

REQUEST FOR BOARD ACTION

**HENDERSON COUNTY
BOARD OF COMMISSIONERS**

MEETING DATE: October 6, 2025

SUBJECT: Tower Lease with Verizon Wireless

PRESENTER: Jimmy Brissie, Public Safety Director

ATTACHMENTS: (1) Lease

SUMMARY OF REQUEST:

During 2018 Henderson County began researching the feasibility of the co-location of a commercial cellular carrier for the Forge Mountain communications tower. The intent of this co-location was to improve cellular service in the South Mills River area. For several years staff have been working with the property owner and Verizon Wireless for the joint project.

Following the construction of the larger tower on the site, staff are recommending the approval of a lease with Verizon Wireless for the co-location of their new site on Forge Mountain.

BOARD ACTION REQUESTED:

The Board is requested to approve the attached lease between Henderson County and Cellco Partnership d/b/a Verizon Wireless, and authorize the County Manager so sign the lease on behalf of Henderson County.

Suggested Motion:

I move to approve the attached lease between Henderson County and Cellco Partnership d/b/a Verizon Wireless and authorize the County Manager so sign the lease on behalf of Henderson County.

TOWER LEASE AGREEMENT

This Tower Lease Agreement (the "**Agreement**") is made by and between the **County of Henderson**, a body corporate and politic, with a mailing address of 1 Historic Courthouse Square, Hendersonville, North Carolina, ("**Lessor**") and **Cellco Partnership** d/b/a Verizon Wireless ("**Lessee**") with a mailing address of One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920. Lessor and Lessee are at times collectively referred to hereinafter as the "**Parties**" or individually as the "**Party**."

WITNESSETH

In consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties hereto agree as follows:

1. **GRANT.** Lessor hereby leases Lessee space in and/or upon that certain tower structure owned, leased or controlled by Lessor ("**Tower**") together with a parcel of land sufficient for the installation of Lessee's equipment building (the "**Land Space**") to install, maintain, upgrade, replace and operate communications equipment ("**Use**") at the property located at 469 S Forge Crest Dr., Mills River, Henderson County, North Carolina, Tax Map No. 10007439 (the "**Property**") which is more particularly described in Exhibit "A" attached hereto and incorporated hereby. The portions of the Tower occupied by Lessee are hereinafter referred to as the "**Tower Space**", which shall consist of all of the area on the Tower between the top and bottom of the centerline of Lessee's equipment on the Tower. (For example, if Lessee's equipment occupies ten (10) feet of space on the Tower, with an equipment centerline of forty (40) feet, Lessee would be entitled to occupy any space on the Tower between the elevations of thirty-five (35) and forty-five (45) feet above ground level.) The Tower Space and Land Space are collectively hereinafter referred to as the "**Premises**" and are described and/or depicted on Exhibit "B" attached hereto and made a part hereof. Notwithstanding anything to the contrary, the Premises shall also include such additional space necessary for the installation, operation and maintenance of wires, cables, conduits and pipes running between and among the various portions of the Premises and to all necessary electrical, telephone, fiber and other similar support services located within the Property or the nearest public right of way. In the event it is necessary, Lessor agrees to grant Lessee the right to install support services on, through, over and/or under the Property, provided the location of such services shall be reasonably approved by Lessor.

2. **INITIAL TERM.** This Agreement shall be effective as of the date of execution by both Parties ("**Effective Date**"). The initial term of the Agreement shall be for 5 years beginning on the first day of the month after Lessee begins installation of Lessee's communications equipment on the Premises (the "**Commencement Date**"). The Commencement Date will be acknowledged by the Parties in writing, including electronic mail.

3. **EXTENSIONS.** The initial term of this Agreement shall automatically be extended for 4 additional 5-year terms unless Lessee gives Lessor notice of its intent to terminate at least 3 months prior to the end of the initial term or then current extension term, as applicable. The initial term and all extensions shall be collectively referred to herein as the "**Term**".

4. RENTAL.

a. Rent payments shall begin on the Commencement Date and be due at a total annual rental of \$6,000.00, to be paid in equal monthly installments on the first day of the month, in advance, to Lessor at 1 Historic Courthouse Square, Hendersonville, North Carolina or to such other person, firm, or place as Lessor may, from time to time, designate in writing at least 30 days in advance of any rent payment due date by notice given in accordance with Paragraph 4.d below. Rent shall accrue starting on the Commencement Date; however, the initial rent payment will be delivered no later than 90 days after: (i) Lessee's receipt of the Rental Documents (as defined in Paragraph 4.c), or (ii) the written acknowledgement of the Commencement Date, whichever is later. Upon agreement of the Parties, Lessee may pay rent by electronic funds transfer and in such event, Lessor agrees to provide to Lessee bank routing information for such purpose upon request of Lessee. Effective as of the start of each renewal term, annual rent shall increase by 10% over the rent for the immediately preceding initial term or renewal term.

b. As additional consideration for this Agreement, Lessee shall pay Lessor a one-time, non-refundable, lump-sum signing bonus of \$500.00 ("**Signing Bonus**"), no later than 90 days after: (i) Lessee's receipt of the Rental Documents (as defined in Paragraph 4.c), or (ii) the Effective Date, whichever is later. The Signing Bonus shall be considered additional rent for the Premises for the period from the Effective Date until the Commencement Date (the "**Due Diligence Period**"). Lessor agrees that the Signing Bonus is fair and adequate consideration for the Due Diligence Period, and Lessor recognizes that Paragraph 2 of this Agreement governs the Commencement Date. This paragraph does not impact whether or not Lessee chooses to install Lessee's communications equipment and commence the Term.

c. For any party to whom rent payments are to be made, Lessor or any successor in interest of Lessor hereby agrees to provide to Lessee (i) a completed, current version of Internal Revenue Service Form W-9, or equivalent; (ii) complete and fully-executed state and local withholding forms if required; (iii) Lessee's payment direction form, and (iv) other documentation to verify Lessor's or such other party's right to receive rental as is reasonably requested by Lessee (collectively, the "**Rental Documents**"). If the Rental Documents are not provided by Lessor, or there is a change to the Lessor payee, rent shall accrue in accordance with this Agreement, but Lessee shall have no obligation to deliver rent payments to Lessor, or its designee or successor in interest, as applicable, until 30 days after Lessee receives the required Rental Documents. Thereafter, Lessee shall deliver the accrued rent payments in accordance with the Rental Documents.

d. Lessor must register in the Verizon Landlord Connect portal at landlordconnect.verizon.com ("**VLC Portal**") and shall utilize the VLC Portal to submit changes to Lessor's account information (e.g. notice address, ownership information, banking details, email address), view rental payments, submit an invoice/bill (e.g. CAM, utilities) for payment, and to access this Agreement or certificates of insurance.

5. ACCESS/UTILITIES. Lessee shall have the non-exclusive right of ingress and egress from a public right-of-way, 7 days a week, 24 hours a day, over the Property to and from the Premises for the purpose of installation, operation and maintenance of Lessee's

communications equipment. Notwithstanding anything to the contrary, the Premises shall also include such additional space necessary for the installation, operation and maintenance of wires, cables, conduits and pipes running between and among the various portions of the Premises and to all necessary electrical, telephone, fiber and other similar support services located within the Property or the nearest public right of way. In the event it is necessary, Lessor agrees to grant Lessee the right to install such services on, through, over and/or under the Property, provided the location of such services shall be reasonably approved by Lessor.

6. CONDITION OF PROPERTY. Lessor shall deliver the Premises to Lessee in a condition ready for Lessee's Use and clean and free of debris. Lessor represents and warrants to Lessee that as of the Effective Date, the Tower and Land Space are (a) in good operating condition; (b) in compliance with all Laws; and (c) in compliance with all EH&S Laws (as defined in Paragraph 25).

7. ELECTRICAL.

a. If permitted by the local utility company serving the Premises, Lessee shall furnish and install an electrical meter at the Premises for the measurement of electrical power used by Lessee at the Premises and Lessee shall pay the utility company directly.

b. If an electrical meter is not permitted, then Lessee may furnish and install an electrical sub-meter at the Premises for the measurement of electrical power used by Lessee at the Premises and shall pay the utility company directly if permitted by the utility company.

c. In the event a sub-meter is installed and the utility company will not permit Lessee to pay the utility company directly, then the Lessor shall read Lessee's sub-meter on a monthly basis and provide Lessee with an invoice for Lessee's power consumption on an annual basis. Each invoice shall reflect charges only for Lessee's power consumption based on the average kilowatt hour rate actually paid by Lessor to the utility, without markup or profit.

d. Lessor shall all invoices for power consumption to Lessee at Verizon Wireless, M/S 3846, P.O. Box 2375, Spokane, WA 99210-2375, and shall be provided to Lessee within 90 days following the conclusion of each calendar year (otherwise, Lessor waives the right to collect applicable electrical charges). Upon written request from Lessee, Lessor shall provide copies of electricity bills received by Lessor during any period that Lessor submits invoices to Lessee for reimbursement and for that same period Lessor shall provide documentation of the sub-meter readings applicable to such periods. Lessee shall pay each invoice within 45 calendar days after receipt of the invoice from Lessor.

e. Lessee shall be permitted to install, maintain and/or provide access to and use of, as necessary (during any power interruption at the Premises), a temporary power source, and all related equipment and appurtenances within the Premises, or elsewhere on the Property in such locations as reasonably approved by Lessor. Lessee shall have the right to install conduits connecting the temporary power source and related appurtenances to the Premises.

8. IMPROVEMENTS. The communications equipment including, without limitation, antennas, conduits, and other improvements shall be at Lessee's expense and installation shall be at the discretion and option of Lessee. Lessee shall have the right to replace, repair, add to or otherwise modify its communications equipment, antennas, conduits or other improvements or any portion thereof and the frequencies over which the communications equipment operates whether or not any of the communications equipment, antennas, conduits or other improvements are listed on any exhibit. Lessee shall only be required to obtain Lessor consent for modifications that increase the square footage of Lessee's Premises. Lessor shall respond in writing to any Lessee consent request within 30 days of receipt or Lessor's consent shall be deemed granted, provided, any increase to the Premises shall be memorialized by the Parties in writing. Lessor is not entitled to a rent increase associated with any Lessee modification unless it is increasing its Premises, in which case, any rent increase shall be proportionate to the additional square footage of space included in the Premises.

9. GOVERNMENT APPROVALS. Lessee's Use is contingent upon Lessee obtaining all of the certificates, permits and other approvals (collectively the "**Government Approvals**") that may be required by any Federal, State or Local authorities (collectively, the "**Government Entities**") as well as a satisfactory structural analysis of the Tower or other structure that will permit Lessee's Use. Lessor shall cooperate with Lessee in its effort to obtain and maintain any Government Approvals. Notwithstanding anything contained herein the the contrary, Lessor hereby agrees to allow Lessee to install any RF frequency signage and/or barricades as are necessary to ensure Lessee's compliance with Laws (as defined herein).

10. TERMINATION. Lessee may, unless otherwise stated, immediately terminate this Agreement upon written notice to Lessor in the event that (i) any applications for such Government Approvals should be finally rejected; (ii) any Government Approval issued to Lessee is canceled, expires, lapses or is otherwise withdrawn or terminated by any Government Entity; (iii) Lessee determines that such Government Approvals may not be obtained in a timely manner; (iv) Lessee determines any structural analysis is unsatisfactory; (v) Lessee, in its sole discretion, determines the Use of the Premises is obsolete or unnecessary; (vi) with 3 months prior notice to Lessor, upon the annual anniversary of the Commencement Date; or (viii) at any time before the Commencement Date for any reason or no reason in Lessee's sole discretion.

11. MAINTENANCE/RELOCATION.

a. Lessee will maintain Lessee's communications equipment within the Premises in good condition, reasonable wear and tear and casualty damage excepted. Lessor shall maintain, in good operating condition and repair, the Tower and the Property.

b. In the event Lessor desires to replace, relocate, modify, demolish, or in any way alter the Property in any manner likely to interfere with the operation of Lessee's communications equipment (each event, a "Project"), Lessor shall have the right to cause Lessee to temporarily or permanently relocate the communications equipment and/or utilities, as the case may be, subject to the terms and conditions set forth herein; provided, however, Lessor shall accommodate Lessee's continued uninterrupted use of temporary

communications equipment throughout the Project. If Lessor's Project requires Lessee to temporarily or permanently relocate its communications equipment from the Premises, Lessor shall have the right to require Lessee to relocate the communications equipment upon the following terms and conditions: (i) Lessor shall deliver to Lessee written notice of its Project at least 2 years in advance, unless the Project is necessary to preserve the integrity and functionality of the Property, in which case the Parties may agree to a lesser notice period in writing; (ii) Lessor shall identify an alternate location on the Property that provides substantially similar signal coverage for the communications equipment as that of the Premises being relocated and is otherwise reasonably acceptable to Lessee; (iii) unless the necessity for the Project results from the negligence or willful misconduct of Lessee, all work associated with such relocation will be performed exclusively by Lessee and paid for by Lessor, and (iv) in the event of permanent relocation of the communications equipment and/or utilities, the Parties shall execute an amendment to this Agreement memorializing the same. Lessee shall not be required to pay any additional application, review or other fees in connection with any relocation initiated by Lessor.

12. **INDEMNIFICATION.** Subject to Paragraph 13, each Party and/or any successor and/or assignees thereof, shall indemnify and hold harmless the other Party, and/or any successors and/or assignees thereof, against (i) all third party claims of liability or loss (including reasonable attorney's fees, expenses, and defense costs incurred by the indemnified Party) from bodily injury or property damage resulting from or arising out of the negligence or willful misconduct of the indemnifying Party, its employees, contractors or agents, except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of the other Party, or its employees, contractors or agents, and (ii) reasonable attorney's fees, expense, and defense costs incurred by the indemnified Party. The indemnified Party will provide the indemnifying Party with prompt, written notice of any claim that is subject to the indemnification obligations in this paragraph. The indemnified Party will cooperate appropriately with the indemnifying Party in connection with the indemnifying Party's defense of such claim. The indemnifying Party shall defend any indemnified Party, at the indemnified Party's request, against any claim with counsel reasonably satisfactory to the indemnified Party. The indemnifying Party shall not settle or compromise any such claim or consent to the entry of any judgment without the prior written consent of each indemnified Party and without an unconditional release of all claims by each claimant or plaintiff in favor of each indemnified Party. All indemnification obligations shall survive the termination or expiration of this Agreement.

13. **INSURANCE.** The Parties agree to maintain during the term of this Agreement the following insurance policies:

a. Commercial general liability in the amount of \$2,000,000.00 per occurrence for bodily injury and property damage and \$4,000,000.00 general aggregate. Each party shall be included as an additional insured as their interest may appear under this Agreement on the other party's insurance policy. If either Party maintains a program of self-insurance, then the Party that maintains self-insurance shall comply with the preceding sentence by adding the other Party as an additional insured, as their interest may appear under this Agreement, in the same manner as if standard general liability insurance was in place.

b. "All-Risk" property insurance on a replacement cost basis insuring their respective property with no coinsurance requirement. Where legally permissible, each party agrees to waive subrogation against the other party and to ensure said waiver is recognized by the insurance policies insuring the property.

14. LIMITATION OF LIABILITY. Except for indemnification pursuant to Paragraphs 12 and 25, a violation of Paragraph 28, or a violation of Laws, neither Party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

15. INTERFERENCE.

a. Lessee agrees that Lessee will not cause interference that is measurable in accordance with industry standards to Lessor's equipment. Lessor agrees that Lessor and other occupants of the Property will not cause interference that is measurable in accordance with industry standards to the then existing communications equipment of Lessee.

b. Without limiting any other rights or remedies, if interference occurs and continues for a period in excess of 48 hours following notice to the interfering party via telephone to Lessee's Network Management Center at (1-800-264-6620 or 1-800-621-2622) or to Lessor at 1-828-697-4728 the interfering party shall or shall require any other user to reduce power or cease operations of the interfering equipment until the interference is cured.

c. The Parties acknowledge that there will not be an adequate remedy at law for noncompliance with the provisions of this Paragraph and therefore the Parties shall have the right to equitable remedies such as, without limitation, injunctive relief and specific performance.

16. REMOVAL/HOLDOVER.

a. Within 90 days of the expiration or earlier termination of the Agreement, Lessee shall remove Lessee's communications equipment (except footings and foundations) and restore the Premises to its original condition, reasonable wear and tear and casualty damage excepted. Lessor agrees and acknowledges that the communications equipment shall remain the personal property of Lessee and Lessee shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and attachments to real property under applicable laws.

b. If the Parties are negotiating an amendment or new lease at the time of the expiration of the Term, Lessee may remain on the Premises until the amendment or new lease has been executed, provide Lessee shall pay rent at the then existing monthly rate, or on the existing monthly pro-rata basis if based upon a longer payment term, until the removal of the communications equipment is completed.

17. Intentionally deleted.

18. RIGHTS UPON SALE. Should Lessor, at any time during the Term, decide (i) to sell or otherwise transfer all or any part of the Property, or (ii) to grant to a third party by easement or other legal instrument an interest in and to any portion of the Premises, such sale, transfer, or grant of an easement or interest therein shall be under and subject to this Agreement and any such purchaser or transferee shall recognize Lessee's rights hereunder. In the event that Lessor completes any such sale, transfer, or grant described in this paragraph without executing an assignment of the Agreement whereby the third party agrees in writing to assume all obligations of Lessor under this Agreement, then Lessor shall not be released from its obligations to Lessee under this Agreement, and Lessee shall have the right to look to Lessor and the third party for the full performance of the Agreement.

19. LESSOR'S TITLE. Lessor covenants that Lessee, on paying the rent and performing the covenants herein, shall peaceably and quietly have, hold and enjoy the Premises. Lessor represents and warrants to Lessee as of the Effective Date and covenants during the Term that Lessor has full authority to enter into and execute this Agreement and that there are no liens, judgments, covenants, easements, restrictions or other impediments of title that will adversely affect Lessee's Use.

20. ASSIGNMENT. Without any approval or consent of the other Party, this Agreement may be sold, assigned or transferred by either Party to (i) any entity in which the Party directly or indirectly holds an equity or similar interest; (ii) any entity which directly or indirectly holds an equity or similar interest in the Party; or (iii) any entity directly or indirectly under common control with the Party. Lessee may assign this Agreement to any entity which acquires all or substantially all of Lessee's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition or other business reorganization without notice to, or approval or consent of Lessor. As to other parties, this Agreement may not be sold, assigned or transferred without the written consent of the other Party, which such consent will not be unreasonably withheld, delayed or conditioned. No change of stock ownership, partnership interest or control of Lessee or transfer upon partnership or corporate dissolution of either Party shall constitute an assignment hereunder.

21. NOTICE. Except for notices permitted via telephone in accordance with Paragraph 15 or notices permitted via electronic mail in accordance with Paragraph 2, all notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows any other address that Lessee may have designated to Lessor by like notice, or that the Lessor may have designated to Lessee in the VLC Portal):

LESSOR: **County of Henderson**
1 Historic Courthouse Square
Hendersonville, North Carolina 28793

LESSEE: Cellco Partnership
d/b/a Verizon Wireless
Attention: Network Real Estate
180 Washington Valley Road
Bedminster, New Jersey 07921

With a copy to: Basking Ridge Mail Hub
Attn: Legal Intake
One Verizon Way
Basking Ridge, New Jersey 07920

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

22. SUBORDINATION AND NON-DISTURBANCE. Within 15 days of the Effective Date, Lessor shall obtain a Non-Disturbance Agreement (as defined below) and any required consent from its existing mortgagee(s), ground lessors and master lessors, if any, of the Property. At Lessor's option, this Agreement shall be subordinate to any future master lease, ground lease, mortgage, deed of trust or other security interest (a "**Mortgage**") by Lessor which from time to time may encumber all or part of the Property; provided, however, as a condition precedent to Lessee being required to subordinate its interest in this Agreement to any future Mortgage covering the Property, Lessor shall obtain for Lessee's benefit a non-disturbance and attornment agreement for Lessee's benefit in the form reasonably satisfactory to Lessee, and containing the terms described below (the "**Non-Disturbance Agreement**"), and shall recognize Lessee's rights under this Agreement. The Non-Disturbance Agreement shall include the encumbering party's ("**Lender's**") agreement that, if Lender or its successor-in-interest or any purchaser of Lender's or its successor's interest (a "**Purchaser**") acquires an ownership interest in the building, Lender or such successor-in-interest or Purchaser will honor all of the terms of the Agreement. Such Non-Disturbance Agreement must be binding on all of Lender's participants in the subject loan (if any) and on all successors and assigns of Lender and/or its participants and on all Purchasers. In return for such Non-Disturbance Agreement, Lessee will execute an agreement for Lender's benefit in which Lessee (i) confirms that the Agreement is subordinate to the Mortgage or other real property interest in favor of Lender, (2) agrees to attorn to Lender if Lender becomes the owner of any portion of the Property and (3) agrees to accept a cure by Lender of any of Lessor's defaults, provided such cure is completed within the deadline applicable to Lessor. In the event Lessor defaults in the payment and/or other performance of any Mortgage or other real property interest encumbering the Property, Lessee, may, at its sole option and without obligation, cure or correct Lessor's default and upon doing so, Lessee shall be subrogated to any and all rights, titles, liens and equities of the holders of such mortgage or other real property interest and Lessee shall be entitled to deduct and setoff against all rents that may otherwise become due under this Agreement the sums paid by Lessee to cure or correct such defaults.

23. DEFAULT. It is a "**Default**" if (i) either Party fails to comply with this Agreement and does not remedy the failure within 30 days after written notice by the other Party or, if the failure cannot reasonably be remedied in such time, if the failing Party does not commence a remedy within the allotted 30 days and diligently pursue the cure to completion

within 90 days after the initial written notice, or (ii) Lessor fails to comply with this Agreement and the failure interferes with Lessee's Use and Lessor does not remedy the failure within 5 days after written notice from Lessee or, if the failure cannot reasonably be remedied in such time, if Lessor does not commence a remedy within the allotted 5 days and diligently pursue the cure to completion within 15 days after the initial written notice. The cure periods set forth in this Paragraph 23 do not extend the period of time in which either Party has to cure interference pursuant to Paragraph 15 of this Agreement.

24. REMEDIES. In the event of a Default, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such default, the non-defaulting Party may terminate this Agreement and/or pursue any remedy now or hereafter available to the non-defaulting Party under the Laws or judicial decisions of the state in which the Property is located. Further, upon a Default, the non-defaulting Party may at its option (but without obligation to do so), perform the defaulting Party's duty or obligation. The costs and expenses of any such performance by the non-defaulting Party shall be due and payable by the defaulting Party upon receipt of an itemized invoice. If Lessee undertakes any such performance on Lessor's behalf and Lessor does not pay Lessee the full undisputed amount within 30 days of its receipt of an itemized invoice setting forth the amount due, Lessee may offset the full undisputed amount due against all fees due and owing to Lessor under this Agreement until the full undisputed amount is fully reimbursed to Lessee.

25. ENVIRONMENTAL. Lessee shall conduct its business in compliance with all applicable laws governing the protection of the environment or employee health and safety ("**EH&S Laws**"). Lessee shall indemnify and hold harmless the Lessor from claims to the extent resulting from Lessee's violation of any applicable EH&S Laws or to the extent that Lessee causes a release of any regulated substance to the environment. Lessor shall indemnify and hold harmless Lessee from all claims resulting from the violation of any applicable EH&S Laws or a release of any regulated substance to the environment except to the extent resulting from the activities of Lessee. The Parties recognize that Lessee is only leasing a small portion of the Property and that Lessee shall not be responsible for any environmental condition or issue except to the extent resulting from Lessee's specific activities and responsibilities. In the event that Lessee encounters any hazardous substances that do not result from its activities, Lessee may relocate its facilities to a mutually agreeable location to avoid such hazardous substances. Lessee may also, at its option (but without obligation to do so), remove at its own cost all or some of the hazardous substances or materials (such as soil) containing those hazardous substances, in which case Lessor agrees to sign any necessary waste manifest associated with the removal, transportation and/or disposal of such substances.

26. CASUALTY. If a fire or other casualty damages the Property or the Premises and impairs Lessee's Use, rent shall abate until Lessee's Use is restored. If Lessee's Use is not restored within 45 days, Lessee may terminate this Agreement.

27. CONDEMNATION. If a condemnation of any portion of the Property or Premises impairs Lessee's Use, Lessee may terminate this Agreement. Lessee may on its own behalf make a claim in any condemnation proceeding involving the Premises for losses related to Lessee's communications equipment, relocation costs and, specifically excluding

loss of Lessee's leasehold interest, any other damages Lessee may incur as a result of any such condemnation.

28. APPLICABLE LAWS. During the Term, Lessor shall maintain the Property in compliance with all applicable laws, EH&S Laws, rules, regulations, ordinances, directives, covenants, easements, consent decrees, zoning and land use regulations, and restrictions of record, permits, building codes, and the requirements of any applicable fire insurance underwriter or rating bureau, now in effect or which may hereafter come into effect (including, without limitation, the Americans with Disabilities Act and laws regulating hazardous substances) (collectively "**Laws**"). Lessee shall, in respect to the condition of the Premises and at Lessee's sole cost and expense, comply with (i) all Laws relating solely to Lessee's specific and unique nature of use of the Premises; and (ii) all building codes requiring modifications to the Premises due to the improvements being made by Lessee in the Premises. It shall be Lessor's obligation to comply with all Laws relating to the Property, without regard to specific use (including, without limitation, modifications required to enable Lessee to obtain all necessary building permits).

29. TAXES. If Lessor is required by law to collect any federal, state, or local tax, fee, or other governmental imposition (each, a "**Tax**") from Lessee with respect to the transactions contemplated by this Agreement, then Lessor shall bill such Tax to Lessee in the manner and for the amount required by law, Lessee shall promptly pay such billed amount of Tax to Lessor, and Lessor shall remit such Tax to the appropriate tax authorities as required by law; provided, however, that Lessor shall not bill to or otherwise attempt to collect from Lessee any Tax with respect to which Lessee has provided Lessor with an exemption certificate or other reasonable basis for relieving Lessor of its responsibility to collect such Tax from Lessee. Except as provided in this Paragraph 29, Lessor shall bear the costs of all Taxes that are assessed against or are otherwise the legal responsibility of Lessor with respect to itself, its property, and the transactions contemplated by this Agreement. Lessee shall be responsible for all Taxes that are assessed against or are otherwise the legal responsibility of Lessee with respect to itself, its property, and the transactions contemplated by this Agreement.

30. Intentionally deleted.

31. SIMILAR TERMS AND CONDITIONS. Lessor represents and warrants that the rent, benefits and terms and conditions granted to Lessee by Lessor hereunder are now and shall be, during the Term, no less favorable than the rent, benefits and terms and conditions for substantially the same or similar tenancies or licenses granted by Lessor to other parties. If at any time during the Term Lessor shall offer more favorable rent, benefits or terms and conditions for substantially the same or similar tenancies or licenses as those granted hereunder, then Lessor shall, within 30 days after the effective date of such offering, notify Lessee of such fact and offer Lessee the more favorable offering. If Lessee chooses, the parties shall then enter into an amendment that shall be effective retroactively to the effective date of the more favorable offering, and shall provide the same rent, benefits or terms and conditions to Lessee. Lessee shall have the right to decline to accept the offering. Lessor's compliance with this requirement shall be subject, at Lessee's option, to independent verification.

32. **PRIME LEASE.** The Parties acknowledge that LESSOR's rights in the property derive from that certain Lease with an effective date of May 5th, 2022 between Darryl B Fullam and wife, Carla B Fullam, as landlord, and LESSOR, as tenant (the "Prime Lease"). LESSOR shall not terminate the Prime Lease prior to the expiration of its term without the express written consent of LESSEE. In the event LESSOR receives any notice of failure to pay or failure to perform any covenant, agreement or obligation under the Prime Lease, LESSOR shall notify LESSEE of such notice as soon as the notice is received by LESSOR pursuant to the terms of the Prime Lease and LESSEE may take any such actions to cure any such failure under the Prime lease. LESSEE shall be under no obligation to take such action but may do so solely at its own discretion. In the event LESSEE pays any amount or performs any obligations on behalf of LESSOR pursuant to the terms of the Prime Lease, LESSEE may deduct such amounts paid or the reasonable value of the performance from the amount that would otherwise be due from LESSEE to LESSOR pursuant to this Agreement. LESSOR agrees to timely exercise any and all renewal options granted to LESSOR in the Prime Lease. If the term of the Prime Lease is shorter than the Term of this Agreement, then the Term of this Agreement and LESSEE's right to extend the Term of this Agreement shall only be for as long as the term of the Prime Lease. If the term of the Prime Lease is shorter than the Term of this Agreement and if there will be more than twelve (12) months remaining in the Term of this Agreement when the Prime Lease is scheduled to expire, then LESSOR shall use commercially reasonable efforts to amend the Prime Lease prior to its expiration for the purpose of extending the term of the Prime Lease for a period equal to or greater than the remaining Term of this Agreement.

33. **MISCELLANEOUS.** This Agreement contains all agreements, promises and understandings between the Lessor and the Lessee regarding this transaction, and no oral agreement, promises or understandings shall be binding upon either the Lessor or the Lessee in any dispute, controversy or proceeding. This Agreement may not be amended or varied except in a writing signed by all Parties. This Agreement shall extend to and bind the heirs, personal representatives, successors and assigns hereto. The failure of either Party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights hereunder shall not waive such rights and such Party shall have the right to enforce such rights at any time. The performance of this Agreement shall be governed, interpreted, construed and regulated by the laws of the state in which the Premises is located without reference to its choice of law rules. Except as expressly set forth in this Agreement, nothing in this Agreement shall grant, suggest or imply any authority for one Party to use the name, trademarks, service marks or trade names of the other for any purpose whatsoever. Lessor agrees to execute a Memorandum of this Agreement, which Lessee may record with the appropriate recording officer. The provisions of the Agreement relating to indemnification from one Party to the other Party shall survive any termination or expiration of this Agreement. This Agreement may be executed in counterparts, including written and electronic forms. All executed counterparts shall constitute one Agreement, and each counterpart shall be deemed an original.

IN WITNESS WHEREOF, this Agreement is entered into by the Parties as of the Effective Date.

LESSOR:

County of Henderson

By: _____

Name: _____

Its: _____

Date: _____

LESSEE:

Cellco Partnership

d/b/a Verizon Wireless

By: _____

Name: _____

Its: _____

Date: _____

EXHIBIT "A"

PROPERTY DESCRIPTION

BEING all of that 2.0 acre lot depicted on plat of record at Plat Slide 13323 in the office of the Register of Deeds for Henderson County, North Carolina, reference to which plat is hereby made for a more particular description. There is also conveyed herewith a fifty (50') foot wide easement for the purposes of ingress, egress and regress and installation and maintenance of utilities to and from the public road as depicted on plat of record at Plat Slide 13577, Henderson County Registry.

ALSO BEING a portion of the property conveyed to Fullam Family Limited Partnership (a 1/3 undivided interest) by deed of record in Deed Book 1198, Page 238, Henderson County Registry, Otis Clayton and wife, Catherine Clayton (a 1/3 undivided interest) by deed of record in Deed Book 730, Page 323, Henderson County Registry and Darryl B. Fullam and wife, Carla B. Fullam (a 1/3 undivided interest) by deed of record in Deed Book 909, Page 249, Henderson County Registry. Otis Clayton and wife, Catherine Clayton are deceased and Ottis L. Clayton, Jr., Marilyn C. Tyer and Cathy C. Council were their sole heirs. Cathy C. Council is deceased and Richard S. Council is the personal representative of her estate.

EXHIBIT "B"

PREMISES DESCRIPTION

Site Plan to be attached by VZW