

Angelina County  
Amy Fincher  
County Clerk  
Lufkin, Texas 75901



70 2016 00341246

Instrument Number: 2016-00341246

As

Recorded On: June 27, 2016

RECORDINGS

Parties: FLENIKEN CHRISTOPHER

Billable Pages: 10

To VERTICAL BRIDGE TOWERS LLC

Number of Pages: 11

Comment: EASEMENT

( Parties listed above are for Clerks reference only )

**\*\* Examined and Charged as Follows: \*\***

RECORDINGS	62.00
Total Recording:	62.00

\*\*\*\*\* DO NOT REMOVE. THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\*

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

**File Information:**

**Record and Return To:**

Document Number: 2016-00341246

Receipt Number: 285373

Recorded Date/Time: June 27, 2016 03:55:31P

User / Station: M Dodson - Cash Station 4

HARTMAN SIMONS & WOOD LLP  
6400 POWERS FERRY RD NW,  
SUITE 400  
ATLANTA GA 30339



STATE OF TEXAS  
COUNTY OF ANGELINA  
I hereby certify that this instrument was FILED on the date and at the time stamped hereon by me and was duly RECORDED in the Official Records of Angelina County, Texas.

*Amy Fincher*

Amy Fincher, County Clerk, Angelina County Texas

TX-5162 Diboll

Parcel ID: 59945 & 59944

**ACCESS AND UTILITY EASEMENT AGREEMENT**

**THIS ACCESS AND UTILITY EASEMENT AGREEMENT** (this "Agreement") is made and entered into as of the 2 day of June, 2016, by and among **CHRISTOPHER FLENIKEN** and **EMILY FLENIKEN**, husband and wife, both individual residents of the State of Texas, having an address of 813 Kiln, Lufkin, Texas 75904 (collectively, the "Grantor"), and **VERTICAL BRIDGE TOWERS, LLC**, a Delaware limited liability company, having an address of 750 Park of Commerce Drive, Suite 200, Boca Raton, Florida 33487 and its successors and/or assigns ("Grantee").

**WITNESSETH:**

**WHEREAS**, Grantor owns that certain property located in Angelina County, Texas, more particularly described in Exhibit "A" attached hereto (the "Property");

**WHEREAS**, Grantor, as landlord, and Grantee, as tenant, entered into that certain Option and Ground Lease Agreement dated December 17, 2015 (as the same may be assigned or amended or modified from time to time, the "Lease") conveying a leasehold interest in a portion of the Property, more particularly described on Exhibit "B" attached hereto and incorporated herein by reference (the "Leased Property"), to Grantee;

**WHEREAS**, in connection with the development, operation and use of the Leased Property, Grantor desires to grant and convey to Grantee an easement for ingress and egress and utilities in accordance with the terms set forth below.

**NOW, THEREFORE**, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other valuable consideration paid by each to the other, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**1. Easement.**

(a) Grant if Access and Utility Easement. Grantor hereby declares, establishes, creates and grants to Grantee and Grantee's successors and assigns and for the benefit of their lessees, subtenants, employees, representatives, agents, contractors, licensees and invitees, for the benefit of and as an appurtenance to the Leased Property, an irrevocable, non-exclusive and perpetual right, privilege and easement for access and utilities (the "Access and Utility Easement") over and across that portion of the Property more particularly described on Exhibit "C" attached hereto and made a part thereof (the "Easement Area"). The Access and Utility Easement shall provide Grantee with pedestrian and vehicular access, ingress and egress to and from the Leased Property and N. Hendrix Avenue. The Access and Utility Easement provided herein to Grantee shall be twenty-four (24) hours a day, seven (7) days a week. Additionally, the Easement Area may be utilized by Grantee as necessary for the installation, running, servicing and maintenance of electrical power, telephone service and other utilities necessary to serve Grantee's Communication Facilities (as defined in the Lease) located on the Leased Property. Grantor also hereby grants to Grantee a temporary construction easement to enter upon such portion of the Property as may be reasonably necessary for the purpose of installing a roadway/gravel drive and utilities in the Easement Area and with respect to maintenance, repair and/or replacement of same.

(b) Duration. Upon termination of the Lease, this Agreement shall terminate and be of no further force or effect. It is the intent of Grantor and Grantee that this Agreement be coterminous with the term of the Lease. In no event shall this Agreement be construed to expand or limit the rights and obligations of Grantor and Grantee under the Lease.

2. Miscellaneous. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Wherever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under such law, such provision is ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. Neither this Agreement nor any provision hereof may be changed, waived, discharged, modified, or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge, modification, or termination is sought. This Agreement does not create an association, partnership, joint venture or a principal and agency relationship between the parties. The provisions of this Agreement shall run with the land and shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, successors, assigns, and the legal representatives of their estates, and the easements, obligations and liabilities granted herein shall be perpetual until terminated as set forth above and shall be a burden upon and appurtenance to the land in accordance with the provisions hereof; provided, however, that the parties benefitted or burdened by the rights and easements granted herein shall only be responsible hereunder for matters occurring and claims arising during their respective periods of ownership of such benefitted or burdened parcels. The persons executing this Agreement hereby represent and warrant in their individual capacity that they are fully authorized to execute and deliver this Agreement on behalf of the party for whom they are signing, and that this Agreement as executed by them constitutes the legal, valid and binding obligation of the party for whom they are signing. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed to be an original, and

all of which together shall constitute one and the same instrument. The failure of either party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that party may have hereunder or at law or equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

3. **Estoppel Certificate.** Upon written request of any party hereto (the "Requesting Party"), the other party (the "Responding Party") shall provide within ten (10) business days after receipt of request therefor an estoppel certificate confirming the status of this Agreement as to compliance by the Requesting Party with the terms and conditions of this Agreement. The Responding Party hereby constitutes and appoints the Requesting Party as its attorney-in-fact to execute any such estoppel certificate for or on behalf of the Requesting Party should the Responding Party fail to do so within said ten (10) business day period.

4. **Attorneys' Fees.** If a party institutes any legal action or proceeding against the other party to enforce the provisions of this Agreement, the prevailing party in such action or proceeding will be entitled to recover from the other party its reasonable attorneys' fees and costs of litigation.

5. **Remedies.** The rights established hereunder, and each of them, shall be enforceable at law or in equity, it being fully understood that an action for damages shall not be an adequate remedy for a breach of this Agreement. Without limiting the foregoing, any party shall be entitled to pursue injunctive relief or specific performance with respect to any violation or threatened violation by any party of any of the terms, covenants, or conditions of this Agreement.

6. **Notices.** Every notice, demand, consent, approval, or other communication required or permitted to be given to any party shall be in writing and shall be given, delivered, or served, either by personal delivery, by prepaid recognized overnight courier service with receipt, or by prepaid certified U.S. mail, return receipt requested, addressed to the intended recipient at the address set forth above or the most recently furnished by such party for the giving of notices hereunder. In the event of a sale or transfer of the Property or the Leased Premises, the new owner shall give written notice to the other party of the name and address of such new owner.

7. **Entire Agreement.** This Agreement and the Lease constitute the sole and entire agreement of the parties with respect to the subject matter hereof and no prior or contemporaneous oral or written representation or agreement among the parties respecting the subject matter hereof shall have legal effect.

8. **Interpretation.** The titles of sections and subsections herein have been inserted as a matter of convenience of reference only and shall not control or affect the meaning or construction of any of the terms or provisions herein. Unless the context of this Agreement clearly requires otherwise, (a) references to the plural include the singular, the singular the plural, the part the whole, (b) "or" has the inclusive meaning frequently identified with the phrase "and/or" and (c) "including" has the inclusive meaning frequently identified with the phrase "but not limited to." Should any provisions of this Agreement require judicial

interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of all parties have participated in the preparation hereof.

9. **Exhibits.** The following exhibits are attached hereto and incorporated herein by reference:

**Exhibit "A"**

Legal Description of the Property

**Exhibit "B"**

Legal Description of the Leased Property

**Exhibit "C"**


Legal Description of the Easement Area

*(The remainder of this page is intentionally blank. Signatures begin on the following page.)*

IN WITNESS WHEREOF the undersigned have executed this Agreement under seal as of the day and year first written above.

**Grantor:**

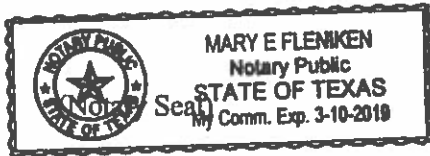
  
\_\_\_\_\_  
Christopher Fleniken (Seal)

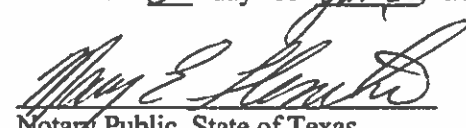
  
\_\_\_\_\_  
Emily Fleniken (Seal)

STATE OF TEXAS

COUNTY OF ANGELINA

This instrument was acknowledged before me on 2 day of June, 2016 by Christopher Fleniken.




  
\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS

COUNTY OF ANGELINA

This instrument was acknowledged before me on 2 day of June, 2016 by Emily Fleniken.



  
\_\_\_\_\_  
Notary Public, State of Texas

**Grantee:**

**VERTICAL BRIDGE TOWERS, LLC, a  
Delaware limited liability company**



By:

Name:

Alex Gellman

STATE OF FLORIDA

COUNTY OF PALM BEACH

This instrument was acknowledged before me on the 6<sup>th</sup> day of June, 2016 by Alex Gellman, the C.E.O. of Vertical Bridge Towers, LLC, a Delaware limited liability company.



(Notary Seal)

Rachel Williamson  
Notary Public

**AFTER RECORDING, RETURN TO:**

Vertical Bridge Towers, LLC  
750 Park of Commerce Drive  
Suite 200  
Boca Raton, Florida 33487  
Attn: Brandy Hill

**EXHIBIT "A"**  
**Legal Description of the Property**

**Tract One:**

Lot No. Seven (6), Block No. Three (3) of the VILLAGE ADDITION to the Town of Diboll recorded on map or plat in Cabinet A, Slides 72 A&B, 73 A&B and 74-A of the Map and Plat Records of Angelina County, Texas.

**Tract Two:**

Lot No. Seven (7), Block No. Three (3) of the VILLAGE ADDITION to the Town of Diboll recorded on map or plat in Cabinet A, Slides 72 A&B, 73 A&B and 74-A of the Map and Plat Records of Angelina County, Texas.

AND BEING a portion of the same property conveyed to Christopher Fleniken from JT 2011 Investments, LLC, a Texas limited liability company by Warranty Deed with Vendor's Lien dated October 30, 2013 and recorded October 30, 2013 in Instrument No. 2013-00311158.



**EXHIBIT "B"**  
**Legal Description of the Leased Property**

BEING a 0.147 acre (6,400.00 square feet) tract of land situated in the Jose Anselmo Prado Survey, Abstract No. 38, being out of called Lot 7, Block 3, Village Addition, an Addition to the City of Diboll, Angelina County, Texas, according to the plat recorded in Cabinet A, Slide 72, Deed Records, Angelina County, Texas, described in deed to Christopher Fleniken., recorded in Instrument No. 2013-00311158, Deed Records, Angelina County, Texas, and being more particularly described by metes and bounds as follows;

COMMENCING at a found 1/2" iron rod at the west corner of Lot 1, Block 2, Village Addition to the Town of Diboll, an addition to the city of Diboll, Angelina County, Texas, according to the plat recorded in Cabinet A, Slides 72A and 72B, Deed records Angelina County, Texas, situated at the intersection of the south right-of-way line of N. Hines Street (60' public right-of-way) and the east right-of-way of N. Hendrix Avenue (variable width public right-of-way);

THENCE North 59° 30' 24" West for a distance of 179.33 feet to a set 1/2" iron rod for the POINT OF BEGINNING;

THENCE South 22° 43' 40" West for a distance of 80.00 feet to a set 1/2" iron rod for corner;

THENCE North 67° 16' 20" West for a distance of 80.00 feet to a set 1/2" iron rod for corner;

THENCE North 22° 43' 40" East for a distance of 80.00 feet to a set 1/2" iron rod for corner;

THENCE South 67° 16' 20" East a distance of 80.00 feet to the POINT OF BEGINNING, and containing 0.147 acre (6,400.00 square feet) of land, more or less.

**EXHIBIT "C"**  
**Legal Description of the Easement Area**

See attached.



BEING a 0.075 acre (3,285.42 square feet) tract of land situated in the Jose Anselmo Prado Survey, Abstract No. 38, being out of called Lot 7, Block 3, Village Addition, an Addition to the City of Diboll, Angelina County, Texas, according to the plat recorded in Cabinet A, Slide 72, Deed Records, Angelina County, Texas, described in deed to Christopher Fleniken., recorded in Instrument No. 2013-00311158, Deed Records, Angelina County, Texas, and being more particularly described by metes and bounds as follows;

COMMENCING at a found 1/2" iron rod at the west corner of Lot 1, Block 2, Village Addition to the Town of Diboll, an addition to the city of Diboll, Angelina County, Texas, according to the plat recorded in Cabinet A, Slides 72A and 72B, Deed records Angelina County, Texas, situated at the intersection of the south right-of-way line of N. Hines Street (60' public right-of-way) and the east right-of-way of N. Hendrix Avenue (variable width public right-of-way);

THENCE North 59° 30' 24" West for a distance of 179.33 feet to a set 1/2" iron rod;

THENCE North 67° 16' 20" West for a distance of 30.00 feet to the POINT OF BEGINNING;

THENCE North 67° 16' 20" West for a distance of 20.00 feet to a point for corner;

THENCE North 22° 43' 59" East for a distance of 66.08 feet to a point for corner;

THENCE South 67° 36' 53" East for a distance of 70.35 feet to a point for corner;

THENCE South 84° 27' 35" East for a distance of 42.73 feet to the beginning of a curve, situated on the west right-of-way of N. Hendrix Avenue (variable width public right-of-way);

THENCE with said curve turning to the left through an angle of 00° 59' 11", having a radius of 1186.30 feet, an arc distance of 20.42 feet, and whose long chord bears South 06° 08' 08" East for a distance of 20.42 feet to a point;

THENCE North 84° 27' 35" West for a distance of 49.82 feet to a point for corner;

THENCE North 67° 36' 53" West for a distance of 53.43 feet to a point for corner;

THENCE South 22° 43' 59" West a distance of 46.20 feet to the POINT OF BEGINNING, and containing 0.075 acre (3,285.42 square feet) of land, more or less.