

CELL TOWER LEASE AGREEMENT

THIS CELL TOWER LEASE AGREEMENT (this "Lease"), dated as of the date approved by the Henderson City Council shown on the signature page hereto (the "Effective Date"), is entered into by the City of Henderson, a municipal corporation and political subdivision of the State of Nevada ("Landlord"), and [WIRELESS COMPANY] ("Tenant").

RECITALS

- A. Landlord owns that certain real property located at _____, in the City of Henderson, County of Clark, State of Nevada, and identified as Assessor's Parcel Number _____ as further described on Exhibit A attached hereto (the "Property").
- B. Tenant desires to lease approximately _____ square feet of land (the "Premises"), as shown on Exhibit B attached hereto, for the purpose of constructing, operating, and maintaining a certain telecommunications facility and equipment as further described herein.
- C. Pursuant to Nevada Revised Statutes ("NRS") Chapter 268 and Section 2.320 of the City Charter of the City of Henderson, Landlord conducted a public meeting of the Henderson City Council to receive and consider the bid proposals for the Premises and accepted the bid from Tenant.
- D. The parties now desire to enter into this Lease pursuant to the terms and conditions set forth herein.

AGREEMENT

NOW THEREFORE, based on the foregoing Recitals, which the parties agree are true and correct and are incorporated into the terms of this Lease, and in and for consideration of the rents, covenants, and agreements hereinafter set forth, the parties hereby agree as follows:

1. Lease of the Premises.

- 1.1. **Lease.** In consideration of the Rent and the conditions, limitations, covenants, and agreements set forth below, Landlord does hereby lease, demise, and let unto Tenant, and Tenant does hereby take, hire, and lease from Landlord, the Premises. This Lease shall apply only to the Premises. Tenant shall have no rights with respect to any other portions of the Property, and Tenant shall not use or occupy space other than the Premises, except that Tenant shall have the non-exclusive right, at those locations on the Property designated by Landlord to access to the Premises from a public right-of-way, and to install, maintain and replace necessary utilities from a public right-of-way and/or point of connection to the Premises. Tenant shall not interfere with or restrict in any manner Landlord's use of the other portions of the Property. This Lease is and at all times shall be subject and subordinate to the terms of any and all prior agreements and encumbrances

affecting the Property, including, without limitation, management agreements, leases, license agreements, loan documents and security instruments, and to the terms of any future loan documents and security instruments (collectively, the “Senior Property Interests”). Notwithstanding such automatic subordination, Tenant shall execute such subordination and similar agreements as requested by Landlord or the holder of such Senior Property Interests to evidence further such subordination. This Lease is subject to the condition that Tenant shall not cause or suffer use of the Premises in a manner that would cause a violation of any of the Senior Property Interests.

1.2 **Tenant’s Acceptance of Premises.** Landlord has made no representation or warranty concerning the fitness for use or suitability for purpose of the Premises or the Property, all of which are expressly disclaimed, and Tenant has accepted the Premises “**AS IS, WHERE IS, AND WITH ALL FAULTS.**” Without limiting the foregoing, Tenant shall bear the risk of the suitability of the Premises for Tenant’s intended use from both an economic and technical engineering basis and with respect to Tenant’s ability to obtain and maintain any and all governmental licenses, permits, approvals, or other relief required or deemed necessary or appropriate by Tenant for its use of the Premises. Landlord agrees to reasonably cooperate with Tenant, at Tenant’s sole expense, in any applications for governmental approvals to the extent that participation of the owner or manager of the Property is required to process such application, provided that Landlord’s cooperation shall require no cost, expense, or significant effort on the part of Landlord and that the substance of all such applications shall have been approved by Landlord. Tenant shall notify Landlord of the application for and receipt of any governmental and insurance approvals and shall provide Landlord with true and correct copies thereof. Neither this Lease, nor the lease of City-owned property, constitutes an endorsement or approval of any development plans or a commitment or guarantee for any utilities or services. Provision of these services is administered pursuant to Title 13 and 19 of the Henderson Municipal Code as amended from time-to-time. Tenant understands that the Premises are subject to requirements for development pursuant to the Henderson Municipal Code.

2. Lease Term.

2.1. **Term and Extension Terms.** The initial term of this Lease (the “Initial Term”) shall commence on the first day of the month following the Effective Date (the “Commencement Date”) and shall end on the tenth (10th) anniversary of the Commencement Date (the “Termination Date”), unless sooner terminated in accordance with the terms of this Lease. Provided that a Tenant Event of Default (as defined below) shall not have occurred and be continuing, the term of this Lease shall automatically extend one (1) time for a period of ten (10) years (the “Extension Term”), with the Extension Term commencing on the Termination Date of the Initial Term, unless either party provides notice to the other party of its intent not to extend the Lease at least ninety (90) days prior to the Termination Date of the Initial Term. The last day of the Extension Term shall become the new “Termination Date.” Notwithstanding the foregoing, if Landlord notifies Tenant of its intent not to extend the Lease for the Extension Term, then Tenant shall automatically be granted a one (1) year extension of the term of this Lease

(“Relocation Extension”) in order to obtain a suitable replacement location and construct a new communication facility thereon before decommission of the Telecommunications Equipment from the Premises, in which case the last day of the Relocation Extension shall be the new “Termination Date.” The Initial Term, together with the effective Extension Term or Relocation Extension, collectively shall be referred to herein as the “Term.” All rights of Tenant under this Lease or otherwise relating to the Premises shall terminate automatically upon the expiration or earlier termination of this Lease.

2.2. **Holdover.** If Tenant remains in possession of the Premises following the expiration or earlier termination of the Term, in addition to all other remedies available to Landlord on account of such holdover, Tenant shall pay during the first two (2) months of such holdover, a holdover fee equal to one hundred fifty percent (150%) of the monthly Rent otherwise payable under the terms of this Lease immediately preceding such holdover, and during each subsequent month of any holdover, three hundred percent (300%) thereof. Upon expiration or earlier termination of this Lease, Landlord may proceed to recover possession of the Premises under and by virtue of the provisions of laws of the jurisdiction in which the Premises is located, or by such proceedings, including re-entry and possession and summary process or other expedited proceedings as may be applicable, and may but shall not be required, to remove all of the Telecommunications Equipment or other property therein at Tenant’s sole risk and expense.

2.3. **Surrender.** On or before the expiration or earlier termination of the Term, Tenant shall, at its sole cost and expense, remove the Telecommunications Equipment (defined below) including full sub-surface removal of all below-grade structures or supports, remove all of its personal property from the Premises, and return the Premises to its condition as of the Commencement Date. Rent, including adjustments for holdover fees as described above, shall continue until all Telecommunications Equipment has been removed from the Premises. Any property not so removed within sixty (60) days following the expiration or earlier termination of the Term may, at the option of Landlord, be deemed abandoned and become the property of Landlord. Notwithstanding anything to the contrary, however, Tenant’s liability under this Lease shall survive any expiration or earlier termination of this Lease and such liability shall include, without limitation, the obligations to repair all damage caused by such removal and to pay for all costs to remove such Telecommunications Equipment should Tenant fail to do so within such period.

3. **Rent.**

3.1. **Rent.** In addition to any other amounts due under the terms of this Lease, Tenant shall pay to Landlord, at the address set forth in the Notices section herein, rent in an amount not less than fair market value for the Telecommunication Equipment depicted on Exhibit B, as provided in this Section (“Base Rent”), payable in monthly installments in advance, beginning on the date Tenant receives City of Henderson building permit approval for the Telecommunication Equipment on the Premises (“Rent Commencement Date”) and continuing thereafter on the first day of each calendar month during the Term. For the period beginning on the Effective Date, the Base Rent shall be [_____] and No/100 Dollars [(\$_____.00)] per annum, payable in equal monthly installments of

[_____] and No/100 Dollars [(\$ _____ .00)] each, and thereafter, on each anniversary of the Effective Date, the Base Rent and Additional Rent, if any, shall be increased by three and one-half percent (3.5%) per annum including during any holdover period. In the event that the Term commences on any day other than the first day of a calendar month or ends on a day other than the last day of a calendar month, then the Rent for such month shall be prorated on a daily basis. In addition, Tenant shall pay all personal property and other ad valorem taxes assessed against the Telecommunications Equipment and Tenant's other personal property and all increases in real property taxes, if any, attributable to the Telecommunications Equipment.

3.2. **Additional Rent for Added Antennas and Co-locations.** If Tenant allows any antenna(s) to attach to the telecommunications structure by virtue of a sublease, license, or similar right of use or occupancy for a particular level or "rad center" of the telecommunications structure (each, a "Co-location"), other than the first antenna to be installed concurrently with the construction of the telecommunications structure, Tenant shall pay additional rental ("Additional Rent" and, with Base Rent, "Rent") for each Co-location level or "rad center" where Co-located antennas are attached. For clarification, if an antenna is attached at one level of the telecommunications structure and Co-location Additional Rent is being paid to Landlord pursuant to this Lease, the future addition of one (1) or more antennas at the same level or "rad center" by the same party shall be considered the same Co-location and no additional rental shall be due. However, if a future antenna is attached to the telecommunication structure on a different level of the telecommunication tower, that attachment shall be considered a new Co-location and Additional Rent shall be due to Landlord. All such Additional Rent shall be increased by three and one-half percent (3.5%) per annum for each year of the Lease from the Effective Date regardless of whether any Co-location was attached in those prior years. For the period beginning on the date of the installation of the Co-location, Rent shall increase by [_____] and No/100 Dollars [(\$ _____ .00)] per annum, prorated for the portion of the first year installed, plus all annual three and one-half percent (3.5%) increases effective as of the date of the Co-location, for each Co-location. Such Additional Rent shall cease on the date that such Co-located antennas are removed from one entire level or "rad center" of the telecommunications structure. Unpermitted Co-locations shall subject Tenant to the payment of back rent to the Effective Date regardless of the date such unpermitted Co-locations were installed or were discovered.

3.3. **General Rent Terms.** Tenant hereby covenants and agrees to pay Rent to Landlord as provided herein, without prior demand, deduction, or set-off whatsoever, in lawful money of the United States of America at such place or places as may from time to time be designated in writing by Landlord. Landlord shall receive Rent free and clear of any and all taxes, liens, and other charges, costs, expenses, and liabilities of any kind whatsoever, with any such obligations, including, without limitation, any rental tax or fee and any business license tax or fee based upon Rent payments or on the size of the Premises, other than federal or state income taxes, to be timely paid and borne by Tenant in addition to the Rent. It is the purpose and intention of Landlord and Tenant that Rent shall be net to Landlord, with all costs, expenses, and charges of every kind and nature relating to the Premises that may arise or become due during the Term to be paid by Tenant, and with

Landlord to be indemnified and held harmless by Tenant from and against the same. The foregoing indemnification obligations shall survive the expiration or sooner termination of this Lease.

- 3.4. **Late Charge.** If Tenant shall fail to pay any installment of the Rent or any other amount due under this Lease within five (5) days after the same becomes due and payable, then Tenant shall pay to Landlord a late payment service charge ("Late Charge") covering administrative and overhead expenses equal to five percent (5%) of the amount overdue. The foregoing Late Charge is agreed to be a fair and reasonable charge under the circumstances and shall not be construed as interest on a debt payment. In addition, any amount due from Tenant to Landlord that is not paid when due shall bear interest at the rate of twelve percent (12%) per annum from the date such payment is due until paid. Such rate shall remain in effect after the occurrence of any failure to pay an amount due hereunder by Tenant to and until payment of the entire amount due. If any charge imposed under this Lease is either stated or construed to be interest, then no such interest charge shall be calculated at a rate that is higher than the maximum legal rate under all applicable federal, state and local laws, statutes, codes, regulations, ordinances, and orders (collectively, "Laws"). The foregoing provisions for paying the Late Charge or default interest shall not be construed to extend the date for payment of any sums required to be paid by Tenant hereunder or to relieve Tenant of its obligation to pay all such sums at the times herein stipulated.
4. **Permitted Use.** The Premises shall only be used for the installation, use, operation and maintenance of the telecommunications facilities and equipment having the specifications approved by Landlord in accordance with the terms and conditions of this Lease (such facilities and equipment, collectively the "Telecommunications Equipment"), as more fully described in the plans and specifications attached hereto as Exhibit B (as updated from time to time) and incorporated herein by this reference (the "Plans"), which shall be referred to hereunder as the "Permitted Use." Such use shall be at Tenant's sole cost, expense, and risk and is, in all respects, subject to the Additional Conditions attached hereto as Exhibit C. The Telecommunications Equipment shall at all times conform to the Plans. The parties expressly agree that Landlord's approval of the Plans does not foreclose any objections regarding the manner in which such Telecommunications Equipment may be installed or any other Losses (as defined below) with respect to the Telecommunications Equipment. Specifically, Landlord, its successors and assigns, shall not be liable for any Losses or prejudice suffered or claimed by Tenant or any third party on account of (a) any defects in any Plans submitted, revised, or approved in accordance with this Lease, nor for any structural or other defects in any work done in accordance with the Plans, (b) the approval or disapproval of any Plans, whether or not defective, (c) the construction of or performance of any work, whether pursuant to approved Plans, (d) the use or operation of any Telecommunications Equipment within the Property, or (e) the effect or result from any approvals granted, denied, or conditioned by Landlord.
5. **Use Restrictions.** The Telecommunications Equipment shall remain Tenant's personal property and, at Tenant's option, may be removed by Tenant at any time during the Term, but not later than the then applicable Termination Date or the date of any earlier termination of

this Lease. Tenant covenants that Tenant shall comply with and ensure the non-violation of all restrictive covenants, insurance requirements, mortgage covenants, governmental requirements (including, without limitation, environmental laws and Federal Communications Commission (“FCC”), the Federal Aviation Administration (“FAA”) and U.S. Department of Housing and Urban Development (“HUD”) requirements and restrictions), and agreements affecting the Property and shall not itself or through its employees, agents, servants, contractors, invitees, consultants, representatives, and the like install, use, maintain, or operate the Telecommunication Equipment, the Premises, or the Property in a manner that is unsafe or constitutes a nuisance (collectively, “Use Restrictions”). In addition to any other remedies Landlord may have hereunder or at law or in equity, Tenant shall indemnify, hold harmless, and, if requested by Landlord, in Landlord’s sole and absolute discretion, defend (with counsel approved by Landlord) Landlord and its officers, directors, shareholders, employees, partners, members, managers, subsidiaries, affiliates, agents, attorneys, successors, assigns, contractors, subcontractors and their respective authorized representatives, servants, and employees (collectively with Landlord, the “Indemnified Parties”) against all claims, demands, damages, liabilities, judgment, penalties, fine, interest, reasonable attorneys’ fees (including those of appeal and in-house counsel), costs, and expenses (collectively, “Losses”), in connection with a third party claim arising or resulting directly from use of the Premises and the Property by Tenant, its employees, agents, contractors, servants, invitees, consultants, representatives, and the like and from its and their installation, use, operation, and maintenance of the Telecommunications Equipment and from any and all breaches of the Use Restrictions or other provisions of this Lease, except to the extent caused by the Indemnified Parties’ gross negligence or willful misconduct. The foregoing indemnification obligations shall survive the expiration or sooner termination of this Lease.

6. **Alterations.** Tenant may not alter, remove, substitute, or modify the Telecommunications Equipment or any part thereof or make any alterations, modifications, or install any Co-location or other improvements to the Premises (collectively, “Alterations”), without the prior written approval by Landlord, which shall not be unreasonably withheld. In the event that Tenant desires to make reasonable Alterations to the Telecommunications Equipment or Premises, specifically including the installation of any Co-location, such proposed Alterations shall be set forth in proposed plans submitted to Landlord in advance of any construction for approval at staff level in accordance with the requirements of this Lease and such other reasonable requirements as may be established by Landlord in connection with the nature of such alterations, removals, modifications, and installations. Any Alterations approved by Landlord shall constitute “Approved Alterations” hereunder and the Landlord approved plans for any Approved Alterations shall constitute part of the Plans hereunder as depicted in Exhibit B, as updated with the Plans of the Approved Alterations. Any Approved Alterations shall be completed in accordance with the following requirements:

- 6.1. **General.** All work relating to any Approved Alterations shall be done in a good and workmanlike manner, by only licensed contractors that have been approved by Landlord, and only between the hours of 6:00 a.m. and 6:00 p.m., Monday through Friday, except in the case of an emergency.

- 6.2. **Permits and Licenses.** Following Landlord's written approval and prior to commencement of construction or installation of any Approved Alterations, Tenant shall obtain all licenses, permits, consents and approvals required by any and all governmental authorities, including, without limitation, the FCC, the FAA, HUD and all other federal, state, and local governmental authorities having jurisdiction over such work, including without limitation, land use approvals, which shall be posted as required by applicable Laws. Tenant also shall secure and maintain all licenses required for ownership, operation, use, replacement and repair of the Telecommunications Equipment, including, without limitation, any and all licenses required by the FCC.
- 6.3. **Structural Requirements.** The Telecommunications Equipment and its placement on and attachment to the Premises and any Approved Alterations must be safe and structurally sound in all respects, including, without limitation, utility systems and connections, weight, height, wind forces, structural integrity, and emissions. Any Approved Alterations shall require Landlord's written approval as described herein, which approval shall not be unreasonably withheld, delayed, or conditioned. Any Approved Alterations and their removal shall be effected so as to leave the Premises in as safe and sound a condition as on the Commencement Date.
- 6.4. **Coordination of Approved Alterations.** Tenant shall give notice to Landlord at least five (5) business days in advance (except in a bona fide emergency), before undertaking the construction or installation of any Approved Alterations. All work performed by or on behalf of Tenant under this Lease shall be performed so as to cause minimum interference with the Property, Landlord, and any other tenants or users of the Property. Tenant shall take all precautionary steps to protect the Property, the Telecommunications Equipment, and the equipment and facilities of others while conducting any work at the Property. All work performed by or on behalf of Tenant will be coordinated with Landlord and subject to supervision by Landlord or Landlord's designees, and Landlord shall have the right to (a) require Tenant to correct and remedy all work that does not conform to applicable Laws and the requirements of this Lease, or (v) cease such work until reasonable steps are taken to assure such conformance. Construction equipment and materials are to be located in confined areas designated by Landlord, and truck traffic is to be routed in and from the Premises as directed by and coordinated with Landlord. Tenant and its contractor(s) shall at all times comply with rules and regulations that may be established by Landlord from time-to-time; provided that Landlord has given Tenant at least thirty (30) days prior written notice thereof and provided further such rules and regulations are equally imposed on all users of the Property. In addition to any other remedies hereunder or at law or in equity, Landlord shall have the right to order Tenant, or Tenant's contractor or any subcontractor, who violates the above requirements, to cease work and to remove itself, its equipment, and its employees from the Premises.
- 6.5. **Repair of Damage.** Tenant shall repair promptly and to Landlord's reasonable satisfaction all damage caused by any Approved Alterations or any use, operation, maintenance, repair or other activities performed in, on or about the Property by or on behalf of Tenant.

6.6. **Trash Removal.** Tenant shall not allow any trash to accumulate in or about the Premises, and Tenant shall remove promptly all trash resulting from any Approved Alterations or the delivery, installation, use, operation, and maintenance of the Telecommunications Equipment.

7. **Compliance with Laws.** The Telecommunications Equipment, Plans, any Approved Alterations, and any and all other activities performed by or on behalf of Tenant in, on, or about the Premises, and the use, operation, and maintenance of the Telecommunications Equipment and the Premises shall at all times comply with applicable Laws and insurance requirements set forth in this Lease, and Tenant shall have sole responsibility for such compliance. The approval by Landlord or Landlord's officers, employees, agents, or representatives of any or all of the Telecommunications Equipment, the Plans, or the Approved Alterations shall not constitute an implication, representation, or certification by Landlord, its officers, employees, agents, or representatives that they are in compliance with any standards or requirements or Laws, and Landlord shall not be liable for any such failure to so comply. Tenant shall have the sole responsibility for compatibility of the Telecommunications Equipment, the Plans and/or any Approved Alterations with the existing service systems and structure of the improvements on the Property.

8. **Payment of Costs: Mechanics' and Materialmen's Liens.**

8.1. **No Liens.** Tenant shall pay promptly when due any and all costs, expenses and other amounts relating to Approved Alterations and the Telecommunications Equipment. Tenant shall not permit any mechanic's, materialmen's, laborers, or other liens to be placed upon any portion of the Property for work, materials or improvements by, for, or at the direction of Tenant. Nothing in this Lease shall constitute or be construed to constitute the consent or request of Landlord, express or implied, to any person for the performance of any labor or the furnishing of any materials to or for the Property or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to any mechanics', materialmen's, laborers', or other liens against the Property or any part thereof. Tenant shall give written notice to Landlord prior to Tenant commencing any Approved Alteration at the Premises, and Landlord may post notices of non-responsibility as permitted by applicable Laws. In the event any charge or lien is filed or attaches to the Property or any part thereof, then within thirty (30) days (or such earlier deadline as shall be required by any documents, agreements governing or persons or entities having rights under any Senior Property Interests) after the earlier of the attachment or filing, Tenant shall cause the lien to be discharged or released either by posting a bond as provided by applicable Laws or otherwise. If Tenant does not cause the lien to be discharged or released within such thirty (30) day period (or such earlier deadline as described above), then, in addition to any other right or remedy that Landlord may have hereunder or at law or in equity, Landlord may, but shall not be obligated to, discharge the same at Tenant's expense. Any amount paid by Landlord for these purposes, including without limitation, attorneys' fees and expenses, shall be paid by Tenant to Landlord on demand.

8.2. **Nevada Requirements.** Without limiting the foregoing, pursuant to Section 108.234 of the Nevada Revised Statutes (“NRS”), Landlord hereby informs Tenant that if Tenant undertakes any “work of improvement” (as such term is defined in NRS 108.22188), Tenant must comply with the requirements of NRS § 108.2403. Tenant shall take all actions necessary under laws of the State of Nevada to ensure that no liens encumbering the Property arise as a result of any work of improvement by or for Tenant, which actions shall include, without limitation, the recording of a notice of posted security in the Office of the County Recorder of Clark County, Nevada (the “Official Records”) in accordance with NRS § 108.2403, and either (a) establish a construction disbursement account pursuant to NRS § 108.2403(1)(b)(1), or (b) furnish and record in the Official Records, in accordance with NRS § 108.2403(1)(b)(2), a surety bond for the construction of any work of improvement, which survey bond meets the requirements of NRS § 108.2415. Further, Tenant shall immediately notify Landlord when Tenant has entered into a contract with the contractor for any work of improvement, and concurrently with such notice, shall provide Landlord with such contractor’s mailing address and other contact information.

9. Interruption and Access to the Premises by Landlord.

9.1. **Access to the Premises.** Landlord shall be permitted access to the Premises (a) for emergencies without prior notice to Tenant, so long as Tenant is notified as soon thereafter as reasonably practicable; and (b) otherwise with reasonable prior notice to Tenant. Except only for Landlord or the other Indemnified Parties’ gross negligence or willful misconduct, Landlord and the other Indemnified Parties, as applicable, shall not be liable for any injury, interference, or Losses arising out of Landlord’s exercise of access rights under this Lease.

9.2. **Temporary Interruptions.** Landlord may require reasonable interruptions of service, relocation, or removal of the Telecommunications Equipment for repairs, maintenance, or modification of the Property, including, but not limited to, roofing, structural, electrical, or mechanical repairs. Landlord shall coordinate with Tenant and undertake commercially reasonable efforts to minimize any disruption of service in respect of Tenant’s operation of the Telecommunications Equipment. Such temporary interruptions shall not give rise to any right of offset or of abatement or curtailment of the Rent and shall not entitle Tenant to terminate this Lease.

10. Interference.

10.1. **Operation and Maintenance of Telecommunications Equipment.** Tenant covenants that its use of the Premises shall not interfere with Landlord’s use of the remainder of the Property or the use of the remainder of the Property by any tenants or other users permitted by Landlord, damage the Property or the Premises, or increase applicable insurance rates. Tenant represents and covenants that the Telecommunications Equipment has been approved to the full extent required by applicable Laws, complies with all insurance requirements, and will be operated and maintained in accordance with all applicable Laws. Tenant covenants to install, operate, and maintain the Telecommunications Equipment and the Premises so as not to cause any interference that

(based on the application of commercially reasonable standards) has an adverse impact on any of: (i) Landlord, or (ii) the use of the Property for residential occupancy or otherwise, or (iii) use of the remainder of the Property for the installation, operation, or maintenance of radio, television, telephone, cable, telecommunications, or similar equipment for commercial purposes (“Commercial Communications Facilities”). In the event that Tenant’s Telecommunications Equipment causes such interference to Landlord, other governmental agencies, or other third parties with agreements to use the Property that commenced prior to the Effective Date of this Lease (“Pre-Existing Users”), Tenant immediately shall take all steps necessary to correct and eliminate such interference, and Tenant shall indemnify and hold the Indemnified Parties harmless against any and all Losses arising from such interference. Without limiting the foregoing, Tenant shall modify the equipment or relocate it to another area mutually approved by Landlord and Tenant if the Telecommunications Equipment causes such interference or creates or results in any emissions, interference, noise, odor, or nuisance tending to disturb Landlord, other government agencies, or any Pre-Existing User of the remainder of the Property. In addition, Tenant agrees that it shall cooperate fully with Landlord and make all commercially reasonable modifications to its Telecommunications Equipment and its use and operation, in order to minimize any interference with Commercial Communications Facilities currently installed in, on, or about the remainder of the Property or by others in the future and to enable Landlord to enter into and perform its obligations under present and future agreements with other parties for the installation and operation of Commercial Communications Facilities on the remainder of the Property. The foregoing indemnification obligations shall survive the expiration or sooner termination of this Lease.

- 10.2. **Landlord Cooperation.** In connection with any future agreements pertaining to Commercial Communications Facilities on the remainder of the Property (but only to the extent effective during the Term), Landlord shall endeavor to provide notice to Tenant of future installations of Commercial Communications Facilities on the remainder of the Property for the purpose of facilitating discussion and avoidance of potential and existing sources of interference. However, Landlord shall not be liable, nor shall Landlord be in default, for any failure to provide such notice, or to cause any such discussions to occur. Landlord shall take reasonable action to eliminate the cause of any interference to the Telecommunications Equipment operated within the Premises, if Tenant has provided Landlord with written notice detailing the nature of such interference. Such action shall include giving notice of such interference to any tenants or licensees of Landlord whose equipment also is located on the Property and making reasonable demand under any provisions similar to those in this Lease requiring such tenants or licensees to minimize such interference. For purposes of this Section, the term “interference” means the effect of unwanted energy due to one or a combination of emissions, radiation, or inductions upon reception in a radio communication system, manifested by any material performance degradation, misinterpretation, or loss of information that could be extracted in the absence of such unwanted energy. Notwithstanding anything to the contrary, neither Landlord nor any other Indemnified Party shall have any liability in respect of any temporary or continuing interference with the Telecommunications Equipment or operations (other than interference caused directly by Landlord) or in respect of any effort

to diminish or eliminate any interference. Under no circumstances shall Landlord or any other Indemnified Party be under any obligation to file any suit or other action against any person or entity as a result of the interference.

11. **Maintenance and Repairs.** Tenant shall be solely responsible for all service, repairs, and maintenance of and to the Premises and the Telecommunications Equipment and all associated costs. To the extent Tenant's maintenance or repairs impact Landlord's and the general public's use of the Property, Tenant shall give Landlord prior written notice of Tenant's need to effect service, maintenance, or repairs, and Tenant shall have access to the Premises as designated by and coordinated with Landlord at reasonable times and under reasonable conditions prescribed by Landlord; provided that, in case of an emergency, Tenant shall have immediate access to the Premises without prior Landlord notice or consent, but shall provide Landlord notice thereof as soon as reasonably practical thereafter. Landlord may charge Tenant for any equipment and materials used and impose reasonable hourly charges for any time spent by Landlord, Landlord's management staff, or Landlord's consultants for such purposes. Landlord shall not be liable to Tenant for any loss or damage to all or any part of the Telecommunications Equipment occasioned by theft, fire, act of God, public enemy, injunction, riot, vandalism, malicious mischief, earthquake, flood, strike, insurrection, war, court order, requisition, or order of governmental body or authority or by any other cause whatsoever beyond the reasonable control of Landlord, except to the extent attributable to the gross negligence or willful misconduct of the Indemnified Parties. Tenant shall perform all maintenance and repairs necessary to keep the Telecommunications Equipment and the Premises in good condition and repair, reasonable wear and tear and damage from the elements excepted.
12. **Utilities.** Tenant, at its sole expense, shall arrange for its own separately metered utilities required for operation of the Telecommunications Equipment, including, without limitation, electrical, telephone, and fiber supply from the local utility companies, and Tenant shall pay for all electric and other utility charges consumed by Tenant. Tenant will have the right to install utilities, at Tenant's expense, and to improve present utilities on the Property and the Premises.
13. **Insurance.**
 - 13.1. **Required Coverage.** As of the Effective Date, Tenant shall carry during the Term (including, without limitation, any and all Extension Terms and continuing through any holdover period), at its own cost and expense, the following insurance: (i) "All Risk" property insurance for the full replacement cost of the Telecommunications Equipment, Tenant self-insures this risk (ii) worker's compensation insurance as required by applicable Laws, (iii) commercial general liability insurance pre ISO form CG 01 00 or its equivalent on an occurrence basis in an amount of \$1,000,000 and \$2,000,000 in the aggregate providing coverage for bodily injury and property damage, including contractual liability, (iv) automobile liability insurance on an occurrence basis in an amount of \$1,000,000 each accident, (v) excess liability (umbrella coverage) in an amount of \$10,000,000 on an occurrence basis and an amount of \$10,000,000 in the aggregate, providing coverage for the investigation, defense and satisfaction (by settlement or

otherwise), at no cost to Landlord, of any liability, loss, cost expense or fee asserted against or incurred by Tenant or any Indemnified Parties for insurable claims caused in whole or in part, by Tenant with respect to this Lease or Tenant's products, services, or covenants hereunder. Tenant may use any combination of primary and excess insurance to meet the total limits required. Landlord, and its subsidiaries and affiliates and any other parties as shall be designated in writing by Landlord to Tenant, shall be included as an additional insured by endorsement as respects this Lease under the commercial general liability, automobile liability on a primary and noncontributory basis, if used to satisfy the required limits and excess/umbrella liability coverage. All policies shall contain a waiver of subrogation endorsement, as required by this written Lease in favor of the Landlord.

13.2. **Primary Insurance.** The required commercial general liability, automobile liability and if used to satisfy the required limits excess/umbrella insurance provided by Tenant shall be primary, and insurance maintained by Landlord, if any, shall be excess and not contributing with Tenant's insurance. Tenant shall arrange with its insurance companies to endorse its policies accordingly.

13.3. **Landlord's Interests.** All such policies of insurance required to be carried by Tenant (i) shall include the Landlord and all Landlord mortgagees of the Property as additional insureds by endorsement as respect to this Lease except for the workers compensation and property insurance; (ii) shall insure the interests of Landlord notwithstanding any breach or violation by Tenant of any unintentional warranties, declarations or conditions contained in such policy of insurance, any action or inaction on the part of Tenant or others (other than Landlord) or any foreclosure relating to Tenant's rights; (iii) shall provide that coverage shall not be voided or reduced on account of the performance of any construction or other work on the Premises; and (iv) shall include a waiver of any right of subrogation by the insurance company against Landlord or any other Indemnified Party, except for Tenant's self-insured property coverage where Tenant shall include the Landlord as joint loss payee in lieu of waiver of subrogation and such status as joint loss payee shall void the requirement for waiver of subrogation for Tenant's self-insured property coverage. Neither the issuance of any insurance policy required hereunder, nor the minimum limits specified herein with respect to Tenant's insurance coverage shall be deemed to limit or restrict in any way Tenant's liability arising under or out of this Lease.

13.4. **Verification of Coverage.** With respect to each and every one of the insurance policies herein required to be carried by Tenant, on or before the Effective Date and each anniversary thereof and within ten (10) days before any such insurance policy shall expire, Tenant shall deliver to Landlord a certificate of insurance for each such policy or renewal thereof or Tenant's form for self-insurance, as the case may be. Tenant shall provide at least thirty (30) days' written notice to Landlord of cancellation or nonrenewal of any required coverage that is not replaced. The term "insurance policy" as used in this Lease shall be deemed to include any extension or renewals of such insurance policy.

13.5. **Failure to Procure or Maintain Insurance.** In the event that Tenant shall fail to furnish any insurance coverage required to be procured by Tenant after receipt of written

notice and an opportunity to cure, Landlord shall have the option, but not the obligation, to obtain the same and pay the premium therefor, and the premium so paid by Landlord together with an amount equal to fifteen percent (15%) of such premium shall be immediately due and payable by Tenant to Landlord as Additional Rent hereunder.

- 13.6. **Compliance with Insurance Requirements.** Tenant shall not do or permit to be done any act or thing on or about the Premises or the Property that will invalidate or be in conflict with any insurance policies covering the Property, the Premises, or any part thereof, including all common areas or fixtures and property therein, that Landlord has given Tenant a copy of, or any other insurance policies or coverage referred to above; and Tenant promptly shall comply with all Laws or requirements relating to such insurance policies, and shall not do, or permit anything to be done, in or upon the Premises or the Property, or bring or keep anything therein, which shall increase the rate of fire insurance on the Property or on any property, including all common areas, located therein, or increase the rate or rates of any other insurance in effect. If any act or omission (where there is a duty to act) of Tenant, its agents, employees or contractors shall result in any increase in the premium rates applicable to any such insurance policies carried by Landlord, or other increased costs to Landlord in order for Landlord to comply with insurance regulations, in excess of the premium rates or such costs in effect, then Tenant shall reimburse Landlord for the amount of any such increased rates or costs on account of such act or omission within thirty (30) days after receipt of a statement therefor from Landlord.

14. Events of Default.

- 14.1. **Tenant Event of Default.** Each of the following shall constitute a “Tenant Event of Default” under this Lease:
- 14.1.1. Any failure by Tenant to pay any installment of the Rent on the date when payment thereof is due; or
 - 14.1.2. Any failure by Tenant to pay any other monetary obligations when due as specified hereunder or if no such specification is made, then within five (5) days following demand for payment by Landlord; or
 - 14.1.3. Any failure by Tenant to maintain in effect all insurance required to be maintained by Tenant; or
 - 14.1.4. If Tenant (a) applies for or consents to the appointment of a receiver, trustee or liquidator of Tenant or of all or a substantial part of its assets, (b) files a voluntary petition in bankruptcy or admits in writing its inability to pay its debts as they come due, (c) makes an assignment for the benefit of its creditors, (d) files a petition or an answer seeking a reorganization or any arrangement with creditors, or seeks to take advantage of any insolvency law, (e) performs any other act giving rise to the application to or against Tenant, the Premises or the Telecommunications Equipment of any bankruptcy or insolvency law, or (f) files an answer admitting the material

allegations of a petition filed against Tenant in any bankruptcy, reorganization or insolvency proceeding; or

14.1.5. If as a result of an action by one or more creditors of Tenant (a) an order, judgment or decree is entered by any court of competent jurisdiction adjudicating Tenant a bankrupt or an insolvent, approving a petition seeking a reorganization, or appointing a receiver, trustee or liquidator of Tenant or of all or, a substantial part of its assets, or (b) there otherwise commences as to Tenant or any of its assets any proceeding under any bankruptcy, reorganization, arrangement, insolvency, readjustment, receivership or similar law, and if, in either such case, Tenant fails to obtain a dismissal of such order, judgment, decree or proceeding within thirty (30) days; or

14.1.6. If Tenant fails to apply promptly for any approvals, permits or licenses as required so that it may lawfully operate the Telecommunications Equipment or fails to comply therewith or maintain the same in full force and effect; or

14.1.7. If Tenant fails to bond, satisfy or discharge any lien or security agreement or fails to comply with any notice of a governmental body as required by this Lease for more than thirty (30) days (or such earlier deadline as shall be required by any documents or agreements governing, or persons or entities having rights under, any Senior Property Interests) with or without notice from Landlord, or if Tenant shall fail to advise Landlord promptly of any and all notices of violation received by Tenant concerning the Premises; or

14.1.8. If Tenant shall record this Lease or any memorandum thereof without the prior written consent of Landlord (which consent may be given or withheld in Landlord's sole discretion); or

14.1.9. The dissolution or liquidation of Tenant; or

14.1.10. If Tenant directly or indirectly assigns, licenses, or otherwise transfers this Lease, the rights or obligations hereunder, except as may be expressly permitted by this Lease; or

14.1.11. If Tenant fails to perform any other agreement or covenant or breaches any representation or warranty under this Lease and fails to cure or remedy such failure or breach and the circumstances giving rise to any breach of representation within thirty (30) days after receipt of notice from Landlord as to the same.

14.2. **Landlord Event of Default.** The following shall constitute a "Landlord Event of Default" under this Lease: Landlord's failure to perform any term or condition under this Lease within forty-five (45) days after receipt of written notice from Tenant specifying the failure. No such failure, however, will be deemed to exist if Landlord has commenced to cure the default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord. If Landlord remains in default beyond

any applicable cure period, Tenant will have the right to exercise any and all rights available to it under law and equity, including the right to cure Landlord's default and to deduct the costs of such cure from any moneys due to Landlord from Tenant.

15. **Landlord Remedies.** Upon the occurrence of any Tenant Event of Default, Landlord shall have the option, in addition to and not in limitation of any other remedy permitted at law or in equity or by this Lease, to exercise any and all of the following remedies:

15.1. **Remedies.** Upon Landlord becoming entitled to pursue Landlord's remedies against Tenant, as provided in Section 14 above, Landlord may declare Tenant in default under this Lease and (a) enjoin or prevent the violation, (b) enforce the performance of this Lease, (c) pursue any remedy in any manner provided and permitted by applicable Laws or in equity, including specific performance or damages, (d) terminate Tenant's right of possession under this Lease, and/or (e) terminate this Lease at Landlord's discretion. Upon Landlord's election to terminate this Lease, this Lease shall cease and come to an end as if that were the day originally fixed herein for the expiration of the Term. All amounts actually and reasonably expended by Landlord to cure any default or to pursue remedies hereunder shall be paid by Tenant to Landlord upon demand and shall be in addition to the Base Rent, Additional Rent, and other payments otherwise payable hereunder. All remedies of Landlord under this Lease shall be cumulative, and the failure to assert any remedy, and any waiver of any event of default, shall not be deemed to be a waiver of such remedy or event of default at later dates.

15.2. **Separate Covenants.** Each and every covenant and agreement contained in this Lease shall be deemed separate and independent and not dependent upon any other provisions of this Lease and the damages for failure to perform the same shall be deemed in addition to and separate and independent of the damages accruing by reason of the breach of any other covenant contained in this Lease.

15.3. **Survival.** In the event of a termination of this Lease by the Landlord due to the Tenant's default, the Tenant's obligation to pay Base Rent, Additional Rent, and other charges shall not cease, and the Tenant shall be liable to the Landlord for damages in an amount equal to the Base Rent, Additional Rent, and other charges that would have been payable by the Tenant for the remainder of the Term, less any net recovery by the Landlord from reletting the Premises, after deducting all costs and expenses incurred by the Landlord in connection with such reletting. The Tenant shall pay such damages to the Landlord monthly and at the time the Base Rent and the Additional Rent would have been payable under this Lease, and no suit to collect such damages shall prejudice the Landlord's right to collect any further damages.

15.4. **Cumulative Remedies.** All rights, options, and remedies of the Landlord contained in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Landlord shall have the right to pursue any one or all such remedies. Nothing herein shall limit Landlord from bringing an appropriate action for declaratory relief, injunctive relief, or specific performance of all requirements and

obligations pertaining to such relief, or an action for the enforcement or collection of any amounts that are or may become due under this Lease.

16. Termination by Tenant. This Lease may be terminated by Tenant as follows:

- 16.1. By Tenant upon written notice to Landlord prior to the Rent Commencement Date, if Tenant is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court, or other governmental authority necessary for the construction or operation of the Telecommunications Equipment as now and hereafter intended by Tenant; or if Tenant determines in its sole discretion that the cost of obtaining or retaining the same is commercially unreasonable;
- 16.2. By Tenant upon thirty (30) days prior written notice to Landlord, if Landlord remains in default under Section 14.2 of this Lease after expiration of any applicable notice and cure periods;
- 16.3. By Tenant upon ninety (90) days written notice for any reason, other than 16.1 or 16.2 above, so long as Tenant pays the Landlord a termination fee equal to twelve (12) months' Rent based on the then-current amount, including Additional Rent, at the time Tenant provides its notice of termination.
- 16.4. For the avoidance of doubt, for each of the above terminations other than a termination pursuant to Section 16.1, the then-current Rent amount, including Additional Rent, shall apply through the notice period after which Tenant shall pay Holdover Rent to Landlord until all of Tenant's Telecommunications Equipment is removed from the Premises and Property and the Premises has been restored to the condition existing prior to the Effective Date.

17. Assignment.

- 17.1. Except as set forth in subparagraph 16.2 below, Tenant shall have the right to assign this Lease, in whole or in part, only with the prior written consent of the Landlord, which consent may not be unreasonably withheld, conditioned, or delayed. Any assignment of this Lease, except as provided in subparagraph 16.2 below and other than the co-location of additional users, requires the submission, review, and approval of the assignee's corporate and financial documents by the Landlord prior to the assignment. Landlord shall have thirty (30) days from the submission of the required documentation to review and approve the assignment. If no response is received from the Landlord within the thirty-day period, the assignment is deemed approved. Any assignee or Co-Location shall be bound by the terms of this Lease.
- 17.2. This Lease may be assigned or transferred by Tenant without any approval or consent of Landlord to (a) Tenant's principal, affiliates, subsidiaries of its principal; (b) any entity that acquires all or substantially all of Tenant's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition, or other business reorganization; or (c) to any entity that acquires or receives an interest in the majority of communication towers of Tenant in the market

defined by the Federal Communications Commission in which the Property is located; provided, however, that Tenant shall promptly notify Landlord in writing of such assignment or transfer. Upon notice to Landlord of the consummation of any such assignment or transfer permitted under this Section 17, the assignor shall be relieved of all future performance, liabilities, and obligations under this Lease only if such assignment is approved in writing by the Landlord. Tenant shall provide Landlord updated contact information immediately upon any such assignment or transfer.

18. **Relocation.** Landlord may, on no more than one occasion during the Term and upon no less than nine (9) months' prior written notice to Tenant, relocate the Telecommunications Equipment to an alternate location (the "Alternate Area"), provided that: (a) the Alternate Area shall be similar in size to the Premises, (b) the Alternate Area shall be reasonably accessible to Tenant and reasonably suitable for operation of the Telecommunications Equipment, (c) the costs of removal and re-installation of the Telecommunications Equipment shall be at Tenant's expense and shall be performed by contractors reasonably acceptable to Landlord, such approval not to be unreasonably withheld, conditioned, or delayed, (d) there shall be no substantial period during which the Telecommunications Equipment shall be inoperative or Tenant's service interrupted, and (e) Tenant shall be allowed, if necessary, to place temporary equipment on the Property at a mutually agreeable location during such relocation. Rent shall continue throughout the relocation period.

19. **Condemnation; Casualty.**

19.1. Notwithstanding anything to the contrary herein, Landlord shall have the right to terminate this Lease following the occurrence of any condemnation or other taking of all or any material portion of the Property or any material casualty, as determined by Landlord or by any persons or entities having rights under the Senior Property Interests, and neither Landlord nor any such persons or entities shall have any restoration obligation under this Lease. All condemnation, taking, and casualty proceeds relating to the Property and this Lease shall be property of the Landlord or such persons or entities having rights under the Senior Property Interests as their interests may appear, and Tenant shall have no interest therein. Landlord shall not be liable for any damages or inconvenience that may arise through or as a result of any repair or alteration of any part of the Property or as a result of any termination of this Lease under the terms of this Section. This Section 19 is intended as an express provision with respect to the casualty or condemnation of the Property that supersedes the provisions of the Nevada Uniform Vendor and Purchaser Risk Act.

19.2. If any part of the Telecommunications Equipment or Property is damaged by fire or other casualty so as to render the Premises unsuitable, in Tenant's sole determination, then Tenant may terminate this Lease by providing written notice to Landlord within fifteen (15) days of the date of the casualty (the "Casualty Notice"), and termination will be effective as of the date of the casualty. Upon such termination, Tenant will be entitled to collect all of its insurance proceeds and to be reimbursed for any prepaid Rent after the date of the Casualty Notice.

20. **Estoppel.** Either party shall, at any time upon fifteen (15) days' prior written notice from the other, execute, acknowledge, and deliver to the other a statement in writing (a) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying this Lease, as so modified, is in full force and effect), (b) certifying the date to which the Rent and other charges are paid in advance, if any, and (c) certifying that there are not, to such party's knowledge, any uncured defaults on the part of the other party hereunder, or specifying such defaults if any are claimed, and (d) such other matters as such party shall reasonably request.

21. **Tenant Indemnification.**

21.1. **Environmental Law Compliance.** Without limiting any other covenant or undertaking of Tenant in this Lease, Tenant at Tenant's expense, shall comply with all applicable Laws pertaining to any and all of the environment, health, safety, and hazardous substances or waste or any other dangerous substances (collectively, "Environmental Laws") to the extent the foregoing pertain to Tenant's use of the Premises or any part of the Property. Tenant shall not cause or permit any hazardous substances, pollutants, contaminant, toxic or hazardous waste, dangerous substance, potentially dangerous substance, noxious substance, toxic substance, flammable, explosive, radioactive material, asbestos, PCBs, or any other dangerous substances to be brought upon, stored, released, kept, or used in or about the Premises or the Property by Tenant, its agents, employees, contractors, or invitees in violation of any applicable Environmental Laws. If Tenant breaches any of the foregoing obligations, Tenant shall promptly take all steps necessary to completely clean-up and remove all contamination and shall indemnify, hold harmless and, if requested by Landlord in its sole and absolute discretion, defend the Indemnified Parties and any and all holders and owners of Senior Property Interests from any and all Losses, including all out-of-pocket litigation costs, consultant fees, and expert fees that arise as a result of any and all such breaches. The foregoing indemnification obligations shall survive the expiration or sooner termination of this Lease.

21.2. **General Indemnification.** Without limiting Tenant's other indemnification obligations hereunder, Tenant shall indemnify, hold harmless and, if requested by Landlord in its sole and absolute discretion, defend (with counsel approved by Landlord) the Indemnified Parties from and against any and all Losses arising out of Tenant's performance under this Lease, Tenant's breach of any representation, warranty, or covenant under this Lease, Tenant's negligence or misconduct, Tenant's breach of any Law or Tenant's use of the Premises and the Telecommunications Equipment, except to the extent attributable to the gross negligence or willful misconduct of the Indemnified Parties. This Section shall survive the expiration or earlier termination of this Lease.

22. **Representations and Warranties.**

22.1. Each of Landlord and Tenant represents and warrants to the other that it is duly organized, validly existing, and in good standing in its state of organization, and that it has

the right, power, and authority to enter into this Lease and bind itself hereto through the party set forth as signatory for the party below.

22.2. Landlord represents that (i) it owns the Property in fee simple and as of the Effective Date, Landlord has not conveyed an interest in the leasehold estate to any party that is superior to, or otherwise conflicts with, the leasehold interest granted to Tenant herein; and (ii) provided that Tenant is not in default of any of the terms of this Lease, Landlord grants to Tenant peaceful possession and quiet enjoyment of the Premises throughout the Term for the primary purpose of the use permitted herein.

22.3. Tenant represents and warrants that neither Tenant nor any of its Affiliates or owners currently is a debtor in a case under the Bankruptcy Code (Title 11 of the United States Code), is the subject of an involuntary petition under the Bankruptcy Code, has made an assignment for the benefit of creditors, or is insolvent and unable to pay its debts as they become due. Tenant further represents and warrants that it has sufficient funds to enable Tenant pay Rent when due and all fees and expenses necessary or related to the consummation of the transactions contemplated by this Lease. Tenant intends to use, and will use, the Premises for the purposes contemplated by this Lease.

23. Miscellaneous.

23.1. **Limitation of Liability.** Landlord's liability shall be limited as provided by NRS Chapter 41 and, except for the indemnity obligations set forth in this Lease, and otherwise notwithstanding anything to the contrary in this Lease, TENANT AND LANDLORD HEREBY WAIVE ANY CLAIMS THAT EACH MIGHT HAVE AGAINST THE OTHER WITH RESPECT TO CONSEQUENTIAL, PUNITIVE, INCIDENTAL, OR SPECIAL DAMAGES, HOWEVER CAUSED, BASED ON ANY THEORY OF LIABILITY. Further, Tenant agrees that, in the event Tenant shall have any claim against Landlord under this Lease arising out of the subject matter of this Lease, Tenant's sole recourse shall be against Landlord's interest in this Lease, for the satisfaction of any claim requiring the payment of money by Landlord as a result of an event of default or otherwise in connection with this Lease, and no other property or assets of any Indemnified Party shall be subject to the levy, execution, or other enforcement procedure for the satisfaction of any such claim.

23.2. **Authority.** Each person executing this Lease on behalf of the parties represents and warrants that he or she has the authority to execute this Lease on behalf of such party and that this Lease has been duly authorized, executed and delivered by such party.

23.3. **Prohibited Persons.** Tenant represents and warrants that: (a) it is not a Prohibited Person (as defined below), (b) to Tenant's knowledge, none of its investors, affiliates or brokers or other agents (if any), acting or benefiting in any capacity in connection with this Lease are Prohibited Persons, and (c) none of the funds or other assets, if any, to be transferred hereunder are the property of, or beneficially owned, directly or indirectly, by a Prohibited Person, nor are such funds or other assets the proceeds of any specified unlawful activity as defined by 18 U.S.C. § 1956(c)(7). "Prohibited Person" means any of the following: (i) a person or entity that is listed in the annex to, or is otherwise subject

to the provisions of, Executive Order No. 13224 on Terrorist Financing (effective September 24, 2001) (the “Executive Order”); (ii) a person or entity owned or controlled by, or acting for or on behalf of any person or entity that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order; (iii) a person or entity that is named as a “specially designated national” or “blocked person” on the most current list published by the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”) at its official website, <http://www/treas.gov/offices/enforcement/ofac>; (iv) a person or entity that is otherwise the target of any economic sanctions program currently administered by OFAC; or (v) a person or entity that is affiliated with any person or entity identified in subclause (i), (ii), (iii) and/or (iv) above.

23.4. **No Brokers.** Tenant and Landlord each represent to the other that it has not dealt with any broker in connection with this Lease and shall indemnify and hold the other harmless against all broker fees and commissions arising out of a breach of the foregoing warranty. The foregoing indemnification obligations shall survive the expiration or sooner termination of this Lease.

23.5. **Time of the Essence.** As to all of Tenant’s and Landlord’s obligations under this Lease, time is of the essence.

23.6. **No Agency.** Tenant is not and shall not represent itself as an agent or representative of Landlord.

23.7. **Notices.** All notices, demands, requests and other communications required or permitted hereunder by a party shall be in writing and addressed as set forth below, and (i) personally delivered with a written receipt of delivery, (ii) sent by a nationally recognized overnight delivery service requiring a written acknowledgement of receipt or providing a certification of delivery or attempted delivery, or (iii) sent by certified or registered mail, return receipt requested. All notices shall be deemed effective when actually delivered as documented in a delivery receipt if sent via clauses (i)-(iii); provided, however, that if the notice was sent by overnight courier or mail as aforesaid and is affirmatively refused or cannot be delivered during customary business hours by reason of the absence of a signatory to acknowledge receipt, or by reason of a change of address with respect to which the sending party did not have either knowledge or written notice delivered in accordance with this paragraph, then the first attempted delivery shall be deemed to constitute delivery. Each party shall be entitled to change its address for notices from time-to-time by delivering to the other party notice thereof in the manner herein provided for the delivery of notices.

If to Tenant: [WIRELESS COMPANY]

With a copy to: [WIRELESS COMPANY]
Attn.: Legal Department

If to Landlord: City of Henderson
Attn: Property Management
240 S. Water Street
P.O. Box 95050 MSC131
Henderson, Nevada 890009-5050

With a copy to: City of Henderson
Attn: City Attorney's Office
240 Water Street
P.O. Box 95050 MSC 144
Henderson, Nevada 89009-5050

Payments to: City of Henderson
Attn: Finance Department
240 Water Street
P.O. Box 95007
Henderson, NV 89009-5007

23.8 **Severability.** In the event that any part of this Lease shall be held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be reformed, and enforced to the maximum extent permitted by applicable Laws. If such provision cannot be reformed, it shall be severed from this Lease and the remaining portions of this Lease shall be valid and enforceable.

23.9 **Subordination.** At the option of Landlord or of any persons or entities having rights under the Senior Property Interests, this Lease shall be subordinate to any Senior Property Interest or any modification, extension, or renewal of any such Senior Property Interest. This subordination shall be automatic and self-operative without further consent from Tenant; provided, however, Tenant shall execute such subordination or other agreements as requested by Landlord or the holder of a Senior Property Interest to evidence further such subordination.

23.10 **No Waiver.** No provision of this Lease shall be deemed to have been waived, except if such waiver is contained in a written instrument executed by the party against whom such waiver is to be enforced. No waiver by a party of any term or condition of this Lease shall constitute a waiver by such party of any prior, concurrent or subsequent breach or default of the same or any other term or condition of this Lease.

23.11 **Binding Nature And Benefit; No Third-Party Rights.** The terms and conditions contained in this Lease shall inure to the benefit of and be binding upon Landlord and Tenant and each of their respective heirs, executors, administrators, successors, and

permitted assigns, and no third party other than a permitted assignee of Landlord or Tenant is contemplated to or shall have any rights hereunder.

- 23.12 **Entire Agreement.** This Lease, together with all exhibits and addenda hereto, contains all of the terms and conditions agreed upon by the parties hereto with reference to the subject matter hereof and supersedes all prior agreements and negotiations with respect to the subject matter hereof. Any amendment, alteration, change, or modification of or to this Lease, in order to become effective, shall be made in writing and in each instance signed on behalf of each party and, other than Co-locations and updates to Exhibit B, approved by the City Council in accordance with any applicable Landlord signature policy.
- 23.13 **Governing Law; Jurisdiction.** This Lease shall be governed by the laws of the State of Nevada without regard to its conflict of laws provisions. Jurisdiction shall be in the courts located in Clark County, Nevada.
- 23.14 **Jury Trial Waiver.** LANDLORD AND TENANT EACH ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS LEASE IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER OF THEM AGAINST THE OTHER, ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THEIR RELATIONSHIP AS LANDLORD AND TENANT, TENANT'S USE AND OCCUPANCY OF THE PREMISES, AND ANY CLAIM OF INJURY OR DAMAGE. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT, OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE SUCH WAIVERS; (ii) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVERS; (iii) IT MAKES SUCH WAIVERS VOLUNTARILY; AND (iv) IT HAS BEEN INDUCED TO ENTER INTO THIS LEASE BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.
- 23.15 **Interpretation.** Unless otherwise specified, the following rules of construction and interpretation apply: (a) captions are for convenient reference only and in no way define or limit the construction of the terms and conditions hereof; (b) use of the term "including" shall be interpreted to mean "including but not limited to"; use of the terms "termination" or "expiration" are interchangeable; use of the terms "will" and "shall" are interchangeable; (c) reference to a default shall take into consideration any applicable notice, grace and cure periods; and (d) exhibits are an integral part of this Lease.
- 23.16 **Counterparts/Signatures.** This Lease may be executed in several counterparts, and each counterpart shall constitute one Lease binding on all parties hereto, notwithstanding that all of the parties are not signatory to an original or same counterpart. This Lease may be executed by electronic signature.

23.17 **Attorneys' Fees.** In the event either Landlord or Tenant brings an action against the other to enforce this Lease, or to defend an action brought by the other party, the prevailing party in such action shall be reimbursed by the other party for such costs as may be incurred in such action and any appeal from judgment, including attorneys' fees, court costs and expert witness fees.

[Signatures appear on the following pages.]

IN WITNESS WHEREOF, the parties hereto have entered into this Lease as of the Effective Date.

Date of Council Action: _____

LANDLORD:
CITY OF HENDERSON

By: _____
RICHARD A. DERRICK
CITY MANAGER/CEO

ATTEST:

JOSE LUIS VALDEZ, CMC
CITY CLERK

APPROVED AS TO FORM:

NICHOLAS G. VASKOV **CAO**
CITY ATTORNEY

APPROVED AS TO FUNDING:

MARIA GAMBOA
FINANCE DIRECTOR

DEPARTMENT DIRECTOR:

LANCE M. OLSON, P.E.
DIRECTOR OF PUBLIC WORKS

TENANT:

TENANT:

[WIRELESS COMPANY.]

a Delaware corporation

By: _____

Name: _____

Title: _____

EXHIBIT A

LEGAL DESCRIPTION OF THE PREMISES
[see attached]

EXHIBIT B

THE PLANS
[see attached]

EXHIBIT C

ADDITIONAL CONDITIONS

[INSERT SITE-SPECIFIC CONDITIONS AS REQUIRED]

(a) Tenant shall reimburse the Landlord for the costs of all appraisals, preliminary title reports, and publication of any notice related to the lease of the Property.

(b) Landlord's execution of this Lease is made in its capacity as owner of the Property and not in Landlord's regulatory capacity. Landlord's execution of this Lease does not constitute an endorsement or approval of any development plans or a commitment or guarantee for water or sanitary sewer service. Provision of those services is administered pursuant to Title 14 and 19 of the Henderson Municipal Code. Tenant understands the Premises will be subject to requirements for development per the Henderson Municipal Code.

(c) Tenant acknowledges that the Landlord, its employees, agents, and representatives have made no representations or warranties, written or oral, express or implied, with respect to the Premises. Tenant is relying upon its own expertise and upon its own investigation of the Premises with respect to its suitability for Tenant's intended use. **TENANT UNDERSTANDS AND AGREES THAT IT IS LEASING THE PREMISES AS IS AND WITH ALL FAULTS.**

(d) Tenant must construct any improvements on the Property pursuant to the Henderson Municipal Code or as required by the City of Henderson Public Works, Parks and Recreation, and the Community Development and Services Departments.

(e) Except as otherwise explicitly permitted by a local governmental agency, the Premises must be for a use permitted by zoning and is limited to PS (Public Semi-Public).

(f) Landlord reserves the right to reroute Tenant's access to the Telecommunications Equipment if development plans are submitted and approved that would offer an alternative means of access to the site for Tenant, or if Tenant occupies the Premises prior to Landlord's development of the Property.

(g) The Premises must be completely enclosed with a decorative block wall to match the existing decorative block walls of [the park/the adjacent reservoir facility] to conceal all ground based equipment and equipment shelters. No equipment or equipment shelters, other than the tower and any equipment located on or within the tower, shall extend above the wall. Tenant shall submit the block wall design to Landlord for review and approval and shall make modifications to the proposed block wall design as requested by Landlord before commencing construction on the Property.

(h) Tenant shall re-locate and replace all landscaping, irrigation lines, ground cover, and the like that becomes disturbed by the construction of the Telecommunication Equipment facility, including any landscaping, irrigation lines, ground cover, and the like that may be located outside of the Premises but which was disturbed as part of the construction of the Telecommunications Equipment facility.

(i) Tenant shall be responsible for repairing and/or replacing any paving, concrete, curbs, gutters, sidewalks, decorative block, or other improvements damaged by construction or trenching activities or

caused by any other accidental damage. Landlord shall bill Tenant for any repairs made by Landlord caused by, or related to, Tenant's construction or operation and use of the Premises.