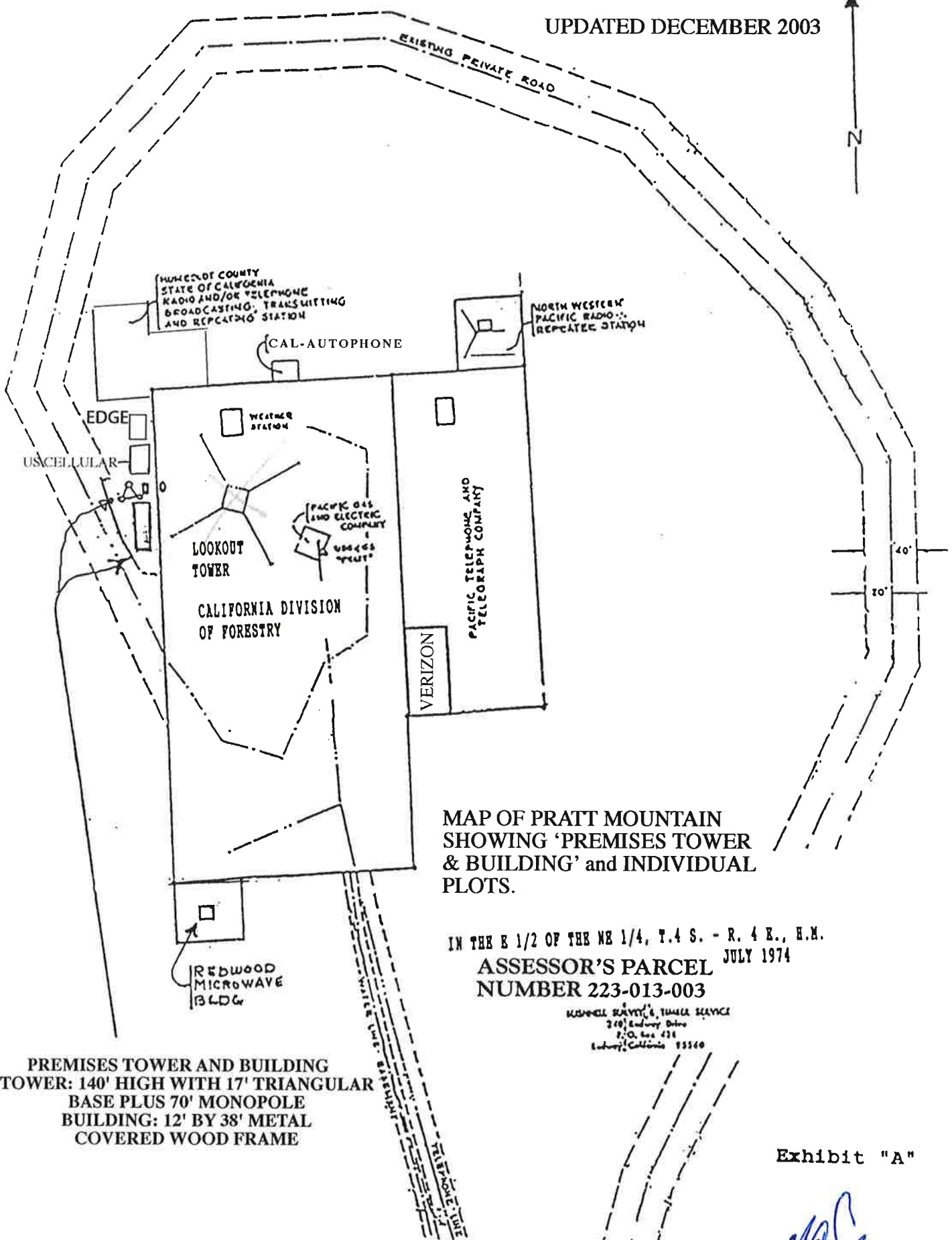
BOARD OF SUPERVISORS:

By: *[Signature]*

Chairman, Board of Supervisors  
County of Humboldt, State of California

Executed this 9<sup>th</sup> day of March, 2004.

UPDATED DECEMBER 2003



MAP OF PRATT MOUNTAIN  
SHOWING 'PREMISES TOWER  
& BUILDING' and INDIVIDUAL  
PLOTS.

IN THE E 1/2 OF THE NE 1/4, T.4 S. - R. 4 E., S.M.  
JULY 1974

ASSESSOR'S PARCEL  
NUMBER 223-013-003

KIMMEL SURVEY & TITLE SERVICE  
210 Audubon Drive  
P.O. Box 431  
Eureka, California 95560

PREMISES TOWER AND BUILDING  
TOWER: 140' HIGH WITH 17' TRIANGULAR  
BASE PLUS 70' MONOPOLE  
BUILDING: 12' BY 38' METAL  
COVERED WOOD FRAME

Exhibit "A"