

## COMMUNICATION TOWER AGREEMENT

THIS COMMUNICATION SITE LEASE AGREEMENT ("Agreement") dated and is effective as of \_\_\_\_\_, 2009, is between Clear Wireless LLC, a Nevada limited liability company ("Clearwire" or "Tenant"), and Chabot Las Positas Community College District ("Owner" or "Landlord").

For good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Premises. Owner owns a parcel of land ("**Land**") and a telecommunications tower ("**Tower**") located in the City of Hayward, County of , State of California, commonly known as 25555 Hesperian Blvd., Hayward, CA 94545 (APN: 441-0020-002-07, 441-0020-003-07). The Tower and the Land are collectively referred to herein as the "**Property**." The Land is more particularly described in Exhibit A annexed hereto. Subject to the provisions of Paragraph 2 below ("Effective Date/Due Diligence Period"), Owner hereby leases to Clearwire and Clearwire leases from Owner approximately 50 square feet of Land and space adjacent to and/or on the Tower and all access and utility easements necessary or desirable therefore (collectively, "**Premises**") as may be described generally in Exhibit B annexed hereto.

2. Effective Date/Due Diligence Period. This Agreement shall be effective on the date of full execution hereof ("**Effective Date**"). Beginning on the Effective Date and continuing until the Term Commencement Date as defined in Paragraph 4 below ("**Due Diligence Period**"), Clearwire shall only be permitted to enter the Property for the limited purpose of making appropriate engineering and boundary surveys, inspections, and other reasonably necessary investigations and signal, topographical, geotechnical, structural and environmental tests (collectively, "**Investigations and Tests**") that Clearwire may deem necessary or desirable to determine the physical condition, feasibility and suitability of the Premises. In the event that Clearwire determines, during the Due Diligence Period, that the Premises are not appropriate for Clearwire's intended use, or if for any other reason, or no reason, Clearwire decides not to commence its tenancy of the Premises, then Clearwire shall have the right to terminate this Agreement without penalty upon written notice to Owner at any time during the Due Diligence Period and prior to the Term Commencement Date. Owner and Clearwire expressly acknowledge and agree that Clearwire's access to the Property during this Due Diligence Period shall be solely for the limited purpose of performing the Investigations and Tests, and that Clearwire shall not be considered an owner or operator of any portion of the Property, and shall have no ownership or control of any portion of the Property (except as expressly provided in this Paragraph 2), prior to the Term Commencement Date.

3. Use. The Premises may be used by Tenant for any lawful activity in connection with the provisions of wireless communications services, including without limitation, the transmission and the reception of radio communication signals and the construction, maintenance and operation of related communications facilities. Landlord agrees, at no expense to Landlord, to cooperate with Tenant, in making application for and obtaining all licenses, permits and any and all other necessary approvals that may be required for Tenant's intended use of the Premises.

4. Term. The term of this Agreement shall commence upon the date Tenant begins construction of the Tenant Facilities (as defined in Paragraph 6 below) or eighteen (18) months following the Effective Date, whichever first occurs ("**Term Commencement Date**") and shall terminate on the fifth anniversary of the Term Commencement Date ("**Term**") unless otherwise terminated as provided herein. Tenant shall have the right to extend the Term for five (5) successive five (5) year periods ("**Renewal Terms**") on the same terms and conditions as set forth herein. This Agreement shall automatically be extended for each successive Renewal Term unless Tenant notifies Landlord of its intention not to renew at least thirty (30) days prior to commencement of the succeeding Renewal Term.

5. Rent. Within fifteen (15) business days following the Term Commencement Date and on the first day of each month thereafter, Tenant shall pay to Landlord as rent Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) per month ("**Rent**"). Rent for any fractional month at the beginning or at the end of the Term or Renewal Term shall be prorated. Rent shall be payable to Landlord at 25555 Hesperian Blvd., Hayward, CA 94545; Attention: Yulian Ligioso. All of Tenant's monetary obligations set forth in this Agreement are conditioned upon Tenant's receipt of an accurate and executed W-9 Form from Landlord. In year two (2) of the Initial Term,

and each year thereafter, including throughout any Extension Terms exercised, the monthly Rent will increase by two percent (2%) over the Rent paid during the previous year.

6. Improvements.

6.1 Tenant has the right to construct, maintain, install, repair secure, replace, remove and operate on the Premises radio communications facilities, including but not limited to utility lines, transmission lines, an ice bridge(s), an air conditioned equipment shelter(s), electronic equipment, transmitting and receiving antennas, microwave dishes, antennas and equipment, a power generator and generator pad, and supporting equipment and structures therefore (“**Tenant Facilities**”). In connection therewith, Tenant has the right to do all work necessary to prepare, add, maintain and alter the Premises for Tenant’s communications operations and to install utility lines and transmission lines connecting antennas to transmitters and receivers. All of Tenant’s construction and installation work shall be performed at Tenant’s sole cost and expense and in a good and workmanlike manner. Title to the Tenant Facilities and any equipment placed on the Premises by Tenant shall be held by Tenant or its lenders or assigns and are not fixtures. Tenant has the right to remove the Tenant Facilities at its sole expense on or before the expiration or earlier termination of this Agreement, and Tenant shall repair any damage to the Premises caused by such removal. Upon the expiration or earlier termination of this Agreement, Tenant shall remove the Tenant Facilities from the Property.

7. Access and Utilities.

7.1 Landlord shall provide Tenant, Tenant’s employees, agents, contractors, subcontractors and assigns with access to the Premises twenty-four (24) hours a day, seven (7) days a week, at no charge to Tenant. Landlord grants to Tenant, and Tenant’s agents, employees and contractors, a non-exclusive right and easement for pedestrian and vehicular ingress and egress across the Property, and such right and easement may be described generally in Exhibit B.

7.2 Landlord shall maintain all access roadways from the nearest public roadway to the Premises in a manner sufficient to allow pedestrian and vehicular access at all times under normal weather conditions. Landlord shall be responsible for maintaining and repairing such roadways, at its sole expense, except for any damage caused by Tenant’s use of such roadways.

7.3 In consideration of the Rent, Landlord shall provide 40 amps of electrical service to Tenant at no charge to Tenant through Landlord owned facilities.

8. Interference. Tenant shall operate the Tenant Facilities in compliance with all Federal Communications Commission (“**FCC**”) requirements including those prohibiting interference to communications facilities of Landlord or other lessees or licensees of the Property, provided that the installation and operation of any such facilities predate the installation of the Tenant Facilities. Subsequent to the installation of the Tenant Facilities, Landlord will not, and will not permit its lessees or licensees to, install new equipment on or make any alterations to the Property or property contiguous thereto owned or controlled by Landlord, if such modifications are likely to cause interference with Tenant’s operations. In the event interference occurs, Landlord agrees to use best efforts to eliminate such interference in a reasonable time period. Landlord’s failure to comply with this paragraph shall be a material breach of this Agreement.

9. Taxes. Tenant shall pay personal property taxes assessed against the Tenant Facilities and Landlord shall pay when due, all real property taxes and all other taxes, fees and assessments attributable to the Premises or this Agreement.

10. Termination.

10.1 This Agreement may be terminated without further liability on thirty (30) days prior written notice as follows: (i) by either party upon a default of any covenant or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default, except that this Agreement shall not be terminated if the default cannot reasonably be cured within such sixty (60) day period and the defaulting party has commenced to cure the default within such sixty (60) day period and diligently pursues the cure to completion; provided that the grace period for any monetary default is ten (10) days from receipt of written notice. This

Agreement may be terminated by Tenant without further liability for any reason or for no reason, provided Tenant delivers written notice of termination to Landlord prior to the Commencement Date.

10.2 This Agreement may also be terminated by Tenant without further liability on thirty (30) days prior written notice (i) if Tenant is unable to reasonably obtain or maintain any certificate, license, permit, authority or approval from any governmental authority, thus, restricting Tenant from installing, removing, replacing, maintaining or operating the Tenant Facilities or using the Premises in the manner intended by Tenant; (ii) if Tenant determines that the Premises are not appropriate for its operations for economic, environmental or technological reasons, including without limitation, signal strength, coverage or interference, or (iii) or Tenant otherwise determines, within its sole discretion, that it will be unable to use the Premises for Tenant's intended purpose.

11. Destruction or Condemnation. If the Premises or Tenant Facilities are damaged, destroyed, condemned or transferred in lieu of condemnation, Tenant may elect to terminate this Agreement as of the date of the damage, destruction, condemnation or transfer in lieu of condemnation by giving notice to Landlord no more than forty-five (45) days following the date of such damage, destruction, condemnation or transfer in lieu of condemnation. If Tenant chooses not to terminate this Agreement, Rent shall be reduced or abated in proportion to the actual reduction or abatement of use of the Premises.

12. Insurance; Subrogation; and Indemnity.

12.1 Tenant shall provide Commercial General Liability Insurance in an aggregate amount of One Million and No/100 Dollars (\$1,000,000.00). Tenant may satisfy this requirement by obtaining the appropriate endorsement to any master policy of liability insurance Tenant may maintain.

12.2 Landlord, at Landlord's sole cost and expense, shall procure and maintain CGL insurance covering bodily injury and property damage with a combined single limit of at least One Million and 00/100 Dollars (\$1,000,000.00) per occurrence. Such insurance shall insure, on an occurrence basis, against all liability of Landlord, its employees and agents arising out of or in connections with landlord's use, occupancy and maintenance of the Property. Within thirty (30) days following the Effective Date, Landlord shall provide Tenant with a COI evidencing the coverage required by this Section.

12.3 Landlord and Tenant hereby mutually release each other (and their successors or assigns) from liability and waive all right of recovery against the other for any loss or damage covered by their respective first-party property insurance policies for all perils insured thereunder. In the event of such insured loss, neither party's insurance company shall have a subrogated claim against the other.

12.4 Landlord and Tenant shall each indemnify, defend and hold the other harmless from and against all claims, losses, liabilities, damages, costs, and expenses (including reasonable attorneys' and consultants' fees, costs and expenses) (collectively "Losses") arising from the indemnifying party's breach of any term or condition of this Agreement or from the negligence or willful misconduct of the indemnifying party or its agents, employees or contractors in or about the Property. The duties described in this Paragraph 12.4 shall apply as of the Effective Date of this Agreement and survive the termination of this Agreement.

13. Assignment. Tenant may assign this Agreement at any time with notice to be provided to Landlord as soon thereafter as reasonably possible.

14. Title and Quiet Enjoyment.

14.1 Landlord represents and warrants that (i) it has full right, power, and authority to execute this Agreement, (ii) Tenant may peacefully and quietly enjoy the Premises and such access thereto, provided that Tenant is not in default hereunder after notice and expiration of all cure periods, (iii) it has obtained all necessary approvals and consents, and has taken all necessary action to enable Landlord to enter into this Agreement and allow Tenant to install and operate the Facility on the Premises, including without limitation, approvals and consents as may be necessary from other tenants, licensees and occupants of Landlord's Property, and (iv) the Property and access rights are free and clear of all liens, encumbrances and restrictions except those of record as of the Effective Date.

14.2 Tenant has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice. If, in the opinion of Tenant, such title report shows any defects of title or any liens or encumbrances which may adversely affect Tenant's use of the Premises, Tenant shall have the right to terminate this Agreement immediately upon written notice to Landlord.

15. Environmental. As of the Effective Date of this Agreement: (1) Tenant hereby represents and warrants that it shall not use, generate, handle, store or dispose of any Hazardous Material in, on, under, upon or affecting the Property in violation of any applicable law or regulation, and (2) Landlord hereby represents and warrants that (i) it has no knowledge of the presence of any Hazardous Material located in, on, under, upon or affecting the Property in violation of any applicable law or regulation; (ii) no notice has been received by or on behalf of Landlord from any governmental entity or any person or entity claiming any violation of any applicable environmental law or regulation in, on, under, upon or affecting the Property; and (iii) it will not permit itself or any third party to use, generate, handle, store or dispose of any Hazardous Material in, on, under, upon, or affecting the Property in violation of any applicable law or regulation. Without limiting Paragraph 12.4, Landlord and Tenant shall each indemnify, defend and hold the other harmless from and against all Losses (specifically including, without limitation, attorneys', engineers', consultants' and experts' fees, costs and expenses) arising from (i) any breach of any representation or warranty made in this Paragraph 15 by such party; and/or (ii) environmental conditions or noncompliance with any applicable law or regulation that result, in the case of Tenant, from operations in or about the Property by Tenant or Tenant's agents, employees or contractors, and in the case of Landlord, from the ownership or control of, or operations in or about, the Property by Landlord or Landlord's predecessors in interest, and their respective agents, employees, contractors, tenants, guests or other parties. The provisions of this Paragraph 15 shall apply as of the Effective Date of this Agreement and survive termination of this Agreement. "**Hazardous Material**" means any solid, gaseous or liquid wastes (including hazardous wastes), regulated substances, pollutants or contaminants or terms of similar import, as such terms are defined in any applicable environmental law or regulation, and shall include, without limitation, any petroleum or petroleum products or by-products, flammable explosives, radioactive materials, asbestos in any form, polychlorinated biphenyls and any other substance or material which constitutes a threat to health, safety, property or the environment or which has been or is in the future determined by any governmental entity to be prohibited, limited or regulated by any applicable environmental law or regulation.

16. Waiver of Landlord's Lien. Landlord hereby waives any and all lien rights it may have, statutory or otherwise concerning the Tenant Facilities or any portion thereof which shall be deemed personal property for the purposes of this Agreement, whether or not the same is deemed real or personal property under applicable laws, and Landlord gives Tenant and Mortgagees the right to remove all or any portion of the same from time to time, whether before or after a default under this Agreement, in Tenant's and/or Mortgagee's sole discretion and without Landlord's consent.

17. 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 for next-business-day delivery by a nationally recognized overnight carrier to the following addresses:

If to Tenant, to:	With a copy to:	If to Landlord, to:
Clear Wireless LLC Attn: Site Leasing 4400 Carillon Point Kirkland, WA 98033 Telephone: 425-216-7600 Fax: 425-216-7900 Email: siteleasing@clearwire.com	Clear Wireless LLC Attention: Legal Department 4400 Carillon Point Kirkland, WA 98033 Telephone: 425-216-7600 Fax: 425-216-7900	Yulian Ligioso 25555 Hesperian Blvd. Hayward, CA 94545 Telephone: 510-723-6618

Landlord or Tenant may from time to time designate any other address for this purpose by written notice to the other party. All notices hereunder shall be deemed received upon actual receipt or refusal to accept delivery.

18. Marking and Lighting. Landlord shall be responsible for compliance with all marking and lighting requirements of the Federal Aviation Administration ("FAA") and the FCC. Should Tenant be cited because the Property is not in compliance and should Landlord fail to cure the conditions of noncompliance, Tenant may either terminate this Agreement or proceed to cure the conditions of noncompliance at Landlord's expense,

which amounts may be deducted from (and offset against) the Rent and any other charges or amounts due, or coming due, to Landlord.

19. Miscellaneous.

19.1 If Tenant is to pay Rent to a payee other than the Landlord, Landlord shall notify Tenant in advance in writing of the payee's name and address.

19.2 The substantially prevailing party in any legal claim arising hereunder shall be entitled to its reasonable attorney's fees and court costs, including appeals, if any.

19.3 If any provision of the 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, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

19.4 Terms and conditions of this Agreement which by their sense and context survive the termination, cancellation or expiration of this Agreement will so survive.

19.5 This Agreement shall be governed under law of the State in which the Premises are located, and be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

19.6 A Memorandum of Agreement in the form attached hereto as Exhibit C may be recorded by Tenant confirming the (i) effectiveness of this agreement, (ii) expiration date of the Term, (iii) the duration of any Renewal Terms, and/or other reasonable terms consistent with this Agreement.

19.7 All Exhibits referred herein are incorporated herein for all purposes.

19.8 Landlord shall make a diligent and good faith effort to obtain a Nondisturbance Agreement for the benefit of Tenant from each lender with a security interest recorded upon the title to the Site at the time of execution of this Agreement.

19.9 This Agreement constitutes the entire Agreement between the parties, and supersedes all understandings, offers, negotiations and other leases concerning the subject matter contained herein. There are no representations or understandings of any kind not set forth herein. Any amendments, modifications or waivers of any of the terms and conditions of this Agreement must be in writing and executed by both parties.

19.10 Landlord agrees not to disclose, without the written consent of Tenant, any of the terms of this Agreement or any other written agreement between the parties relating to the privileges granted herein, except as required by governmental authority, in which case Landlord shall inform Tenant prior to divulging such information.

**IN WITNESS WHEREOF**, the parties have entered into this Agreement effective as of the date first above written.

**LANDLORD:**

**TENANT:**

Chabot Las Positas Community College District

Clear Wireless LLC, a Nevada limited liability company

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

Tax I.D.: \_\_\_\_\_

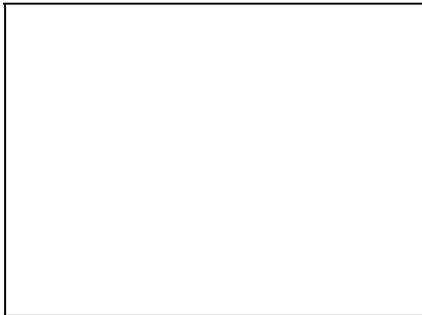


*[Notary block for Tenant]*

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of Clear Wireless LLC, a Nevada limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_



(Use this space for notary stamp/seal)

\_\_\_\_\_  
Notary Public  
Print Name \_\_\_\_\_  
My commission expires \_\_\_\_\_

**EXHIBIT A**

**DESCRIPTION OF LAND**

to the Agreement dated \_\_\_\_\_, 2009, by and between Chabot Las Positas Community College District, as Landlord, and Clear Wireless LLC, a Nevada limited liability company, as Tenant.

The Land is described and/or depicted as follows (metes and bounds description):

APN: 441-0020-002-07, 441-0020-003-07

**A WRITTEN DESCRIPTION OF THE LAND WILL BE PRESENTED HERE OR ATTACHED HERETO**

Property located in Alameda, CA

BEGINNING at a point on the northeastern line of the parcel of land described in the Final Order of Condemnation rendered February 18, 1964 in Superior Court, Alameda County, State of California, entitled South County Joint Junior College District of Alameda County and Contra Costa County, State of California, a public corporation, plaintiff vs. Marian Cecile Mohr, et al, defendants, Cast No. 332485, a certified copy of which was recorded February 18, 1964 in Reel 1126 of Official Records of Alameda County, Image 821, (AW/27019), distant along said line North 25°02'30" West 231.50 feet from the center line of Depot Read, or County Road No. 812, 50 feet in width, said point of beginning being on the arc of a curve, concave southeasterly having a radius of 507.00 feet, (a radial line of said curve to last said point bears North 32°10'46" West); and running thence northeasterly along the arc of said curve through an angle of 7°08'16" a distance of 63.16 feet to a point of reverse curve; thence northeasterly, northerly and northwesterly along the arc of said reverse curve having a radius of 20.00 feet through an angle of 90°00'00" a distance of 31.42 feet to the point of tangency thereof on a line drawn parallel with the distant southwesterly, at right angles, 22.00 feet from the southwestern line of Hesperian Boulevard, or County Road No. 90, 66 feet in width; thence along said parallel line, so drawn, North 25°02'30" West 20.59 feet to the northwestern line of the parcel of land firstly described in the deed from Andrew Anderson, to Ettore Zito, et ux, dated September 11, 1925 and recorded October 01, 1925 in Book 1051 of Official Records of Alameda County, at Page 395, (U-80425), being a southeastern line of said parcel of land described in Final Order of Condemnation; thence along last said line South 64°57'30" West 83.00 feet to said northeastern line of the parcel of land described in said Final Order of Condemnation; thence along last said line South 25°02'30" East 44.52 feet to the point of beginning.

Containing 3,365 square feet.

AND BEING the same property conveyed to South County Joint Junior College District of Alameda County and Contra Costa County, State of California, its successors and assigns from City of Hayward, a municipal corporation by Grant Deed dated July 01, 1969 and recorded April 30, 1973 in Deed Book 3403, Page 728.

Tax Parcel Nos. 441-0020-002-07, 441-0020-003-07

## EXHIBIT B

### DESCRIPTION OF PREMISES

to the Agreement dated \_\_\_\_\_, 2009, by and between Chabot Las Positas Community College District, as Landlord, and Clear Wireless LLC, a Nevada limited liability company, as Tenant.

The Premises are described and/or depicted as follows:

#### **A DRAWING OF THE PREMISES WILL BE PRESENTED HERE OR ATTACHED HERETO**

Please see attached drawings.

#### **Notes:**

1. Tenant may replace this Exhibit with a survey of the Premises once Tenant receives it.
2. The Premises shall be setback from the Property's boundaries as required by the applicable governmental authorities.
3. The access road's width will be the width required by the applicable governmental authorities, including police and fire departments.
4. The type, number, mounting positions and locations of antennas and transmission lines are illustrative only. The actual types, numbers, mounting positions and locations may vary from what is shown above.
5. The locations of any utility easements are illustrative only. The actual locations will be determined by the servicing utility company in compliance with all local laws and regulations.

**EXHIBIT C**

**COMMUNICATIONS FACILITY**

to the Agreement dated \_\_\_\_\_, 2009, by and between Chabot Las Positas Community College District, as Landlord, and Clear Wireless LLC, a Nevada limited liability company, as Tenant.

**RECORDED AT REQUEST OF, AND WHEN RECORDED RETURN TO:**

Clear Wireless LLC, a Nevada limited liability company  
400 Carillon Point  
Kirkland, WA 98033  
Attn: Property Manager

**MEMORANDUM OF AGREEMENT**  
**APN: 441-0020-002-07, 441-0020-003-07**

This MEMORANDUM OF AGREEMENT is entered into on \_\_\_\_\_, 200\_\_\_\_, by Chabot Las Positas Community College District, with an address at 25555 Hesperian Blvd., Hayward, CA 94545 (hereinafter referred to as “**Owner**” or “**Landlord**”) and Clear Wireless LLC, a Nevada limited liability company, with an address at 4400 Carillon Point 0, Kirkland, WA 98033 (hereinafter referred to as “**Clearwire**” or “**Tenant**”).

1. Owner and Clearwire entered into a Communication Tower Agreement (“**Agreement**”) dated as of \_\_\_\_\_, 200\_\_\_\_, effective upon full execution of the parties (“**Effective Date**”) for the purpose of Clearwire undertaking certain Investigations and Tests and, upon finding the Property appropriate, for the purpose of installing, operating and maintaining a communications facility and other improvements. All of the foregoing is set forth in the Agreement.

2. The term of Clearwire’s tenancy under the Agreement is for five (5) years commencing on the start of construction of the Tenant Facilities or eighteen (18) months following the Effective Date, whichever first occurs (“**Term Commencement Date**”), and terminating on the fifth anniversary of the Term Commencement Date with five (5) successive five (5) year options to renew.

3. The Land that is the subject of the Agreement is described in Exhibit A annexed hereto. The portion of the Land being leased to Tenant and all necessary access and utility easements (the “**Premises**”) are set forth in the Agreement.

In witness whereof, the parties have executed this Memorandum of Agreement as of the day and year first written above.

**LANDLORD:**

Chabot Las Positas Community College District

By:           **EXHIBIT ONLY – DO NOT EXECUTE**          

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**TENANT:**

Clear Wireless LLC,  
a Nevada limited liability company

By:           **EXHIBIT ONLY – DO NOT EXECUTE**          

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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