

## OPTION AND LEASE AGREEMENT

This OPTION AND LEASE AGREEMENT ("**Agreement**"), effective as of the date of the last signature below, is entered into by The Fountain Valley School of Colorado, a Colorado non-profit corporation, having a mailing address of 6155 Fountain Valley School Road, Colorado Springs, CO 80991 (hereinafter referred to as "**Landlord**"), and Horizon Tower Limited Partnership-II, a Kansas limited partnership, by Horizon Tower, LLC, a Delaware limited liability company, its Operations Partner, having a mailing address of 117 Town & Country Drive, Suite A, Danville, CA 94526 (hereinafter referred to as "**Tenant**") (Landlord and Tenant referred to herein individually as a "Party" and collectively as the "Parties").

### BACKGROUND

Landlord owns that certain plot, parcel or tract of land, together with all rights and privileges arising in connection therewith, located at 6155 Fountain Valley School Road, Colorado Springs, in the County of El Paso, State of Colorado (collectively, the "**Property**"). Tenant desires to use a portion of the Property in connection with its intention to build a tower structure, provide antenna locations, and sublease ground space to federally licensed communications businesses. Landlord desires to grant to Tenant the right to use a portion of the Property in accordance with this Agreement.

The Parties agree as follows:

#### 1. OPTION TO LEASE.

(a) Landlord grants to Tenant an option (the "**Option**") to lease a portion of the Property measuring approximately 2500 square feet as described on attached **Exhibit 1**, together with unrestricted access for Tenant's and its potential subtenants' (any such subtenant, a "**Subtenant**") uses from the nearest public right-of-way along the Property to the Premises as described on the attached **Exhibit 1** (collectively, the "**Premises**").

(b) During the Option period and any extension thereof, and during the term of this Agreement, Tenant and its agents, engineers, surveyors and other representatives will have the right to enter upon the Property to inspect, examine, conduct soil borings, drainage testing, material sampling, and other geological or engineering tests or studies of the Premises (collectively, the "**Tests**"), to apply for and obtain licenses, permits, approvals, or other relief required of or deemed necessary or appropriate at Tenant's sole discretion for its use of the Premises and including, without limitation, applications for zoning variances, zoning ordinances, amendments, special use permits, and construction permits (collectively, the "**Government Approvals**"), initiate the ordering and/or scheduling of necessary utilities, and otherwise to do those things on the Property that, in the opinion of Tenant, are necessary in Tenant's sole discretion to determine the physical condition of the Premises, the environmental history of the Premises, Landlord's title to the Property and the feasibility or suitability of the Premises for Tenant's Permitted Use, all at Tenant's expense. Tenant will not be liable to Landlord on account of any pre-existing defect or condition on or with respect to the Property, whether or not such defect or condition is disclosed by Tenant's inspection. Consistent with paragraph 13 herein, Tenant will restore the Property and the Premises substantially to the condition that existed at the commencement of the Option Term (as defined below), reasonable wear and tear and casualty not caused by Tenant excepted. In addition, Tenant shall indemnify, defend and hold Landlord and Landlord's officers, directors, board members, and managers harmless from and against any and all injury, loss, damage or claims arising directly out of Tenant's Tests.

(c) In consideration of Landlord granting Tenant the Option, Tenant agrees to pay Landlord the sum [REDACTED] within thirty (30) business days of the full execution of this Agreement. The Option will be for an initial term of one (1) year (the "**Initial Option Term**") and may be renewed by Tenant for two (2) additional one (1) year terms (each, an "**Additional Option Term**", and together with the Initial Option Term, the "**Option Term**") upon written notification to Landlord and the payment of an

████████████████████ for each Additional Option Term prior to the expiration date of the Initial Option Term or the first Additional Option Term, as applicable.

(d) During the Option Term, Tenant may exercise the Option by notifying Landlord in writing. If Tenant exercises the Option then Landlord leases the Premises to Tenant subject to the terms and conditions of this Agreement. If Tenant does not exercise the Option during the Initial Option Term or any extension thereof, this Agreement will terminate and the Parties will have no further liability to each other except Tenant's removal and restoration obligations set forth in paragraph 13 of this Agreement.

(e) In addition to such written notice of its intent to exercise the Option, Tenant must satisfy the following conditions:

(1) Tenant must not be in default of any provision of this Agreement, consistent with paragraph 15 herein;

(2) prior to exercise of the Option, Tenant must provide a proposed projected signal coverage map showing that the proposed signal coverage from the Communication Facility to be installed at the Premises will provide a high quality wireless signal throughout the Property, it being understood that Tenant shall in no way be responsible for installing or maintaining such wireless signal during the term of this Agreement; and

(3) Tenant must provide to Landlord for approval in its reasonable discretion, a drawing or other diagram, including a site plan, depicting the location, appearance, and height of the proposed structure and associated equipment and facilities comprising the Communication Facility.

(f) Upon Tenant's request, the exercise of the Option, including the satisfaction of the conditions enumerated in the preceding clause (e), shall be acknowledged by the Parties in writing.

2. **PERMITTED USE.** Tenant may use the Premises for the construction of a tower structure that will provide antenna locations for the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair, replacement and upgrade of communications fixtures and related equipment, cables, accessories and improvements, which may include any suitable support structure, associated antennas, equipment shelters or cabinets and fencing and any other items necessary to the successful and secure use of the Premises (collectively, the "**Communication Facility**"), as well as the right to survey and review title on the Property; Tenant or its Subtenants further have the right to add, modify and/or replace equipment associated with the Communication Facility in order to be in compliance with any current or future federal, state or locally mandated regulation, including, but not limited to, emergency 911 communication services, at no additional cost to Landlord (collectively, the "**Permitted Use**"). Landlord and Tenant agree that any portion of the Communication Facility that may be conceptually described on **Exhibit 1** will not be deemed to limit Tenant's Permitted Use; provided, however, that Landlord shall have the right to approve substantial changes to the Communication Facility beyond what is described on **Exhibit 1** based upon its aesthetic impact on the Property and Landlord's use thereof, such approval not to be unreasonably withheld, delayed or conditioned. Tenant or its Subtenants shall have the right to install and operate transmission cables from the equipment shelter or cabinet to the antennas, electric lines from the main feed to the equipment shelter or cabinet, and communication lines from the main entry point to the equipment shelter or cabinet, and to make improvements to the Premises, alterations, upgrades or additions to the Communication Facility as appropriate for Tenant's or Subtenants' use ("**Tenant Changes**"). Tenant Changes include the right to construct a fence around the Premises, the design of which shall be subject to approval by Landlord which approval shall not be unreasonably withheld, delayed or conditioned, and undertake any other appropriate means to secure the Premises. Tenant agrees to comply with all applicable governmental laws, rules, statutes and regulations, relating to its use of the Communication Facility on the Property. Consistent with Landlord's approval right set forth above, Tenant or its Subtenants shall have the right to modify, supplement, replace, upgrade, expand the equipment, increase the number of antennas or relocate the Communication Facility within the Premises at any time during the term of this Agreement. Tenant or its Subtenants will be allowed to make such alterations to the Premises in order to accomplish Tenant's Changes or to insure that Tenant's or Subtenants' Communication Facility complies with all applicable federal, state or local laws, rules or regulations.

**3. TERM.**

(a) The initial lease term will be five (5) years ("Initial Term"), commencing upon the Commencement Date, as defined below. The Initial Term will terminate on the last day of the month in which the fifth (5th) annual anniversary of the Commencement Date occurs.

(b) This Agreement will be automatically renewed for six (6) additional five (5) year term(s) (each five (5) year term shall be defined as the "**Extension Term**"), upon the same terms and conditions, unless Tenant notifies Landlord in writing of Tenant's intention not to renew this Agreement at least sixty (60) days prior to the expiration of the existing Term.

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

**4. RENT.**



**5. APPROVALS.**

(a) Landlord agrees that Tenant's ability to use the Premises is contingent upon the suitability of the Premises for Tenant's Permitted Use and Tenant's ability to obtain all Government Approvals. Landlord authorizes Tenant to prepare, execute, and file all required applications to obtain Government Approvals for Tenant's Permitted Use under this Agreement and agrees to reasonably assist Tenant with such applications. Government Approvals shall be limited to the Premises and may not alter or affect Government Approvals applicable to the Property outside of the Premises. Landlord reserves the right to oppose any applications for Government Approvals that may adversely affect its present or future use of the Property outside of the Premises. Tenant shall inform Landlord in advance of all applications for Government Approvals, and shall keep Landlord reasonably informed of the status and results of such applications.

(b) Tenant has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of Tenant's choice. In the event Tenant determines, in its sole discretion, due to the title report results or survey results, that the condition of the Premises is unsatisfactory, Tenant will have the right to terminate this Agreement upon notice to Landlord.

(c) Tenant may also perform and obtain, at Tenant's sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports on, over, and under the Premises, necessary to determine if Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system, design, operations or Government Approvals.

**6. TERMINATION.** This Agreement may be terminated, without penalty or further liability, as follows:

(a) by either Party on thirty (30) days' prior written notice, if the other Party remains in default under Paragraph 15 Default and Right to Cure of this Agreement after the applicable cure periods;

(b) by Tenant upon written notice to Landlord, if Tenant is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now and hereafter intended by Tenant; or if Tenant determines in its sole discretion that the cost of obtaining or retaining the same is commercially unreasonable; or

(c) by Tenant on sixty (60) days' prior written notice for any reason, so long as Tenant pays Landlord a termination fee equal to six (6) months' Rent, at the then current rate, provided, however, that no such termination fee will be payable on account of the termination of this Agreement by Tenant under any one or more of Paragraphs 5(b) Approvals, 6(a) Termination, 6(b) Termination, 8 Interference, 11(d) Environmental, 18 Severability, 19 Condemnation or 20 Casualty of this Agreement.

7. **INSURANCE.** Tenant will carry during the Term, at its own cost and expense, the following insurance: (i) "All Risk" property insurance for its property's replacement cost; (ii) commercial general liability insurance with a minimum limit of liability of \$2,000,000 combined single limit for bodily injury or death/property damage arising out of any one occurrence; and (iii) Workers' Compensation Insurance as required by law. It is understood and agreed that the coverage afforded by Tenant's commercial general liability insurance also applies to Landlord as an additional insured, but only with respect to Landlord's liability arising out of its interest in the Property.

8. **INTERFERENCE.**

(a) Where there are existing radio frequency user(s) on the Property, Landlord will provide Tenant with a list of all existing radio frequency user(s) on the Property to allow Tenant to evaluate the potential for interference. Tenant warrants that its or its Subtenants' use of the Premises will not interfere with existing radio frequency user(s) on the Property so disclosed by Landlord, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations.

(b) Landlord will not grant or convey after the date of this Agreement, a lease, license or any other right to any third party for the use of the Property, if such use may in any way adversely affect or interfere with Tenant's Communication Facility or Tenant's purpose or intent, including its Tower Structure. Nothing contained herein will restrict Tenant nor its successors and assigns or Subtenants from installing and modifying its communications equipment, subject to Landlord's approval rights contained in this Agreement.

(c) Landlord will not use, nor will Landlord permit its employees, tenants, licensees, invitees or agents to use, any portion of the Property in any way which interferes with the operations of Tenant or the rights of Tenant under this Agreement. Landlord will cause such interference to cease within twenty-four (24) hours after receipt of notice of interference from Tenant. In the event any such interference does not cease within the aforementioned cure period then the Parties acknowledge that Tenant will suffer irreparable injury, and therefore, Tenant will have the right, in addition to any other rights that it may have at law or in equity, for Landlord's breach of this Agreement, to elect to enjoin such interference or to terminate this Agreement upon notice to Landlord.

9. **INDEMNIFICATION.**

(a) Tenant agrees to indemnify, defend and hold Landlord and Landlord's officers, directors, board members, and managers harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly from the installation, use, maintenance, repair or removal of the Communication Facility or Tenant's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Landlord, its employees, agents or independent contractors.

(b) Landlord agrees to indemnify, defend and hold Tenant harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly from Landlord's breach of any provision of this Agreement.

(c) Notwithstanding anything to the contrary in this Agreement, Tenant and Landlord each waive any claims that each may have against the other with respect to consequential, incidental or special damages.

10. **WARRANTIES.**

(a) Tenant and Landlord each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power and authority to enter into this Agreement and bind itself hereto through the party set forth as signatory for the Party below.

(b) Landlord represents and warrants that: (i) Landlord solely owns the Property in fee simple, or controls the Property by lease or license; (ii) the Property is not encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements not of record, which would adversely affect

Tenant's Permitted Use and enjoyment of the Premises under this Agreement; (iii) as long as Tenant is not in default, Landlord grants to Tenant sole, actual, quiet and peaceful use, enjoyment and possession of the Premises; (iv) Landlord's execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on Landlord; and (v) if the Property is or becomes encumbered by a deed to secure a debt, mortgage or other security interest, Landlord will use best efforts to provide promptly to Tenant a mutually agreeable Subordination, Non-Disturbance and Attornment Agreement.

**11. ENVIRONMENTAL.**

(a) To the best of Landlord's knowledge without the duty to investigate, Landlord represents and warrants that the Property is free of hazardous substances as of the date of this Agreement, and, to the best of Landlord's knowledge without the duty to investigate, the Property has never been subject to any contamination or hazardous conditions resulting in any environmental investigation, inquiry or remediation. Landlord and Tenant agree that each will be responsible for compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene condition or other matters as may now or at any time hereafter be in effect, that are now or were related to that Party's activity conducted in or on the Property and the Premises.

(b) Landlord and Tenant separately agree to hold harmless and indemnify the other from, and to assume all duties, responsibilities and liabilities at its sole cost and expense for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any action; notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is related to the indemnifying party's failure to comply with any environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or matters as may now or hereafter be in effect. Landlord agrees to hold harmless and indemnify Tenant from, and to assume all duties, responsibilities and liabilities at its sole cost and expense for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is related to any environmental or industrial hygiene conditions that arise out of or are in any way related to the condition of the Property, except to the extent that any such environmental or other conditions are caused by Tenant. Tenant agrees to hold harmless and indemnify Landlord from, and to assume all duties, responsibilities and liabilities at its sole cost and expense for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is related to any environmental or industrial hygiene conditions that arise out of or are in any way related to the condition of the Premises, except to the extent that any such environmental or other conditions are caused by Landlord.

(c) The indemnifications of this Paragraph 11 Environmental specifically include reasonable costs, expenses and fees incurred in connection with any investigation of Property or Premises conditions or any clean-up, remediation, removal or restoration work required by any governmental authority. The provisions of this Paragraph 11 Environmental will survive the expiration or termination of this Agreement.

(d) In the event Tenant becomes aware of any hazardous materials on the Property or the Premises, or any environmental or industrial hygiene condition or matter relating to the Property or Premises that, in Tenant's sole determination, renders the condition of the Premises or Property unsuitable for Tenant's use, or if Tenant believes that the leasing or continued leasing of the Premises would expose Tenant to undue risks of government action, intervention or third-party liability, Tenant will have the right, in addition to any other rights it may have at law or in equity, to terminate the Agreement upon notice to Landlord.

**12. ACCESS.** At all times throughout the Term of this Agreement, and at no additional charge to Tenant, Tenant and its employees, agents, Subtenants and subcontractors, will have twenty-four (24) hour per day, seven (7) day per week pedestrian and vehicular access to and over the Property, from an open and improved public

road to the Premises, for the installation, maintenance and operation of the Communication Facility and any utilities serving the Premises and Landlord grants to Tenant an easement for such access which shall be specifically described in **Exhibit 1**. Upon Tenant's request, Landlord will execute a separate recordable easement evidencing this right. Tenant shall not be permitted to install a paved or concrete road or driveway from the public road to the Premises. In the event any public utility is unable to use the access or easement provided to Tenant then Landlord agrees to grant additional access or an easement either to Tenant or to the public utility, for the benefit of Tenant, at no cost to Tenant.

**13. REMOVAL/RESTORATION.**

(a) All portions of the Communication Facility brought onto the Property by Tenant or its Subtenants will be and remain Tenant's or its Subtenants personal property and, at Tenant's or its Subtenants option, may be removed by Tenant or its Subtenants at any time during the Term. Landlord covenants and agrees that no part of the Communication Facility constructed, erected or placed on the Premises by Tenant or its Subtenants will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of Landlord that all improvements of every kind and nature constructed, erected or placed by Tenant or its Subtenants on the Premises will be and remain the property of Tenant and its Subtenants and may be removed by Tenant or its Subtenants at any time during the Term.

(b) Notwithstanding the foregoing, at the earlier of the expiration or termination of this Agreement, consistent with its restoration obligations set forth in paragraph 1(b) above, Tenant will be responsible for the restoration and replacement of any trees, shrubs, or other vegetation removed or damaged as a result of Tenant's or its Subtenants' use of the Premises, and Tenant will be required to remove from the Premises or the Property all foundations, underground utilities, or any part of the Communication Facility within 90 days of the expiration or termination of this Agreement; provided, however, that such foundations, underground utilities, and any part of the Communication Facility may be left in place at the option of Landlord. If Landlord requests in writing that any foundations, underground utilities, and any part of the Communication Facility be left in place, such improvements shall become the property of Landlord and Tenant shall be relieved of its removal and restoration obligations hereunder.

**14. MAINTENANCE/UTILITIES.**

(a) Tenant will keep and maintain the Premises and access thereto in good condition, reasonable wear and tear and damage from the elements excepted. Given the location of the Premises and the Communication Facilities to be installed thereon, Tenant shall be responsible for preventing, mitigating, and repairing as necessary any erosion or ground disturbance resulting from run-off from the Premises. Landlord will maintain the Property in good and tenantable condition, subject to reasonable wear and tear and damage from the elements. Landlord shall have no responsibility for maintenance of any road or driveway constructed by Tenant to provide access to the Premises from the nearest public road.

(b) Tenant will be responsible for paying on a monthly or quarterly basis if necessary, all utilities charges for electricity, telephone service or any other utility used or consumed by Tenant on the Premises. In the event Tenant cannot secure its own metered electrical supply, Tenant will have the right, at its own cost and expense, to submeter from Landlord. When submetering is necessary and available, Landlord will read the meter on a monthly or quarterly basis and provide Tenant with the necessary usage data in a timely manner to enable Tenant to compute such utility charges. Failure by Landlord to perform this function will limit utility fee recovery by Landlord to a 12-month period. Landlord will fully cooperate with any utility company requesting an easement over, under and across the Property in order for the utility company to provide service to Tenant. Landlord will not be responsible for interference with, interruption of or failure, beyond the reasonable control of Landlord, of such services to be furnished or supplied by Landlord.

**15. DEFAULT AND RIGHT TO CURE.**

(a) The following will be deemed a default by Tenant and a breach of this Agreement: (i) non-payment of Rent or utility charges if submetering is used if such Rent or utility charges remain unpaid for more than thirty (30) days after receipt of written notice from Landlord of such failure to pay; or (ii) Tenant's failure to perform any other term or condition under this Agreement within forty-five (45) days after receipt of written notice from Landlord specifying the failure. No such failure, however, will be deemed to exist if Tenant has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Tenant. If Tenant remains in default beyond any applicable cure period, Landlord will have the right to exercise any and all rights and remedies available to it under law and equity, including the right but not the obligation to cure Tenant's default and to recover the costs of such cure from Tenant.

(b) The following will be deemed a default by Landlord and a breach of this Agreement: Landlord's failure to perform any term, condition or breach of any warranty or covenant under this Agreement within forty-five (45) days after receipt of written notice from Tenant specifying the failure. No such failure, however, will be deemed to exist if Landlord has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord. If Landlord remains in default beyond any applicable cure period, Tenant will have the right to exercise any and all rights available to it under law and equity, including the right to cure Landlord's default and to deduct the costs of such cure from any monies due to Landlord from Tenant.

**16. ASSIGNMENT/SUBLEASE.** Tenant will have the right to assign this Agreement or sublease the Premises and its rights herein, in whole or in part, with Landlord's consent, such consent shall not be unreasonably withheld, delayed or conditioned, provided that such assignment or sublease shall be subject to all of the terms, conditions, and provisions of this Agreement. Notwithstanding the foregoing, Tenant may assign this Agreement without Landlord's consent to a parent corporation, any of its subsidiaries or affiliates or to any entity which acquires all or substantially all of Tenant's assets by reason of a merger, acquisition or other business reorganization. Upon notification to Landlord of such assignment, Tenant will be relieved of all future performance, liabilities and obligations under this Agreement. Additionally, Landlord agrees that Tenant may mortgage, hypothecate or grant a security interest in the Agreement and the Communication Facilities, and may assign the Agreement or any rights therein and the Communication Facilities to any mortgagees or holders of security interests, including their successors or assigns (collectively "**Mortgagees**"), provided such Mortgagees interests in the Agreement are subject to any and all of the terms and provisions of the Agreement. In such event, Landlord shall execute such consent or acknowledgements to leasehold financing as may reasonably be required by Mortgagees. Execution of any Mortgagee required documents shall not be unreasonably withheld, conditioned or delayed.

**17. NOTICES.** All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed as follows:

If to Tenant:                   Horizon Tower Limited Partnership-II  
By Horizon Tower, LLC, its Operations Partner  
Attn: Lease Administration  
Re: Site #CO4714; Site Name: FOUNTAIN VALLEY  
117 Town & Country Drive, Suite A  
Danville, CA 94526

If to Landlord:           The Fountain Valley School of Colorado  
6155 Fountain Valley School Road  
Colorado Springs, CO 80991  
ATTENTION: Mrs. Janet Refior

Either party hereto may change the place for the giving of notice to it by thirty (30) days prior written notice to the other as provided herein.

**18. SEVERABILITY.** If any term or condition of this Agreement is found unenforceable, the remaining terms and conditions will remain binding upon the Parties as though said unenforceable provision were not contained herein. However, if the invalid, illegal or unenforceable provision materially affects this Agreement then the Agreement may be terminated by either Party on ten (10) business days prior written notice to the other Party hereto.

**19. CONDEMNATION.** In the event Landlord receives notification of any condemnation proceedings affecting the Property, Landlord will provide notice of the proceeding to Tenant within forty-eight (48) hours. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's reasonable determination, to render the Premises unsuitable for Tenant, this Agreement will terminate as of the date the title vests in the condemning authority. The Parties will each be entitled to pursue their own separate awards in the condemnation proceeds, which for Tenant will include, where applicable, the value of its Communication Facility, moving expenses, prepaid Rent, and business dislocation expenses, provided that any award to Tenant will not diminish Landlord's recovery. Tenant will be entitled to reimbursement for any prepaid Rent on a prorata basis.

**20. CASUALTY.** Landlord will provide notice to Tenant of any casualty affecting the Property within forty-eight (48) hours of the casualty. If any part of the Communication Facility or Property is damaged by fire or other casualty so as to render the Premises unsuitable, in Tenant's sole determination, then Tenant may terminate this Agreement by providing written notice to Landlord, which termination will be effective as of the date of such damage or destruction. Upon such termination, Tenant will be entitled to collect all insurance proceeds payable to Tenant on account thereof and to be reimbursed for any prepaid Rent on a prorata basis.

**21. WAIVER OF LANDLORD'S LIENS.** Landlord waives any and all lien rights it may have, statutory or otherwise, concerning Tenant's and its Subtenants Communication Facility or any portion thereof, including the Tower Structure. The Communication Facility shall be deemed personal property for purposes of this Agreement, regardless of whether any portion is deemed real or personal property under applicable law, and Landlord consents to Tenant's and its Subtenants right to remove all or any portion of the Communication Facility from time to time in Tenant's and its Subtenants sole discretion and without Landlord's consent.

**22. MISCELLANEOUS.**

(a) **Amendment/Waiver.** This Agreement cannot be amended, modified or revised unless done in writing and signed by an authorized agent of Landlord and an authorized agent of Tenant. No provision may be waived except in a writing signed by both Parties.

(b) **Memorandum/Short Form Lease.** Either Party will, at any time upon fifteen (15) business days prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum or Short Form of Lease. Either Party may record this Memorandum or Short Form of Lease at any time, in its absolute discretion.

(c) **Bind and Benefit.** The terms and conditions contained in this Agreement will run with the Property and bind and inure to the benefit of the Parties, their respective heirs, executors, administrators, successors and assigns.



(d) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the Parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement.

(e) **Governing Law.** This Agreement will be governed by the laws of the state in which the Premises are located, without regard to conflicts of law.

(f) **Interpretation.** Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term "including" will be interpreted to mean "including but not limited to"; (iii) whenever a Party's consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of the Agreement and are incorporated by reference into this Agreement; (v) use of the terms "termination" or "expiration" are interchangeable; and (vi) reference to a default will take into consideration any applicable notice, grace and cure periods.

(g) **Estoppel.** Either Party will, at any time upon twenty (20) business days prior written notice from the other, execute, acknowledge and deliver to the other a statement in writing (i) certifying that this Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying this Agreement, as so modified, is in full force and effect) and the date to which the Rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to such Party's knowledge, any uncured defaults on the part of the other Party hereunder, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises. The requested Party's failure to deliver such a statement within such time will be conclusively relied upon by the requesting Party that (i) this Agreement is in full force and effect, without modification except as may be properly represented by the requesting Party, (ii) there are no uncured defaults in either Party's performance, and (iii) no more than one month's Rent has been paid in advance.

(h) **No Electronic Signature/No Option.** The submission of this Agreement to any Party for examination or consideration does not constitute an offer, reservation of or option for the Premises based on the terms set forth herein. This Agreement will become effective as a binding Agreement only upon the handwritten legal execution, acknowledgment and delivery hereof by Landlord and Tenant.

(i) **Costs.** Each Party hereto shall be responsible for their own costs and the costs of any attorneys, consultants, or other professionals advising them in connection with this Agreement.

[SIGNATURES APPEAR ON THE NEXT PAGE]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be effective as of the last date written below.

**"LANDLORD"**

The Fountain Valley School of Colorado,  
a Colorado non-profit corporation

By: W.V. Webb  
Print Name: William V. Webb  
Its: Head of School  
Date: 6/21/18

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**"TENANT"**

Horizon Tower Limited Partnership-II, a Kansas limited partnership, by Horizon Tower, LLC, a Delaware limited liability company, its Operations Partner

By: \_\_\_\_\_  
Print Name: JOHN KAPULLA  
Its: CEO  
Date: 7/3/18

**EXHIBIT 1**

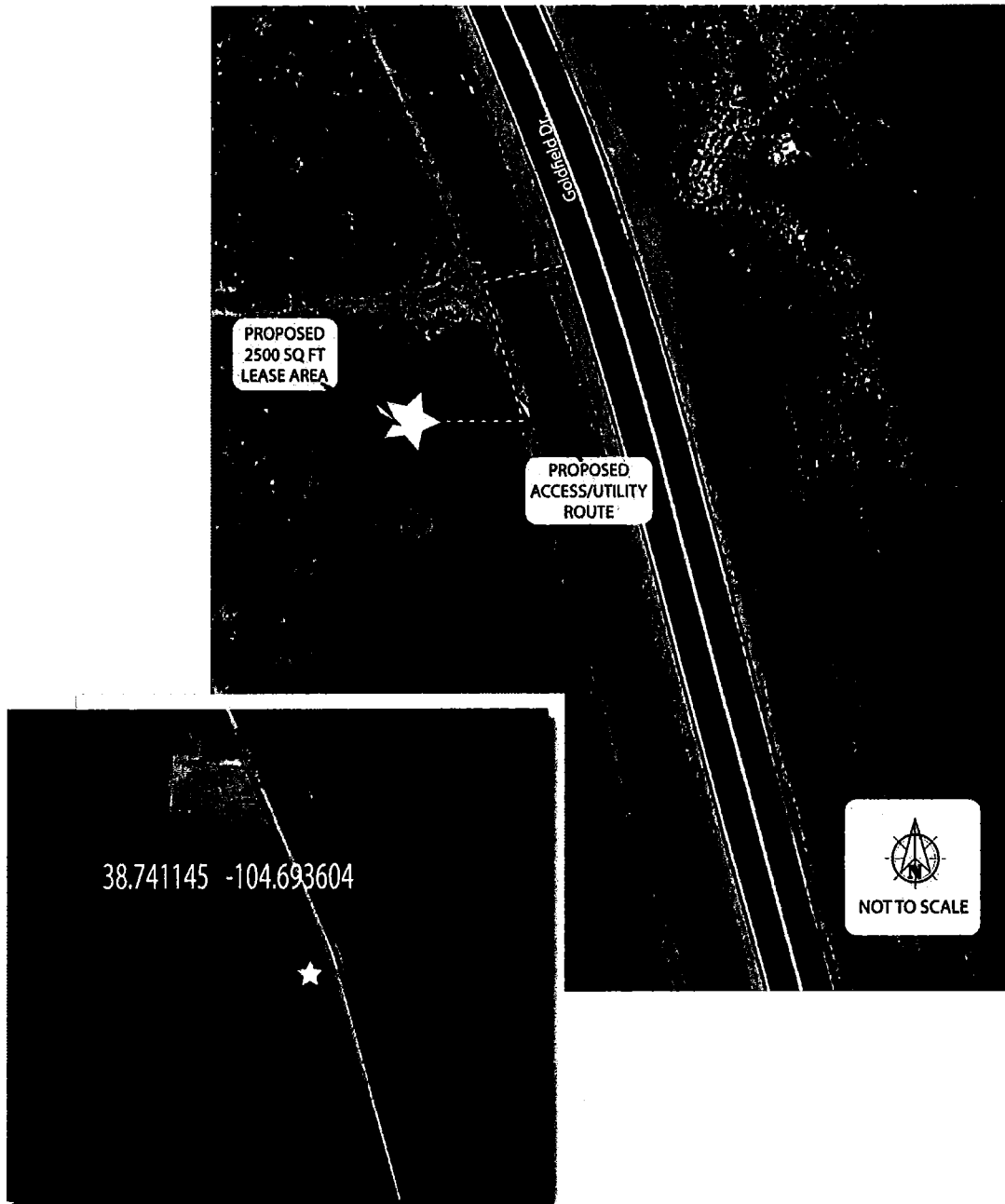
**DESCRIPTION OF PREMISES AND ACCESS**

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to the Agreement dated 6/21/, 2018, by and between The Fountain Valley School of Colorado, as Landlord, and Horizon Tower Limited Partnership-II, a Kansas limited partnership by Horizon Tower, LLC, a Delaware limited liability company, its Operations Partner, as Tenant.

The Premises and access thereto are described and/or depicted as follows:

A 2500 square foot portion, together with access and utility easements, of:



**Notes:**

1. This Exhibit may be replaced by a land survey and/or construction drawings of the Premises once received by Tenant.
2. Any setback of the Premises from the Property's boundaries shall be the distance required by the applicable governmental authorities.
3. Width of access road shall be the width required by the applicable governmental authorities, including police and fire departments.
4. The type, number and mounting positions and locations of antennas and transmission lines are illustrative only. Actual types, numbers and mounting positions may vary from what is shown above.

**MEMORANDUM OF LEASE**

[FOLLOWS ON NEXT PAGE]

**Return to:**

Horizon Tower, LLC  
140 Town & Country Drive, Suite E  
Danville, CA 94526

**Site Name:** \_\_\_\_\_

**Site No.:** \_\_\_\_\_

State: \_\_\_\_\_

County: \_\_\_\_\_

**MEMORANDUM  
OF  
LEASE**

This Memorandum of Lease is entered into on this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_, \_\_\_\_\_ having a mailing address of \_\_\_\_\_ (hereinafter referred to as "Landlord") and Horizon Tower, LLC, a Delaware limited liability company, with an office at 140 Town & Country Drive, Suite E, Danville, CA 94526 (hereinafter referred to as "Tenant").

1. Landlord and Tenant entered into a certain Lease Agreement ("Agreement") on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, for the purpose of installing, operating and maintaining a communications facility and other improvements. All of the foregoing are set forth in the Agreement.
2. The term of the Agreement is for an Initial Term of five (5) years commencing on the date that Tenant commences construction and ending on the last day of the month in which the fifth (5th) anniversary of the Commencement Date occurs, with five (5) successive five (5) year options to renew.
3. The portion of the land being leased to Tenant (the "Premises") is described in **Exhibit 1** annexed hereto.
4. The Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Memorandum of Lease as of the day and year first above written.

**“LANDLORD”**

\_\_\_\_\_

By: \_\_\_\_\_

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

Its: \_\_\_\_\_

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

**“TENANT”**

Horizon Tower Limited Partnership-II, a Kansas limited partnership, by Horizon Tower, LLC, a Delaware limited liability company, its Operations Partner

By: \_\_\_\_\_

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

Its: \_\_\_\_\_

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

**LANDLORD ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, before me personally appeared \_\_\_\_\_, personally known to me (or 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 behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature

**TENANT ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 ) ss:  
COUNTY OF CONTRA COSTA )

On the \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared John Kapulica, who 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 authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



**EXHIBIT 1**

**DESCRIPTION OF PREMISES**

Page \_\_\_ of \_\_\_

to the Agreement dated \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_,  
as Landlord, and Horizon Tower Limited Partnership-II, a Kansas limited partnership, by Horizon Tower,  
LLC, a Delaware limited liability company, its Operations Partner, as Tenant.

The Premises are described and/or depicted as follows:

**Notes:**

1. This Exhibit may be replaced by a land survey and/or construction drawings of the Premises once received by Tenant.
2. Any setback of the Premises from the Property's boundaries shall be the distance required by the applicable governmental authorities.
3. Width of access road shall be the width required by the applicable governmental authorities, including police and fire departments.
4. The type, number and mounting positions and locations of antennas and transmission lines are illustrative only. Actual types, numbers and mounting positions may vary from what is shown above.