

## **ASSIGNMENT OF LEASE AND EASEMENT AGREEMENT**

**WHEREAS**, on September 29, 2009, The City of Oklahoma City, a municipal corporation (“Lessor”), and Dragon Communications LLC (“Lessee”), entered into a Lease and Easement Agreement (“Lease”), which commenced on March 22, 2010, and attached hereto; and

**WHEREAS**, Dragon Communications LLC is being acquired by SWI Funds Tower Holdings LLC (“Assignee”); and

**WHEREAS**, Lessor received a request to assign the Lease to SWI Funds Tower Holdings LLC; and

**WHEREAS**, the Lease provides that Lessee shall not assign the Lease Agreement without the consent in writing of Lessor.

**NOW, THEREFORE**, the parties agree:

1. The Lease commenced on March 22, 2010, and the expiration date of the initial term of the Lease was March 21, 2015. The term of the Lease automatically extends for four (4) successive renewal terms of five (5) years each, for a total of twenty-five (25) years, unless terminated by the provisions set forth in the Lease. The next renewal term is scheduled to commence on March 22, 2025. The rent increases by fifteen percent (15%) upon the commencement of each renewal term.
2. Attached as Exhibit “A” is a true and complete copy of the Lease and all amendments or modifications thereto. The Lease, together with this Assignment, constitutes the entire agreement.
3. Lessee’s current annual payment amount to Lessor per Section 4 of the Lease is Seventeen Thousand One Hundred Ninety-two Dollars and Fifty cents (\$17,192.50). The annual payment is due each year on March 22<sup>nd</sup>. All rent due in accordance with Section 4 of the Lease have been paid through March 21, 2023.
4. Notices and other communications to the City pursuant to the Lease shall be addressed to:

The City of Oklahoma City  
Parks and Recreation Director  
420 W Main, Suite 210  
Oklahoma City, OK 73102  
[okcparks@okc.gov](mailto:okcparks@okc.gov)  
405.297.3882

and

The City of Oklahoma City  
City Clerk  
200 N Walker Ave., 2<sup>nd</sup> Floor  
Oklahoma City, OK 73102  
[cityclerk@okc.gov](mailto:cityclerk@okc.gov)

Notices and other communications to the SWI Funds Tower Holdings, LLC pursuant to the Lease shall be addressed to:

SWI Funds Tower Holdings, LLC  
260 Mason Street  
Greenwich, CT 06830  
Email: sriggs@swifunds.com  
Phone: 615.730.1105

5. Lessee shall have the Lease Premises and the Easement surveyed by a registered surveyor to verify that the tower and related improvements are within the Lease Premises. Lessee shall provide a copy of the survey to Lessor and if the tower or any related improvements are determined to lay outside the legal description for the Lease Premises the Lessor and Lessee shall negotiate in good faith to resolve the discrepancies.
6. If requested by the Lessee, the Lessor shall execute an amendment to the Lease containing a metes and bounds description.
7. This Assignment shall be null and void if the transaction between SWI Funds Tower Holdings LLC and Dragon Communications LLC is not completed within thirty (30) calendar days after Lessor approves this Assignment of Lease and Easement Agreement.
8. All other terms in the Lease and Easement Agreement approved by City Council on September 29, 2009, remain in effect.
9. The parties affirm that, on the date this Assignment of Lease and Easement Agreement is executed by their signatories, neither Lessor nor Lessee is known or presumed to be in breach or default of any terms or conditions of the Lease that commenced on March 22, 2010.

APPROVED by SWI Funds Tower Holdings, LLC this 7<sup>th</sup> day of June, 2022

*[Handwritten Signature]*

Authorized Agent

Davidson County)  
) SS:  
State of Tennessee )



This instrument was acknowledged before me on this 7 day of June, 2022  
Notary Public Anu Sagarad. My commission expires 09/21/2024.

APPROVED by the Council of The City of Oklahoma City this 21st day of June, 2022.

*[Handwritten Signature: Amy K Simpson]*  
City Clerk



*[Handwritten Signature]*  
Vice Mayor

REVIEWED for form and legality.

*[Handwritten Signature: Jill Burnett]*  
Assistant Municipal Counselor

Exhibit "A"

(Attached)

## LEASE AND EASEMENT

This Lease and Easement (hereinafter referred to as "Lease") is entered into between **The City of Oklahoma City**, a municipal corporation (hereinafter referred to as "Oklahoma City") and **Dragon Communications LLC**, (hereinafter referred to as "Lessee"), and is effective upon the date of execution by the last party hereto (the "Effective Date").

**WHEREAS**, Oklahoma City owns certain property known as South Rotary Park, located at 1604 SW 15<sup>th</sup> Street; and

**WHEREAS**, Oklahoma City grants leases and easements for uses which do not conflict with operating and maintaining a park system for the primary purpose of providing recreation facilities to the citizens of Oklahoma City; and

**WHEREAS**, Lessee has requested a lease to access South Rotary Park for the purpose of installing, operating and maintaining wireless communication antennas and facilities associated with the transmission and reception of cellular telephone signals, limited to one (1) monopole and associated equipment to be located within a 50' by 50' foot site, plus an access road connecting the site to Westwood Boulevard. A legal survey and site sketch of the location and describing the proposed facilities more particularly are attached hereto as **Attachments "A" and "B"** which are incorporated herein by reference; and

**WHEREAS**, Lessee has also requested an easement for the purposes of excavating a utility trench for the purpose of installing underground electric and telephone lines (no overhead lines permitted) to the Lease Premises (as defined below), also located in South Rotary Park; and

**WHEREAS**, Lessee has also requested an option to lease the site for an initial term of six months, which may be extended by the Lessee for six additional months upon written notice.

**NOW, THEREFORE**, for and in consideration of the promises and mutual covenants herein contained, the parties agree as follows:

### 1. **LEASE**

If Lessee exercises the Option pursuant to Section 2, below, Oklahoma City does hereby lease to Lessee and Lessee leases from Oklahoma City a portion of the property (hereinafter referred to as "Lease Premises"), more particularly described in **Attachments "A" and "B"**, respectively. Lessee shall be permitted access to the area described in **Attachments "A" and "B"** for the purpose of installing, operating and maintaining the tower, antennas, related equipment and communications equipment and cabinets (hereinafter referred to as "Antenna Facilities"). Lessee shall further be permitted access to the area described in **Attachment "B"** as

an Easement for the purposes of excavating a utility trench and installing, operating and maintaining underground (no overhead lines permitted) electric and telephone lines (hereinafter referred to as "Lines") to serve the Lease Premises. Vehicle access to the Lease Premises shall be permitted along the access road as described in **Attachment "B"**. Lessee shall replace and repair any paving cuts made during the construction of the access road. Prior to excavation or construction, Lessee shall provide Oklahoma City with a survey of the Lease Premises and the Easement as prepared by a registered surveyor. *No construction, installation, or excavation is to be commenced prior to approval of all construction plans and specifications by the Parks and Recreation Department Director (Director), which approval shall not be unreasonably withheld, conditioned or delayed.*

**As-Built Drawings.** Once the construction of the Antenna Facilities is completed, Lessee, at its sole cost and expense, shall provide Oklahoma City with as-built drawings in the latest AutoCAD format compatible with the City of Oklahoma City's current software and such drawings will depict the locations of the Easement and all Lines of Lessee upon the property.

This Lease shall be subject to the prior rights of all other utilities, lessees, permittees and easement holders. Lessee shall, during the term of the Lease and any extension, have reasonable access to the Lease Premises in order to install, maintain, and repair its Antenna Facilities and Lines, and in the event of emergency situations, shall have access twenty-four (24) hours a day, seven (7) days a week.

**Attachments "A", "B" and "C"** referred to herein and any Addenda are incorporated herein for all purposes. The parties understand and acknowledge that **Attachments "A" and "B"** may be attached to the Lease in preliminary form. Accordingly, the parties agree that upon the preparation of final, more complete attachments, **Attachments "A" and/or "B"**, as the case may be, may be replaced by Lessee with such final, more complete Attachment(s).

## **2. OPTION TO LEASE**

In consideration of the payment of one thousand dollars (\$1,000.00) (the "Option Fee") by Lessee to Oklahoma City, Oklahoma City hereby grants to Lessee an option to lease a portion of the real property described in the attached **Attachment "A"**, on the terms and conditions set forth herein (the "Option"). The Option shall be for an initial term of six (6) months, commencing on the Effective Date. The Option Period may be extended by Lessee for an additional six (6) months upon written notice to Oklahoma City and payment of the sum of one thousand dollars (\$1,000.00) at any time prior to the end of the Option Period. Oklahoma City

expressly grants to Lessee a right of access to the property described in **Attachment "A"** to perform any surveys, soil tests, and other engineering procedures or environmental investigations on the property deemed necessary or appropriate by Lessee to evaluate the suitability of the property for the uses contemplated under this Lease. During the Option Period and any extension thereof, Lessee may exercise the Option by so notifying Oklahoma City in writing in accordance with Section 22 hereof.

### **3. TERM**

Unless earlier terminated as provided for herein, this Lease shall continue in force for an initial term of five (5) years commencing on the date of exercise of the Option (the "Commencement Date"). This Lease may be renewed for up to four (4) additional and successive five (5) year terms (up to a total of twenty-five (25) years, including the original five (5) year term). The term of the Lease will automatically extend for each successive renewal term unless Lessee notifies Oklahoma City of Lessee's intention not to renew at least ninety (90) days before the expiration of the then current term. However, in the event Lessee removes its property from the Lease Premises or said Lease Premises are abandoned or ceased to be used by the Lessee for the purposes set forth herein, then upon written notice from the Lessee, this Lease shall be deemed terminated. This Lease may also be terminated as provided for in Paragraph 22, for non-payment of the annual consideration and as otherwise set forth in the Lease.

### **4. CONSIDERATION**

During the initial five (5) year term of the Lease, Lessee shall pay Oklahoma City thirteen thousand dollars (\$13,000.00) per year, with payment for the first year payable upon the Commencement Date and subsequent annual payments due on or before each anniversary date of the Commencement Date.

Provided, however, should Oklahoma City terminate this Lease for any reason other than breach by Lessee, Oklahoma City shall reimburse the Lessee for a pro rata share of any prepaid rent.

Upon the commencement of each renewal term, rent will increase by fifteen percent (15%) of the rent in effect during the immediately preceding term.

### **5. COORDINATION**

Lessee acknowledges park recreation and maintenance and other City activities at and near the Lease Premises may be occurring at the time Lessee is installing, constructing or maintaining the Antenna Facilities and/or Lines. Prior to installation, construction, maintenance

and repair activities, Lessee shall provide notice to the Director and shall coordinate Lessee's activities in a manner which accommodates and least interferes with the park operations and maintenance or other events.

**6. EXISTING EASEMENTS**

Lessee acknowledges the prior rights of existing easement holders and agrees to coordinate all activities through the Public Works Department.

**7. USE AND REPAIR OF ACCESS ROAD**

Lessee agrees to use only the approved access road as specified in Paragraph 1. Lessee agrees that it will immediately notify the Director of any damage it causes to the access road. Lessee shall immediately and appropriately barricade pending repair and shall promptly repair any damage to the access roads at Lessee's own cost. Should the Lessee fail to timely repair such damage, the Director may elect to repair the access road or have the access roads repaired, and Lessee agrees to reimburse Oklahoma City for the cost and expense of the repairs within ten (10) days of written notice of said costs and expenses, reasonable wear and tear excepted. Provided, Oklahoma City is in no way obligated to repair the access road.

**8. COMMENCE WORK**

It is expressly agreed that the Lessee will commence installation and construction of the Antenna Facilities and Lines work within one hundred fifty (150) days of the Commencement Date of this Lease and will proceed vigorously and continuously to complete same within sixty (60) days from the date of commencement of work, unless an extension is granted by the Director. Any such extension may be granted at the sole discretion of the Director and may be withheld for any or no reason.

**9. ANTENNA FACILITIES REQUIREMENTS AND TESTING**

The Antenna Facilities and Lines shall be designed, installed, constructed and maintained in accordance with all local, state and federal regulation, codes and laws.

**10. MAINTENANCE OF PROPERTY AND FACILITIES**

Lessee shall keep and maintain the Lease Premises, the Antenna Facilities and all of Lessee's buildings and improvements now or hereafter located on the Lease Premises and/or the Easement in reasonable condition and repair during the term of this Lease.

**11. SECURITY, FENCING AND LANDSCAPE SCREENING**

In an effort to prevent theft and vandalism and to protect the public, Lessee shall, at its sole expense, install and maintain six (6) foot high fencing around the perimeter of the Lease

Premises and shall further plant and maintain such trees, shrubbery and vegetation around the exterior of the fence as specified in writing by the Director. Lessee also agrees to install fencing around any work site at the end of each workday during construction and installation of facilities or improvements. A pair of four (4) foot wide gates will provide access to Lease Premises, and the gates will remain locked at all times except to provide access to the Director or authorized personnel.

## **12. UTILITY EASEMENT REQUIREMENTS**

Lessee shall install and meter, at its own expense, electrical service to the Lease Premises. Power shall be run underground to the Antenna Facilities from the closest available source. Lessee further shall install, at its own expense, a digital telephone line to serve the Antenna Facilities. Both the electrical and telephone services described herein shall be installed in a utility trench within the Easement granted by this Lease, the location of which is more specifically described in **Attachment "B"**. Electrical, telephone or other permitted utilities shall be separately metered, billed, and maintained at the sole cost of the Lessee.

## **13. PRECAUTIONARY MEASURES**

Where openings are made in or adjacent to any path, jogging or cycling trail, sidewalk, road, street, alley, or public right-of-way, the Lessee shall, at its own expense, furnish all necessary barricades, fences, lights, and danger signals, and shall take all necessary precautionary measures for the protection of persons or property.

Neither the materials nor the excavated material or machinery used in the construction of any work hereunder shall be placed so as to endanger the work, or prevent free access to any water or other facilities, gas valves, manholes, or electric, telephone or telegraph conduits, or fire alarms or police call boxes. The Director reserves the right, but not the obligation, to remedy, at the Lessee's expense, any neglect on the part of the Lessee for the protection of persons or property or may at the discretion of the Director terminate this Lease for breach. Provided however, the Lessee shall be entitled to notice and thirty (30) days to cure any defect before the Director may remedy and/or terminate this Lease pursuant to this paragraph.

## **14. BACKFILL AND REVEGETATION**

Lessee shall promptly backfill all trenches; fill all holes caused by shrinkage or compaction; remove all excess dirt; and shall leave all disturbed property in a solid and safe condition. The Lessee shall promptly restore all sodded areas to its original condition by placing slab sod on all disturbed areas and provide or arrange for regular watering until the sod is

established. All such restoration shall be subject to the inspection and approval of the Director. If the Lessee shall fail to make any restoration, repairs or do any work required by the provisions of this Lease within thirty (30) days after receipt of written notice from Oklahoma City, then Oklahoma City will have the right, but not the obligation, to make such restorations, repairs or do such work at the expense of the Lessee, and the Lessee shall reimburse Oklahoma City for the cost and expense of such repairs or work within thirty (30) days of tender of a bill. However, if Lessee is prevented from restoring, repairing or doing such work because of conditions beyond their control, Lessee, upon written request, shall be given a reasonable amount of time to perform said repairs or restoration as determined by the Director before issuance of thirty (30) days written notice.

**15. ABANDONMENT**

Upon termination, revocation or expiration of this Lease, the Director has the option to require Lessee to 1) remove the Antenna Facilities and Lines; provided, however, that Lessee will not be required to remove any Lines, footings or foundations any further than two (2') feet below grade; or 2) allow the abandonment of any portion of the Antenna Facilities and/or Lines in place.

**16. TERMINATION**

This Lease shall terminate at such time as 1) the Lessee shall cease activities and operations, and abandon use of said Antenna Facilities and Easement; 2) the passage of five (5) years without renewal of the Lease and/or Easement; 3) for breach of this Lease or Easement; or 4) in the event Oklahoma City determines the Lease Premises and Easement are necessary for purposes of Oklahoma City. Additionally, this Lease may be terminable by Oklahoma City upon one hundred twenty (120) days written notice upon a determination of need for Oklahoma City purposes; in which case Oklahoma City will make a reasonable effort, if possible, to make available to Lessee an alternative location to accommodate Lessee's needs for Antenna Facilities. Upon termination of this Lease, Lessee shall restore at its sole cost the Lease Premises and Easement as required by the Director, and Oklahoma City shall not be liable for any costs, injury, damage, expense or loss accruing to Lessee pursuant to the expiration, non-renewal, cancellation or termination of this Lease.

**17. REMOVAL OF PROPERTY**

Lessee shall within sixty (60) calendar days after the expiration, non-renewal, cancellation or termination of this Lease, remove Lessee's personal property without damaging

the reservoir, reservation, or any property belonging to Oklahoma City. Any property of the Lessee not removed within the aforementioned sixty (60) calendar days shall become the property of Oklahoma City to dispose of in any way which meets the needs and requirements of Oklahoma City. Lessee shall be liable and shall reimburse Oklahoma City for any expense or cost in removal or disposal of Lessee's personal property either abandoned or not removed within the aforementioned sixty (60) days.

#### **18. RESTORATION**

Upon the cancellation, non-renewal, expiration, or termination of this Lease for any reason whatsoever, the Lessee shall surrender the Lease Premises and Easement in accordance with Section 16 above, and in a clean and orderly manner and shall, as requested by the Director, restore the Lease Premises to a condition at least equivalent to that under which existed at the Commencement Date.

#### **19. INSURANCE**

Lessee shall provide and maintain or cause to be provided and maintained at all times during the performance of any and all operations, and/or activities such *public liability and property damage insurance* as will protect Oklahoma City as additional insureds from claims for bodily injury including, but not limited to *accidental death*, as well as from claims for property and other damages which may arise from such operations and/or activities on or about the Lease Premises and Easement, whether such operations and/or activities are performed by Lessee or its employees, agents, contractors or by any subcontractors or by anyone directly or indirectly employed by any of them. The insurance coverage required in this Section shall name Oklahoma City as an additional insured under the policy or policies. The amounts of said insurance coverage available and applicable to each act or occurrence and to each insured and additional insured shall not be less than the maximum cumulative liability exposure as set out in *51 O.S. § 151 et seq. (Governmental Tort Claims Act)*, and any successor, addition or amendatory statutes.

No operation and/or activity shall commence until satisfactory proof of the required insurance coverage has been submitted to Oklahoma City; provided, "certificates of insurance" submitted as proof of insurance coverage *must be on Oklahoma City's form or a form approved by the Director and must contain a provision that insurance coverage afforded under the policy or policies will not be materially altered, canceled or permitted to terminate or lapse except upon at least thirty (30) days written notice given to Oklahoma City.* A copy or the

required insurance certificate form is attached hereto as **Attachment "C"** and is incorporated herein by reference.

The minimum insurance requirements set forth herein shall not be deemed to limit, affect, waive or define any obligations of Lessee in any other Section of this Lease or any indemnification or insurance requirement in any other Section of this Lease. Further, the termination, cancellation, non-renewal or expiration of this Lease shall not affect the obligations and rights established by this Section, which the parties expressly agree will survive cancellation, non-renewal, termination and expiration.

Provided, however, should Lessee or its officers, invitees, representatives, contractors, employees or agents carry any additional, different or other insurance or insurance coverage of any kind or nature, the provisions of this paragraph shall not in any way limit, waive or inhibit Oklahoma City from making a claim or recovering under such insurance or insurance coverage.

Notwithstanding any other provision to the contrary, this Lease shall automatically be terminated without notice at any time upon termination or lapse of insurance coverage hereunder unless and except within no more than thirty (30) calendar days:

1. Such lapsed or terminated insurance coverage is subsequently obtained and;
2. The newly obtained insurance coverage replacing the lapsed or terminated insurance coverage is retroactive in effect to the date of the lapse or termination, inclusive; and
3. A certificate of insurance evidencing the satisfaction of the requirements in (1) and (2) above has been timely provided to Oklahoma City.

Termination of this Lease pursuant to this paragraph shall take precedence and supersede any other paragraph establishing the term of this Lease or requiring notice and/or providing an opportunity to cure a breach. The insurance limits in this paragraph in no way act or shall be deemed to define or limit the right of Oklahoma City to recover damages, expenses, losses or for personal injuries, death or property damage pursuant to applicable law or the indemnification provisions or under any other paragraph or provision in this Lease.

The provisions of this paragraph shall not terminate or expire upon the termination or expiration of this Lease, but shall continue in full force and affect for any act, omission, incident or occurrence occurring or commencing during the term of this Lease.

## **20. INDEMNIFICATION**

Lessee agrees to indemnify, defend, and hold harmless Oklahoma City from and against all liability for injuries or death to persons, costs, legal expense, or damage and/or loss to

property, directly or indirectly caused by Lessee, its officers, representatives, agents, contractors, and employees. Each party shall give the other party hereto prompt and timely notice of any claim or suit instituted, which in any way, directly or indirectly, contingently or otherwise, affects or might affect the other party, provided, however, such notice shall not be a precondition to indemnification hereunder. The rights granted by this paragraph shall not limit, restrict or inhibit the rights of Oklahoma City under any paragraph of this Lease. Lessee shall not indemnify or save harmless Oklahoma City from the acts or omissions of its elected officials, officers, representatives, agents, contractors or employees.

**21. NOTICES**

Notices and other communications to Oklahoma City pursuant to the provisions hereof shall be sufficient if sent by fax, registered or certified mail, postage prepaid, or by a nationally recognized courier service, addressed to:

The City of Oklahoma City  
Parks and Recreation Department  
420 W. Main Street, 2<sup>nd</sup> Floor  
Oklahoma City, Oklahoma 73102  
Phone: (405) 297-3848

and notices or other communications to the Lessee pursuant to the provisions hereof shall be sufficient if sent by fax, registered or certified mail, postage prepaid, or by a nationally recognized courier service, addressed to both:

Dragon Communications LLC  
PO Box 23494  
Oklahoma City, OK 73123

**22. ABIDES BY LAW**

The Lessee shall abide by the conditions of this Lease, the ordinances of The City of Oklahoma City, and all laws and regulations of the State of Oklahoma and the United States of America. Lessee shall be responsible for securing any other permits and/or zoning which may be required prior to commencement of installation of the Antenna Facilities or Lines serving the Lease Premises and/or Easement.

**23. LIMITATION**

The Lease fee provided herein does not include consideration for damages, if any, which may be caused by Lessee to property of Oklahoma City, on or off the Lease Premises and/or Easement, nor does the consideration provided herein include consideration for any losses, costs,

expenses or damages to Oklahoma City caused by acts or omissions of Lessee, its officers, employees, agents, contractors or representatives not in accordance with this Lease.

**24. ASSIGNMENTS**

Lessee shall have the right to assign or otherwise transfer this Lease to any person or business entity which is authorized pursuant to and licensed by the Federal Communications Commission (FCC) to operate a wireless communications business if that person or business entity is a parent, subsidiary or affiliate of Lessee, is merged or consolidated with Lessee or purchases more than fifty (50) percent of either an ownership interest in Lessee or the assets of Lessee in the "Metropolitan Trading Area" or "Basic Trading Area" (as those terms are defined by the FCC) in which the property is located; provided, however, that Lessee must give written notice of any such assignment to Oklahoma City within thirty (30) days after the assignment's effective date. Upon such assignment (and after proper notice to Oklahoma City as specified herein), Lessee shall be relieved of all subsequent liabilities or obligations hereunder and Oklahoma City shall subsequently look solely to the assignee for performance under this Lease and all obligations hereunder. Except as specifically provided above, Lessee may only otherwise assign this Lease upon written approval of Oklahoma City, which approval shall not be unreasonably delayed, withheld, conditioned or denied. Additionally, Lessee shall tender to Oklahoma City consideration in the amount of Five Hundred Dollars (\$500.00) to cover the administration cost of processing and approving (if such approval is required) the assignment.

**25. COMPLETE AGREEMENT**

This is the complete agreement between the parties with respect to the subject matter hereof and no additions, amendments, alterations, or changes in this Lease shall be effective unless reduced to writing and signed by all parties hereto. Additionally, no statements, discussions or negotiations shall be deemed or interpreted to be included in this Lease unless specifically and expressly provided herein.

**26. TIME OF ESSENCE**

For the purposes of this Lease, time shall be deemed to be of the essence.

**27. MULTIPLE ORIGINALS**

This Lease shall be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

**28. NONINTERFERENCE**

This Lease authorizes Lessee to use and occupy a portion of certain easements, rights-of-way and public properties for the location of its Antenna Facilities and Lines only as provided herein in a manner which will not permanently or unreasonably interfere with public use of said easements, rights-of-way, and public properties.

**29. PROPERTY INTERESTS**

Lessee acknowledges and agrees that the Lease Premises and associated property is first and foremost the property of Oklahoma City, and that the terms of this Lease shall in no way inhibit the right of Oklahoma City to use the property upon which the Lease Premises and Easement are located or adjacent property in any manner or for the provision recreation services.

**30. DIRECTOR**

The Director shall mean the Director of the Parks and Recreation Department or his designated representative. The Director is hereby acknowledged as the authorized and empowered representative of Oklahoma City regarding this Lease.

**31. ANTI-COLLUSION**

Lessee agrees that it has not been and shall not be a party to any collusion with Oklahoma City or any of their officials, trustees, or employees as to the terms or conditions of this Lease and Easement, and has not and will not exchange, give or donate money or other things of value for special consideration to Oklahoma City or any of their officials, trustees, or employees, either directly or indirectly, in the procuring and execution of this Lease and Easement.

**32. WARRANTY**

Issuance of this Lease does not constitute any express or implied warranties of title, interest or right to possession of the Leased Premises or Easement nor of the physical condition of any property subject to this Lease. Lessee shall be responsible for identifying other property interests and easements, if any, and arranging whatever additional permission as may be required.

**33. BREACH**

A breach of any provision of this Lease shall act as a breach of the entire Lease unless said breach is waived in writing by all other parties hereto. No waiver of any breach by any party hereto of any terms, covenants or conditions herein contained shall be deemed a waiver of any subsequent breach of the same, similar or different nature.

#### **34. DEFAULT**

Except as otherwise specifically and expressly provided in any paragraph hereto, should either party hereto fail to perform, keep or observe any of the terms, covenants, or conditions herein contained, this Lease may be terminated by the non-defaulting party upon (10) days written notice in the event of a monetary default, and upon thirty (30) days written notice in the event of a non-monetary default; provided, however, that neither party will be in non-monetary default hereunder if it commences curing such default within such 30-day period and thereafter diligently prosecutes the cure to completion.

#### **35. ENVIRONMENTAL**

The Lessee shall not permit any chemical substance or hazardous material brought upon, kept or used in or about the Lease Premises or Easement by the Lessee, its officers, representatives, agents, employees, contractors, or invitees to escape the Lease Premises. Lessee shall notify the Director of the presence, even if temporary, of any chemical substance or hazardous material.

If Lessee breaches the obligations stated in the preceding paragraph, or if the presence of the chemical substance or hazardous material on the Lease Premises and/or Easement caused by Lessee or its contractors, employees or agents results in contamination, or contamination of the water supply of Oklahoma City or of the Lease Premises or Easement, or if contamination of the Lease Premises by the chemical substance or hazardous material otherwise occurs for which Lessee is legally liable, Lessee shall indemnify, defend and hold Oklahoma City, and their officers, trustees, representatives, contractors, agents and employees harmless from any and all injuries, deaths, property damage, claims, judgments, damages, penalties, fines, costs, liabilities or losses including without limitation, diminution in value of the Lease Premises, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Lease Premises, damages arising from any adverse impact on marketing or space and sums paid in settlement of claims, attorney's, consultants' and expert fees which arise during or after any term of this Lease hereof as a result of such contamination.

This indemnification of Oklahoma City by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work required by Oklahoma City, or any federal, state or local government agency or political subdivision because of any chemical substance or hazardous

material present in the soil or ground water on or under the Lease Premises and/or Easement or the water supply of Oklahoma City, caused by Lessee.

Without limiting the foregoing, if the presence of any chemical substance or hazardous material on the Lease Premises and/or Easement caused by Lessee, its employees, agents or contractors results in any contamination of the Lease Premises, Easement or the water supply of Oklahoma City, Lessee shall promptly take all actions at its sole expense as are necessary to return the Lease Premises, Easement and/or the water supply of Oklahoma City to the condition existing prior to the introduction of any such chemical substance or hazardous material; provided the Director's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Lease Premises, Easement and/or water supply of Oklahoma City. The foregoing indemnity shall survive the expiration or earlier termination of this Lease.

As used herein, the term "chemical substance" shall mean a substance obtained by a chemical process or used for producing a chemical effect, including but not limited to pesticides, herbicides and fertilizers, and the term "hazardous material" means any hazardous or toxic substance, material or waste, including but not limited to those substances, materials and wastes listed by the Environmental Protection Agency as hazardous substances, or such substances, materials and wastes that are or become regulated under any applicable local, state or federal law.

**36. INSPECTION**

Oklahoma City and its agents shall have the right, but not the duty, to inspect the Lease Premises at any time to determine whether Lessee is complying with the terms of this Lease.

**37. THIRD PARTY BENEFICIARIES**

All parties expressly agree that no third-party beneficiaries, expressly or implicitly, are intended to be or shall be created or acknowledged by this Lease. This Lease is solely for the benefit of the Lessee and Oklahoma City, and none of the provisions hereof are intended to benefit any third parties.

**38. VENUE**

All parties hereto expressly agree that the venue of any litigation relating to or involving this Lease and/or the rights, obligations, duties and covenants therein shall be in the appropriate court (state or federal) located in Oklahoma County, Oklahoma.

**39. ONE CALL CENTER**

The Lessee shall notify the Oklahoma One-Call Center that Lessee is the operator of underground facilities and will be responsible, whenever it receives notice from the notification center or Oklahoma City, for locating and marking its underground facilities in accordance with the Underground Facilities Damage Prevention Act.

AREA BELOW LEFT INTENTIONALLY BLANK



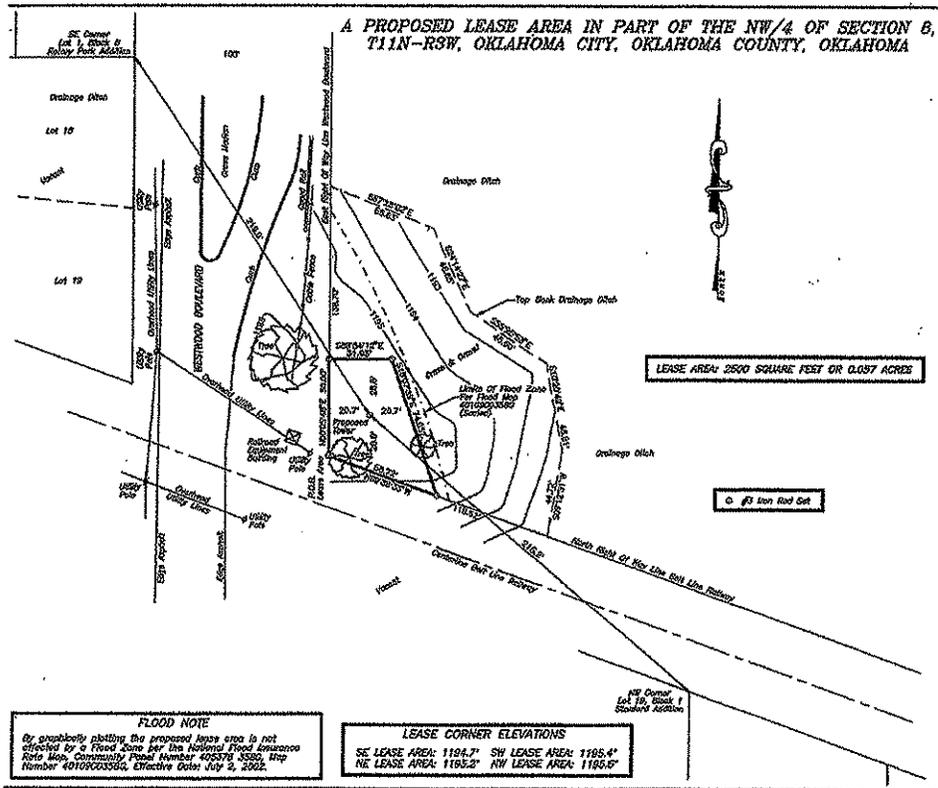
ATTACHMENT "A"

Legal Description

A 50 feet by 50 feet tract located in a tract of land located in the Northwest Quarter of Section 8, Township 11 North, Range 3 West of the Indian Meridian, Oklahoma County, Oklahoma and described as follows:

Beginning at a point in the East line of the NW/4 of Section 8, Township 11 North, Range 3 West of the Indian Meridian, 33 feet south of the Northeast corner; thence South along the East line of said quarter section a distance of 1827.2 feet to a point in the North right-of-way of the Belt Line Railway as now located; thence in a westerly direction along the North right-of-way line of the Belt Line Railway as now located a distance of 221.2 feet to a point of curve having a radius of 1885.08 feet; thence in a westerly direction along said right-of-way line and along the arc of said curve a distance of 670 feet to a point of tangent to said curve; thence in a westerly direction along said North right-of-way line and tangent to said curve a distance of 515.4 feet to a point in the East line of Westwood Boulevard; thence North along the East line of Westwood Boulevard a distance of 522.5 feet to a point; thence East and parallel with the North line of said quarter section a distance of 163.8 feet to a point of curve having a radius of 280 feet, tangent 230.5 feet and central angle of 78 degrees fifty-seven minutes in the Northeast quadrant; thence northeasterly direction along the arc of said curve a distance of 383.9 feet to a point of tangent to said curve; thence continuing in a northerly direction tangent to said curve a distance of 793.5 feet to a point 33 feet South of the North line of said quarter section; thence East and parallel with and 33 feet distance from the North line of said quarter section a distance of 775.9 feet to the place of beginning.

**ATTACHMENT "B"**  
**Map of Lease Premises, Facilities and Access Road**



ATTACHMENT "C"  
Insurance Certificate



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
9/18/2009

PRODUCER (405) 354-5201 FAX: (405) 350-6829 Wesco Insurance Agency, Inc 420 Maple P.O. Box 850300 Yukon OK 73085-0300	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.												
INSURED American Tower Ltd, PO Box 23074 Dragon Communication LLC, PO Box 23494 Eagle Communication Inc Oklahoma City OK 73123	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th style="width:80%;">INSURERS AFFORDING COVERAGE</th> <th style="width:20%;">NAIC #</th> </tr> <tr> <td>INSURER A: <b>Scottsdale Insurance Co.</b></td> <td></td> </tr> <tr> <td>INSURER B: <b>American States Insurance</b></td> <td>19704</td> </tr> <tr> <td>INSURER C: <b>National Casualty Company</b></td> <td></td> </tr> <tr> <td>INSURER D: <b>CompSource Oklahoma</b></td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> </table>	INSURERS AFFORDING COVERAGE	NAIC #	INSURER A: <b>Scottsdale Insurance Co.</b>		INSURER B: <b>American States Insurance</b>	19704	INSURER C: <b>National Casualty Company</b>		INSURER D: <b>CompSource Oklahoma</b>		INSURER E:	
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INSURER D: <b>CompSource Oklahoma</b>													
INSURER E:													

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR	ADD'L	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
A	X	GENERAL LIABILITY	CLS1461226	11/1/2008	11/1/2009	EACH OCCURRENCE \$ 1,000,000	
		<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual Liab incl GENL AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000	
B		AUTOMOBILE LIABILITY	01CH8853172	5/18/2009	5/18/2010	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000	
		<input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS				BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$	
		GARAGE LIABILITY				<input type="checkbox"/> ANY AUTO	AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
		EXCESS / UMBRELLA LIABILITY				<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 0	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$ \$
D		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	00627917091	4/1/2009	4/1/2010	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER	
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below				E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000	
		OTHER					

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS  
 Site Number: OK1642, Site Name: Rotary Park. The certificate holder is an Additional Insured for General Liability solely as respect to the operations of the Named Insured at the above location if required by contract.

<b>CERTIFICATE HOLDER</b> (405) 297-2001 City of Oklahoma City Attn: City clerk 200 N Walker Ave Oklahoma City, OK 73102-2252	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>10</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE Doy Davis/LAIDA
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