

REPORT / RECOMMENDATION



To: Members Of Edina City Council

Agenda Item #: IV. H.

From: Tim Barnes, City Facility Manager *TFB*

Action

Discussion

Date: December 16, 2014

Information

Subject: Cell Tower Lease Renewal at Creek Valley Park Communications Facility

Action Requested: Approval of attached cell tower lease renewal with Crown Castle for T-Mobile site at Creek Valley Park.

Information / Background:

Creek Valley Park

6303 Gleason Road Edina 55424

The original lease with ATP Minneapolis Inc. (Original Tenant) was effective on August 1, 1996. T-Mobile Central LLC acquired the rights to this site as a successor in interest to APT Minneapolis Inc. effective November 16, 2012. Thus far the City has had a successful owner/tenant relationship at this site. Crown Castle and T-Mobile Central LLC entered into an owner/management agreement for certain portions of T-Mobile's portfolio at the end of November 2012, assigning this tower location as part of that portfolio under Crown Castle. The lease agreement is due to expire at the end of December 2014 and Crown Castle has expressed an interest in renewal and continuance of this lease agreement with the City of Edina.

- City staff engaged in a process of negotiation that resulted in an agreement for 100% of any additional property space to be solely the income of the City (the tower is the property of the tenant).
- We also negotiated a 2 % increase in the Annual escalation amounts based on Consumer Price Index numbers.
- The City also realized that we have a rental rate on this contract that was lower than other municipalities and we were able to see a 10% starting lease rate increase.
- There is also a \$5,000.00 signing bonus associated with this lease agreement, to be used for the removal of equipment upon lease termination by either party.
- This agreement is set to the term of 5 years, with 4 additional 5 year terms.
- This lease includes both of the original and additional amendments that have been agreed upon by the

City. Any additional language has been under the review of Attorney John Kelly of the Campbell Knutson Professional Association and City staff.

Therefore after review the City Staff recommends that the City of Edina renews the lease at this location.

Site Name: Edina (Creek Valley)
Business Unit #: 823886

LEASE FOR COMMUNICATION FACILITY AGREEMENT
(Renewal)

by and between

CITY OF EDINA

and

T-MOBILE USA TOWER LLC

Dated as of January 1, 2015

THIS INSTRUMENT WAS DRAFTED BY:

CAMPBELL, KNUTSON
Professional Association
1380 Corporate Center Curve, Suite 317
Eagan, Minnesota 55121
Telephone: (651) 452-5000
[JFK]

Site Name: Edina (Creek Valley)
Business Unit #: 823886

LEASE FOR COMMUNICATION FACILITY AGREEMENT
(Renewal)

This **Lease for Communication Facility Agreement** (“Lease”) is entered into as of January 1, 2015, by and between the **CITY OF EDINA**, a Minnesota municipal corporation (“Landlord”), whose address is 4801 West 50th Street, Edina, Minnesota 55424, and **T-MOBILE USA TOWER LLC**, a Delaware limited liability company, (“Tenant”), whose address is 12920 Southeast 38th Street, Bellevue, WA 98006.

Recitals

WHEREAS, the Landlord is the owner of certain property located on Gleason Road in Edina, Minnesota 55424 known as “Creek Valley Park”, as legally described in Exhibit “A” attached hereto (“Property”); and

WHEREAS, Landlord and ATP Minneapolis, Inc. (“Original Tenant”) entered into a Lease for Communication Facility made and effective as of August 1, 1996 (“Original Lease”) which Original Lease was amended as of December 31, 1996 pursuant to the First Amendment to Lease for Communication Facility (“First Amendment of Lease”) and further amended on February 17, 1999 pursuant to the Second Amendment to Lease for Communication Facility (“Second Amendment of Lease”) (the First Amendment of Lease and Second Amendment of Lease are hereinafter jointly referred to as “Amendments of Lease”), wherein Landlord leased nine hundred square feet (900 sq. ft.) of space on the Property, as legally described on Exhibit “A” and depicted on the “Plot Plan” attached hereto as Exhibit “B” (“Leased Premises”) to Original Tenant for Original Tenant to install a seventy-five foot (75’) monopole (“Monopole”) with nine (9) antennas (“Antennas”) located thereon, for Original Tenant’s communication equipment cabinets (“Tenant’s Communication Equipment”), the Monopole,

Antennas and Original Tenant's Communication Equipment, located within the Leased Premises, are hereinafter jointly referred to as "Tenant's Communication Facility"; and Landlord further granted to Original Tenant an easement over and under the Property as legally described in Exhibit "A" and shown on the Plot Plan ("Access Easement") to allow Original Tenant to install, remove, replace, operate, maintain and repair Tenant's Communication Facility, including the running of electric lines and telephone lines and Tenant's Communication Equipment; and

WHEREAS, T-Mobile Central, LLC ("T-Mobile Central"), as successor in interest to the Original Tenant, assigned the Original Lease, as amended by the Amendments of Lease, to Tenant on November 26, 2012 pursuant to a "Memorandum of Assignment and Assumption Agreement" ("Assignment of Lease"), wherein T-Mobile Central sold, conveyed, assigned and transferred T-Mobile Central's interest in the Original Lease, as amended by the Amendments of Lease, to Tenant and Tenant accepted the sale, conveyance and transfer of T-Mobile Central's interest in the Original Lease, as amended by the Amendments of Lease, and assumed and agreed to pay, perform and discharge all of the liabilities of T-Mobile Central under the Original Lease; and

WHEREAS, the Original Lease expires by its terms on December 31, 2014 and Tenant has requested that Landlord enter into a new lease with Tenant effective as of January 1, 2015 for the "Leased Premises" so that Tenant may continue to use Tenant's Communication Facility and the non-exclusive Access Easement, as hereinafter defined; and

WHEREAS, the Landlord is agreeable to leasing and does hereby agree to lease to the Tenant the Leased Premises so that Tenant may continue to use the Tenant's Communication Facility, the non-exclusive Access Easement over the Property for Tenant's continued ingress and egress to the Leased Premises, along with the electric lines and telephone lines and related

equipment to Tenant's Equipment Cabinets ("Utilities") subject to the terms, covenants and conditions of this Lease.

NOW THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein as though they were set forth in the body hereof and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. PROPERTY AND PREMISES. Subject to the following terms and conditions, Landlord agrees to and hereby does lease to Tenant the Leased Premises for Tenant's use of the Monopole and related equipment and improvements for Tenant's Communication Facility, subject to all other existing easements and leases for space on the Property together with the non-exclusive Access Easement for the, for ingress and egress and for the Utilities on, over and under the Property as legally described in Exhibit "A". The primary purpose of Landlord's ownership of the Property is to operate a public park.

2. TERM. The initial term of this Lease shall be five (5) years ("Initial Term"), commencing on January 1, 2015("Commencement Date"). Tenant shall have the right to extend this Lease for four (4) additional five (5) year terms (each, a "Renewal Term") subject to the terms of this Lease. The Renewal Terms of this Lease shall be on the same terms and conditions as set forth herein except for rental adjustments as provided in Paragraph 3, Rent, below. This Lease shall be automatically renewed for each of the Renewal Terms unless Tenant gives Landlord written notice of Tenant's intention not to renew this Lease at least ninety (90) days prior to the expiration of the Initial Term or any applicable Renewal Term.

3. RENT AND ADDITIONAL COSTS AND EXPENSES.

a. Tenant shall pay Landlord, as and for rent, the following sums at the time stated herein ("Rent"):

Based on Tenant's Communication Facility currently located on the Property, the monthly rent on the Commencement Date of this Lease shall be One Thousand Six Hundred Seventy-five and No/100 Dollars (\$1,675.00) which monthly Rent shall be paid annually in advance on or before the first day of January of each year of this Lease, with the first such annual payment due on or before January 1, 2015.

b. The Rent shall be increased each year on January 1st beginning on January 1, 2016, by an amount equal to the increase in the Consumer Price Index ("CPI") as provided below. In no event shall the increase in Rent calculated for any one (1) year period of the Lease be less than three and one-half percent (3.5%) or greater than five percent (5%) of the Rent for the preceding year of the Lease. The Rent shall never be decreased.

The CPI shall mean the "Consumer Price Index for All Urban Consumers, All Cities, All Items (1984 = 100)" as published by the United States Department of Labor, Bureau of Labor Statistics or, if such index shall be discontinued, the successor index thereto or, if there shall be no successor index, such comparable index as shall be mutually agreed upon by the parties. To determine the annual rental increase to be paid by Tenant, the annual rental for the previous year shall be multiplied by the percentage increase in the "unadjusted" CPI (not seasonally adjusted) for the twelve (12) month period ending in June of the previous year. Landlord shall be responsible for communicating all Rent increases to Tenant.

c. If this Lease is terminated according to its terms, other than for termination of the Lease for nonpayment of Rent or other Tenant's default and Tenant has prepaid the Rent, the Tenant shall be entitled to a refund on a prorated basis, based on a thirty day month, as of the date of termination of this Lease.

d. In addition to Rent, Tenant agrees to timely pay its pro rata share of any real estate taxes or personal property taxes in lieu of real estate taxes required by any governmental body having jurisdiction over the Property as a result of this Lease.

e. Tenant shall pay a late fee of One Hundred Dollars (\$100.00) if the Rent is not paid within thirty (30) days of the due date.

4. GOVERNMENTAL APPROVAL CONTINGENCY.

a. Approvals. Tenant's right to use the Leased Premises and the Access Easement as provided in this Lease is expressly made contingent upon (i) Tenant's maintaining at Tenant's sole cost and expense all the certificates, permits, zoning and other approvals that may be required by any federal, state, or local authority for Tenant's use of the Leased Premises (individually, a "Governmental Approval" and collectively, the "Governmental Approvals"); and (ii) Tenant complying with the terms and conditions of this Lease. Landlord shall cooperate with Tenant in its efforts to obtain and/or retain all such Governmental Approvals and shall take no action which would adversely affect the status of the Leased Premises with respect to the Tenant's proposed use thereof.

b. Interference Study. If in the future Landlord experiences interference with the Landlord's Police, Fire, Emergency Medical, Public Works (SCADA System) and Park's Communications Systems ("Landlord's Communication Systems") and believes the interference to be from Tenant's Communication Facility, Tenant shall take immediate steps to correct the interference problem at its cost and expense as provided in Paragraph 6(a) hereof.

c. Non-approval. In the event that any Governmental Approval necessary under Subparagraph 4a above is rejected or if any permit, license or Governmental Approval currently issued to Tenant is cancelled, expires, lapses, or is otherwise withdrawn or terminated by the applicable governmental authority so that Tenant, in its sole discretion, is unable to use the

Leased Premises for its intended purposes, Tenant shall have the right to terminate this Lease as provided in Paragraph 11 hereof and be reimbursed for the Rent paid if made pursuant to Subparagraph 3a above. Notice of Tenant's exercise of its right to terminate this Lease shall be given to Landlord pursuant to Section 19 hereof. Except as required under Subparagraph 11(d) below, upon such termination, this Lease shall become null and void and the parties shall have no further obligations to each other.

5. PERMITTED USES.

a. Subject to the terms of this Lease, the Leased Premises and the Access Easement may be used by Tenant solely for the following uses: (i) any lawful activity in connection with the provisions of wireless communication services including WiMAX/WiFi, the transmission and reception of radio communication signals; and (ii) for the purpose of constructing, installing, repairing, maintaining, removing, improving and operating the Tenant's Communication Facility, in accordance with this Lease and in accordance with the transmission and reception of microwave spectrum communication signals authorized for use of the Tenant by the Federal Communications Commission ("FCC"). This use is non-exclusive, and Landlord reserves the right to allow the Property to be used by others, provided they do not interfere with Tenant's use of the Tenant's Communication Facility. Tenant agrees to and shall comply with all ordinances, statutes and regulations of the Landlord and all other county, state and/or federal agencies.

b. The placement and/or location of the equipment of any Colocator, as hereinafter defined, on the Monopole or in the Leased Premises and the manner in which the applicable Colocators' equipment is constructed and installed, shall be subject to prior review and approval of Landlord and by a registered professional structural engineer ("Engineer") submitted to Landlord and its agents, which have approved the same. Landlord shall, at all times, use reasonable efforts to provide Tenant 24 hours a day, 7 days a week ingress, egress, and access to

the Tenant's Communication Facility over the Access Easement, subject to the terms of this Lease. Tenant will not allow any mechanics' or materialmen's liens to be placed against the Property as a result of Tenant's work on the Property.

Tenant shall have the right during the term of this Lease to access the Lease Premises, over the Access Easement, including vehicular access, for the repair, maintenance, improvement and operation of the Tenant's Communication Facility. If the Tenant, or any of Tenant's agents, contractors or other designees, damages the Property at any time during the term of this Lease, it shall immediately (within thirty (30) days), repair the Property to the conditions it was in prior to the Tenant, or any of Tenant's agents, contractors or other designees, damaging the same, including but not limited to the filling of all ruts in the grass or damage to asphalt caused by Tenant's, or any of Tenant's agents, contractors or other designees, equipment driving on the Property and shall re-seed or re-sod all grass areas and replace all other vegetation including trees and shrubs damaged by Tenant, such that the Property is in the same or substantially the same condition it was before said damage.

d. Tenant agrees that if Tenant's Communication Facility produces noise levels that cause a disturbance to the surrounding neighbors of the Property in excess of applicable law, Tenant will at its own expense install noise mitigating equipment or a buffer to meet State noise standards.

e. Tenant shall telephonically notify the Landlord of scheduled work on Tenant's Communication Facility that is to be done after 5:00 o'clock p.m. on business days, and any time on weekends and holidays. The notice shall be given to Landlord so that it is received at least forty-eight (48) hours in advance of the start of the scheduled work. In the case of Tenant's emergency work on Tenant's Communication Facility, Tenant shall telephonically notify the Landlord as soon as reasonably practicable.

f. **EXCEPT AS TO EMERGENCY WORK ON TENANT'S COMMUNICATION FACILITY WHERE COORDINATION IS NOT REASONABLY PRACTICAL, TENANT SHALL COORDINATE ALL WORK TO BE DONE ON TENANT'S COMMUNICATION FACILITY WITH THE LANDLORD'S "PARK DEPARTMENT" TO ENSURE THAT IT IS SCHEDULED AROUND ALL COMMUNITY ACTIVITIES, MAINTENANCE OF THE PARK AND/OR IMPROVEMENT PROJECTS OF THE LANDLORD IN THE PARK, SO AS NOT TO INTERFERE WITH THE FOREGOING.**

6. TENANT'S COMMUNICATION FACILITY.

a. Any facility, antenna, structure, equipment or other type of future improvement of Tenant's Communication Facility made by Tenant during this Lease installed by the Tenant on the Leased Premises, must be of a type and installed in such a manner as not to cause any diminution in the quality of the communication signal, transmission or reception (hereinafter "interference") of any governmental communication equipment installed by the Landlord or other public agency now or in the future on the Property or the property adjacent thereto ("Creek Valley School"). If any such interference is alleged by the Landlord and Landlord provides reasonable evidence that such interference is likely caused by Tenant's use or operation of the Leased Premises or any facilities, structures, equipment or other types of improvements installed thereon by Tenant, it shall be the immediate and affirmative duty of Tenant to diligently pursue a cure to eliminate all of the interference. If any such interference is alleged by Landlord and Landlord provides reasonable evidence that such interference is likely caused by Tenant's use or operation of the Leased Premises or Tenant's Communication Facility or any facilities, structures, equipment or other types of improvements installed thereon by Tenant, Tenant shall reimburse Landlord for its reasonable costs associated with conducting such interference studies.

Such reimbursement shall be made within thirty (30) days of Tenant's receipt of Landlord's invoice and documentation reasonably supporting such costs, in an amount not to exceed Five Thousand and 00/100 Dollars (\$5,000.00).

The parties agree that if the interference, that is likely caused by Tenant's use or operation of the Leased Premises, warrants an emergency response, the Notice provision in Paragraph 19 shall not apply. Rather, Landlord shall provide notice of reasonable evidence that the interference is likely caused by the Tenant's use or operation of the Leased Premises verbally by telephone, facsimile or e-mail, whichever is determined by the Landlord to be the most immediate method of conveying such notice of reasonable evidence to Tenant, provided such notice by Landlord is in a form that is reasonably practical for Tenant to assess such alleged interference. Notice of reasonable evidence of Tenant's interference shall be phone, faxed, or e-mailed to the following:

Tenant's Emergency Responder	National Operations Center (NOC)
Telephone Number	800-788-7011
Email	noc.noc@crowncastle.com

Upon providing notice of reasonable evidence that any interference is likely caused by Tenant's use or operation of the Tenant's Communication Facility, Tenant shall send a qualified technician or representative to the Leased Premises within eight (8) hours from the time that the notice of reasonable evidence is provided by Landlord. The required eight (8) hour emergency response time under these circumstances is applicable 24 hours a day, 7 days a week. The qualified technician or representative shall be capable of assessing the situation and eliciting the necessary response, including any repairs, alterations or modifications to Tenant's Communication Facility.

If such interference cannot be cured within twenty-four (24) hours after the notice provided for in this Paragraph 6a, the Tenant shall immediately cease using or operating the Tenant's Communication Facility or any of its facilities, structures, equipment or other types of improvements installed thereon, until such interference is cured to the reasonable satisfaction of Landlord.

b. Tenant shall be solely responsible for any taxes on its personal property.

c. Tenant shall, at its sole cost and expense, maintain Tenant's Communication Facility and the Leased Premises in as close as reasonably possible to the condition they are in as of the Commencement Date, reasonable wear and tear accepted and shall further maintain during the term of this Lease, any fencing surrounding the Leased Premises and all landscaped areas in and around the fencing and the Leased Premises (e.g. weeding, adding mulch as needed and repairing the fence).

7. UTILITY SERVICE AND ACCESS EQUIPMENT. All of Tenant's electrical wires, telephone wires and related cables (coaxial cables) and related equipment installed on the Property and/or the Leased Premises shall be installed underground in the future except as permitted by the Landlord in writing and shall be installed on the Property and the Leased Premises, or within the Monopole according to the Landlord's applicable code, rules and regulations and all state codes, rules and regulations. Any future utilities shall be directionally bored and adjusted in the field to avoid potential impact to any existing trees and "hand dug" in any area or location where there are numerous existing utilities. Tenant shall provide Landlord with an as-built plan showing the exact location of all Utilities, installed by Tenant on the Leased Premises and/or the Property. Tenant shall furnish Landlord with pertinent information as to the exact type of AC power used by the Tenant. The Tenant agrees that upon the request of the Landlord, it will field locate all existing Utilities at Tenant's expense.

As partial consideration for Rent paid under this Lease, Landlord hereby grants to the Tenant an appurtenant non-exclusive easement for the Utilities where they are currently located and an appurtenant non-exclusive easement for ingress, egress, and access to the Leased Premises over the Access Easement. Upon notice, Landlord shall have the right, at Landlord's sole expense, to relocate the Access Easement, provided such new location shall not materially interfere with the operations of Tenant's Communication Facility. The new Access Easement, provided hereunder, shall have the same term as this Lease. Notwithstanding the foregoing, the Landlord and Tenant acknowledge that part of the Tenant's current access is through the Creek Valley School parking lot and that if it is limited or prohibited in the future, the Landlord will provide an alternate easement for access, to the Leased Premises across the Landlord's property ("Alternate Access Easement"). The Alternate Access Easement shall be one of the Alternate Access Easements shown on the Plot Plan. Tenant shall be responsible for all construction cost related to the construction of this Alternate Access Easement and Landlord and Tenant agree to amend this Lease to reflect the Alternate Access Easement and shall legally describe the same in the amendment of the Lease.

8. ADDITIONAL LESSEE'S. Tenant acknowledges that Landlord may in the future lease a portion of the Property to other parties, so long as Landlord shall not itself, nor permit any new tenants or licensees to install equipment on the Property, if such equipment would cause interference with Tenant's operations of Tenant's Communication Facility.

9. ADDITIONAL TENANT FACILITIES AND/OR COLOCATORS.

Tenant may not add additional facilities, structures, equipment or other types of improvements, including equipment cabinets and/or antennas beyond those currently existing as part of the Tenant's Communication Facility without the prior written approval of the Landlord which approval shall not be unreasonably withheld, conditioned or delayed. If Landlord fails to

provide its written approval or disapproval of Tenant's request within thirty (30) days after Tenant submits plans and specifications setting forth the additional facilities, structures and equipment including, but not limited to, equipment cabinets, coaxial cables and/or antennas that Tenant intends to add, which plans and specifications, shall be in a form and substance acceptable to Landlord, Landlord's approval shall be deemed to have been provided to Tenant. If Landlord approves additional facilities, equipment or antennas on the Monopole or in the Leased Premises or on the Property, for other users or carriers ("Colocators"), Landlord and Tenant acknowledge and agree that Landlord shall have the exclusive right to lease space on the Property to the Colocators for the applicable Colocators' equipment including equipment cabinets and/or shelters, to the Colocators ("Colocators' Space") and Landlord may charge additional rent for any of said Colocators' equipment including equipment cabinets and/or shelters or other types of improvements of the applicable Colocator in the Colocators' Space. Tenant may lease antenna space on the Monopole to Colocators and also provide for the installation of related equipment, i.e. ice bridges, coaxial cable and utilities, etc. in the Leased Premises, but not lease space in the Leased Premises for any Colocators' equipment cabinets or shelters, subject to Landlord's approval as provided in this Lease and the Tenant shall be entitled to receive all of the rent from the Colocators for the Colocators antennas on the Monopole and related equipment. All Colocators leasing space from the Tenant on the Monopole must comply with all applicable rules, regulations, ordinances and procedures of the Landlord including executing an application for the use of the Monopole and the Colocators' equipment and enter into (i) a separate lease for the Colocators' Space and the Colocators' equipment cabinets and/or shelters and related equipment and utilities and access easements, with Landlord; and (ii) a separate Monopole lease and/or equipment lease for the Colocators' use of the Monopole and

related equipment located within the Leased Premises with Tenant. Tenant will be entitled to retain all Monopole rents or other rents from the Colocators for use of the Leased Premises.

Tenant agrees to enter into an "Escrow Agreement" in a form and substance acceptable to Landlord wherein Tenant shall deposit with Landlord the amount of Five Thousand Dollars (\$5,000.00), at the time, that Tenant proposes to make any alteration or modification of, or addition to, the Tenant's Communication Facility whether by Tenant or any Colocator pursuant to this Lease, to be used by Landlord to reimburse Landlord for all costs incurred by the Landlord in connection with any such alteration, modification of, or addition to, the Tenant's Communication Facility or a Colocator pursuant to this Lease including, but not limited to, plan review, structural review, site meetings, inspection time, and as-built updating because of Tenant's changes, including attorney's fees for drafting and/or reviewing documents.

10. DEFAULT. Any of the following occurrences, conditions, or acts shall be deemed a "Default" under this lease:

- a. If Tenant fails to pay amounts due under this Lease within thirty (30) days of its receipt of written notice that such payments are overdue;
- b. If either party fails to observe or performs its obligations under this Lease and does not cure such failure within sixty (60) days from its receipt of written notice of breach without, however, limiting any other rights available to the parties pursuant to any other provision of this Lease. If the default may not be reasonably cured within such sixty (60) day period, either party may request the other party to grant an extension of the time to cure.
- c. Except as expressly limited hereby, Landlord and Tenant shall have such remedies for the default of the other party hereto as may be provided at law or equity following written notice of such default and failure to cure the same within the applicable time allowed to cure under the terms of this Lease.

11. TERMINATION.

- a. Except as otherwise provided herein, this Lease may be terminated, without penalty or further liability, as follows:
- i. by either party upon sixty (60) days written notice of a Default as defined herein (without, however, limiting any other rights available to the parties pursuant to any other provisions hereof);
 - ii. by Tenant upon ninety (90) days written notice by Tenant if Tenant is unable after filing all necessary applications for obtaining or maintaining of any license, permit or other Governmental Approval and making all reasonable efforts and using due diligence to comply with all requirements necessary to obtain or maintain any license, permit or other Governmental Approval necessary for the installation and/or operation of the Tenant's Communication Facility or Tenant's business;
 - iii. by Tenant upon one hundred eighty (180) days' notice if the Tenant's Communication Facility becomes unacceptable under Tenant's design or engineering standards for Tenant's Communication Facility or the communications system to which Tenant's Communication Facility belongs;
 - iv. by Landlord upon ninety (90) days written notice if Landlord reasonably determines that Tenant has failed to comply with applicable ordinances, or state or federal law, or any conditions attached to Government Approvals granted thereunder, after a public hearing before the Landlord's Council;
 - v. by Landlord and/or Tenant if there is an interference problem with the Landlord's Communication Systems that cannot be corrected; or

- vi. Upon eighteen (18) months written notice after the Initial Term by Landlord if its Council decides to sell or redevelop the Property and/or discontinue use of the Property for public or governmental purposes in a manner that is inconsistent, in Landlord's sole opinion, with Tenant's continued use of Tenant's Communication Facility.
- b. Notice of Termination. The parties shall give notice of termination of this Lease in accordance with Section 19 of this Lease. All rentals paid for by Tenant prior to said termination date shall be retained by Landlord.
- c. Tenant's Liability for Early Termination. If Tenant terminates this Lease pursuant to subsection 11.a.iii, above, Tenant shall pay to Landlord as liquidated damages for early termination, 150% of the annual Rent for the year in which Tenant terminates; provided, however, that Tenant shall not be required to pay an liquidated damages or termination fee if Tenant elects not to renew the term of this Lease pursuant to Section 2, above.
- d. Removal of Communication Facility. Upon termination of this Lease for any reason, Tenant shall, within ninety (90) days of "Landlord's Notice" as hereinafter provided, remove the Tenant's Communication Facility including, but not limited to, the Monopole and the base for the Monopole (except that Tenant shall not be required to remove more than the top five (5) feet of the base) and any fencing from the Leased Premises, and all Coaxial Cable, and Utilities and restore the Property to a condition as close as possible to its original condition. The Monopole and/or any other part of Tenant's Communication Facility or any other improvement made by Tenant or any Colocator on the Property, remaining on the Property ninety (90) days after Landlord's Notice may be removed by Landlord at Tenant's sole cost and expense, or at Landlord's sole discretion, become the property of the Landlord free of any claim by Tenant or any person claiming through Tenant. If Tenant fails to remove the Monopole and the base

thereof or Tenant's Communication Facility or any other improvements within said ninety (90) day period, the Tenant shall pay to Landlord, notwithstanding the termination of this Lease, Rent in an amount equal to 150% of the amount of Rent that would have been due for the period of time that the Monopole and equipment and/or Tenant's Communication Facility remains on the Property.

Notwithstanding the foregoing paragraphs of this Section, upon termination of this Lease for any reason except for as provided in section 11.a.vi, Landlord and Tenant may mutually agree to have the Tenant leave the Monopole on the Leased Premises. In the event that Landlord and Tenant mutually agree that Tenant shall leave the Monopole on the Leased Premises, the Tenant shall remove all of the rest of Tenant's Communication Facility from the Monopole including the Antenna, all Coaxial Cables and Utilities on the Leased Premises and/or the Property, including any of the forgoing that belongs to any Colocator. If Landlord and Tenant mutually agree to have the Monopole remain on the Leased Premises, the Tenant shall not remove the chain link fencing surrounding the Leased Premises.

If Landlord and Tenant cannot mutually agree within forty-five (45) days of the termination of the Lease as to whether the Tenant shall leave the Monopole on the Existing Leased Premises, the Tenant shall, at its sole cost and expense, remove the Monopole, and that portion of the base as required by Section 11d, and the rest of Tenant's Communication Facility, including all Utilities and the fencing and all Colocator's (if any) equipment, antennas and cables.

12. INSURANCE.

Tenant agrees to obtain and maintain during the term of this Lease the insurance coverage's set forth in Exhibit "C".

13. DEFENSE AND INDEMNIFICATION.

a. General. Tenant agrees to defend, indemnify and hold harmless Landlord and its elected officials, officers, employees, agents, and representatives, from and against any and all claims, costs, losses, expenses, demands, actions, or causes of action, including reasonable attorneys' fees and other costs and expenses of litigation, which may be asserted against or incurred by Landlord or for which the Landlord may be liable in the performance of this Lease, except those which arise solely from the gross negligence, or willful misconduct of Landlord, or its respective employees, agents or contractors. Tenant shall further defend and indemnify all claims arising out of the installation, operation, use, maintenance, repair, removal, or presence of the Tenant's Communication Facility on the Property.

b. Tenant's Warranty. Tenant represents and warrants that its use of the Leased Premises will not generate and Tenant will not store or dispose of on the Leased Premises, nor transport to the Leased Premises or over the Property, any Hazardous Materials, unless Tenant specifically informs Landlord thereof in writing twenty-four hours prior to such storage, disposal or transport, or otherwise as soon as Tenant becomes aware of the existence of Hazardous Materials on the Leased Premises. The obligations of the Tenant under this Paragraph 13 shall survive the expiration or other termination of this Lease.

c. Hazardous Materials. Without limiting the scope of Subparagraph 13a and 13b above, Tenant will be solely responsible for and will defend, indemnify, and hold Landlord, its agents, and employees harmless from and against any and all claims, costs, and liabilities, including reasonable attorney's fees and costs, arising out of or in connection with the cleanup or restoration of the Leased Premises, associated with the Tenant's use of Hazardous Materials. For the purposes of this Lease, "Hazardous Materials" shall be interpreted broadly and specifically includes, without limitation, asbestos, fuel, batteries or any hazardous substance, waste, or

materials as defined in any federal, state, or local environmental or safety law or regulations including, but not limited to, CERCLA. Notwithstanding anything to the contrary herein, Tenant shall have the right to store and use standard quantities of batteries within the Leased Premises so long as it does so in full compliance with all applicable laws.

14. LIMITATION OF LIABILITY. Notwithstanding anything to the contrary in this Lease, in no event will either party be liable to the other party for, or indemnify the other party against, punitive, indirect, incidental, special or consequential damages, including, without limitation, loss of profits, income or business opportunities; provided, however, that this provision shall not release or reduce Tenant's obligation to pay Rent to the Landlord in accordance with the terms of this Lease. Landlord's liability under this Lease for any claim of any nature, or reason, by any person or party, is limited to the liability limits of Minnesota Statutes, Chapter 466.

15. ASSIGNMENT. This Lease, or rights thereunder, may not be sold, assigned, or transferred at any time by Tenant except to Tenant's affiliates or subsidiaries, or any party that merges or consolidates with Tenant or Tenant's parent, or any party that purchases or otherwise acquires all or substantially all of Tenant's stock or assets without the written consent of the Landlord, such consent not to be unreasonably withheld, conditioned or delayed. For purposes of this paragraph, an "affiliate" or "subsidiary" means an entity in which Tenant owns greater than a 50% interest. Landlord hereby consents to the assignment by Tenant of its rights under this Lease as collateral to any entity which provides financing for the Tenant's Communication Facility subject to Landlord's rights to retain the same and/or other improvements if Tenant fails to remove them as required by this Lease.

16. QUIET ENJOYMENT. Tenant, upon paying Rent, shall peaceably and quietly have, hold and enjoy the Leased Premises and the Access Easement, provided Tenant is not in default

under any other covenant or agreement contained in this Lease. Landlord hereby waives any and all lien rights it may have statutory or otherwise concerning Tenant's Communication Facility or any portion thereof which shall be deemed personal property for the purposes of this Lease, whether or not the same is deemed real or personal property under the applicable laws, and Landlord gives Tenant and Tenant's mortgagees ("Mortgagees"), the right to remove all or any portion of Tenant's Communication Facility from time to time, whether before or after default under the Lease, in Tenant's and/or mortgagee's sole discretion and without Landlord's consent, subject to the obligations of the Tenant to remove Tenant's Communication Facility as set forth in Section 11(d). If a Mortgagee desires to remove Tenant's Communication Facility, the Mortgagee shall sign an agreement with the Landlord stating that they will be responsible for restoring the Property to a condition as close as possible to its original condition, and that they will be liable to the Landlord for any cost and expenses incurred by Landlord in restoring the Property to a condition as close as possible to its original condition in the event that the Mortgagee fails to do so.

17. DAMAGE OR DESTRUCTION. If the Tenant's Communication Facility or any portion thereof is destroyed or damaged so as to materially hinder the effective use of the Tenant's Communication Facility by Tenant through no fault or negligence of Tenant, Tenant may elect to terminate this Lease upon thirty (30) days' written notice to Landlord. In such event, all rights and obligations of the parties shall cease (except as to the Tenant's obligations under this Lease to remove the Tenant's Communication Facility under Paragraph 11.d.) as of the date of the notice to Landlord and Tenant shall be entitled to the reimbursement of any Rent prepaid by Tenant. If Tenant elects to continue this Lease, then the Rent shall abate for a period of ninety (90) days or until the Tenant's Communication Facility is restored to the condition existing prior to the damage or destruction, whichever is earlier.

18. CONDEMNATION. In the event the whole of the Leased Premises and/or Property is taken by eminent domain, this Lease shall terminate as of the date title to the Leased Premises or the Property vests in the condemning authority. In event a portion of the Leased Premises is taken by eminent domain, either party shall have the right to terminate this Lease as of the date of title transfer, by giving thirty (30) days' written notice to the other party. In the event of any taking under the power of eminent domain, Tenant shall not be entitled to any portion of the reward paid for the taking and the Landlord shall receive full amount of such award. Tenant hereby expressly waives any right or claim to any portion thereof. Although all damages, whether awarded as compensation for diminution in value of the leasehold or to the fee of the Leased Premises or the Property shall belong to Landlord, Tenant shall have the right to claim and recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant on account of any and all damage to Tenant's business and any costs or expenses incurred by Tenant in moving/removing all or a portion of the Tenant's Communication Facility.

19. NOTICES. All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or delivered by a nationally recognized overnight courier service, to the following addresses or to any other address of Tenant or Landlord that is given from time to time to the other party pursuant to this provision, regarding written notice:

If to Landlord: City of Edina
 4801 West 50th Street
 Edina, MN 55424
 Attn: City Manager

e. Enforcement and Attorneys' Fees. The prevailing party in any action or proceeding in court to enforce the terms of this Lease including any appeals shall be entitled to receive its reasonable attorney's fees and other reasonable costs and expenses from the non-prevailing party.

f. Governing Law. This Lease shall be construed in accordance with the laws of the State of Minnesota.

g. Severability. If any term of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect.

h. Memorandum of Lease. Landlord and Tenant agree that upon the request of the Landlord or Tenant to sign a Memorandum of Lease in the form acceptable to both parties which may be recorded in the Office of the Hennepin County Recorder by either party.

i. Estoppel Information. Each party agrees to furnish to the other, within ten (10) days after request, such truthful estoppel information as the other may reasonably request relating to this Lease.

j. Brokers. If either party is represented by a real estate broker in this transaction, that party shall be fully responsible for any fee due such broker in this transaction, that party shall be fully responsible for any fee due such broker, and shall hold the other party harmless from any claims for commission by such broker.

k. No Waiver. No provision of this Lease will be deemed waived by either party unless expressly waived in writing by the waiving party. No waiver shall be implied by delay or any other act or omission of either party. No waiver by either party of any provisions of this Lease shall be deemed a waiver of such provision with respect to any subsequent matter relating to such provision.

THIS INSTRUMENT WAS DRAFTED BY:
CAMPBELL KNUTSON, P.A. [JFK]
1380 Corporate Center Curve, Suite 317
Eagan, MN 55121
Telephone: (651) 452-5000

LIST OF EXHIBITS

- Exhibit "A": Legal Descriptions
 (1) Property
 (2) Leased Premises
 (3) Access Easement
- Exhibit "B": Plot Plan
- Exhibit "C": Tenant's Required Insurance

Tenant Site I.D. #: A1P009
Site Name: Edina – Creek Valley

EXHIBIT "A"

LEGAL DESCRIPTIONS

(1) **LEGAL DESCRIPTION OF PROPERTY:**

SITUATE IN THE COUNTY OF HENNEPIN AND STATE OF MINNESOTA.

ALL THE TRACT OR PARCEL OF LAND LYING AND BEING IN THE COUNTY OF HENNEPIN AND STATE OF MINNESOTA, DESCRIBED AS FOLLOWS, TO-WIT: THAT PART OF LOT 24, AUDITOR'S SUBDIVISION NUMBER 196, HENNEPIN COUNTY, MINNESOTA, WHICH LIES WITHIN THAT PART OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 116, RANGE 21, LYING EAST OF GLEESON ROAD AND LYING NORTHERLY OF THE FOLLOWING DESCRIBED LINE KNOWN AS LINE A:

LINE A

BEGINNING AT THE EAST 1/4 CORNER OF SECTION 6, TOWNSHIP 116, RANGE 21; THENCE NORTH 00 DEGREES 09 MINUTES 27 SECONDS EAST ALONG THE EAST LINE OF SAID SECTION 6 A DISTANCE OF 1960.42 FEET; THENCE NORTH 78 DEGREES 48 MINUTES 33 SECONDS WEST A DISTANCE OF 661.05 FEET; THENCE NORTH 11 DEGREES 11 MINUTES 27 SECONDS EAST A DISTANCE OF 50.0 FEET; THENCE NORTH 78 DEGREES 48 MINUTES 33 SECONDS WEST A DISTANCE OF 330.0 FEET; THENCE NORTH 89 DEGREES 04 MINUTES 48 SECONDS WEST A DISTANCE OF 168.18 FEET TO THE ACTUAL POINT OF BEGINNING OF LINE A; THENCE NORTH 76 DEGREES 48 MINUTES 12 SECONDS WEST A DISTANCE OF 5.00 FEET; THENCE NORTHWESTERLY ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 879.93 FEET (DELTA ANGLE 21 DEGREES, TANGENT DISTANCE 163.09 FEET) A DISTANCE OF 322.51 FEET; THENCE NORTH 55 DEGREES 48 MINUTES 12 SECONDS WEST ALONG TANGENT TO LAST DESCRIBED CURVE A DISTANCE OF 290.10 FEET; THENCE NORTHWESTERLY ALONG A CURVE TO THE LEFT WITH A RADIUS OF 647.96 FEET (DELTA ANGLE 21 DEGREES 34 MINUTES 58 SECONDS, TANGENT DISTANCE 123.50 FEET) A DISTANCE OF 244.08 FEET; THENCE NORTH 77 DEGREES 23 MINUTES 10 SECONDS WEST ALONG TANGENT TO LAST DESCRIBED CURVE A DISTANCE OF 81.42 FEET AND THERE TERMINATING.

TAX ID NO: 06-11621120002

ADDRESS: 6303 Gleason Road, Edina, MN 55424

(2) LEGAL DESCRIPTION OF LEASED PREMISES:

That part of Lot 24, AUDITOR'S SUBDIVISION NO. 196, according to the recorded plat thereof, Hennepin County, Minnesota, described as follows:

Commencing at the most easterly corner of Lot 1, Block 1, CHEROKEE HILLS 6TH ADDITION, according to the recorded plat thereof, said Hennepin County; thence North 54 degrees 35 minutes 03 seconds West, assumed bearing along the northerly extension of the northeasterly line of said Lot 1 a distance of 228.82 feet; thence North 41 degrees 21 minutes 21 seconds East 134.74 feet; thence easterly a distance of 56.88 feet along a tangential curve, concave to the south, having a radius of 72.38 feet and a central angle of 45 degrees 01 minutes 25 seconds; thence North 88 degrees 22 minutes 46 seconds East, tangent to last described curve, a distance of 336.83 feet; thence southeasterly a distance of 78.13 feet along a tangential curve, concave to the south, having a radius of 148.07 feet and a central angle of 30 degrees 14 minutes 07 seconds; thence South 63 degrees 23 minutes 07 seconds East, tangent to last described curve a distance of 49.81 feet; thence easterly a distance of 46.93 feet along a tangential curve, concave to the north, having a radius of 55.01 feet and a central angle of 48 degrees 53 minutes 01 seconds; thence North 67 degrees 43 minutes 52 seconds East, tangent to last described curve, a distance of 101.35 feet; thence easterly a distance of 28.50 feet along a tangential curve, concave to the south, having a radius of 37.01 feet and a central angle of 44 degrees 07 minutes 20 seconds; thence South 68 degrees 08 minutes 48 seconds East, tangent to last described curve, a distance of 23.98 feet; thence easterly a distance of 25.59 feet along a tangential curve, concave to the north, having a radius of 19.55 feet and a central angle of 74 degrees 59 minutes 59 seconds; thence North 36 degrees 51 minutes 13 seconds East, tangent to last described curve, a distance of 168.60 feet; thence northerly a distance of 27.20 feet along a tangential curve, concave to the west, having a radius of 25.94 feet and a central angle of 60 degrees 05 minutes 02 seconds; thence North 23 degrees 06 minutes 10 seconds East, tangent to last described curve, a distance of 135.64 feet; thence westerly a distance of 43.95 feet along a tangential curve, concave to the south, having a radius of 36.92 feet and a central angle of 68 degrees 12 minutes 29 seconds; thence South 68 degrees 41 minutes 21 seconds West, tangent to last described curve, a distance of 51.50 feet; thence northerly a distance of 39.27 feet along a tangential curve, concave to the east, having a radius of 25.00 feet and a central angle of 90 degrees 00 minutes 00 seconds; thence North 01 degrees 18 minutes 39 seconds West, tangent to last described curve a distance of 39.92 feet; thence South 68 degrees 41 minutes 21 seconds West 11.00 feet to the point of beginning of the land to be described; thence North 01 degrees 18 minutes 39 seconds West 30.00 feet; thence North 68 degrees 41 minutes 21 seconds East 30.00 feet; thence South 01 degrees 18 minutes 39 seconds East 30.00 feet; thence South 68 degrees 41 minutes 21 seconds West 30.00 feet to the point of beginning.

(3) LEGAL DESCRIPTION OF ACCESS EASEMENT:

A 20.00 foot wide permanent easement for access purposes over and across part of Lot 24, AUDITOR'S SUBDIVISION NO. 196, according to the recorded plat thereof, Hennepin County, Minnesota, the center line of said easement is described as follows:

Commencing at the most easterly corner of Lot 1, Block 1, CHEROKEE HILLS 6TH ADDITION, according to the recorded plat thereof, said Hennepin County; thence North 54 degrees 35 minutes 03 seconds West, assumed bearing along the northerly extension of the northeasterly line of said Lot 1 a distance of 228.82 feet to the point of beginning of said center line to be described; thence North 41 degrees 21 minutes 21 seconds East 134.74 feet; thence easterly a distance of 56.88 feet along a tangential curve, concave to the south, having a radius of 72.38 feet and a central angle of 45 degrees 01 minutes 25 seconds; thence North 86 degrees 22 minutes 46 seconds East, tangent to last described curve, a distance of 336.83 feet; thence southeasterly a distance of 78.13 feet along a tangential curve, concave to the south, having a radius of 148.07 feet and a central angle of 30 degrees 14 minutes 07 seconds; thence South 63 degrees 23 minutes 07 seconds East, tangent to last described curve, a distance of 49.81 feet; thence easterly a distance of 46.93 feet along a tangential curve, concave to the north, having a radius of 55.01 feet and a central angle of 48 degrees 53 minutes 01 seconds; thence North 67 degrees 43 minutes 52 seconds East, tangent to last described curve, a distance of 101.35 feet; thence easterly a distance of 28.50 feet along a tangential curve, concave to the south, having a radius of 37.01 feet and a central angle of 44 degrees 07 minutes 20 seconds; thence South 88 degrees 08 minutes 48 seconds East, tangent to last described curve a distance of 23.98 feet; thence easterly a distance of 25.59 feet along a tangential curve, concave to the north, having a radius of 19.55 feet and a central angle of 74 degrees 59 minutes 59 seconds; thence North 36 degrees 51 minutes 13 seconds East, tangent to last described curve, a distance of 188.60 feet; thence northerly a distance of 27.20 feet along a tangential curve, concave to the west, having a radius of 25.94 feet and a central angle of 60 degrees 05 minutes 02 seconds; thence North 23 degrees 06 minutes 10 seconds East, tangent to last described curve, a distance of 135.64 feet; thence westerly a distance of 43.95 feet along a tangential curve, concave to the south, having a radius of 36.92 feet and a central angle of 68 degrees 12 minutes 29 seconds; thence South 88 degrees 41 minutes 21 seconds West, tangent to last described curve a distance of 51.50 feet; thence northerly a distance of 39.27 feet along a tangential curve, concave to the east, having a radius of 25.00 feet and a central angle of 90 degrees 00 minutes 00 seconds; thence North 01 degrees 18 minutes 39 seconds West, tangent to last described curve a distance of 36.92 feet and said center line there terminating.

The side lines of said easement shall be prolonged or shortened to terminate on the northerly extension of the northeasterly line of said Lot 1 and on a northerly and southerly extension of a line bearing South 88 degrees 41 minutes 21 seconds West from said point of termination.

EXHIBIT "C"

TENANT'S REQUIRED INSURANCE

a. Worker's Compensation. The Tenant must maintain Workers' Compensation insurance in compliance with all applicable statutes, rules and regulations. The policy shall also provide Employer's Liability coverage with limits of not less than \$500,000 Bodily Injury each accident, \$500,000 Bodily Injury by disease, policy limit, and \$500,000 Bodily Injury by disease, each employee.

b. General Liability. The Tenant must maintain an occurrence form comprehensive general liability coverage. Such coverage shall include, but not be limited to, bodily injury, property damage -- broad form, and personal injury, for the hazards of Premises/Operation, broad form contractual liability, independent contractors, and products/completed operations.

The Tenant must maintain aforementioned comprehensive general liability coverage with limits of liability not less than \$1,000,000 each occurrence; \$1,000,000 personal and advertising injury; \$2,000,000 general aggregate, and \$2,000,000 products and completed operations aggregate. These limits may be satisfied by the comprehensive general liability coverage or in combination with an umbrella or excess liability policy, provided coverage afforded by the umbrella or excess policy are no less than the underlying comprehensive general liability coverages.

Tenant will maintain Completed Operations coverage for a minimum of two years after the construction of Tenant's Communication Facility is completed.

c. Automobile Liability. The Tenant must carry Automobile Liability coverage. Coverage shall afford total liability limits for Bodily Injury Liability and Property Damage Liability in the amount of \$1,000,000 per accident. The liability limits may be afforded under the Commercial Policy, or in combination with an Umbrella or Excess Liability Policy provided coverage of rides afforded by the Umbrella Excess Policy are no less than the underlying Commercial Auto Liability coverage.

Coverage shall be provided by Bodily Injury and Property Damage for the ownership, use, maintenance or operation of all owned, non-owned and hired automobiles.

The Commercial Automobile Policy shall include at least statutory personal injury protection, uninsured motorists and underinsured motorists coverages.

d. Tenant Property Insurance. The Tenant must keep in force for the duration of the Lease a policy covering damages to its property at the Leased Premises. The amount of coverage shall be for the full insurable value and be sufficient to replace the damaged property, loss of use and comply with any ordinance or law requirements.

e. Hazardous Materials Coverage. Tenant must carry sufficient coverage, to the reasonable satisfaction of Landlord, for damage caused by Hazardous Materials.

f. Excess Liability. Tenant shall also maintain an umbrella or excess liability insurance policy with a combined single limit of \$5,000,000.00 which provides coverage in excess of all other coverages (except Workers' Compensation) required to be maintained by Tenant under this Lease.

g. Additional Insured - Certificate of Insurance. The Tenant shall provide, prior to the start of construction of the Communication Facility, evidence of the required insurance in the form of a Certificate of Insurance issued by a company (rated A or better), licensed to do business in the State of Minnesota, which includes all coverages required in this Paragraph. Tenant will name the Landlord as an Additional Insured on the General Liability and Commercial Automobile Liability Policies. The Certificate(s) shall also provide the coverage may not be cancelled, non-renewed, or reduced without thirty (30) days prior written notice to the Landlord, except for cancellation for non-payment of premium, in which case Tenant shall provide such notice.