

**CITY COMMISSION MEETING  
Winfield, Kansas**

DATE: Monday, July 10, 2023  
TIME: 5:30 p.m.  
PLACE: City Commission – Community Council Room – First Floor – City Building

***AGENDA***

CALL TO ORDER .....Mayor Gregory N. Thompson  
ROLL CALL.....City Clerk, Tania Richardson  
MINUTES OF PRECEDING MEETING.....Monday, June 19, 2023

**BUSINESS FROM THE FLOOR**

-Citizens to be heard

**NEW BUSINESS**

**Ordinances & Resolutions**

**Bill No. 2345 – A Resolution** – Authorizing an Outdoor Community Event and Temporary Entertainment District Application (Cowley County Fair Board).

**Bill No. 2346 – A Resolution** – Awarding a Lease Purchase Agreement for Refuse Utility equipment, specifically including a fully equipped Crane Carrier LET2-40/New Way Cobra Magnum equipped 2023 Refuse Truck in the amount of \$268,266, to RCB Bank, Winfield, KS.

**Bill No. 2347 – A Resolution** – Authorizing the City Manager and the City Clerk of the City of Winfield, Kansas to execute a first amendment to Option and Lease Agreement between the City of Winfield, Kansas and American Towers, LLC. for the purpose of leased land/tower space on City property.

**OTHER BUSINESS**

**ADJOURNMENT**

-Next Commission Work session 4:00 p.m. Thursday July 13, 2023  
-Next regular meeting 5:30 p.m. Monday, July 17, 2023.

## CITY COMMISSION MEETING MINUTES

Winfield, Kansas

June 19, 2023

The Board of City Commissioners met in regular session, Monday, June 19, 2023 at 5:30 p.m. in the City Commission-Community Council Meeting Room, City Hall; Mayor Gregory N. Thompson presiding. Commissioners Ronald E. Hutto was also present. Commissioner Brenda K. Butters was absent. Also in attendance were Taggart Wall, City Manager; and Tania Richardson, City Clerk. William E. Muret, City Attorney was absent. Other staff members present were Robbie DeLong, Police Chief; Phillip Lynch, Master Police Officer; Dan Defore, Water Superintendent.

Commissioner Hutto moved that the minutes of the June 5, 2023 meeting be approved. Commissioner Thompson seconded the motion. With both Commissioners voting aye, motion carried.

### PRESENTATION

-Winfield Police Department Promotions

-Police Chief DeLong introduced Phillip Lynch promoted from Master Police Officer to Sergeant.

- Police Chief DeLong presented the Commissioners and City Manager with a Winfield 150th Plaque.

### NEW BUSINESS

**Bill No. 2340 – An Ordinance** – Authorizing and directing the Mayor and Clerk of the City of Winfield, Kansas, to execute an agreement by and between the Cities of Winfield and Arkansas City, Kansas, and the Rural Fire District No. 6, Cowley County, Kansas, for certain fire protection services. City Manager Wall explains this Ordinance will authorize a renewal agreement for 2024-2026 with the same terms and conditions as the current agreement. Upon motion by Commissioner Hutto, seconded by Commissioner Thompson, both Commissioners voting aye, Bill No. 2340 was adopted and numbered Ordinance No. 4199.

**Bill No. 2341 – An Ordinance** – Authorizing the City of Winfield, Kansas, to enter into a lease purchase transaction, the proceeds of which will be used to pay the costs of acquiring refuse utility equipment for use in the City; and to approve the execution of certain documents in connection therewith. City Manager Wall explains this Ordinance will authorize entering into a Lease Purchase Agreement with Union State Bank for financing a 2023 Refuse Truck. Upon motion by Commissioner Hutto, seconded by Commissioner Thompson, both Commissioners voting aye, Bill No. 2341 was adopted and numbered Ordinance No. 4200.

**Bill No. 2342 – A Resolution** – Establishing a Capital Improvement Program for the use of Coronavirus State and Local Fiscal Recovery Funds authorized by the American Rescue Plan Act. City Manager Wall explains this Resolution will approve a CIP Plan for the use of the funds. This plan may be revised by the Commission at any time. Upon motion by Commissioner

Hutto, seconded by Commissioner Thompson, both Commissioners voting aye, Bill No. 2342 was adopted and numbered Resolution No. 3623.

**Bill No. 2343 – A Resolution** – Authorizing the Mayor and the City Clerk of the City of Winfield, Kansas to execute an agreement for engineering services with Professional Engineering Consultants for the purpose of providing professional design and construction administration services for water treatment plant ozone improvements. City Manager Wall explains this Resolution will approve an engineering firm to conduct an Ozone System Replacement. Upon motion by Commissioner Hutto, seconded by Commissioner Thompson, both Commissioners voting aye, contingent upon approval by the City Attorney, Bill No. 2343 was adopted and numbered Resolution No. 3723.

**Bill No. 2344 – A Resolution** – Authorizing the Mayor and the City Clerk of the City of Winfield, Kansas to execute an agreement for contractual services with Stockton Restoration Company, Wichita, for the purpose of providing contractual masonry restoration services at the Abbey Mausoleum at Highland Cemetery. City Manager Wall explains this Resolution approves an agreement to complete masonry restoration work on the Abbey Mausoleum. Upon motion by Commissioner Hutto, seconded by Commissioner Thompson, both Commissioners voting aye, Bill No. 2344 was adopted and numbered Resolution No. 3823.

#### **OTHER BUSINESS**

-Consider Board Appointments. City Manager Wall presented a list of board appointments for the Commission's consideration. Commissioner Hutto made a motion to accept the board appointments as follows:

##### **Board of Zoning Appeals**

David Brazil	reappoint
Michael Ledy	reappoint
Tom McNeish	appoint to fill vacancy (exp 2025)

##### **Building Trades Board**

Mark Satterlee-Plumber	reappoint
Cheri Hulse-Architect	reappoint
Mitchell Potucek-Electrician	reappoint
Brett Thomson-Contractor	reappoint

##### **City Planning Commission**

David Brazil	reappoint
Robert Gottlob	reappoint
Anne Jarrett	reappoint
Michael Ledy	appoint to fill vacancy (exp 2024)
Derek Koller	appoint to fill vacancy (exp 2025)

##### **Convention & Tourism Committee**

Emily Hamilton	reappoint
Robert McNown	reappoint
Jace McIntire	appoint to fill vacancy

Cowley County Council on Aging  
Scott Schoon reappoint

Kansas Power Pool (KPP)  
Gus Collins reappoint  
Taggart Wall reappoint

KMEA Board of Directors  
Gus Collins reappoint  
Taggart Wall reappoint  
Greg Thompson reappoint

KMGA Board of Directors  
Gus Collins reappoint  
Taggart Wall reappoint

Library Board  
Ian Otte appoint to fill vacancy  
Erica Lann-Teubner reappoint  
Joni Hoppins appoint

Park Board  
Jaci Littrell reappoint  
Tyler Martin appoint  
John Boyle reappoint  
Joyce McArtor reappoint

Senior Citizens Advisory Committee  
Janice Irvin reappoint  
Gary Holloway reappoint  
Lois Tharp reappoint  
Jim Buterbaugh reappoint  
Linda Chase reappoint  
Candi Fox reappoint  
Robert Ward reappoint  
Kathy Wohlgemuth reappoint  
Keith Wohlgemuth reappoint

Wm Newton Memorial Hospital Board  
Joan Cales reappoint

Commissioner Thompson seconded the motion. With both Commissioners voting aye, motion carried.



-Consider purchase of loader bucket for Street Department. City Manager Wall explains this loader bucket will replace an existing bucket. Commissioner Thompson moved to accept the low bid of \$29,400 from CAT. Commissioner Hutto seconded the motion, both Commissioners voting aye, motion carried.

-Consider an agreement with FLOCK Safety for the purchase of six (6) FLOCK fixed License Plate Reading (LPR) cameras. Police Chief DeLong explains this will approve an agreement with FLOCK Safety with an option of up to five years. Commissioner Hutto moved to accept the agreement with FLOCK Safety. Commissioner Thompson seconded the motion, both Commissioners voting aye, motion carried.

-Budget Workshop to be held on July 10, 2023. from 1 p.m. to 4 p.m. at the Physicians Pavilion.  
-Next Commission meeting rescheduled to July 10, 2023.

#### **ADJOURNMENT**

Upon motion by Commissioner Hutto, seconded by Commissioner Thompson, both Commissioners voting aye, the meeting adjourned at 5:41 p.m.

Signed and sealed this 7th day of July 2023.

Signed and approved this 10<sup>th</sup> day of July 2023.

---

Tania Richardson, City Clerk

---

Gregory N. Thompson, Mayor

**A RESOLUTION**

**AUTHORIZING** an Outdoor Community Event and Temporary Entertainment District Application (Cowley County Fair Board)

---

**WHEREAS**, Cowley County Fair Board has made application for an Outdoor Community Event and Temporary Entertainment District; and

**WHEREAS**, Cowley County Fair Board requests the sale, possession, and consumption of alcoholic liquor on city streets, alleys, parking lots, and public sidewalks during the Cowley County Fair, a special event, from 8:00 a.m. to 11:59 pm, on August 4, 2023, on Fairgrounds Street east of the grandstands.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WINFIELD, KANSAS, THAT:**

**Section 1.** Within Section 6-120 of Article IV of Section 6 of the Code of the City of Winfield, Kansas, "Temporary Entertainment District" means a defined area, which includes City streets, alleys, parking lots and public sidewalks on which the City Commission has authorized the sale, possession or consumption of alcoholic liquor or cereal malt beverage for a specified period of time, during a community event which has been properly permitted under Chapter 8 of this Code.

**Section 2.** A Special Event is defined by K.S.A. 41.719(a)(2). Alcoholic liquor may be consumed at a special event held on public streets, alleys, roads, sidewalks or highways when a temporary permit has been issued pursuant to K.S.A. 41-2645 for such special event. Such special event must be approved, by ordinance or resolution, by the local governing body of any city, county or township where such special event is being held. No alcoholic liquor may be consumed inside vehicles while on public streets, alleys, roads or highways at any such special event.

**Section 3.** The Cowley County Fair Board has contracted with Gypsy Bev Co LLC, 2213 E. 9<sup>th</sup> Ave, Winfield KS, a Caterer licensed by the Kansas Department of Revenue, Alcoholic Beverage Control Division and the City of Winfield. A "caterer" means an individual, partnership or corporation which sells alcoholic liquor by the individual drink, and provides services related thereto, on unlicensed premises which may be open to the public but does not include a holder of a temporary permit. [Subsection (c) of K.S.A. 41-2601]. Kansas Department of Revenue, Alcoholic Beverage Control Division granted Gypsy Bev Co LLC liquor license #11268, attached and made a part hereof, effective 09/12/2022 and expiring 09/11/2024. Gypsy Bev Co LLC will notify the Alcoholic Beverage Control Division Director by electronic notification of its intent to sell and serve alcoholic liquor by individual drink at least 48 hours prior to the event. A separate

Temporary Alcohol Permit is not required of the Cowley County Fair Board or Gypsy Bev Co LLC.

**Section 4.** The Governing Body of the City of Winfield Kansas hereby authorizes Outdoor Community Event and Temporary Entertainment District Application in accordance with the rules and procedures set forth by Article IV of Section 6 of the Code of the City of Winfield, Kansas, regarding the sale, possession or consumption of alcoholic liquor as presented by the Cowley County Fair Board for the Walnut Valley Festival, a special event, from 8:00 a.m. to 11:59 pm, on August 4, 2023, on Fairgrounds Street east of the grandstands, Winfield Kansas as identified in the Outdoor Community Event and Temporary Entertainment District Application; a copy of which is attached hereto and made a part hereof.

**Section 5.** This resolution shall be in full force and effect from and after its passage and approval.

**ADOPTED** this 10th day of July 2023.

(SEAL)

\_\_\_\_\_  
Gregory N. Thompson, Mayor

ATTEST:

\_\_\_\_\_  
Tania Richardson, City Clerk

Approved as to form: \_\_\_\_\_  
William E. Muret, City Attorney

Approved for Commission Action: \_\_\_\_\_  
Taggart Wall, City Manager



## Outdoor Community Event and Temporary Entertainment District Application

### APPLICANT INFORMATION

Organization:

Contact Name:

Email:

Telephone:

Address:

City/State/Zip:

### EVENT INFORMATION

Event Title:

Event Date:

Event Type:

Event Time (setup & teardown):

Public Property Needed:

Street Closure Requested? **Yes** ☐ or No ☐

**If yes, provide map of event identifying any and all street closures and placement of barricades; with type of barricades to be used**

Has written approval been received by appropriate authorities (KDOT) for closure of any State Highway (Main Street or 9<sup>th</sup> Avenue)? Yes ☐ or No ☐ *if yes, attach copy*

Date(s)/Time of Street Closures *(or attached information)*:

**Site Plan Required:** The plan defines the placement of fencing, tables, water supply, toilet/lavatory facilities, lighting, stages, temporary power needs, parking plans, sound plan, traffic control, temporary seating, tents or canopies, amusement or inflatable rides, barricade type/location, enter/exit locations, trash, signage, all streets being closed, etc. Parade or motor events require a map or diagram of the route to be traveled w/ starting and ending points identified; use of all or a portion of the street; approximate number, type, and description of persons, animals, and vehicles, as well as information above.

Emergency Services Requested: Police ☐ Fire ☐ EMS ☐

If you would like to speak with a department representative regarding having a member/s of one of the above-mentioned Emergency Service Departments, please contact the member mentioned below. Please note, that if the request is accepted, there are potential fees that may be assessed to your event for this coverage.

Winfield Police Department: Captain Chad Gordon (620) 221-5540

Winfield Fire/EMS Department: Fire Chief Vincent Warren (620) 221-5560

Will admission be charged? Yes ☐ or No ☐

Is this event a fundraiser? Yes ☐ or No ☐

Estimated Attendance: *(maximum)*:

Number of participants in previous years:

Please provide fliers, brochures, or website/Facebook posts describing the event.



## Outdoor Community Event and Temporary Entertainment District Application

### GENERAL LIABILITY INSURANCE INFORMATION

Comprehensive liability insurance (CGL) is a broad policy that protects the organization from liability claims related to products coverage, completed operations coverage, premise and operations coverage, and independent contractors' coverage; also called commercial general liability insurance. Proof of insurance may need be submitted to the City prior to approval of this application if any of the following activities are a part of the event; including but not limited to paid admissions, spectators, fairs & festivals, fireworks, concerts, carnivals, exhibitions, fundraisers, rides & attractions, racing events, religious ceremonies, running events, sporting events, animals, airsoft or paintball gun usage, construction exposures, inflatables (bounce houses), trampolines, water rides or water slides, bb/pellet guns, re-enactment weapons, archery, bonfires or open pit fires, food trucks/vendors, cereal malt beverage/liquor liability.

If required, the Applicant will procure and maintain during the term of the event a policy of insurance which provides general liability coverage in an amount not less than \$ 1,000,000 General Aggregate, \$ 1,000,000 Products Aggregate, \$ 500,000, Each Occurrence, \$ 500,000 Personal/Adv Injury, \$ 100,000 Fire Damage. with the City of Winfield KS, its officers and agents, named additional insured's.

Has a prior insurance provider canceled or refused to renew your policy? Yes ☐ or No ☐

### ALCOHOLIC LIQUOR OR CMB INFORMATION

Will Alcoholic Liquor or CMB be sold and/or served? Yes ☐ or No ☐ If yes, complete the following

If Yes, is there a Liquor Liability Policy In-Force? Yes ☐ or No ☐

Is the Applicant Named as an Additional Insured? Yes ☐ or No ☐

On-Site Supervisor Name:

Email:

Telephone:

Address:

City/State/Zip:

Possession, sale and/or consumption of Alcoholic Liquor or CMB: A Catered Licensed Event, Temporary license or a Temporary Permit MUST be approved by the Kansas Division of Alcoholic Beverage Control (ABC) and the Winfield City Commission. Regular City Commission meetings are held the 1<sup>st</sup> and 3<sup>rd</sup> Mondays of each month.

### FOOD INFORMATION

Will food be sold and/or served? Yes ☐ or No ☐ If yes, complete the following

Who is Providing the Food and/or Drink?

If Other than the Applicant, is a Certificate of Insurance Provided? Yes ☐ or No ☐

If Other than the Applicant, is Applicant Named as Additional Insured? Yes ☐ or No ☐

On-Site Supervisor Name:

Email:

Telephone:

Address:

City/State/Zip:



## Outdoor Community Event and Temporary Entertainment District Application

I, \_\_\_\_\_, the above named applicant, have read the contents of this application and that all information and answers herein contained are completed and true. In addition, I have read and understand all rules and regulations as set out in the Code of the City of Winfield. Furthermore, I hereby agree to comply with all of the laws of the State of Kansas, and all rules and regulations prescribed by the City of Winfield and I have consent to the immediate revocation of my license, by the proper officials, for any violation of such laws, rules, or regulations.

*Shannon Martin*

Signature of Event Applicant

\_\_\_\_\_

Date

### APPLICATION APPROVAL

*D. Wall*

Winfield City Manager

7/1/2023

\_\_\_\_\_

Date





W 14TH AVE

Q Search Maps





KEEP THIS LICENSE POSTED CONSPICUOUSLY AT ALL TIMES

## CITY OF WINFIELD, KANSAS CATERING LICENSE

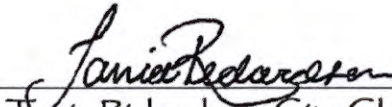
License is hereby granted for the applicant named below to operate a Catering Business in the City of Winfield, County of Cowley, Kansas. This license is neither transferable nor assignable, nor will any refund of the fee be allowed thereon, and is valid from 12:01 a.m. September 12, 2022 until 12:00 midnight September 11, 2024, unless surrendered or revoked.

Gypsy Bev Co LLC  
2213 E 9<sup>th</sup> Ave  
Winfield, Kansas 67156

*Witness my hand and the Corporate Seal of said City this 3rd day of October, 2022.*

(Seal)



  
Tania Richardson, City Clerk



**Kansas Alcoholic Beverage Control Division**  
**Liquor License**  
**Caterer**

OWNER NAME: **Gypsy Bev Co LLC**  
DBA: **Gypsy Bev Co**  
ADDRESS: **2213 E 9th Street**  
**Winfield , KS 67156**

**LICENSE NO: 11268**

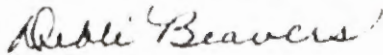
The licensee named above has been granted a liquor license by the Kansas Department of Revenue, Alcoholic Beverage Control Division. This license is neither transferable nor assignable and is subject to suspension or revocation.

**PRIVILEGES:**

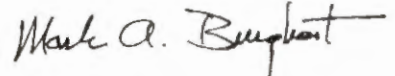
Allows the licensee to sell and serve alcoholic liquor for consumption on unlicensed premises and other activities as authorized by K.S.A. 41-2643.

**AGREEMENT:**

By accepting this license, the licensee agrees to conduct business in compliance with all applicable federal, state, county and city statutes and regulations.



Debbi Beavers  
Director, Alcoholic Beverage Control



Mark A. Burghart  
Secretary of Revenue

**EFFECTIVE: 09/12/2022**

**EXPIRES: 09/11/2024**

THIS LICENSE MUST BE FRAMED AND POSTED ON THE PREMISES IN A CONSPICUOUS PLACE

**IMPORTANT INFORMATION**

Contact the ABC Licensing Unit at 785-296-7015 or email [Kdor\\_abc.licensing@ks.gov](mailto:Kdor_abc.licensing@ks.gov) if you have any:

- questions regarding this license
- changes to your business name, location, ownership or officers
- questions about filing gallonage tax; if applicable

Contact your local ABC Enforcement Agent at 785-296-7015 or visit our website at

Contact the Miscellaneous Tax Segment at 785-368-8222 or email [Kdor\\_miscellaneous.tax@ks.gov](mailto:Kdor_miscellaneous.tax@ks.gov) if you:

- need assistance with liquor drink or liquor enforcement taxes
- have questions about liquor drink tax bonds, bond relief or bond release

**CLOSING YOUR BUSINESS**

If you are closing your business, you must surrender your liquor license and complete the form at



## Request for Commission Action

**Date:** July 6, 2023

**Requestor:** Taggart Wall, city manager

---

**Action Requested:** Reconsideration of bids for lease purchase of refuse utility equipment (packer body and chassis) and award to RCB Bank.

The previous formal documents approved were not specific to an agreement with Union State Bank, but conversation in the public meeting and in agenda documents discussed that only two bids had been received for this process. After the last regular meeting, it was discovered that a qualified third bid had been submitted via email, but not registered and considered, thus the reconsideration.

**Analysis:** In 2022, as approved by the governing body, the City procured a 2023 chassis and packerbody for the refuse utility. Those funds were encumbered in the 2022 financial statements and upon delivery of the unit in 2023, the City planned to solicit bids for financing of the equipment.

The City has completed that solicitation and received **three** bids for the LPA:

- Union State Bank  
Rate – 5.00%  
Fees - \$100.00
- Community National Bank  
Rate – 5.74%  
Fees - \$276.16
- RCB Bank  
Rate – 3.95%  
Fees - \$570.00

As outlined in the Request for Terms, the lease period is 60 months and there is a clause for the City to payoff the lease early with no penalties.

**Fiscal Impact:** This lease is approximately \$60,000 per year for five years and is a budgeted expense.

**Attachments:** RCB Letter, Resolution

**A RESOLUTION**

**AWARDING** a Lease Purchase Agreement for Refuse Utility equipment, specifically including a fully equipped Crane Carrier LET2-40/New Way Cobra Magnum equipped 2023 Refuse Truck in the amount of \$268,266, to RCB Bank, Winfield, KS.

**WHEREAS**, at the June 19, 2023 regular meeting of the Governing Body of the City of Winfield, bids were reviewed and an ordinance passed to allow the City to enter into a lease purchase agreement for refuse utility equipment. At that meeting, the apparent low bid was with Union State Bank, Winfield, Kansas. After the meeting, one qualifying bid not originally considered was discovered.

**WHEREAS**, after review, the City wishes to reject previous consensus award to Union State Bank and confirm award to RCB Bank the new apparent low bid.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WINFIELD, KANSAS, THAT:**

**Section 1.** The City of Winfield hereby awards a Lease Purchase Agreement for Refuse Utility equipment, specifically including a fully equipped Crane Carrier LET2-40/New Way Cobra Magnum equipped 2023 Refuse Truck in the amount of \$268,266, to RCB Bank, Winfield, KS.

**Section 2.** This resolution shall be in full force and effect from and after its passage and adoption.

**ADOPTED** this 10th day of July 2023.

(SEAL)

\_\_\_\_\_  
Gregory N. Thompson, Mayor

ATTEST:

\_\_\_\_\_  
Tania Richardson, City Clerk

Approved as to form: \_\_\_\_\_  
William E. Muret, City Attorney

Approved for Commission action: \_\_\_\_\_  
Taggart Wall, City Manager



*That's my bank!*

June 9, 2023

Melissa Schooley  
Finance Director  
City of Winfield  
PO Box 646  
Winfield, KS 67156

RE: Refuse Truck Lease Purchase

Per the attached municipal lease term sheet and amortization schedule, RCB Bank submits for consideration a tax-exempt, fixed rate of 3.95% for the \$268,266 Lease Purchase of 2023 Refuse Truck on five-year term with ten semi-annual payments of \$29,624.72 commencing October 1, 2023. There is no penalty for early repayment of the lease.

Thank you for the opportunity to provide you with this proposal.  
If you have any questions, please contact me at 620.221.8203

Respectfully,

A handwritten signature in black ink, appearing to read "Jon C. Baker", with a stylized flourish underneath.

Jon C. Baker  
Vice President  
NMLS #1174570

1610 Main Street  
Winfield, KS 67156  
Phone: 620.221.8203  
Fax: 620.229.8777  
Email: [chris.baker@rcbbank.bank](mailto:chris.baker@rcbbank.bank)

Encl.

## RCB Bank – Municipal Lease Term Sheet

The following Lessee is requesting **RCB Bank** to serve as Lessor with respect to obtaining lease-purchase financing for the specified equipment acquisitions of the Lessee, as set out below. Please provide the information requested for this lease-purchase transaction to **RCB Bank**.

		<b>Date:</b>	6/9/23
<b>Name of Lessee:</b>	City of Winfield, Kansas	<b>TIN:</b>	48-6004918
<b>Contact Name:</b>	Melissa Schooley, Finance Director	<b>Phone:</b>	620.221.5500
<b>Email:</b>	mschooley@winfieldks.org	<b>Fax:</b>	
<b>Physical Address:</b>	200 E. 9 <sup>th</sup> Ave, Winfield, KS 67156		
<b>Mailing Address:</b>	P.O. Box 646, Winfield, KS 67156		

<b>Equip/Property Description:</b>	2023 Crane Carrier LET2-40/New Way Cobra Magnum Refuse Truck
------------------------------------	--

<b>Vendor:</b>	
<b>Vendor Contact:</b>	<b>Phone:</b>

<b>Amt. of Lease:</b>	\$268,836	<b>Terms:</b>	5 years
<b>Est Delivery Date:</b>	6/30/23		

Interest Commences: Date set out in Amortization Schedule or as Otherwise Agreed Upon.

Nature of Lease: The lease-purchase will be between the Lessee and the successful financier.  
A form of the lease is available from RCB Bank.

Other Matters: RCB Bank will use our lease-purchase agreement and exhibits. In addition, the following fees are included in lease amount: \$175 attorney review, \$295 documentation, \$100 lien filing. No penalty for early repayment. Quoted rate subject to bank qualified, tax-exempt status and RCB loan approval. Quote expires 7/31/23.

### RCB – LEASE BID / FINANCING TERMS

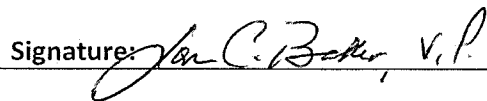
#### Equipment Lease Options

	Term	Rate	Estimated Payment Amount	Payment Structure
<input checked="" type="checkbox"/>	60	3.95% on Actual/360 basis	\$29,624.72	<input checked="" type="checkbox"/> Semi- Annual

**Name of Lessor:** RCB Bank  
**Address of Lessor:** 1610 Main St.  
Winfield, KS 67156

#### Kansas Division

**Name:** Jon C. Baker  
**Email Address:** [chris.baker@RCBbank.bank](mailto:chris.baker@RCBbank.bank)  
**Phone Number:** 620.221.8203  
**FAX Number:** 620.229.8777

Signature: 

# City of Winfield, Kansas

Compound Period ..... : Monthly

Nominal Annual Rate .... : 3.950 %

## CASH FLOW DATA

Event	Date	Amount	Number	Period	End Date
1 Lease	06/30/2023	268,266.00	1		
2 Attorney Fee	06/30/2023	175.00	1		
3 Title and Doc Fee	06/30/2023	395.00	1		
4 Lease Payment	10/01/2023	29,624.72	10	Semiannual	04/01/2028

## AMORTIZATION SCHEDULE - Normal Amortization

	Date	Lease	Attorney Fee	Title and Doc Fee	Lease Payment	Interest	Principal	Balance
Lease	06/30/2023	268,266.00						268,266.00
Attorney Fee	06/30/2023		175.00			0.00	0.00	268,441.00
Title and Doc Fee	06/30/2023			395.00		0.00	0.00	268,836.00
1	10/01/2023				29,624.72	2,692.89	26,931.83	241,904.17
<b>2023 Totals</b>		<b>268,266.00</b>	<b>175.00</b>	<b>395.00</b>	<b>29,624.72</b>	<b>2,692.89</b>	<b>26,931.83</b>	
	2 04/01/2024				29,624.72	4,817.10	24,807.62	217,096.55
	3 10/01/2024				29,624.72	4,323.10	25,301.62	191,794.93
<b>2024 Totals</b>		<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>59,249.44</b>	<b>9,140.20</b>	<b>50,109.24</b>	
	4 04/01/2025				29,624.72	3,819.26	25,805.46	165,989.47
	5 10/01/2025				29,624.72	3,305.39	26,319.33	139,670.14
<b>2025 Totals</b>		<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>59,249.44</b>	<b>7,124.65</b>	<b>52,124.79</b>	
	6 04/01/2026				29,624.72	2,781.29	26,843.43	112,826.71
	7 10/01/2026				29,624.72	2,246.75	27,377.97	85,448.74
<b>2026 Totals</b>		<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>59,249.44</b>	<b>5,028.04</b>	<b>54,221.40</b>	
	8 04/01/2027				29,624.72	1,701.56	27,923.16	57,525.58
	9 10/01/2027				29,624.72	1,145.52	28,479.20	29,046.38
<b>2027 Totals</b>		<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>59,249.44</b>	<b>2,847.08</b>	<b>56,402.36</b>	
	10 04/01/2028				29,624.72	578.34	29,046.38	0.00
<b>2028 Totals</b>		<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>29,624.72</b>	<b>578.34</b>	<b>29,046.38</b>	
<b>Grand Totals</b>		<b>268,266.00</b>	<b>175.00</b>	<b>395.00</b>	<b>296,247.20</b>	<b>27,411.20</b>	<b>268,836.00</b>	



## Request for Commission Action

**Date:** July 6, 2023

**Requestor:** Taggart Wall

---

**Action Requested:** Consideration of approval of an amendment to an Option and Lease Agreement between the City of Winfield and American Towers, LLC.

**Analysis:** The current lease in effect for the land for the tower at the Parks Shop has been asked to be amended by the company. The company states that it is difficult to get new sub lease contracts without longer term security. The contract started in 2009 with an initial five-year period and we are nearing the end of the second renewal. There are three more renewals expiring in 2039. For 2023, the lease is netting \$17,700/yr.

The company offered:

- Extend the current lease an additional 7, 5 year terms (meaning the lease would then expire in 2074)
- Current rent and escalation would stay as is (CPI with 3% cap).
- Adding a 10% revenue share for every new sublease.
- Adding a \$15,000 one time payment

In addition to the other terms offered, Staff requested American Towers to consider increasing the one-time payment to \$25,000 and lengthening the renewals to ten years at a time. The thought here is that extended total contract length is offered to the company for additional short-term security as the renewals are lengthened.

**Fiscal Impact:** One time payment of \$25,000 will be applied to the Special Parks and Rec Fund.

**Attachments:** Resolution

**A RESOLUTION**

**AUTHORIZING** the City Manager and the City Clerk of the City of Winfield, Kansas to execute a first amendment to Option and Lease Agreement between the City of Winfield, Kansas and American Towers, LLC. for the purpose of leased land/tower space on City property.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WINFIELD, KANSAS, THAT:**

**Section 1.** The City Manager and the City Clerk of the City of Winfield, Kansas to execute a first amendment to Option and Lease Agreement between the City of Winfield, Kansas and American Towers, LLC. for the purpose of leased land/tower space on City property.

**Section 2.** This resolution shall be in full force and effect from and after its passage and adoption.

**ADOPTED** this 10th day of July 2023.

(SEAL)

\_\_\_\_\_  
Gregory N. Thompson, Mayor

ATTEST:

\_\_\_\_\_  
Tania Richardson, City Clerk

Approved as to form: \_\_\_\_\_  
William E. Muret, City Attorney

Approved for Commission action: \_\_\_\_\_  
Taggart Wall, City Manager



BILL NO. 0921

RESOLUTION NO. 1809

**A RESOLUTION**

**AUTHORIZING** and directing the Mayor and Clerk of the City of Winfield, Kansas, to execute an Option and Lease Agreement by and between the City of Winfield, Kansas and American Towers, Inc.

**WHEREAS**, The City of Winfield owns a site located at 2201 Broadway St. that has been deemed appropriate for use by American Towers, Inc. for the installation of a communications facility; and,

**WHEREAS**, The City of Winfield and American Towers, Inc. are interested in executing an Option and Lease Agreement for this location.

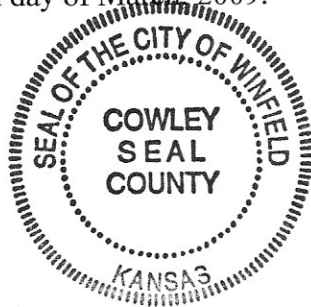
**BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WINFIELD, KANSAS, THAT:**

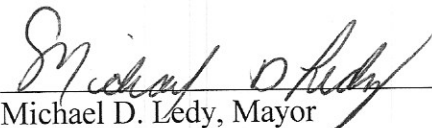
**Section 1.** The Mayor and Clerk of the City of Winfield, Kansas, are hereby authorized and directed to execute an Option and Lease Agreement with American Towers, Inc., a copy of said agreement is attached hereto and made a part hereof.

**Section 2.** This resolution shall be in full force and effect from and after its passage and approval.

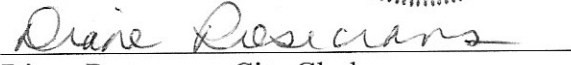
**ADOPTED** this 2nd day of March, 2009.


(SEAL)




  
Michael D. Ledy, Mayor

ATTEST:

  
Diane Rosecrans, City Clerk

Approved as to form:   
William E. Muret, City Attorney

Approved for Commission action:   
Warren Porter, City Manager

Prepared by and Return To:  
American Tower Corporation  
116 Huntington Avenue  
Boston, MA 02116  
Attn: Law Department  
Site #272588  
Site Name: Winfield West

### **Memorandum of Option and Lease Agreement**

**THIS MEMORANDUM OF OPTION AND LEASE AGREEMENT** ("Memorandum") is executed this 23<sup>rd</sup> day of April, 2009 by and between the City of Winfield, with a mailing address of 200 E. 9<sup>th</sup> Ave., Winfield, KS, 67156 ("Landowner") and American Towers, Inc., a Delaware corporation, with a mailing address of 10 Presidential Way, Woburn, MA 01801 ("American Tower") and evidences that on the 23<sup>rd</sup> day of April, 2009 an Option and Lease Agreement ("Agreement") was entered into by and between Landowner and American Tower.

1. **Option.** The term of this Option is one (1) year from the date of this Memorandum ("Option Initial Term"). This Option can be extended by American Tower for one (1) additional period of one (1) year and for such other periods as the Landowner and American Tower mutually agree ("Option Renewal Terms").

2. **Property.** Landowner owns certain real property described in Exhibit "A" attached hereto ("Property"). Subject to the terms of the Agreement, Landowner has granted to American Tower an option to lease a portion of the Property ("Premises") and to acquire certain easements for ingress, egress and utilities ("Easements") which

Premises and Easements are described in the Lease (the Premises and Easements are collectively referred to as the "Site"), a license to use certain other portions of the Property and a right of first refusal to purchase the Site and/or the Property upon the occurrence of certain events.

3. **Lease.** Should American Tower exercise its option, the Agreement will constitute a lease of the Site. The initial term of the lease shall be for five (5) years commencing upon the date American Tower specifies in a written notice to Landowner. The Agreement shall automatically renew for five (5) additional periods of five (5) years each unless American Tower notifies Landowner of its decision not to renew the Agreement.

4. **Notices.** All notices, requests, demands, and other communications to the Landowner or American Tower shall be made at the following addresses:

**Landowner:**

City of Winfield  
200 E. 9<sup>th</sup> Ave.  
Winfield, KS, 67156

**American Tower:**

American Towers, Inc.  
C/O American Tower Corporation  
10 Presidential Way  
Woburn, MA 01801  
Attn: Land Management

**With a Copy to:**

American Towers, Inc.  
C/O American Tower Corporation  
116 Huntington Avenue  
Boston, MA 02116

5. **Construction of Memorandum.** This Memorandum is not a complete summary of the terms and conditions contained in the Agreement. Provisions in the Memorandum shall not be used in interpreting the Agreement provisions. In the event of a conflict between this Memorandum and the Agreement, the Agreement shall control.

SIGNATURES TO FOLLOW

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the date first set forth above.

LANDOWNER:

City of Winfield, Kansas

By: Michael D Ledy  
Name: Michael D Ledy  
Title: Mayor  
Date: 3-12-09

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF Kansas  
COUNTY OF Cowley

Before me, Kathleen M. Lewis the undersigned, a Notary Public for the State, personally appeared Michael D. Ledy, who is the Mayor of the City of Winfield, Kansas, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official stamp or seal, this 12 day of March, 2009.

Kathleen M. Lewis  
Notary Public

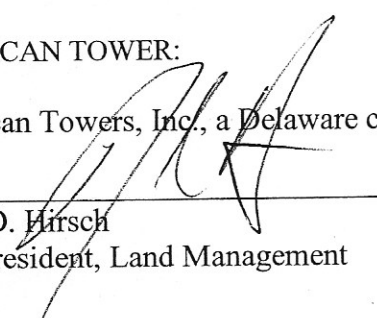
[AFFIX NOTARY SEAL]

My commission expires: 5-13-2012



AMERICAN TOWER:

American Towers, Inc., a Delaware corporation

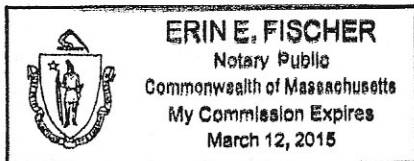
  
\_\_\_\_\_  
Jason D. Hirsch  
Vice President, Land Management

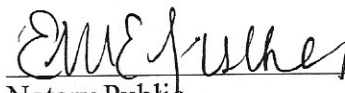
COMMONWEALTH OF MASSACHUSETTS)

) ss:

COUNTY OF MIDDLESEX )

Then, on the 23<sup>rd</sup> day of April, 20 09 personally  
appeared the said, Jason D. Hirsch of American Towers, Inc. as aforesaid, signer and  
sealer of the foregoing instrument, and acknowledged the same to be his/her free act and  
deed as Vice President, Land Management of American Towers, Inc. and the free act and  
deed of said corporation, before me.



  
\_\_\_\_\_  
Notary Public  
My Commission Expires: 3/12/2015

**EXHIBIT A  
PROPERTY**

Lots 7 and 8 and the South Half of Lot 9, Block 2, J. F. Martin's Addition to the City of Winfield.  
(WARRANTY DEED RECORDED IN BOOK 559 PAGE 332, REGISTER OF DEEDS, COWLEY COUNTY, KANSAS.)

AND

Lots 1, 2, 3, 10, 11 and 12, Block 3; Lots 1, 2, 3, 10, 11 and 12, Block 4, except that part deeded in Book 485, Page 74 to State of Kansas; Lots 1, 2 and 3, Block 7; Lots 1, 2, 3, 4, 5 and 6, Block 8; South Half of Lot 2, Lots 3, 4, 5 and 6, Block 2; Lots 1, 2, 3, 4, 5 and 6, Block 9; South of the ditch, J. F. Martin's Addition to the City of Winfield, Kansas,  
and a tract of land beginning at a point on the North line of the Northeast Quarter of the Northeast Quarter of Section 33, Township 32 South, Range 4 East, 10 rods East of the Northwest corner thereof, thence thence on the said North line 40 rods, thence South 80 rods to the South line of the Northeast Quarter of the Northeast Quarter of said Section, thence West along said South line 40 rods, thence North 80 rods to place of beginning,  
EXCEPT a tract heretofore sold and conveyed to the City of Winfield, described as follows, commencing at the Northwest corner of the Northeast Quarter of the Northeast Quarter of Section 33, Township 32 South, Range 4 East, thence East 10 rods for the point of beginning, thence South parallel with the East line of said Quarter Section 80 rods, thence East to point of intersection with the East line of Bliss produced South, thence North parallel with the East line of said Quarter Section 80 rods, thence West to place of beginning, and EXCEPT a tract beginning at a point 1625.73 feet East and 720 feet South of the Northwest corner of the Northeast Quarter of Section 33, Township 32 South, Range 4 East of the 6th P.M., thence South along the East line of Bliss Street, in Winfield, Kansas, extended, a distance of 589.38 feet to a point on the South line of the North Half of said Quarter Section, thence East along said South line a distance of 320 feet to a point, thence North parallel to the East line of Bliss Street extended, a distance of 592.55 feet to a point, thence West parallel to the North line of said Quarter Section a distance of 320 feet to the point of beginning.  
(WARRANTY DEED RECORDED IN BOOK 550, PAGE 832, DEED REGISTER OF COWLEY COUNTY, KANSAS.)

## OPTION AND LEASE AGREEMENT

THIS OPTION AND LEASE AGREEMENT ("**Agreement**") is made effective as of the date of the latter signature hereof (the "**Execution Date**") and is by and between Optionee/Tenant and Optionor/Landlord.

### RECITALS

- A. WHEREAS, Optionor is the owner of that certain parcel of land (the "**Property**") located in the County of Cowley, State of Kansas, as more particularly described on Exhibit A; and
- B. WHEREAS, Optionor desires to grant to Optionee an option to lease from Optionor a portion of the Property (the "**Premises**"), together with easements for ingress and egress and the installation and maintenance of utilities (the "**Easement**") both being approximately located as shown on Exhibit B (the Premises and the Easement will collectively be referred to herein as the "**Site**").

NOW, THEREFORE, in consideration of the sum of \$10.00, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt, adequacy and sufficiency of all of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Business Terms.** For the purposes of this Agreement, the following capitalized terms have the meanings set forth in this paragraph 1.

(a) **Optionee/Tenant:** American Towers, Inc., a Delaware corporation.

(b) **Optionee's/Tenant's Notice Address:** American Towers, Inc.  
c/o American Tower Corporation  
10 President Way  
Woburn, MA 01810  
Attn: Land Management

with a copy to: American Towers, Inc.  
c/o American Tower Corporation  
116 Huntington Ave.  
Boston, MA 02116  
Attn: Law Department

(c) **Optionor/Landlord:** City of Winfield

(d) **Optionor's/Landlord's Address:** 200 E. 9<sup>th</sup> Ave.  
Winfield, KS, 67156

(e) **Option Commencement Date:** The Execution Date.

(f) **Option Consideration (Initial Option Term):** \$1,150.00

(g) **Option Extension Consideration (Renewal Option Term):** \$800.00

(h) **Initial Option Term:** 1 year

- (i) **Renewal Option Term(s):** 1 period of 1 year.
- (j) **Commencement Date:** The date specified in the written notice by Optionee to Optionor exercising the Option constitutes the Commencement Date of the Lease.
- (k) **Rent:** The monthly amount of \$1,150.00, increased annually as further provided for in paragraph 14(b) hereof.
- (l) **Initial Base Rent:** Rent due to Landlord from Tenant first Lease Year.
- (m) **Lease Year:** The first Lease Year will be the period commencing on the Commencement Date and ending on the date immediately preceding the one-year anniversary of the Commencement Date. Each Lease Year thereafter will be a 12 successive calendar month period.
- (n) **CPI:** Consumer Price Index for all Urban Consumers, U.S. City Average, Sub-group "All Items" published by the United States Department of Labor Statistics. In the event the CPI is no longer published, then a comparable index which measures inflationary factors, and the corresponding decrease in the purchasing power of U. S. Dollar will be selected by Tenant and the annual increase provided for in paragraph 14(b) hereof will be based upon such index.
- (o) **Initial Term:** 5 years, commencing on the Commencement Date (as defined in paragraph 1(j) hereof) and continuing until midnight of the day immediately prior to the 5<sup>th</sup> anniversary of the Commencement Date.
- (p) **Renewal Terms:** Subject to paragraph 13(b) hereof, each of the five (5) successive periods of five (5) years each, with the first Renewal Term commencing upon the expiration of the Initial Term and each subsequent Renewal Term commencing upon the expiration of the immediately preceding Renewal Term.

## I. OPTION

- 2. **Grant of Option.** Optionor hereby gives and grants unto Optionee and its assigns, an exclusive and irrevocable option to lease the Premises and use the Easement pursuant to the terms of this Agreement (the "**Option**"). Optionor agrees and acknowledges that Optionee may, at Optionee's sole cost, have a metes and bounds survey of the Site survey prepared and that the legal description of the Site as shown on such survey will thereafter become the legal description of the Site.
- 3. **Initial Option Term.** The Initial Option Term is as set forth in paragraph 1(h).
- 4. **Extension of Option.** This Option will automatically be extended for each Renewal Option Term unless Optionee provides Optionor written notice of its intent not to extend the Option. Optionee will pay Optionor the Option Extension Consideration within thirty (30) days of the commencement of the Renewal Option Term. Option Extension Consideration paid by Optionee will be credited in full to the first years Rent due Optionor if this Option is exercised by Optionee.
- 5. **Consideration for Option.** Option Consideration is due and payable in full within thirty (30) days of the Option Commencement Date. Payment of the Option Consideration by Optionee to Optionor will be credited in full to the first year's Rent due Optionor if this Option is exercised by Optionee.
- 6. **Optionor's Representations and Warranties.** As an inducement for Optionee to enter into and be bound by the terms of this Option, Optionor represents and warrants to Optionee and Optionee's successors and assigns that:



(a) Optionor has good and marketable title to the Property free and clear of all liens and encumbrances. Optionee may at Optionee's sole cost and expense procure an abstract of title or a commitment to issue a policy of title insurance (collectively "***Title***") on the Property. In the event that Optionee objects to any defect or cloud on Title, Optionee may declare this Option to be void and of no further force or effect whereupon this Option will terminate and there will be no further liability of Optionee to Optionor accruing hereunder;

(b) Optionor has the authority to enter into and be bound by the terms of this Option;

(c) There are no pending or threatened administrative actions including bankruptcy or insolvency proceedings under state or federal law, suits, claims or causes of action against Optionor or which may otherwise affect the Property; and

(d) The Property is not presently subject to an option, lease or other contract which may adversely affect Optionor's ability to fulfill its obligations under this Option and Optionor covenants that it will not grant an option or enter into any contract which will affect the Property or the Site until this Option expires or is terminated by Optionee.

These representations and warranties of Optionor survive the exercise of the Option and the termination or expiration of the term of this Agreement.

7. **Taxes.** Optionor will pay any ad valorem taxes or other special assessment taxes attributable to the Property and the Easement during the Initial Option Term and any Renewal Option Term of this Option.

8. **Liquidated Damages.** American Tower is not obligated to exercise this Option. In the event the Option is not exercised, Optionor's sole compensation and damages will be fixed and liquidated to the sums paid by Optionee to Optionor as consideration for this Option. Furthermore, Optionor hereby expressly waives any other remedies it may have for a breach of this Option by Optionee including specific performance and damages for breach of contract.

9. **Inspections and Investigations.** Optionor hereby grants to Optionee, its officers, agents, employees and independent contractors the right and privilege to enter upon the Property at any time after the date of this Option, to perform or cause to be performed test borings of the soil, environmental audits, engineering studies and to conduct a survey of the Property and/or the Site. Optionor will provide Optionee with any necessary keys or access codes to the Property if needed for ingress and egress, and Optionee will not unreasonably interfere with Optionor's use of the Property in conducting these activities. Optionee will provide Optionor notice 48 hours prior to conducting any testing on the Property.

10. **Further Acts.** Optionor will cooperate with Optionee in executing any documents necessary to protect Optionee's rights under this Option or Optionee's use of the Site, including the execution and delivery of a Memorandum of Option and Lease in a form acceptable to Optionee, and to take such action as Optionee may reasonably require to effect the intent of this Option. Optionor hereby irrevocably appoints Optionee or Optionee's agent as Optionor's agent to file applications on behalf of Optionor with federal, state and local governmental authorities which applications relate to Optionee's Intended Use (as defined in paragraph 12 of this Agreement) of the Site including but not limited to land use and zoning applications.

11. **Exercise of Option.** Upon the tender of written notice of Optionee's intent to exercise the Option, the terms and conditions of the Agreement applying to the leasing of the Premises and use of the Easement governs the relationship of the parties, and this Agreement will thereafter be referred to as the

"Lease", Optionor will thereafter be referred to as "**Landlord**" and Optionee will thereafter be referred to as "**Tenant**".

## II. GROUND LEASE

### 12. Use.

(a) Tenant shall be permitted to use the Site for the purpose of constructing, maintaining, securing and operating a communications facility, including, but not limited to, the construction or installation and maintenance of towers, structural tower base(s), communications equipment, one or more buildings or equipment cabinets, radio transmitting and receiving antennas, and related facilities on the Premises (collectively, the "**Tower Facilities**"), to facilitate the use of the Site as a site for the transmission and receipt of wireless communication signals including, but not limited to, voice, data and internet transmissions and for any other uses which are incidental thereto (the "**Intended Use**"). Tenant may, at its sole expense, use any and all appropriate means of restricting access to the Premises or the Tower Facilities, including, without limitation, construction of a fence. Tenant may, at Tenant's sole expense, construct Tenant's Tower Facilities on the Site to meet Tenant's needs and Tenant shall maintain the Premises in a reasonable condition throughout the Initial Term and any Renewal Terms, reasonable wear and tear and damage from casualty and condemnation excepted. Landlord shall cooperate with Tenant in executing any documents necessary to protect Tenant's rights under this Lease or facilitate Tenant's and Tenant's sublessee's and licensee's use of the Site and will take such further action as Tenant may reasonably require to effect the intent of this Lease.

(b) Tenant's obligations hereunder are expressly conditioned upon Tenant's ability to obtain, maintain, renew and reinstate all of the certificates, permits, licenses, zoning, variances and other approvals which may be required from any federal, state or local authority as well as any necessary easements (collectively, the "**Approvals**"). Landlord shall cooperate with Tenant, at no out-of-pocket expense to Landlord, in its efforts to obtain the Approvals, and Landlord shall take no action which would adversely affect the status of the Site with respect to Tenant's Intended Use thereof. If (i) any application by Tenant for any one of the Approvals is finally denied or rejected, or is otherwise withdrawn or terminated or (ii) if any matters exist affecting Landlord's title to the Site which prevent Tenant from using the Site for Tenant's Intended Use, then Tenant shall have the right to terminate this Lease upon written notice to Landlord and Landlord, within 30 days of such termination, shall refund to Tenant any Rent paid by Tenant applicable to the period subsequent to such termination.

(c) Landlord agrees to execute within 15 days after receipt of a written request from Tenant any and all documents necessary in Tenant's reasonable judgment to protect Tenant's rights or the rights of Tenant's sublessees or licensees under this Lease, to facilitate Tenant's use of the Site as contemplated under this Lease, or to allow Tenant to obtain, maintain, renew or reinstate the Approvals. Tenant will provide all documents for execution on Tenant's standard forms or, in the case of zoning applications or other situations regulated by governmental bodies, on forms specified by such governmental body. Documents provided for execution may include without limitation, affidavits relating to title curative measures, non-disturbance agreements, memorandums of lease, memorandums of amendment, and zoning applications and other related documents required to obtain zoning approval. In addition, the parties agree that Tenant shall be entitled to liquidated damages for the revenue lost by Tenant as a result of any delay caused by Landlord's unwillingness to execute a document or to take any other action deemed necessary by Tenant to protect Tenant's leasehold rights or to facilitate the Intended Use.

### 13. Term.

(a) *Initial Term.* The Initial Term of this Lease is set forth in paragraph 1(o).

(b) *Renewal Terms.* Tenant shall have the right to extend this Lease for each of the Renewal Terms. Each Renewal Term will be on the same terms and conditions set forth in this Lease except that Rent will escalate as provided in paragraph 14(b). This Lease will automatically be renewed for each successive Renewal Term unless Tenant notifies Landlord in writing of Tenant's intention not to renew the Lease at any time prior to the expiration of the Initial Term or the Renewal Term which is then in effect.

(c) The Initial Term and Renewal Terms are collectively referred to herein as the "*Term*".

**14. Consideration.**

(a) Tenant shall pay its first installment of Rent within fifteen (15) business days of the Commencement Date. Thereafter, Rent is due and payable in advance on the first day of each calendar month to Landlord at Landlord's Address. Rent will be prorated for any partial months, including, without limitation, the month in which the Commencement Date occurs.

(b) Rent will be increased annually on the anniversary of the Commencement Date (the "*Increase Date*") by an amount equal to the Initial Base Rent multiplied by a fraction the denominator of which is the CPI for the month in which the Commencement Date occurs and the numerator of which is the CPI for the third month immediately preceding the Lease Year just concluding, not to exceed 3%. Notwithstanding any subsequent decrease in the CPI, in no event will the Rent be adjusted downwards. At Tenant's election, Tenant may confirm to Landlord in writing the amount of the annual Rent increase ("*Increase Notice*"). Unless Landlord notifies Tenant in writing within 30 days of the date of the Increase Notice that it disagrees with the amount of the annual Rent increase stated therein, such amount will be conclusively presumed to be the correct calculation of the annual Rent increase.

(c) If this Lease is terminated at a time other than on the day immediately preceding the anniversary of the Commencement Date, Rent will be prorated as of the effective date of such termination (the "*Termination Date*"). If this Lease is terminated for any reason other than nonpayment of Rent, all Rent paid in advance for the period after the Termination Date will be refunded to Tenant by Landlord within 30 days of the Termination Date.

(d) In the event Tenant makes an overpayment of Rent or any other fees or charges to Landlord during the Term of this Lease, Tenant may, but shall not be required, to treat any such overpayment amount as prepaid Rent and apply such amount as a credit against future Rent due to Landlord.

(e) In no event will Tenant be required to remit the payment of Rent to more than two recipients at any given time.

(f) In additional consideration for the Agreement, Tenant shall allow Landlord to place equipment on the Tower at approximately the 50' rad center free of charge. The height of the landlord's equipment shall not exceed forty-eight inches (48"). Installation, maintenance, and purchase of Landlord's equipment and improvements will be at Landlord's sole cost and expense. The specific dimensions and exact location of Landlord's equipment on the tower will be agreed upon by both parties in a separate tenant license agreement to be signed before Landlord installs.

**15. Landlord's Representations and Warranties.** Landlord represents and warrants that (i) Tenant's Intended Use of the Site is not prohibited by any covenants, restrictions, reciprocal easements, servitudes, or subdivision rules or regulations; (ii) there are no easements, licenses, rights of use or other encumbrances on the Site or the Property which will interfere with or constructively prohibit Tenant's

Intended Use of the Site; and (iii) the execution of this Lease by Landlord will not cause a breach or an event of default of any other agreement to which Landlord is a party.

**16. Conditions Subsequent.** If Tenant's Intended Use of the Site is actually or constructively prohibited through no fault of Tenant, then without limiting any other remedy in law or equity, Tenant shall have the option to terminate this Lease upon written notice to Landlord.

**17. Interference.** Landlord shall not use, nor shall Landlord permit its tenants, licensees, invitees or agents to use any portion of the Property in any way which interferes with Tenant's Intended Use of the Site. Such interference will be deemed a material breach of this Lease by Landlord and Landlord shall have the responsibility to terminate said interference immediately upon written notice from Tenant. Anything to the contrary in this Lease notwithstanding, the cure periods provided for in paragraph 19 hereof will not be applicable to failure by Landlord to fulfill its obligations under this paragraph 17. If any such interference does not cease or is not rectified as soon as possible, but in no event longer than 24 hours after Tenant's written notice to Landlord, Landlord acknowledges that continuing interference will cause irreparable injury to Tenant, and Tenant shall have the right, in addition to any other rights that it may have at law or in equity, to bring action to enjoin such interference or to terminate this Lease immediately upon notice to Landlord.

**18. Improvements, Utilities, and Access.**

(a) Tenant shall have the right, at Tenant's sole cost and expense, to erect and maintain on the Site improvements, personal property and facilities, including without limitation, the Tower Facilities and other related facilities. The Tower Facilities are the exclusive property of the Tenant throughout the term as well as upon the expiration or termination of this Lease. Tenant shall remove all of the above-ground portions of the Tower Facilities within one hundred eighty (180) days following the expiration or termination of this Lease. Landlord grants Tenant the right to clear all trees, undergrowth, or other obstructions and to trim, cut, and keep trimmed all tree limbs which may interfere with or fall upon the Tower Facilities or the Site. Landlord grants Tenant a non-exclusive easement in, over, across and through the Property and other real property owned by Landlord as may be reasonably required for construction, installation, maintenance, and operation of the Tower Facilities. If the tower to be constructed by Tenant on the Premises is a guyed tower, Landlord also grants Tenant an easement in, over, across and through the Property or any other real property owned by Landlord as may be necessary to Tenant during the Initial Term and any Renewal Terms of this Lease for the installation and maintenance and removal of and reasonable access to guy wires and guy wire anchors which may be located outside of the Site.

(b) Tenant shall have the right to install utilities, at Tenant's expense, and to improve present utilities on the Property and the Site. Tenant shall have the right to permanently place utilities on (or to bring utilities across or under) the Site to service the Site and the Tower Facilities. Tenant and Tenant's licensee(s) or sublessee(s) have the right to install backup generator(s) on the Site. If utilities necessary to serve the equipment of Tenant or the equipment of Tenant's licensee(s) or sublessee(s) cannot be located within the Site, Landlord agrees to cooperate with Tenant and to act reasonably in allowing the location of utilities on the Property or other real property owned by Landlord without requiring additional compensation from Tenant or Tenant's licensee(s) or sublessee(s). Landlord shall, upon Tenant's request, execute a separate recordable written easement or lease to the utility company providing such service evidencing this right.

(c) Landlord represents and warrants to Tenant that Tenant shall at all times during this Lease enjoy ingress, egress, and access from the Site 24 hours a day, 7 days a week, to an open and improved public road which are adequate to service the Site and the Tower Facilities. If no such public road exists or ceases to exist in the future, Landlord will grant an appropriate easement to Tenant,



Tenant's licensee(s), sublessee(s) and assigns so that Tenant may, at its own expense, construct a suitable private access drive to the Site and the Tower Facilities. To the degree such access is across other property owned by Landlord, Landlord shall execute an easement evidencing this right without requiring additional compensation from Tenant. Landlord shall maintain access to such easement and the Easement in a free and open condition so that no interference is caused to Tenant by other Tenants, licensees, invitees or agents of Landlord which may utilize the easement. To the extent damage (including wear and tear caused by normal usage) to the Easement or any other route contemplated hereunder intended to provide Tenant with access to the Site and the Tower Facilities is caused by Landlord or Landlord's Tenants, licensees, invites or agents, Landlord shall repair same at its own expense.

(d) Landlord grants Tenant (including, without limitation, Tenant's sublessees and licensees) a license to use such portions of the Landlord's property contiguous to the Site on a temporary basis as are reasonably required from time to time during the Term of this Lease for the construction, installation and maintenance of the Tower Facilities, including (i) access to the Site for construction machinery and equipment, (ii) storage of construction materials and equipment during construction of the Tower Facilities, and (iii) use of a staging area for construction, installation and removal of equipment.

(e) Tenant shall have the right to install and maintain during the Term of the Lease identifying signs or other signs required by any governmental authority on or about the Site, including any access road to the Site.

**19. Termination.** This Lease may be terminated, without any penalty or further liability upon written notice as follows:

(a) By either party upon a default of any covenant or term hereof by the other party which default is not cured within 60 days of receipt of written notice of default (without, however, limiting any other rights available to the parties in law or equity); provided, that if the defaulting party commences efforts to cure the default within such period and diligently pursues such cure, the non-defaulting party shall no longer be entitled to declare a default;

(b) Upon 30 days' written notice by Tenant to Landlord if Tenant is unable to obtain, maintain, renew or reinstate any agreement, permit or other Approvals necessary to the construction and operation of the Tower Facilities or to Tenant's Intended Use; or

(c) Upon 30 days' written notice from Tenant to Landlord if the Site is or becomes unsuitable, in Tenant's sole, but reasonable judgment for use as a wireless communications facility by Tenant or by Tenant's licensee(s) or sublessee(s).

**20. Licenses; Subleases.** Tenant at its sole discretion shall have the right, without prior notice or the consent of Landlord, to license or sublease all or a portion of the Site or the Tower Facilities to other parties. Tenant's licensee(s) and sublessee(s) shall be entitled to modify the Tower Facilities and to erect additional improvements on the Site including but not limited to antennas, dishes, cabling, additional storage buildings or equipment shelters as are reasonably required for the operation and maintenance of the communications equipment to be installed on the Site by said licensee(s) and sublessee(s). Tenant's licensee(s) and sublessee(s) shall be entitled to all rights of ingress and egress to the Site and the right to install utilities on the Site as if said licensee(s) or sublessee(s) were Tenant under this Lease.

**21. Taxes.** Tenant shall pay any personal property taxes assessed on or attributable to the Tower Facilities. Landlord shall pay when due all real property taxes and all other fees and assessments attributable to the Property, Premises and Easement. If Landlord fails to pay when due any taxes affecting the Property or the Site, Tenant shall have the right, but not the obligation, to pay such taxes and

(i) deduct the full amount of the taxes paid by Tenant on Landlord's behalf from future installments of Rent, or (ii) collect such taxes by any lawful means.

**22. Damage or Destruction.** If the Premises, the Easement or the Tower Facilities are destroyed or damaged so as to hinder the Intended Use of the Tower Facilities in Tenant's sole judgment, Tenant may elect to terminate this Lease as of the date of the damage or destruction by written notice to Landlord. In such event, all obligations of Tenant to Landlord shall cease to accrue as of the date of the damage or destruction and Tenant shall be entitled to the reimbursement of any Rent paid by Tenant applicable to the period subsequent to such damage or destruction.

**23. Condemnation.** If a condemning authority takes all of the Site, or a portion sufficient in Tenant's sole judgment, to render the Site unsuitable for Tenant's Intended Use in Tenant's reasonable discretion, this Lease will terminate as of the date the title vests in the condemning authority. Landlord and Tenant shall share in the condemnation proceeds in proportion to the values of their respective interests in the Site (which for Tenant includes, where applicable, the value of the Tower Facilities, moving expenses, prepaid rent and business dislocation expenses). If a condemning authority takes less than all of the Site such that the Site remains suitable for Tenant's Intended Use, the Rent payable under this Lease will be reduced automatically by such percentage as the area so condemned bears to the Site as of the date the title vests in the condemning authority. A sale of all or part of the Site to a purchaser with the power of eminent domain in the face of the exercise of eminent domain power will be treated as a taking by condemnation for the purposes of this paragraph.

**24. Insurance.** Tenant shall purchase and maintain in full force and effect throughout the Initial Term and any Renewal Term such general liability and property damage policies as Tenant may deem necessary. Said policy of general liability insurance will at a minimum provide a combined single limit of \$1,000,000. Tenant shall name Landlord as an additional insured on the policy and provide a certificate of insurance to Landlord within thirty (30) days of the Commencement Date.

**25. Environmental Compliance.** Landlord represents, warrants and covenants (i) that neither Landlord nor, to Landlord's knowledge, any third party has used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any contaminants, oils, asbestos, PCB's, hazardous substances or wastes as defined by federal, state or local environmental laws, regulations or administrative orders or other materials the removal of which is required or the maintenance of which is prohibited, regulated or penalized by any federal, state or local government authority having jurisdiction over the Property ("**Hazardous Materials**") on, under, about or within the Property in violation of any applicable law or regulation, and (ii) that Landlord will not, and will not permit any third party to use, generate, store or dispose of any Hazardous Materials on, under, about or within the Property in violation of any applicable laws, regulations or administrative orders. Tenant agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within the Site in violation of any applicable laws, regulations or administrative orders. This Lease will, at the option of Tenant, terminate upon written notice by Tenant to Landlord if Hazardous Materials are discovered to exist on the Property after Tenant takes possession of the Premises and Tenant shall be entitled to a refund of all the consideration paid in advance to Landlord under this Lease.

**26. Indemnification.**

(a) *General.* Landlord, its heirs, grantees, successors, and assigns shall exonerate, hold harmless, indemnify, and defend Tenant from any claims, obligations, liabilities, costs, demands, damages, expenses, suits or causes of action, including costs and reasonable attorney's fees, which may arise out of (i) any injury to or death of any person; or (ii) any damage to property, if such injury, death or

damage arises out of or is attributable to or results from the acts or omissions of Landlord, or Landlord's principals, employees, invitees, agents or independent contractors. Tenant, its grantees, successors, and assigns shall exonerate, hold harmless, indemnify, and defend Landlord from any claims, obligations, liabilities, costs, demands, damages, expenses, suits or causes of action, including costs and reasonable attorney's fees, which may arise out of (i) any injury to or death of any person; or (ii) any damage to property, if such injury, death or damage arises out of or is attributable to or results from the negligent acts or omissions of Tenant, or Tenant's employees, agents or independent contractors.

(b) *Environmental Matters.* Landlord, its heirs, grantees, successors, and assigns shall indemnify, defend, reimburse and hold harmless Tenant from and against any and all damages arising from the presence of Hazardous Materials upon, about or beneath the Property or migrating to or from the Property or arising in any manner whatsoever out of the violation of any applicable laws, regulations or administrative orders pertaining to the Property and any activities thereon, which conditions exist or existed prior to or at the time of the execution of this Lease or which may occur at any time in the future through no fault of Tenant. Tenant, its grantees, successors, and assigns shall indemnify, defend, reimburse and hold harmless Landlord from and against environmental damages caused by the presence of Hazardous Materials on the Premises in violation of any applicable laws, regulations or administrative orders and arising solely as the result of Tenant's activities after the execution of this Lease. Notwithstanding the obligation of Landlord to indemnify Tenant pursuant to this Lease, Landlord shall, upon demand of Tenant, and at Landlord's sole cost and expense, promptly take all actions to remediate the Property which are required by any federal, state or local governmental agency or political subdivision or which are reasonably necessary to mitigate environmental damages or to allow full economic use of the Site, which remediation is necessitated from the presence upon, about or beneath the Property of a Hazardous Material. Such actions include but not be limited to the investigation of the environmental condition of the Property, the preparation of any feasibility studies, reports or remedial plans, and the performance of any cleanup, remediation, containment, operation, maintenance, monitoring or actions necessary to restore the Property to the condition existing prior to the introduction of such Hazardous Material upon, about or beneath the Property notwithstanding any lesser standard of remediation allowable under applicable law or governmental policies.

**27. Right of First Refusal; Sale of Premises.** During the Initial Term and any Renewal Terms of this Lease, Landlord shall, prior to selling the Site or any real property of which the Site is a part, notify Tenant in writing of the sale price and terms offered by a third party, together with a copy of the third party's offer. Tenant shall have the right of first refusal to purchase the real property being sold by Landlord on the same terms and conditions. Tenant shall give Landlord notice of its intention to purchase the same within 30 days of receipt of Landlord's notice. If Tenant gives no such notice of its intention to purchase same, Landlord may sell the real property to the third party on the stated terms and price, as long as (i) such sale is made subject to the terms of this Lease and (ii) if such sale does not include the assignment of Landlord's full interest in this Lease, such purchaser covenants, without requiring compensation from Tenant or Tenant's licensee(s) or sublessee(s) to be paid to such purchaser, to perform any obligation of the Landlord under this Lease, including Landlord's obligation to cooperate with Tenant as provided hereunder, which obligation Landlord would no longer have the legal right or ability to perform following such conveyance.

**28. Notices.** All notices or demands by or from Tenant to Landlord, or Landlord to Tenant, required under this Lease will be in writing and sent (United States mail postage pre-paid, certified with return receipt requested or by reputable national overnight carrier service, transmit prepaid) to the other party at the addresses set forth in paragraphs 1(b) and 1(d) hereof, as applicable, or to such other addresses as the parties hereto may, from time to time, designate consistent with this paragraph 28, with such new notice address being effective 30 days after receipt by the other party. Notices will be deemed to have been given upon either receipt or rejection.

**29. Title and Quiet Enjoyment.** Landlord warrants and represents that (i) it has the full right, power, and authority to execute this Lease; and (ii) it has good and marketable fee simple title to the Site and any other real property across which Landlord may grant Tenant, its sublessees and/or licensees an easement, free and clear of any liens and encumbrances or mortgages. Landlord covenants that Tenant shall have the quiet enjoyment of the Premises during the term of this Lease. Landlord shall indemnify Tenant from and against any loss, cost, expense or damage including attorney's fees associated with a breach of the foregoing covenant of quiet enjoyment. If Landlord fails to keep the Site free and clear of any liens and encumbrances, Tenant shall have the right, but not the obligation, to satisfy any such lien or encumbrance and to deduct the full amount paid by Tenant on Landlord's behalf from future installments of Rent. If the Site is encumbered by a mortgage or deed of trust, within 30 days of receipt of a written request from Tenant, Landlord agrees to execute and obtain the execution by its lender of a non-disturbance and attornment agreement in the form provided by Tenant, to the effect that Tenant and Tenant's sublessees and licensees will not be disturbed in their occupancy and use of the Site by any foreclosure. Should a subordination, non-disturbance and attornment agreement be requested by Landlord or a lender working with Landlord on a loan to be secured by the Property and entered into subsequent to the Execution Date, Tenant will use good faith efforts to provide Landlord or Landlord's lender with Tenant's form subordination, non-disturbance and attornment agreement executed by Tenant within 30 days of such request.

**30. Assignment.** Any sublease, license or assignment of this Lease that is entered into by Landlord or Tenant is subject to the provisions of this Lease. Landlord may assign this Lease in its entirety to any third party in conjunction with a sale of the Property in accordance with paragraph 27 hereof. Landlord shall not otherwise assign less than Landlord's full interest in this Lease without the prior written consent of Tenant. Tenant shall not sell, assign, or transfer this Agreement without the express written consent of the Landlord, which shall not be unreasonably withheld, conditioned or delayed or made the subject of a demand for additional fees or compensation; provided, however, this Agreement may be sold, assigned, licensed, or transferred at any time by Tenant to any business entity which (a) is a parent, subsidiary or affiliate of Tenant, (b) controls or is controlled by or under common control of Tenant, (c) is merged or consolidated with Tenant, or (d) purchases more than 50% ownership interest in or to the assets of Tenant to which this applies. Additionally, Tenant may mortgage or grant a security interest in this Lease and the Tower Facilities, and may assign this Lease and the Tower Facilities to any such mortgagees or holders of security interests including their successors and assigns (hereinafter collectively referred to as "**Secured Parties**"). If requested by Tenant, Landlord shall execute such consent to such financing as may reasonably be required by Secured Parties. In addition, if requested by Tenant, Landlord agrees to notify Tenant and Tenant's Secured Parties simultaneously of any default by Tenant and to give Secured Parties the same right to cure any default as Tenant. If a termination, disaffirmance or rejection of the Lease by Tenant pursuant to any laws (including any bankruptcy or insolvency laws) occurs, or if Landlord shall terminate this Lease for any reason, Landlord will give to Secured Parties prompt notice thereof and Secured Parties shall have the right to enter upon the Premises during a 30-day period commencing upon Secured Parties' receipt of such notice for the purpose of removing any Tower Facilities. Landlord acknowledges that Secured Parties are third-party beneficiaries of this Lease.

**31. Successors and Assigns.** This Lease runs with the Property and is binding upon and will inure to the benefit of the parties, their respective heirs, successors, personal representatives and assigns.

**32. Waiver of Landlord's Lien.** Landlord hereby waives any and all lien rights it may have, statutory or otherwise, in and to the Tower Facilities or any portion thereof, regardless of whether or not same is deemed real or personal property under applicable laws.

**33. Waiver of Damages.** Neither Landlord nor Tenant shall be responsible or liable to the other party for any loss or damage arising from any claim to the extent attributable to any acts of omissions of other licensees or tower users occupying the Tower Facilities or vandalism or for any structural or power



failures or destruction or damage to the Tower Facilities except to the extent caused by the negligence or willful misconduct of such party. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, IN NO EVENT SHALL LANDLORD OR TENANT BE LIABLE TO THE OTHER FOR, AND TENANT AND LANDLORD EACH HEREBY WAIVE THE RIGHT TO RECOVER INCIDENTAL, CONSEQUENTIAL (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF USE OR LOSS OF BUSINESS OPPORTUNITY), PUNITIVE, EXEMPLARY AND SIMILAR DAMAGES.

**34. Miscellaneous.** The following provisions apply to the Option and, providing Optionee exercises such Option, to the Lease:

(a) The substantially prevailing party in any litigation arising hereunder is entitled to its reasonable attorney's fees and court costs, including appeals, if any.

(b) Each party agrees to furnish to the other, within 30 days after request, such estoppel information as the other may reasonably request.

(c) This Agreement constitutes the entire agreement and understanding of Landlord and Tenant with respect to the subject matter of this Agreement, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to said Agreement must be in writing and executed and delivered by Landlord and Tenant.

(d) If either Landlord or Tenant is represented by a real estate broker in this transaction, that party is fully responsible for any fees due such broker and will hold the other party harmless from any claims for commission by such broker.

(e) Landlord agrees to cooperate with Tenant in executing any documents necessary to protect Tenant's rights under this Agreement or Tenant's use of the Premises, including but not limited to affidavits relating to title curative measures and non disturbance agreements, and to take any further action which Tenant may reasonably require to effect the intent of the Agreement.

(f) The Agreement will be construed in accordance with the laws of the state in which the Site is situated.

(g) If any term of the Agreement is found to be void or invalid, such invalidity will not affect the remaining terms of the Agreement, which will continue in full force and effect.

(h) Upon request by Tenant, Landlord shall execute and deliver to Tenant a Memorandum of Option and Lease, which Tenant may record in the county in which the Property is located. If the information included in the Memorandum of Option and Lease should change or if it becomes clear that such information is incorrect or incomplete or if the Option or Lease is amended, Landlord agrees to execute and return to Tenant a recordable Amended Memorandum of Option and Lease in form supplied by Tenant.

(i) Tenant may obtain title insurance on its interest in the Site, and Landlord shall cooperate by executing any documentation required by the title insurance company.

(j) Landlord hereby appoints Tenant or Tenant's agent as Landlord's agent to file applications on behalf of Landlord with federal, state and local governmental authorities which applications relate to Tenant's Intended Use of the Site, including, but not limited, to land use and zoning applications.

(k) This Agreement may be executed in two or more counterparts, all of which are considered one and the same agreement and become effective when one or more counterparts have been signed by each of the parties, it being understood that all parties need not sign the same counterpart.

(l) Landlord will not, during the term of this Option and Lease together with any extensions thereof, enter into any other lease, license, or other agreement for a similar purpose as set forth herein, on or adjacent to the Property.

(m) Failure or delay on the part of either party to exercise any right, power or privilege hereunder will not operate as a waiver thereof and waiver of breach of any provision hereof under any circumstances will not constitute a waiver of any subsequent breach.

(n) The parties agree that irreparable damage would occur if any of the provisions of this Agreement were not performed in accordance with their specified terms or were otherwise breached. Therefore, the parties agree the parties will be entitled to an injunction(s) in any court in the state in which the Site is located to prevent breaches of the provisions of this Agreement and to enforce specifically the terms and provisions of the Agreement, this being in addition to any other remedy to which the parties are entitled at law or in equity.

(o) Each party executing this Agreement acknowledges that it has full power and authority to do so and that the person executing on its behalf has the authority to bind the party.

(p) This Agreement is valid and binding only upon its full execution by the duly authorized representative of each party.

(q) Tenant reserves the right to survey the Property and/or the Site, and the survey of the Property, Premises and/or Easement will then become Exhibit B-1, which will be attached hereto and made a part hereof, and will control in the event of discrepancies between Exhibit B-1 and Exhibit A and/or Exhibit B. Landlord agrees to execute an Amended Memorandum of Option and Lease in recordable form containing the new legal descriptions of the Premises and the Easement if so requested by Tenant.

(r) The parties agree that a scanned or electronically reproduced copy or image of this Agreement will be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence hereof notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Agreement and without the requirement that the unavailability of such original, executed counterpart of this Agreement first be proven.

**35. Confidentiality.** Landlord shall not disclose to any third party the Rent payable by Tenant under this Lease and shall treat such information as confidential, except that Landlord may disclose such information to prospective buyers, prospective or existing lenders, Landlord's affiliates and attorneys, or as may be required by law or as may be necessary for the enforcement of Landlord's rights under the Lease. Landlord acknowledges that the disclosure of such information to any other parties may cause Tenant irreparable harm, and in the event of such disclosure, as an additional remedy, Tenant shall have the right to terminate this Lease upon giving 30 days written notice thereof to Landlord.

[SIGNATURES APPEAR ON NEXT PAGE]

Site Name: Winfield West  
Site Number: 272588

IN WITNESS WHEREOF, Landlord and Tenant have each executed this Lease as of the respective dates written below.

LANDLORD:

City of Winfield, Kansas

By: Michael D. Ledy  
Name: Michael D. Ledy  
Title: Mayor  
Date: 3-2-09

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF Kansas

COUNTY OF Cowley

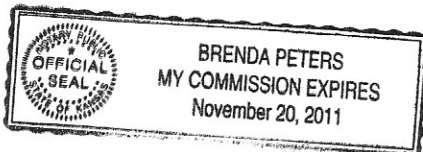
Before me, Brenda Peters the undersigned, a Notary Public for the State, personally appeared Michael D. Ledy, who is the Mayor of the City of Winfield, Kansas, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official stamp or seal, this 2<sup>nd</sup> day of March, 2009.

Brenda Peters  
Notary Public

[AFFIX NOTARY SEAL]

My commission expires: 11-20-2011



Site Name: Winfield West  
Site Number: 272588

IN WITNESS WHEREOF, Landlord and Tenant have each executed this Lease as of the respective dates written below.

LANDLORD:

City of Winfield, Kansas

By: *Michael B. Ledy*  
Name: Michael B. Ledy  
Title: Mayor  
Date: 3-2-09

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF Kansas

COUNTY OF Cowley

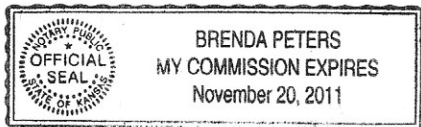
Before me, Brenda Peters the undersigned, a Notary Public for the State, personally appeared Michael D. Ledy, who is the Mayor of the City of Winfield, Kansas, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official stamp or seal, this 2<sup>nd</sup> day of March, 2009.

*Brenda Peters*  
Notary Public

[AFFIX NOTARY SEAL]


My commission expires: 11-20-2011



Site Name: Winfield West  
Site Number: 272588

TENANT:

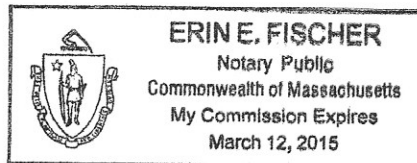
American Towers, Inc., a Delaware corporation

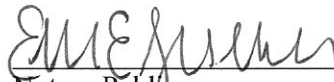
  
\_\_\_\_\_  
Jason D. Hirsch  
Vice President, Land Management

COMMONWEALTH OF MASSACHUSETTS)

COUNTY OF MIDDLESEX ) ss:  
)

Then, on the 23rd day of April, 2009 personally appeared the said, Jason D. Hirsch of American Towers, Inc. as aforesaid, signer and sealer of the foregoing instrument, and acknowledged the same to be his/her free act and deed as Vice President, Land Management of American Towers, Inc. and the free act and deed of said corporation, before me.



  
\_\_\_\_\_  
Notary Public  
My Commission Expires: 3/12/2015

Site Name: Winfield West  
Site Number: 272588

The following exhibits are attached hereto and incorporated herein:

Exhibit A	Description or Depiction of Property
Exhibit B	Description or Depiction of Site

Site Name: Winfield West  
Site Number: 272588

## EXHIBIT A

### DESCRIPTION OR DEPICTION OF PROPERTY

The Property is described and/or depicted as follows:

Lots 7 and 8 and the South Half of Lot 9, Block 2, J. F. Martin's Addition to the City of Winfield.  
(WARRANTY DEED RECORDED IN BOOK 559 PAGE 332, REGISTER OF DEEDS, COWLEY COUNTY, KANSAS.)  
AND

Lots 1, 2, 3, 10, 11 and 12, Block 3, Lots 1, 2, 3, 10, 11 and 12, Block 4, except that part deeded in Book 485, Page 74 to State of Kansas; Lots 1, 2 and 3, Block 7; Lots 1, 2, 3, 4, 5 and 6, Block 8; South Half of Lot 2, Lots 3, 4, 5 and 6, Block 2; Lots 1, 2, 3, 4, 5 and 6, Block 9; South of the ditch, J. F. Martin's Addition to the City of Winfield, Kansas,

and a tract of land beginning at a point on the North line of the Northeast Quarter of the Northeast Quarter of Section 33, Township 32 South, Range 4 East, 10 rods East of the Northwest corner thereof, thence thence on the said North line 40 rods, thence South 80 rods to the South line of the Northeast Quarter of the Northeast Quarter of said Section, thence West along said South line 40 rods, thence North 80 rods to place of beginning,

EXCEPT a tract heretofore sold and conveyed to the City of Winfield, described as follows, commencing at the Northwest corner of the Northeast Quarter of the Northeast Quarter of Section 33, Township 32 South, Range 4 East, thence East 10 rods for the point of beginning, thence South parallel with the East line of said Quarter Section 80 rods, thence East to point of intersection with the East line of Bliss produced South, thence North parallel with the East line of said Quarter Section 80 rods, thence West to place of beginning, and EXCEPT a tract beginning at a point 1625.73 feet East and 720 feet South of the Northwest corner of the Northeast Quarter of Section 33, Township 32 South, Range 4 East of the 6th P.M., thence South along the East line of Bliss Street, in Winfield, Kansas, extended, a distance of 589.38 feet to a point on the South line of the North Half of said Quarter Section, thence East along said South line a distance of 320 feet to a point, thence North parallel to the East line of Bliss Street extended, a distance of 592.55 feet to a point, thence West parallel to the North line of said Quarter Section a distance of 320 feet to the point of beginning.

(WARRANTY DEED RECORDED IN BOOK 550, PAGE 832, DEED REGISTER OF COWLEY COUNTY, KANSAS.)

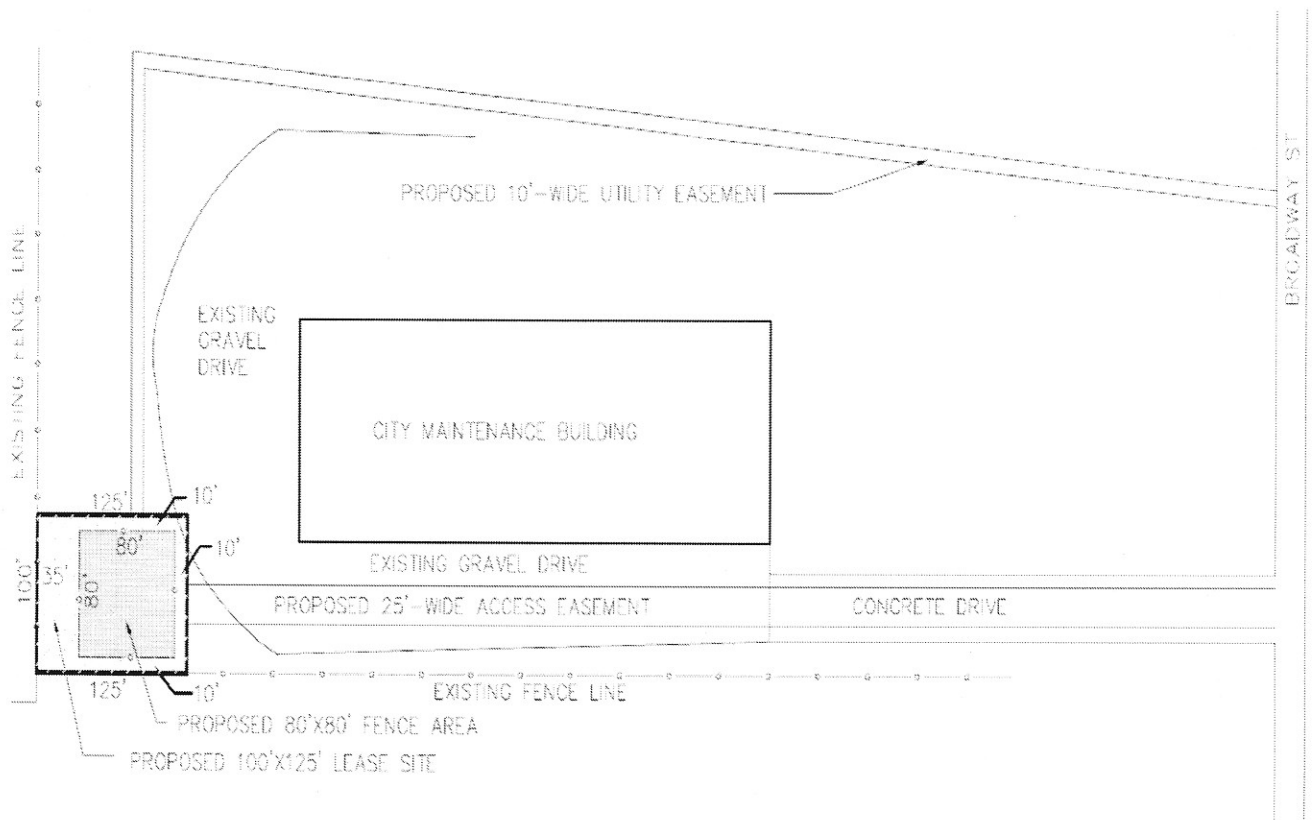


Site Name: Winfield West  
Site Number: 272588

## EXHIBIT B

### DESCRIPTION OR DEPICTION OF SITE

Locations are approximate. Tenant may, at its option, replace this exhibit with a copy of the survey of the Site.



## THE FIRST AMENDMENT TO OPTION AND LEASE AGREEMENT

This First Amendment to Option and Lease Agreement (this "**Amendment**") is made effective as of the latter signature date hereof (the "**Effective Date**") by and between **City of Winfield**, a Kansas municipality ("**Landlord**") and **American Towers LLC**, a Delaware limited liability company ("**Tenant**") (Landlord and Tenant being collectively referred to herein as the "**Parties**").

### RECITALS

**WHEREAS**, Landlord owns the real property described on **Exhibit A** attached hereto and by this reference made a part hereof (the "**Parent Parcel**"); and

**WHEREAS**, Landlord (or its predecessor-in-interest) and Tenant (or its predecessor-in-interest) entered into that certain Option and Lease Agreement dated April 23, 2009 (as the same may have been amended from time to time, collectively, the "**Lease**"), pursuant to which the Tenant leases a portion of the Parent Parcel and is the beneficiary of certain easements for access and public utilities, all as more particularly described in the Lease (such portion of the Parent Parcel so leased along with such portion of the Parent Parcel so affected, collectively, the "**Leased Premises**"), which Leased Premises are also described on **Exhibit A**; and

**WHEREAS**, Landlord and Tenant desire to amend the terms of the Lease to extend the term thereof and to otherwise modify the Lease as expressly provided herein.

**NOW THEREFORE**, in consideration of the foregoing recitals and the mutual covenants set forth herein and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **One-Time Payment.** Tenant shall pay to Landlord a one-time payment in the amount of **Twenty-Five Thousand and 00/100 Dollars (\$25,000.00)**, payable within thirty (30) days of the Effective Date and subject to the following conditions precedent: (a) Tenant's receipt of this Amendment executed by Landlord, on or before July 14, 2023; (b) Tenant's confirmation that Landlord's statements as further set forth in this Amendment are true, accurate, and complete, including verification of Landlord's ownership; (c) Tenant's receipt of any documents and other items reasonably requested by Tenant in order to effectuate the transaction and payment contemplated herein; and (d) receipt by Tenant of an original Memorandum (as defined herein) executed by Landlord.
2. **Lease Term Extended.** Notwithstanding anything to the contrary contained in the Lease or this Amendment, the Parties agree the Lease originally commenced on June 22, 2009, and without giving effect to the terms of this Amendment but assuming the exercise by Tenant of all remaining renewal options contained in the Lease (each an "**Existing Renewal Term**" and, collectively, the "**Existing Renewal Terms**"), the Lease is otherwise scheduled to expire on June 21, 2039. Notwithstanding anything to the contrary, commencing on June 22, 2024, the Lease is hereby amended to provide Tenant with the option to extend the Lease for each of five (5) additional ten (10) year renewal terms (each a "**New Renewal Term**" and, collectively, the "**New Renewal Terms**"). Notwithstanding anything to the contrary contained in the Lease, (a) all Existing Renewal Terms and New Renewal Terms shall automatically renew unless Tenant notifies Landlord that Tenant elects not to renew the Lease, as amended herein, at least sixty (60) days prior to the commencement of the next Renewal Term (as defined below) and (b) Landlord shall be able to terminate the Lease, as amended herein, only in the event of a material default by Tenant, which default is not cured within sixty (60) days of Tenant's receipt of written notice thereof, provided, however, in the event that Tenant has diligently commenced to cure a material default within sixty (60) days of Tenant's actual receipt of notice thereof and reasonably requires additional time beyond the sixty (60) day cure period described herein to effect such cure, Tenant shall have such additional time as is necessary (beyond the sixty [60] day cure period) to effect the cure. References in this Amendment to "**Renewal Term**" shall refer, collectively, to the Existing Renewal Term(s) and the New Renewal Term(s). The Landlord hereby

agrees to execute and return to Tenant an original Memorandum of Lease in the form and of the substance attached hereto as **Exhibit B** and by this reference made a part hereof (the "**Memorandum**") executed by Landlord, together with any applicable forms needed to record the Memorandum, which forms shall be supplied by Tenant to Landlord.

3. **Rent and Escalation.** As of the Effective Date, the Parties hereby acknowledge and agree that the rent payable from Tenant to Landlord under the Lease, is equal to **One Thousand Five Hundred Twenty and 37/100 Dollars (\$1,520.37)** Per month (the "**Rent**"). Commencing on June 22, 2024, and on each successive annual anniversary thereof (the "**Increase Date**"), Rent due under the Lease, as amended herein, will be increased by the percent increase in the Consumer Price Index for all Urban Consumers, U.S. City Average, as published by the United States Department of Labor Statistics (1982-1984 = 100) (the "**Index**") for the immediately preceding year, provided that the increase shall not be greater than **three percent (3%)** annually. As used herein, "preceding year" means the 12-month period ending as of the last day of the full month that is three (3) months prior to the Increase Date. For example, if the rent increase is being determined in connection with an Increase Date of October 1st, then the 'preceding year' would be the 12-month period ending as of July 31st. If the Index is no longer published, then a comparable index, which measures inflationary factors, and the corresponding decrease in the purchasing power of U. S. Dollar, shall be selected by Tenant and the Index adjustment shall be based upon such index. Notwithstanding anything to the contrary contained in the Lease, all Rent and any other payments expressly required to be paid by Tenant to Landlord under the Lease and this Amendment shall be paid to **City of Winfield**. The Landlord hereby agrees the Rent, the One-Time Payment and the Collocation Fee (as defined below) described in this Amendment is the only consideration owed to Landlord from Tenant pursuant to the Lease, as amended, or any other agreements between Landlord and Tenant, as the case may be. In the event of any overpayment of Rent or Collocation Fee (as defined below) prior to or after the Effective Date, Tenant shall have the right to deduct from any future Rent payments an amount equal to the overpayment amount.

4. **Revenue Share.**

- a. Subject to the other applicable terms, provisions, and conditions of this Section, Tenant shall pay Landlord **ten percent (10%)** of any rents actually received by Tenant under and pursuant to the terms and provisions of any new sublease, license or other collocation agreement for the use of any portion of the Leased Premises entered into by and between Tenant and a third party (any such third party, the "**Additional Collocator**") subsequent to the Effective Date (any such amounts, the "**Collocation Fee**"). Notwithstanding the foregoing, Landlord shall not be entitled to receive any portion of any sums paid by a licensee or sublessee to reimburse Tenant, in whole or in part, for any improvements to the Leased Premises or any structural enhancements to the tower located on the Leased Premises (such tower, the "**Tower**"), or for costs, expenses, fees, or other charges incurred or associated with the development, operation, repair, or maintenance of the Leased Premises or the Tower. The Collocation Fee shall not be subject to the escalations to Rent as delineated in this Amendment and/or the Lease. To the extent the amount of rents actually received by Tenant from an Additional Collocator escalate or otherwise increase pursuant to those agreements, the Collocation Fee shall be based on such increased amount.
- b. The initial payment of the Collocation Fee shall be due within thirty (30) days of actual receipt by Tenant of the first collocation payment paid by an Additional Collocator. In the event a sublease or license with an Additional Collocator expires or terminates, Tenant's obligation to pay the Collocation Fee for such sublease or license shall automatically terminate upon the date of such expiration or termination. Notwithstanding anything contained herein to the contrary, Tenant shall have no obligation to pay to Landlord and Landlord hereby agrees not to demand or request that Tenant pay to

Landlord any Collocation Fee in connection with the sublease to or transfer of Tenant's obligations and/or rights under the Lease, as modified by this Amendment, to any subsidiary, parent or affiliate of Tenant.

- c. Landlord hereby acknowledges and agrees that Tenant has the sole and absolute right to enter into, renew, extend, terminate, amend, restate, or otherwise modify (including, without limitation, reducing rent or allowing the early termination of) any future or existing subleases, licenses or collocation agreements for occupancy on the Tower, all on such terms as Tenant deems advisable, in Tenant's sole and absolute discretion, notwithstanding that the same may affect the amounts payable to the Landlord pursuant to this Section.
  - d. Notwithstanding anything to the contrary contained herein, Landlord hereby acknowledges and agrees that Tenant shall have no obligation to pay and shall not pay to Landlord any Collocation Fee in connection with: (i) any subleases, licenses, or other collocation agreements between Tenant, or Tenant's predecessors- in-interest, as applicable, and any third parties, or such third parties' predecessors or successors- in-interest, as applicable, entered into prior to the Effective Date (any such agreements, the "**Existing Agreements**"); (ii) any amendments, modifications, extensions, renewals, and/or restatements to and/or of the Existing Agreements entered into prior to the Effective Date or which may be entered into on or after the Effective Date; (iii) any subleases, licenses, or other collocation agreements entered into by and between Tenant and any Additional Collocators for public emergency and/or safety system purposes that are required or ordered by any governmental authority having jurisdiction at or over the Leased Premises; or (iv) any subleases, licenses or other collocation agreements entered into by and between Tenant and any Additional Collocators if the Landlord has entered into any agreements with such Additional Collocators to accommodate such Additional Collocators' facilities outside of the Leased Premises and such Additional Collocators pay any amounts (whether characterized as rent, additional rent, use, occupancy or other types of fees, or any other types of monetary consideration) to Landlord for such use.
5. **Landlord and Tenant Acknowledgments.** Except as modified herein, the Lease and all provisions contained therein remain in full force and effect and are hereby ratified and affirmed. In the event there is a conflict between the Lease and this Amendment, this Amendment shall control. The Parties hereby agree that no defaults exist under the Lease. To the extent Tenant needed consent and/or approval from Landlord for any of Tenant's activities at and uses of the site prior to the Effective Date, Landlord's execution of this Amendment is and shall be considered consent to and approval of all such activities and uses. Landlord hereby acknowledges and agrees that Tenant shall not need consent or approval from, or to provide notice to, Landlord for any future activities at or uses of the Leased Premises, including, without limitation, subleasing and licensing to additional customers, installing, modifying, repairing, or replacing improvements within the Leased Premises, and/or assigning all or any portion of Tenant's interest in this Lease, as modified by this Amendment. Tenant and Tenant's sublessees and customers shall have vehicular (specifically including truck) and pedestrian access to the Leased Premises from a public right of way on a 24 hours per day, 7 days per week basis, together with utilities services to the Leased Premises from a public right of way. Upon request by Tenant and at Tenant's sole cost and expense but without additional consideration owed to Landlord, Landlord hereby agrees to promptly execute and return to Tenant building permits, zoning applications and other forms and documents, including a memorandum of lease, as required for the use of the Leased Premises by Tenant and/or Tenant's customers, licensees, and sublessees. Landlord hereby appoints Tenant as Landlord's attorney-in-fact coupled with an interest to prepare, execute and deliver land use and zoning and building permit applications that concern the Leased Premises, on behalf of Landlord with federal, state and local governmental authorities, provided that such applications shall be limited strictly to the use of the Leased Premises as a wireless telecommunications

facility and that such attorney-in-fact shall not allow Tenant to re-zone or otherwise reclassify the Leased Premises or the Parent Parcel. The terms, provisions, and conditions of this Section shall survive the execution and delivery of this Amendment.

6. **Limited Right of First Refusal.** The Parties acknowledge and agree that Section 27 of the Lease is hereby deleted in its entirety and is of no further force and effect. From and after the Effective Date the obligations of the Parties with respect to Tenant's right of first refusal shall be controlled by this Section of this Amendment. Notwithstanding anything to the contrary contained herein, this paragraph shall not apply to any fee simple sale of the Parent Parcel from Landlord to any prospective purchaser that is not a Third Party Competitor (as defined below). If Landlord receives an offer or desires to offer to: (i) sell or convey any interest (including, but not limited to, leaseholds or easements) in any real property of which the Leased Premises is a part to any person or entity directly or indirectly engaged in the business of owning, acquiring, operating, managing, investing in or leasing wireless telecommunications infrastructure (any such person or entity, a "**Third Party Competitor**") or (ii) assign all or any portion of Landlord's interest in the Lease, as modified by this Amendment, to a Third Party Competitor (any such offer, the "**Offer**"), Tenant shall have the right of first refusal to purchase the real property or other interest being offered by Landlord in connection with the Offer on the same terms and conditions. If Tenant elects, in its sole and absolute discretion, to exercise its right of first refusal as provided herein, Tenant must provide Landlord with notice of its election not later than forty-five (45) days after Tenant receives written notice from Landlord of the Offer. If Tenant elects not to exercise Tenant's right of first refusal with respect to an Offer as provided herein, Landlord may complete the transaction contemplated in the Offer with the Third Party Competitor on the stated terms and price but with the express condition that such sale is made subject to the terms of the Lease, as modified by this Amendment. Landlord hereby acknowledges and agrees that any sale or conveyance by Landlord in violation of this Section is and shall be deemed to be null and void and of no force and effect. The terms, provisions, and conditions of this Section shall survive the execution and delivery of this Amendment.
7. **Landlord Statements.** Landlord hereby represents and warrants to Tenant that: (i) to the extent applicable, Landlord is duly organized, validly existing, and in good standing in the jurisdiction in which Landlord was organized, formed, or incorporated, as applicable, and is otherwise in good standing and authorized to transact business in each other jurisdiction in which such qualifications are required; (ii) Landlord has the full power and authority to enter into and perform its obligations under this Amendment, and, to the extent applicable, the person(s) executing this Amendment on behalf of Landlord, have the authority to enter into and deliver this Amendment on behalf of Landlord; (iii) no consent, authorization, order, or approval of, or filing or registration with, any governmental authority or other person or entity is required for the execution and delivery by Landlord of this Amendment; (iv) Landlord is the sole owner of the Leased Premises and all other portions of the Parent Parcel; (v) to the best of Landlord's knowledge, there are no agreements, liens, encumbrances, claims, claims of lien, proceedings, or other matters (whether filed or recorded in the applicable public records or not) related to, encumbering, asserted against, threatened against, and/or pending with respect to the Leased Premises or any other portion of the Parent Parcel which do or could (now or any time in the future) adversely impact, limit, and/or impair Tenant's rights under the Lease, as amended and modified by this Amendment; (vi) so long as Tenant performs its obligations under the Lease, Tenant shall peaceably and quietly have, hold and enjoy the Leased Premises, and Landlord shall not act or permit any third person to act in any manner which would interfere with or disrupt Tenant's business or frustrate Tenant or Tenant's customers' use of the Leased Premises and (vii) the square footage of the Leased Premises is the greater of Tenant's existing improvements on the Parent Parcel or the land area conveyed to Tenant under the Lease. The representations and warranties of Landlord made in this Section shall survive the execution and delivery of this Amendment. Landlord hereby does and agrees to indemnify Tenant for any damages, losses, costs, fees, expenses, or charges of any kind sustained or incurred by Tenant as a result of the breach of the

representations and warranties made herein or if any of the representations and warranties made herein prove to be untrue. Tenant hereby does and agrees to indemnify Landlord for any damages, losses, costs, fees, expenses, or charges of any kind sustained or incurred by Landlord as a result of the breach of the representations and warranties made herein or if any of the representations and warranties made herein prove to be untrue. The aforementioned indemnification shall survive the execution and delivery of this Amendment.

8. **Notices.** The Parties acknowledge and agree that Section 28 of the Lease is hereby deleted in its entirety and is of no further force and effect. From and after the Effective Date the notice address and requirements of the Lease, as modified by this Amendment, shall be controlled by this Section of this Amendment. All notices must be in writing and shall be valid upon receipt when delivered by hand, by nationally recognized courier service, or by First Class United States Mail, certified, return receipt requested to the addresses set forth herein: to Landlord at: City of Winfield KS Attn: City Manager PO Box 646 Winfield KS 67156; to Tenant at: Attn.: Land Management 10 Presidential Way, Woburn, MA 01801, with copy to: Attn.: Legal Dept., 116 Huntington Avenue, Boston, MA 02116. Any of the Parties, by thirty (30) days prior written notice to the others in the manner provided herein, may designate one or more different notice addresses from those set forth above. Refusal to accept delivery of any notice or the inability to deliver any notice because of a changed address for which no notice was given as required herein, shall be deemed to be receipt of any such notice.
9. **Counterparts.** This Amendment may be executed in several counterparts, each of which when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument, even though all Parties are not signatories to the original or the same counterpart. Furthermore, the Parties may execute and deliver this Amendment by electronic means such as .pdf or similar format. Each of the Parties agrees that the delivery of the Amendment by electronic means will have the same force and effect as delivery of original signatures and that each of the Parties may use such electronic signatures as evidence of the execution and delivery of the Amendment by all Parties to the same extent as an original signature.
10. **Governing Law.** The Parties acknowledge and agree that Section 34 (f) of the Lease is hereby deleted in its entirety and is of no further force and effect. From and after the Effective Date and notwithstanding anything to the contrary contained in the Lease and in this Amendment, the Lease and this Amendment shall be governed by and construed in all respects in accordance with the laws of the State or Commonwealth in which the Leased Premises is situated, without regard to the conflicts of laws provisions of such State or Commonwealth.
11. **Waiver.** The Parties acknowledge and agree that Section 33 of the Lease is hereby deleted in its entirety and is of no further force and effect. From and after the Effective Date and notwithstanding anything to the contrary contained herein or in the Lease, in no event shall Landlord or Tenant be liable to the other for, and Landlord and Tenant hereby waive, to the fullest extent permitted under applicable law, the right to recover incidental, consequential (including, without limitation, lost profits, loss of use or loss of business opportunity), punitive, exemplary and similar damages.
12. **Tenant's Securitization Rights; Estoppel.** The Parties acknowledge and agree that Section 34 (b) of the Lease is hereby deleted in its entirety and is of no further force and effect. From and after the Effective Date the obligations of the Parties with respect to Tenant's securitization rights shall be controlled by this Section of this Amendment. Landlord hereby consents to the granting by Tenant of one or more leasehold mortgages, collateral assignments, liens, and/or other security interests (collectively, a "***Security Interest***") in Tenant's interest in the Lease, as amended, and all of Tenant's property and fixtures attached to and lying within the Leased Premises and further consents to the exercise by Tenant's mortgagee ("***Tenant's***

**Mortgagee**") of its rights to exercise its remedies, including without limitation foreclosure, with respect to any such Security Interest. Landlord shall recognize the holder of any such Security Interest of which Landlord is given prior written notice (any such holder, a "**Holder**") as "Tenant" hereunder in the event a Holder succeeds to the interest of Tenant hereunder by the exercise of such remedies. Landlord further agrees to execute a written estoppel certificate within thirty (30) days of written request of the same by Tenant or Holder.

13. **Taxes.** The Parties acknowledge and agree that Section 21 of the Lease is hereby deleted in its entirety and is of no further force and effect. From and after the Effective Date the obligations of the Parties with respect to taxes shall be controlled by this Section of this Amendment. During the term of the Lease, as modified by this Amendment, Tenant shall pay when due all real property, personal property, and other taxes, fees, and assessments that are directly attributable to Tenant's improvements on the Leased Premises (the "**Applicable Taxes**") directly to the local taxing authority to the extent that the Applicable Taxes are billed directly to Tenant. Tenant hereby agrees to reimburse Landlord for any Applicable Taxes billed directly to Landlord (which shall not include any taxes or other assessments attributable to periods prior to the Effective Date). Landlord must furnish written documentation (the substance and form of which shall be reasonably satisfactory to Tenant) of any Applicable Taxes along with proof of payment of the same by Landlord. Landlord shall submit requests for reimbursement in writing to: *American Tower Corporation, Attn: Landlord Relations, 10 Presidential Way, Woburn, MA 01801* unless otherwise directed by Tenant from time to time. Subject to the requirements set forth in this Section, Tenant shall make such reimbursement payment within forty-five (45) days of receipt of a written reimbursement request from Landlord. Anything to the contrary notwithstanding, Landlord is only eligible for reimbursement if Landlord requests reimbursement within one (1) year after the date such taxes became due. Additionally, Landlord shall not be entitled to reimbursement for any costs associated with an increase in the value of Landlord's real property calculated based on any monetary consideration paid from Tenant to Landlord. If Landlord fails to pay when due any real property, personal property, and other taxes, fees, and assessments affecting the Parent Parcel, Tenant shall have the right, but not the obligation, to pay such taxes on Landlord's behalf and: (i) deduct the full amount of any such taxes paid by Tenant on Landlord's behalf from any future payments required to be made by Tenant to Landlord hereunder; (ii) demand reimbursement from Landlord, which reimbursement payment Landlord shall make within thirty (30) days of such demand by Tenant; and/or (iii) collect from Landlord any such tax payments made by Tenant on Landlord's behalf by any lawful means.
14. **Conflict/Capitalized Terms.** The Parties hereby acknowledge and agree that in the event of a conflict between the terms and provisions of this Amendment and those contained in the Lease, the terms and provisions of this Amendment shall control. Except as otherwise defined or expressly provided in this Amendment, all capitalized terms used in this Amendment shall have the meanings or definitions ascribed to them in the Lease. To the extent of any inconsistency in or conflict between the meaning, definition, or usage of any capitalized terms in this Amendment and the meaning, definition, or usage of any such capitalized terms or similar or analogous terms in the Lease, the meaning, definition, or usage of any such capitalized terms in this Amendment shall control.

[SIGNATURES COMMENCE ON FOLLOWING PAGE]



**LANDLORD:**

**City of Winfield,**  
a Kansas municipality

Signature: \_\_\_\_\_

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

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

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

*[SIGNATURES CONTINUE ON FOLLOWING PAGE]*

**TENANT:**

**American Towers LLC,**  
a Delaware limited liability company

Signature: \_\_\_\_\_

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

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

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

## EXHIBIT A

*This Exhibit A may be replaced at Tenant's option as described below.*

### **PARENT PARCEL**

*Tenant shall have the right to replace this description with a description obtained from Landlord's deed (or deeds) that include the land area encompassed by the Lease and Tenant's improvements thereon.*

The Parent Parcel consists of the entire legal taxable lot owned by Landlord as described in a deed (or deeds) to Landlord of which the Leased Premises is a part thereof with such Parent Parcel being described below.

**Beginning 982 feet East and 730 feet North of the Southwest Corner of the Southeast Quarter of Section 30, Township 32 South, Range 4 East; thence East 388 feet parallel to the South line of said Quarter Section; thence North parallel to West line of said Quarter Section 224 feet; thence West parallel to the South line of said Quarter Section 388 feet; thence South 224 feet to point beginning, except for land taken for highway purposes.**

**AND BEING the same property conveyed to Sharon Frazer and Jason Frazer and Daniel Frazer from Teresa Waggoner, a single person by Statutory Warranty Deed dated July 03, 2001 in Deed Book 0620, Page 552.**

**Tax Parcel No. 018-179-30-0-40-07-002-00-0-01**

**NOTE: The parent parcel graphically shown hereon, in full or in part, is the same as that described above.**

## LEASED PREMISES

*Tenant shall have the right to replace this description with a description obtained from the Lease or from a description obtained from an as-built survey conducted by Tenant.*

The Leased Premises consists of that portion of the Parent Parcel as defined in the Lease which shall include access and utilities easements. The square footage of the Leased Premises shall be the greater of: (i) the land area conveyed to Tenant in the Lease; (ii) Tenant's (and Tenant's customers) existing improvements on the Parent Parcel; or (iii) the legal description or depiction below (if any).

A TRACT OF LAND LYING IN AND BEING PART OF A CERTAIN TRACT OF LAND SITUATED IN THE NORTHEAST QUARTER (NE/4) OF THE NORTHEAST QUARTER (NE/4) OF SECTION 33, TOWNSHIP 32 SOUTH, RANGE 4 EAST, AS DESCRIBED IN BOOK 550, PAGE 832, AND BOOK 559, PAGE 332, REGISTER OF DEEDS, COWLEY COUNTY, KANSAS; SAID TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A 60d NAIL FOUND FOR THE NORTHEAST CORNER OF SAID NE/4; THENCE SOUTH 01 DEGREES 35 MINUTES 34 SECONDS EAST ON THE EAST LINE OF SAID NE/4, A DISTANCE OF 1161.26 FEET TO A POINT ON SAID EAST LINE; THENCE SOUTH 88 DEGREES 24 MINUTES 26 SECONDS WEST PERPENDICULAR TO SAID EAST LINE, A DISTANCE OF 551.18 FEET TO A 1/2" IRON ROD SET FOR THE NORTHEAST CORNER, SAID CORNER BEING THE POINT OF BEGINNING; THENCE SOUTH 02 DEGREES 07 MINUTES 07 SECONDS EAST A DISTANCE OF 100.00 FEET TO A 1/2" IRON ROD SET FOR THE SOUTHEAST CORNER; THENCE SOUTH 87 DEGREES 52 MINUTES 53 SECONDS WEST A DISTANCE OF 125.00 FEET TO A 1/2" IRON ROD SET FOR THE SOUTHWEST CORNER; THENCE NORTH 02 DEGREES 07 MINUTES 07 SECONDS WEST A DISTANCE OF 100.00 FEET TO A 1/2" IRON ROD SET FOR THE NORTHWEST CORNER; THENCE NORTH 87 DEGREES 53 MINUTES 53 SECONDS EAST A DISTANCE OF 125.00 FEET TO THE POINT OF BEGINNING, CONTAINING 12,500.00 SQUARE FEET OR 0.287 ACRES, MORE OR LESS.

## ACCESS AND UTILITIES

The access and utility easements include all easements of record as well that portion of the Parent Parcel currently utilized by Tenant (and Tenant's customers) for ingress, egress and utility purposes from the Leased Premises to and from a public right of way including but not limited to:

A 25.00 FOOT WIDE EASEMENT FOR INGRESS, EGRESS AND UTILITY PURPOSES CROSSING CERTAIN TRACTS OF LAND SITUATED IN THE NORTHEAST QUARTER (NE/4) OF THE NORTHEAST QUARTER (NE/4) OF SECTION 33, TOWNSHIP 32 SOUTH, RANGE 4 EAST, AS DESCRIBED IN BOOK 550, PAGE 832, AND BOOK 559, PAGE 332, REGISTER OF DEEDS, COWLEY COUNTY, KANSAS; SAID EASEMENT BEING 12.50 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

COMMENCING AT A 60d NAIL FOUND FOR THE NORTHEAST CORNER OF SAID NE/4; THENCE SOUTH 01 DEGREES 35 MINUTES 34 SECONDS EAST ON THE EAST LINE OF SAID NE/4, A DISTANCE OF 1226.07 FEET TO A POINT ON SAID EAST LINE; THENCE SOUTH 88 DEGREES 24 MINUTES 26 SECONDS WEST PERPENDICULAR TO SAID EAST LINE, A DISTANCE OF 30.00 FEET TO THE POINT OF BEGINNING ON THE WEST RIGHT OF WAY LINE OF BROADWAY STREET; THENCE SOUTH 88 DEGREES 31 MINUTES 01 SECONDS WEST A DISTANCE OF 402.04 FEET TO A POINT; THENCE NORTH 83 DEGREES 53 MINUTES 36 SECONDS WEST A DISTANCE OF 119.76 FEET TO THE POINT OF TERMINATION ON THE EAST LINE OF THE ABOVE DESCRIBED 0.287 ACRE LEASE SITE. SIDE LINES OF SAID EASEMENT TO BE SHORTENED OR EXTENDED SUCH AS TO BEGIN ON THE WEST RIGHT OF WAY LINE OF BROADWAY STREET AND TERMINATE ON THE EAST LINE OF SAID 0.287 ACRE LEASE SITE.

### UTILITY EASEMENT LEGAL DESCRIPTION

A 10.00 FOOT WIDE EASEMENT FOR UTILITY PURPOSES CROSSING CERTAIN TRACTS OF LAND SITUATED IN THE NORTHEAST QUARTER (NE/4) OF THE NORTHEAST QUARTER (NE/4) OF SECTION 33, TOWNSHIP 32 SOUTH, RANGE 4 EAST, AS DESCRIBED IN BOOK 550, PAGE 832, AND BOOK 559, PAGE 332, REGISTER OF DEEDS, COWLEY COUNTY, KANSAS; SAID EASEMENT BEING 5.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

COMMENCING AT A 60d NAIL FOUND FOR THE NORTHEAST CORNER OF SAID NE/4; THENCE SOUTH 01 DEGREES 35 MINUTES 34 SECONDS EAST ON THE EAST LINE OF SAID NE/4, A DISTANCE OF 1133.27 FEET TO A POINT ON SAID EAST LINE; THENCE SOUTH 88 DEGREES 24 MINUTES 26 SECONDS WEST PERPENDICULAR TO SAID EAST LINE, A DISTANCE OF 142.98 FEET TO THE POINT OF BEGINNING AT AN EXISTING POWER POLE; THENCE NORTH 48 DEGREES 29 MINUTES 43 SECONDS WEST A DISTANCE OF 92.21 FEET TO A POINT; THENCE NORTH 68 DEGREES 12 MINUTES 04 SECONDS WEST A DISTANCE OF 428.00 FEET TO A POINT; THENCE SOUTH 02 DEGREES 01 MINUTES 17 SECONDS EAST A DISTANCE OF 261.38 FEET TO THE POINT OF TERMINATION ON THE NORTH LINE OF THE ABOVE DESCRIBED 0.287 ACRE LEASE SITE. SIDE LINES OF SAID EASEMENT TO BE SHORTENED OR EXTENDED SUCH AS TO BEGIN AT AN EXISTING POWER POLE AND TERMINATE ON THE NORTH LINE OF SAID 0.287 ACRE LEASE SITE.

## **EXHIBIT B**

# **FORM OF MEMORANDUM OF LEASE**

**Prepared by and Return to:**

American Tower  
10 Presidential Way  
Woburn, MA 01801  
Attn: Land Management/Karla Disla, Esq.  
ATC Site No: 272588  
ATC Site Name: WINFIELD WEST KS  
Assessor's Parcel No(s): 178-33-0-10-01-002.00-0

**Prior Recorded Lease Reference:**

Book 0862, Page 0287  
State of Kansas  
County of Cowley

---

**MEMORANDUM OF LEASE**

This Memorandum of Lease (the "**Memorandum**") is entered into as of the latter signature date hereof, by and between **City of Winfield**, a Kansas municipality ("**Landlord**") and **American Towers LLC**, a Delaware limited liability company ("**Tenant**").

**NOTICE** is hereby given of the Lease (as defined and described below) for the purpose of recording and giving notice of the existence of said Lease. To the extent that notice of such Lease has previously been recorded, then this Memorandum shall constitute an amendment of any such prior recorded notice(s).

1. **Parent Parcel and Lease.** Landlord is the owner of certain real property being described in **Exhibit A** attached hereto and by this reference made a part hereof (the "**Parent Parcel**"). Landlord (or its predecessor-in-interest) and Tenant (or its predecessor-in-interest) entered into that certain Option and Lease Agreement dated April 23, 2009 (as the same may have been amended from time to time, collectively, the "**Lease**"), pursuant to which the Tenant leases a portion of the Parent Parcel and is the beneficiary of certain easements for access and public utilities, all as more particularly described in the Lease (such portion of the Parent Parcel so leased along with such portion of the Parent Parcel so affected, collectively, the "**Leased Premises**"), which Leased Premises is also described on **Exhibit A**.
2. **Expiration Date.** Subject to the terms, provisions, and conditions of the Lease, and assuming the exercise by Tenant of all renewal options contained in the Lease, the final expiration date of the Lease would be June 21, 2074. Notwithstanding the foregoing, in no event shall Tenant be required to exercise any option to renew the term of the Lease.
3. **Leased Premises Description.** Tenant shall have the right, exercisable by Tenant at any time during the original or renewal terms of the Lease, to cause an as-built survey of the Leased Premises to be prepared and, thereafter, to replace, in whole or in part, the description(s) of the Leased Premises set forth on **Exhibit A** with a legal description or legal descriptions based upon such as-built survey. Upon Tenant's request, Landlord shall execute and deliver any documents reasonably necessary to effectuate such replacement, including, without limitation, amendments to this Memorandum and to the Lease.
4. **Right of First Refusal.** There is a right of first refusal in the Lease.
5. **Effect/Miscellaneous.** This Memorandum is not a complete summary of the terms, provisions and conditions contained in the Lease. In the event of a conflict between this Memorandum and the Lease,



the Lease shall control. Landlord hereby grants the right to Tenant to complete and execute on behalf of Landlord any government or transfer tax forms necessary for the recording of this Memorandum. This right shall terminate upon recording of this Memorandum.

6. **Notices.** All notices must be in writing and shall be valid upon receipt when delivered by hand, by nationally recognized courier service, or by First Class United States Mail, certified, return receipt requested to the addresses set forth herein: to Landlord at: City of Winfield KS Attn: City Manager PO Box 646 Winfield KS 67156; to Tenant at: Attn.: Land Management 10 Presidential Way, Woburn, MA 01801, with copy to: Attn.: Legal Dept., 116 Huntington Avenue, Boston, MA 02116. Any of the parties hereto, by thirty (30) days prior written notice to the other in the manner provided herein, may designate one or more different notice addresses from those set forth above. Refusal to accept delivery of any notice or the inability to deliver any notice because of a changed address for which no notice was given as required herein, shall be deemed to be receipt of any such notice.
7. **Counterparts.** This Memorandum may be executed in multiple counterparts, each of which when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.
8. **Governing Law.** This Memorandum shall be governed by and construed in all respects in accordance with the laws of the State or Commonwealth in which the Leased Premises is situated, without regard to the conflicts of laws provisions of such State or Commonwealth.

*[SIGNATURES COMMENCE ON FOLLOWING PAGE]*

**IN WITNESS WHEREOF**, Landlord and Tenant have each executed this Memorandum as of the day and year set forth below.

**LANDLORD**

**2 WITNESSES**

**City of Winfield,**  
a Kansas municipality

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
  
Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_

**WITNESS AND ACKNOWLEDGEMENT**

State/Commonwealth of \_\_\_\_\_

County of \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

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

[SEAL]

*[SIGNATURES CONTINUE ON FOLLOWING PAGE]*

**TENANT**

**WITNESS**

**American Towers LLC,**  
a Delaware limited liability company

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
  
Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_

**WITNESS AND ACKNOWLEDGEMENT**

Commonwealth of Massachusetts

County of Middlesex

On this \_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

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

[SEAL]

## EXHIBIT A

*This Exhibit A may be replaced at Tenant's option as described below.*

### **PARENT PARCEL**

*Tenant shall have the right to replace this description with a description obtained from Landlord's deed (or deeds) that include the land area encompassed by the Lease and Tenant's improvements thereon.*

The Parent Parcel consists of the entire legal taxable lot owned by Landlord as described in a deed (or deeds) to Landlord of which the Leased Premises is a part thereof with such Parent Parcel being described below.

**Beginning 982 feet East and 730 feet North of the Southwest Corner of the Southeast Quarter of Section 30, Township 32 South, Range 4 East; thence East 388 feet parallel to the South line of said Quarter Section; thence North parallel to West line of said Quarter Section 224 feet; thence West parallel to the South line of said Quarter Section 388 feet; thence South 224 feet to point beginning, except for land taken for highway purposes.**

**AND BEING the same property conveyed to Sharon Frazer and Jason Frazer and Daniel Frazer from Teresa Waggoner, a single person by Statutory Warranty Deed dated July 03, 2001 in Deed Book 0620, Page 552.**

**Tax Parcel No. 018-179-30-0-40-07-002-00-0-01**

**NOTE: The parent parcel graphically shown hereon, in full or in part, is the same as that described above.**

## LEASED PREMISES

*Tenant shall have the right to replace this description with a description obtained from the Lease or from a description obtained from an as-built survey conducted by Tenant.*

The Leased Premises consists of that portion of the Parent Parcel as defined in the Lease which shall include access and utilities easements. The square footage of the Leased Premises shall be the greater of: (i) the land area conveyed to Tenant in the Lease; (ii) Tenant's (and Tenant's customers) existing improvements on the Parent Parcel; or (iii) the legal description or depiction below (if any).

A TRACT OF LAND LYING IN AND BEING PART OF A CERTAIN TRACT OF LAND SITUATED IN THE NORTHEAST QUARTER (NE/4) OF THE NORTHEAST QUARTER (NE/4) OF SECTION 33, TOWNSHIP 32 SOUTH, RANGE 4 EAST, AS DESCRIBED IN BOOK 550, PAGE 832, AND BOOK 559, PAGE 332, REGISTER OF DEEDS, COWLEY COUNTY, KANSAS; SAID TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A 60d NAIL FOUND FOR THE NORTHEAST CORNER OF SAID NE/4; THENCE SOUTH 01 DEGREES 35 MINUTES 34 SECONDS EAST ON THE EAST LINE OF SAID NE/4, A DISTANCE OF 1161.26 FEET TO A POINT ON SAID EAST LINE; THENCE SOUTH 88 DEGREES 24 MINUTES 26 SECONDS WEST PERPENDICULAR TO SAID EAST LINE, A DISTANCE OF 551.18 FEET TO A 1/2" IRON ROD SET FOR THE NORTHEAST CORNER, SAID CORNER BEING THE POINT OF BEGINNING; THENCE SOUTH 02 DEGREES 07 MINUTES 07 SECONDS EAST A DISTANCE OF 100.00 FEET TO A 1/2" IRON ROD SET FOR THE SOUTHEAST CORNER; THENCE SOUTH 87 DEGREES 52 MINUTES 53 SECONDS WEST A DISTANCE OF 125.00 FEET TO A 1/2" IRON ROD SET FOR THE SOUTHWEST CORNER; THENCE NORTH 02 DEGREES 07 MINUTES 07 SECONDS WEST A DISTANCE OF 100.00 FEET TO A 1/2" IRON ROD SET FOR THE NORTHWEST CORNER; THENCE NORTH 87 DEGREES 53 MINUTES 53 SECONDS EAST A DISTANCE OF 125.00 FEET TO THE POINT OF BEGINNING, CONTAINING 12,500.00 SQUARE FEET OR 0.287 ACRES, MORE OR LESS.

## ACCESS AND UTILITIES

The access and utility easements include all easements of record as well that portion of the Parent Parcel currently utilized by Tenant (and Tenant's customers) for ingress, egress and utility purposes from the Leased Premises to and from a public right of way including but not limited to:

A 25.00 FOOT WIDE EASEMENT FOR INGRESS, EGRESS AND UTILITY PURPOSES CROSSING CERTAIN TRACTS OF LAND SITUATED IN THE NORTHEAST QUARTER (NE/4) OF THE NORTHEAST QUARTER (NE/4) OF SECTION 33, TOWNSHIP 32 SOUTH, RANGE 4 EAST, AS DESCRIBED IN BOOK 550, PAGE 832, AND BOOK 559, PAGE 332, REGISTER OF DEEDS, COWLEY COUNTY, KANSAS; SAID EASEMENT BEING 12.50 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

COMMENCING AT A 60d NAIL FOUND FOR THE NORTHEAST CORNER OF SAID NE/4; THENCE SOUTH 01 DEGREES 35 MINUTES 34 SECONDS EAST ON THE EAST LINE OF SAID NE/4, A DISTANCE OF 1226.07 FEET TO A POINT ON SAID EAST LINE; THENCE SOUTH 88 DEGREES 24 MINUTES 26 SECONDS WEST PERPENDICULAR TO SAID EAST LINE, A DISTANCE OF 30.00 FEET TO THE POINT OF BEGINNING ON THE WEST RIGHT OF WAY LINE OF BROADWAY STREET; THENCE SOUTH 88 DEGREES 31 MINUTES 01 SECONDS WEST A DISTANCE OF 402.04 FEET TO A POINT; THENCE NORTH 83 DEGREES 53 MINUTES 36 SECONDS WEST A DISTANCE OF 119.76 FEET TO THE POINT OF TERMINATION ON THE EAST LINE OF THE ABOVE DESCRIBED 0.287 ACRE LEASE SITE. SIDE LINES OF SAID EASEMENT TO BE SHORTENED OR EXTENDED SUCH AS TO BEGIN ON THE WEST RIGHT OF WAY LINE OF BROADWAY STREET AND TERMINATE ON THE EAST LINE OF SAID 0.287 ACRE LEASE SITE.

### UTILITY EASEMENT LEGAL DESCRIPTION

A 10.00 FOOT WIDE EASEMENT FOR UTILITY PURPOSES CROSSING CERTAIN TRACTS OF LAND SITUATED IN THE NORTHEAST QUARTER (NE/4) OF THE NORTHEAST QUARTER (NE/4) OF SECTION 33, TOWNSHIP 32 SOUTH, RANGE 4 EAST, AS DESCRIBED IN BOOK 550, PAGE 832, AND BOOK 559, PAGE 332, REGISTER OF DEEDS, COWLEY COUNTY, KANSAS; SAID EASEMENT BEING 5.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

COMMENCING AT A 60d NAIL FOUND FOR THE NORTHEAST CORNER OF SAID NE/4; THENCE SOUTH 01 DEGREES 35 MINUTES 34 SECONDS EAST ON THE EAST LINE OF SAID NE/4, A DISTANCE OF 1133.27 FEET TO A POINT ON SAID EAST LINE; THENCE SOUTH 88 DEGREES 24 MINUTES 26 SECONDS WEST PERPENDICULAR TO SAID EAST LINE, A DISTANCE OF 142.98 FEET TO THE POINT OF BEGINNING AT AN EXISTING POWER POLE; THENCE NORTH 48 DEGREES 29 MINUTES 43 SECONDS WEST A DISTANCE OF 92.21 FEET TO A POINT; THENCE NORTH 68 DEGREES 12 MINUTES 04 SECONDS WEST A DISTANCE OF 428.00 FEET TO A POINT; THENCE SOUTH 02 DEGREES 01 MINUTES 17 SECONDS EAST A DISTANCE OF 261.38 FEET TO THE POINT OF TERMINATION ON THE NORTH LINE OF THE ABOVE DESCRIBED 0.287 ACRE LEASE SITE. SIDE LINES OF SAID EASEMENT TO BE SHORTENED OR EXTENDED SUCH AS TO BEGIN AT AN EXISTING POWER POLE AND TERMINATE ON THE NORTH LINE OF SAID 0.287 ACRE LEASE SITE.



## **Instructions for completing the Resolution and Consent Affidavit**

*\*IMPORTANT INFORMATION BELOW\**

In order to avoid delays in the completion of this transaction, the Resolution and Consent Affidavit must be signed by **ALL** Members, Partners, Directors, Shareholders, Officers or Trustees of the organization. Section 6 of this form allows for the organization to appoint one person to sign the remaining documents but **ONE HUNDRED PERCENT (100%)** of the ownership or voting interest of the organization must sign this first. Failure to comply with these instructions or properly indicate the percentage of ownership and/or voting interest will result in delays and could require the documents to be re-executed. If you have any questions, please contact your land lease representative.

**Prepared by and Return to:**

American Tower  
Attn: Land Management/Karla Disla, Esq.  
10 Presidential Way  
Woburn, MA 01801  
Assessor's Parcel No(s): 178-33-0-10-01-002.00-0

---

**RESOLUTION AND CONSENT AFFIDAVIT**

**City of Winfield**, a Kansas municipality

Be it known that, under the pains and penalties of perjury, the undersigned Members, Partners, Directors, Shareholders, Officers or Trustees, as applicable (collectively, the "**Affiants**") of the above referenced entity (the "**Landlord**"), hereby declare and resolve the following:

1. Landlord (or its predecessor-in-interest) has leased or subleased a portion of land to **American Towers LLC**, a Delaware limited liability company (the "**Tenant**") pursuant to that certain Option and Lease Agreement dated April 23, 2009 (as the same may have been amended from time to time, collectively, the "**Lease**").
2. Landlord and Tenant desire to enter into an amendment of the Lease (the "**Amendment**") in order to extend the term thereof and to further amend the Lease as more particularly set forth in the Amendment.
3. Landlord is duly organized, validly existing, and in good standing in the jurisdiction of its formation, organization, and/or incorporation, as applicable, and is otherwise authorized to transact business and in good standing in any other jurisdictions where such qualifications are required. Landlord has full power and authority to enter into and perform Landlord's obligations under the Amendment and the other Transaction Documents (as hereinafter defined), and the Amendment and the other Transaction Documents have been duly executed and delivered by Landlord. The Affiants listed below are the only legal and equitable owners of Landlord and are the only members, partners, directors, shareholders, officers and/or trustees, as applicable, of Landlord.
4. The Affiants hereby approve of the Transaction Documents and all of the terms and provisions contained therein and declare, resolve and/or affirm, as applicable, that Landlord is hereby authorized to enter into the Transaction Documents with Tenant and effect the transactions contemplated therein. The Affiants hereby declare and affirm that any other corporate and shareholder, member, partner, and/or trustee actions required to effectuate the transactions contemplated in the Amendment and other Transaction Documents have been completed.

- NOMINEE: (Print Name) \_\_\_\_\_  
(Address) \_\_\_\_\_  
\_\_\_\_\_

- [SIGNATURES COMMENCE ON FOLLOWING PAGE]

EXECUTED UNDER THE PAINS AND PENALTIES OF PERJURY ON THE DATE WRITTEN BELOW

**AFFIANT NO. 1**

**2 WITNESSES**

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_

Title: (*circle one*) Member, Partner, Director,  
Shareholder, Officer, Trustee

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_

Percentage Ownership or Voting Interest:  
\_\_\_\_\_ %

**WITNESS AND ACKNOWLEDGEMENT**

State/Commonwealth of \_\_\_\_\_

County of \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

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

[SEAL]

EXECUTED UNDER THE PAINS AND PENALTIES OF PERJURY ON THE DATE WRITTEN BELOW

**AFFIANT NO. 2**

**2 WITNESSES**

Signature: \_\_\_\_\_

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

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

Title: *(circle one)* Member, Partner, Director,  
Shareholder, Officer, Trustee

Percentage Ownership or Voting Interest:  
\_\_\_\_\_ %

Signature: \_\_\_\_\_

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

Signature: \_\_\_\_\_

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

**WITNESS AND ACKNOWLEDGEMENT**

State/Commonwealth of \_\_\_\_\_

County of \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

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

My commission expires: \_\_\_\_\_

[SEAL]

EXECUTED UNDER THE PAINS AND PENALTIES OF PERJURY ON THE DATE WRITTEN BELOW

**AFFIANT NO. 3**

**2 WITNESSES**

Signature: \_\_\_\_\_

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

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

Title: (*circle one*) Member, Partner, Director,  
Shareholder, Officer, Trustee

Percentage Ownership or Voting Interest:  
\_\_\_\_\_ %

Signature: \_\_\_\_\_

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

Signature: \_\_\_\_\_

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

**WITNESS AND ACKNOWLEDGEMENT**

State/Commonwealth of \_\_\_\_\_

County of \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

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

My commission expires: \_\_\_\_\_

[SEAL]

EXECUTED UNDER THE PAINS AND PENALTIES OF PERJURY ON THE DATE WRITTEN BELOW

**AFFIANT NO. 4**

**2 WITNESSES**

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_

Title: (*circle one*) Member, Partner, Director,  
Shareholder, Officer, Trustee

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_

Percentage Ownership or Voting Interest:  
\_\_\_\_\_ %

**WITNESS AND ACKNOWLEDGEMENT**

State/Commonwealth of \_\_\_\_\_

County of \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

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

[SEAL]



EXECUTED UNDER THE PAINS AND PENALTIES OF PERJURY ON THE DATE WRITTEN BELOW

**AFFIANT NO. 5**

**2 WITNESSES**

Signature: \_\_\_\_\_

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

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

Title: (*circle one*) Member, Partner, Director,  
Shareholder, Officer, Trustee

Percentage Ownership or Voting Interest:  
\_\_\_\_\_ %

Signature: \_\_\_\_\_

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

Signature: \_\_\_\_\_

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

**WITNESS AND ACKNOWLEDGEMENT**

State/Commonwealth of \_\_\_\_\_

County of \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

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

My commission expires: \_\_\_\_\_

[SEAL]

EXECUTED UNDER THE PAINS AND PENALTIES OF PERJURY ON THE DATE WRITTEN BELOW

**AFFIANT NO. 6**

**2 WITNESSES**

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_

Title: *(circle one)* Member, Partner, Director,  
Shareholder, Officer, Trustee

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_

Percentage Ownership or Voting Interest:  
\_\_\_\_\_ %

**WITNESS AND ACKNOWLEDGEMENT**

State/Commonwealth of \_\_\_\_\_

County of \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

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

[SEAL]