




HISTORIC
FRANKLIN
TENNESSEE

ITEM #13
WRKS 09/14/2010

MEMORANDUM

September 3, 2010

TO: Board of Mayor and Alderman

FROM: Eric Stuckey, City Administrator 
Vernon Gerth, ACA Community & Economic Development
Lisa R. Clayton, Parks Department
Kevin Lindsey, Parks Facility Superintendent
Micah Woods, Current Planning Supervisor

SUBJECT: Communication Tower Agreement for Fieldstone Park

Purpose

The purpose of this memorandum is to provide the Board of Mayor and Aldermen (BOMA) with information to consider entering into a multi-year agreement with Clear Wireless, LLC for the transmission and the reception of radio communication signals and the construction, maintenance and operation of related communications facilities for wireless broadband services.

Background

Clear Wireless, LLC approached the City of Franklin requesting to expand their operations by installing a tower at Fieldstone Park. The tower would replace an existing sports light pole used for lighting two adult softball fields. Clear Wireless would construct, maintain, install, repair, secure and operate on the premises radio communications. The existing sports lighting would be reinstalled on the new pole.

Clear Wireless, LLC is requesting to enter into a (10) ten year lease and have the right to extend the term for one (1) successive (3) three year period (renewal term).

Financial Impact

Within fifteen (15) business days following the Term Commencement Date and on the first day of each month thereafter, Clear Wireless, LLC shall pay to City of Franklin Parks Department two thousand dollars (\$2,000.00) per month (“Rent”). Initially this revenue will be placed in the City’s general fund. There may be opportunities in the future to identify this revenue to help fund specific park needs.

Recommendation

It is recommended that the City enter into a Communication Site Lease Agreement with Clear Wireless, LLC for an initial ten year lease for Fieldstone Park.

COMMUNICATION TOWER AGREEMENT

COF Contract #2010-0030

THIS COMMUNICATION SITE LEASE AGREEMENT ("Agreement") dated and is effective as of _____, 2010, is between Clear Wireless, LLC, a Nevada limited liability company ("Clearwire" or "Tenant"), and City of Franklin, Tennessee, a Municipality ("City", "Owner" or "Landlord").

For good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Premises.** Owner owns a parcel of land ("**Land**") and a telecommunications tower ("**Tower**") located in the City of Franklin, Tennessee, County of Williamson, State of Tennessee, commonly known as Fieldstone Park, Franklin, Tennessee (APN: _____). The Tower and the Land are collectively referred to herein as the "**Property**." The Land is more particularly described in Exhibit A annexed hereto, and depicted in item Z.1 of the Proposal. Subject to the provisions of Paragraph 2 below ("Effective Date/Due Diligence Period"), Owner hereby leases to Clearwire and Clearwire leases from Owner approximately Two Hundred (200) square feet of Land and space adjacent to and/or on the Tower and all access and utility easements necessary or desirable therefore (collectively, "**Premises**") as may be described generally in Exhibit B annexed hereto.

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2. **Effective Date/Due Diligence Period.** This Agreement shall be effective on the date of full execution hereof ("**Effective Date**"). Beginning on the Effective Date and continuing for a period of one hundred twenty (120) days thereafter ("**Due Diligence Period**"), Clearwire shall only be permitted to enter the Property for the limited purpose of making appropriate engineering and boundary surveys, inspections, and other reasonably necessary investigations and signal, topographical, geotechnical, structural and environmental tests (collectively, "**Investigations and Tests**") that Clearwire may deem necessary or desirable to determine the physical condition, feasibility and suitability of the Premises. In the event that Clearwire determines, during the Due Diligence Period, that the Premises are not appropriate for Clearwire's intended use, or if for any other reason, or no reason, Clearwire decides not to commence its tenancy of the Premises, then Clearwire shall have the right to terminate this Agreement without penalty upon written notice to Owner at any time during the Due Diligence Period and prior to the Term Commencement Date. Owner and Clearwire expressly acknowledge and agree that Clearwire's access to the Property during this Due Diligence Period shall be solely for the limited purpose of performing the Investigations and Tests, and that Clearwire shall not be considered an owner or operator of any portion of the Property, and shall have no ownership or control of any portion of the Property (except as expressly provided in this Paragraph 2), prior to the Term Commencement Date.

Deleted: until the Term Commencement Date as defined in Paragraph 4 below

3. **Use.** The Premises may be used by Tenant for any lawful activity in connection with the provisions of wireless communications services, including without limitation, the transmission and the reception of radio communication signals and the construction, maintenance and operation of related communications facilities. Landlord agrees, at no expense to Landlord, to cooperate with Tenant, in making application for and obtaining all licenses, permits and any and all other necessary approvals that may be required for Tenant's intended use of the Premises. Notwithstanding the foregoing, Tenant acknowledges that administrative approval of the City of Franklin, pursuant to the City's Zoning Ordinance, shall be required prior to commencement of construction or modification of Tenant's communication facilities on the Premises, and that construction must be carried out in accordance with the approved construction plans. In the event the City denies approval of Tenant's construction plans, this Agreement shall be null and void.

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4. **Term.** The term of this Agreement shall commence one hundred twenty (120) days from the full execution of the Agreement, or the date Tenant begins construction of the Tenant Facilities (as defined in Paragraph 6 below) whichever first occurs ("**Term Commencement Date**") and shall terminate on the 10th anniversary of the Term Commencement Date ("**Term**") unless otherwise terminated as provided herein. Tenant shall have the right to extend the Term for one (1) successive three (3) year period ("**Renewal Terms**") on the same terms and conditions as set forth herein, upon written agreement by Tenant and Landlord.

Deleted: This Agreement shall automatically be extended for each successive Renewal Term unless Tenant notifies Landlord of its intention not to renew at least thirty (30) days prior to commencement of the succeeding Renewal Term.¶

Deleted: One Thousand Eight Hundred and 00/100 Dollars (\$1,800.00)

5. **Rent.** Within fifteen (15) business days following the Term Commencement Date and on the first day of each month thereafter, Tenant shall pay to Landlord as rent Two Thousand and 00/100 Dollars (\$2,000.00) per month ("**Rent**"). Rent for any fractional month at the beginning or at the end of the Term or Renewal Term shall be prorated. Rent shall be payable to Landlord at 109 3rd Ave. South, Franklin, Tennessee 37064 Attention: City Administrator. All of Tenant's monetary obligations set forth in this Agreement are conditioned upon Tenant's receipt of an accurate and executed W-9 Form from Landlord. Rent shall be increased at

the beginning of any applicable Renewal Term by an amount equal to fifteen percent (15%) of the Rent for the Term or previous Renewal Term.

6. Improvements.

6.1 Tenant has the right to construct, maintain, install, repair secure, replace, remove and operate on the Premises radio communications facilities, including but not limited to utility lines, transmission lines, an ice bridge(s), an air conditioned equipment shelter(s), electronic equipment, transmitting and receiving antennas, microwave dishes, antennas and equipment, a power generator and generator pad, and supporting equipment and structures therefore ("**Tenant Facilities**"). In connection therewith, Tenant has the right to do all work necessary to prepare, add, maintain and alter the Premises for Tenant's communications operations and to install utility lines and transmission lines connecting antennas to transmitters and receivers. All of Tenant's construction and installation work shall be performed at Tenant's sole cost and expense and in a good and workmanlike manner, and in compliance with all applicable laws, codes and ordinances. Tenant shall notify Landlord at least five (5) business days in advance of commencing construction of the Tenant Facilities, for the purposes of coordinating a mutually acceptable schedule for said construction. Title to the Tenant Facilities and any equipment placed on the Premises by Tenant shall be held by Tenant or its lenders or assigns and are not fixtures. Tenant has the right to remove the Tenant Facilities at its sole expense on or before the expiration or earlier termination of this Agreement, and Tenant shall repair any damage to the Premises caused by such removal. Upon the expiration or earlier termination of this Agreement, Tenant shall remove the Tenant Facilities from the Property unless otherwise agreed upon in writing by both parties.

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6.2 Upon Tenant's completion of the construction of the tower, the ownership of the tower shall transfer to the Landlord, with no further instrument evidencing such transfer required. Landlord shall be solely responsible for the repair and maintenance of the tower except to the extent any repairs are necessitated by damage caused by Tenant or Tenant's agents, contractors, or employees.

Deleted: Thereafter, Landlord shall accept and take title to the tower "as-is," without warranty or representation, express or implied, of any kind, except any manufacturer's warranty, if available, and

6.3 Notwithstanding the provisions of Paragraph 12, Insurance, Tenant shall insure the tower under an All Risk Property Insurance for their full replacement value.

Deleted: Landlord shall indemnify, defend, and hold Tenant harmless from any losses, liabilities, damages, costs, and expenses (including reasonable attorneys' and consultants' fees, costs and expenses) arising from the construction, maintenance, or repair of the tower.

6.4: Notwithstanding the provisions of Paragraph 11, Destruction or Condemnation, in the event the tower is damaged or destroyed after acceptance of the tower, Landlord shall be obligated to rebuild the tower with promptness, subject solely to delays beyond Landlord's control and delays in the making of insurance adjustments by Landlord.

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6.5: Notwithstanding the provision of Paragraph 18 – Marking and Lighting, Tenant shall ensure the completed tower complies with all then-applicable marking and lighting requirements prior to conveying the tower to Landlord. Upon acceptance of the tower, Landlord shall be solely responsible for complying with any tower marking and lighting requirements of the FAA and FCC.

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7. Access and Utilities.

7.1 Landlord shall provide Tenant, Tenant's employees, agents, contractors, subcontractors and assigns with access to the Premises twenty-four (24) hours a day, seven (7) days a week, at no charge to Tenant for emergencies. Landlord grants to Tenant, and Tenant's agents, employees and contractors, a non-exclusive right and easement for pedestrian and vehicular ingress and egress across the Property, and such right and easement may be described generally in Exhibit B. Tenant shall give Landlord forty-eight (48) hours notice prior to performing any maintenance on the Tenant Facilities. If there is an emergency at the Tenant Facility, Tenant shall have the right to access the site immediately. As this site is a public park, Tenant shall work to schedule any maintenance on the Tenant Facility so as to not interfere with any special events, tournaments or private rentals.

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7.2 Landlord shall maintain all existing access driveways from the nearest public roadway to the Premises in a manner sufficient to allow pedestrian and vehicular access at all times under normal weather conditions. Landlord shall be responsible for maintaining and repairing such driveways, at its sole expense, except for any damage caused by Tenant's use of such driveways. Landlord will not construct any new roadways or driveways for purposes of access to Tenant Facilities.

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7.3 Tenant shall supply 40 amps of electrical service to the facilities at its sole expense.

Deleted: to Tenant at no charge to Tenant through Landlord owned

8. Interference. Tenant shall operate the Tenant Facilities in compliance with all Federal Communications Commission ("FCC") requirements including those prohibiting interference to communications facilities of Landlord or other lessees or licensees of the Property, provided that the installation and operation of any such facilities predate the installation of the Tenant Facilities. Subsequent to the installation of the Tenant Facilities, Landlord will not, and will not permit its lessees or licensees to, install new equipment on or make any alterations to the Property or property contiguous thereto owned or controlled by Landlord, if such modifications are likely to cause interference with Tenant's operations. In the event interference occurs, Landlord agrees to use best efforts to eliminate such interference in a reasonable time period. Landlord's failure to comply with this paragraph shall be a material breach of this Agreement.

Deleted: 7.4 Tenant shall notify Landlord prior to any access to the property due to the facility being a public park. Due to the facility being a public park, special events, tournaments or private rentals may not be conducive for maintenance or access of the structure; therefore a proposed time and date will be presented to the Tenant from the Landlord at the time of the initial notification.¶

9. Taxes. Tenant shall pay personal property taxes assessed against the Tenant Facilities and Landlord shall pay when due, all real property taxes and all other taxes, fees and assessments attributable to the Premises or this Agreement.

10. Termination.

10.1 This Agreement may be terminated without further liability on thirty (30) days prior written notice as follows: (i) by either party upon a default of any covenant or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default, except that this Agreement shall not be terminated if the default cannot reasonably be cured within such sixty (60) day period and the defaulting party has commenced to cure the default within such sixty (60) day period and diligently pursues the cure to completion; provided that the grace period for any monetary default is ten (10) days from receipt of written notice. During the Due Diligence Period, this Agreement may be terminated by Tenant without further liability for any reason or for no reason, provided Tenant delivers written notice of termination to Landlord prior to the Commencement Date.

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10.2 This Agreement may also be terminated by Tenant without further liability on thirty (30) days prior written notice (i) if Tenant is unable to reasonably obtain or maintain any certificate, license, permit, authority or approval from any governmental authority, thus, restricting Tenant from installing, removing, replacing, maintaining or operating the Tenant Facilities or using the Premises in the manner intended by Tenant; (ii) if Tenant determines that the Premises are not appropriate for its operations for economic, environmental or technological reasons, including without limitation, signal strength, coverage or interference, or (iii) if Tenant otherwise determines, within its sole discretion, that it will be unable to use the Premises for Tenant's intended purpose.

11. Destruction or Condemnation. If the Premises or Tenant Facilities are damaged, destroyed, condemned or transferred in lieu of condemnation, Tenant may elect to terminate this Agreement as of the date of the damage, destruction, condemnation or transfer in lieu of condemnation by giving notice to Landlord no more than forty-five (45) days following the date of such damage, destruction, condemnation or transfer in lieu of condemnation. If Tenant chooses not to terminate this Agreement, Rent shall be reduced or abated in proportion to the actual reduction or abatement of use of the Premises.

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12. Insurance; Subrogation; and Indemnity.

12.1 Tenant, at Tenant's sole cost and expense, shall provide Commercial General Liability Insurance covering bodily injury and property damage with a combined single limit of at least One Million and No/100 Dollars (\$1,000,000.00) and Two Million and no/100 Dollars (\$2,000,000.00) in aggregate. Such insurance shall insure against all liability of Tenant, its employees and agents arising out of or in connections with Tenant's use, occupancy and maintenance of the Premises. Tenant may satisfy this requirement by obtaining the appropriate endorsement to any master policy of liability insurance Tenant may maintain. Within thirty (30) days following the Effective Date, Tenant shall provide Landlord with a certificate of insurance, evidencing the coverage required by this section and naming Landlord as an additional insured.

Deleted: 12.3 Landlord and Tenant hereby mutually release each other (and their successors or assigns) from liability and waive all right of recovery against the other for any loss or damage covered by their respective first-party property insurance policies for all perils insured thereunder. In the event of such insured loss, neither party's insurance company shall have a subrogated claim against the other.¶

12.2 Landlord, at Landlord's sole cost and expense, shall maintain liability insurance coverage sufficient to provide for the liability limits established by the Tennessee Governmental Tort Liability Act.

12.4 ~~Other than from arising from or related to the negligence or willful misconduct of the Landlord, its employees, contractors or agents, Tenant shall indemnify, defend and hold Landlord harmless from and against all claims, losses, liabilities, damages, costs, and expenses (including reasonable attorneys' and consultants' fees, costs and expenses) (collectively "Losses") arising from the indemnifying party's breach of any term or condition of this Agreement or from the negligence or willful misconduct of the indemnifying party or its agents, employees or contractors in or about the Property. The duties described in this Paragraph shall apply as of the Effective Date of this Agreement and survive the termination of this Agreement.~~

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12.5 Flood Insurance. Tenant acknowledges that Facilities are located in the 100-year Flood Plain, as determined by the Federal Emergency Management Agency. As such, Tenant agrees to obtain flood insurance at its sole expense.

13 Assignment and Subleasing:

(a) Tenant may assign this Lease in its entirety only upon the prior written approval of Landlord, not to be unreasonably withheld, conditioned or delayed; provided that Tenant may assign this Lease to a parent, affiliate, subsidiary or purchaser of all or substantially all of Tenant's assets upon prior written notice to Landlord. Tenant may sublease, partially assign, or otherwise co-locate an additional commercial mobile radio service provider ("CMRS Provider") upon a portion of the Premises, with the prior approval of Landlord, not to be unreasonably withheld, conditioned or delayed and subject to the terms of this section.

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(b) In the event Tenant desires to collocate an additional commercial mobile radio service ("CMRS") provider on the Premises, whether through a sublease or partial assignment, such CMRS provider shall be required to obtain a separate ground lease and/or consent agreement from Landlord, depending on whether the CMRS provider is located within or outside the Premises. The parties understand that: (i) Landlord may charge the CMRS provider for such ground lease and/or consent agreement, at rates determined at Landlord's reasonable discretion; (ii) Landlord and Tenant shall reasonably cooperate to locate additional CMRS providers on the Property, provided that Landlord shall have no obligation to locate CMRS providers that do not meet Landlord's reasonable financial integrity standards; (iii) Landlord may not charge an additional amount to Tenant for the placement of a CMRS provider; and (iv) in the event of a default or breach by a CMRS provider to either party, Landlord and Tenant shall reasonably cooperate with the other party to evict or otherwise remove the defaulting CMRS.

Deleted: (c) Additionally, Tenant may, upon notice to Landlord, mortgage or grant a security interest in this Lease and the Antenna Facilities, and may assign this Lease and the Antenna Facilities to any mortgagees or holders of security interests, including their successors or assigns (collectively "Mortgagees"), provided such Mortgagees agree to be bound by the terms and provisions of this Lease. In such event, Landlord shall execute such consent to leasehold financing as may reasonably be required by Mortgagees. Landlord agrees to notify Tenant and Tenant's Mortgagees simultaneously of any default by Tenant and to give Mortgagees the same right to cure any default as Tenant or to remove any property of Tenant or Mortgagees located on the Premises, except that the cure period for any Mortgagees shall not be less than thirty (30) days after receipt of the default notice, as provided in Section 9 of this Lease. All such notices to Mortgagees shall be sent to Mortgagees at the address specified by Tenant. Failure by Landlord to give Mortgagees such notice shall not diminish Landlord's rights against Tenant, but shall preserve all rights of Mortgagees to cure any default and to remove any property of Tenant or Mortgagees located on the Premises as provided in this Lease.

14. Title and Quiet Enjoyment.

14.1 Landlord represents and warrants that (i) it has full right, power, and authority to execute this Agreement, (ii) Tenant may peacefully and quietly enjoy the Premises and such access thereto, provided that Tenant is not in default hereunder after notice and expiration of all cure periods, (iii) it has obtained all necessary approvals and consents, and has taken all necessary action to enable Landlord to enter into this Agreement and allow Tenant to install and operate the Facility on the Premises, including without limitation, approvals and consents as may be necessary from other tenants, licensees and occupants of Landlord's Property, and (iv) the Property and access rights are free and clear of all liens, encumbrances and restrictions except those of record as of the Effective Date.

14.2 Tenant has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice. If, in the opinion of Tenant, such title report shows any defects of title or any liens or encumbrances which may adversely affect Tenant's use of the Premises, Tenant shall have the right to terminate this Agreement immediately upon written notice to Landlord.

15. Environmental. As of the Effective Date of this Agreement: (1) Tenant hereby represents and warrants that it shall not use, generate, handle, store or dispose of any Hazardous Material in, on, under, upon or affecting the Property in violation of any applicable law or regulation, and (2) Landlord hereby represents and warrants that (i) it has no knowledge of the presence of any Hazardous Material located in, on, under, upon or affecting the Property in violation of any applicable law or regulation; (ii) no notice has been received by or on behalf of Landlord from any governmental entity or any person or entity claiming any violation of any applicable environmental law or regulation in, on, under, upon or affecting the Property; and (iii) it will not permit itself or any third party to use, generate, handle, store or dispose of any Hazardous Material in, on, under, upon, or affecting the

Deleted: 13. Assignment. Tenant may assign this Agreement at any time with notice to be provided to Landlord as soon thereafter as reasonably possible. Assignment/Subcontracting. Neither party may assign any rights or obligations under these Standard Terms and Conditions or any Statement of Work without the prior written consent of the other party

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Property in violation of any applicable law or regulation. The provisions of this Paragraph 15 shall apply as of the Effective Date of this Agreement and survive termination of this Agreement. **“Hazardous Material”** means any solid, gaseous or liquid wastes (including hazardous wastes), regulated substances, pollutants or contaminants or terms of similar import, as such terms are defined in any applicable environmental law or regulation, and shall include, without limitation, any petroleum or petroleum products or by-products, flammable explosives, radioactive materials, asbestos in any form, polychlorinated biphenyls and any other substance or material which constitutes a threat to health, safety, property or the environment or which has been or is in the future determined by any governmental entity to be prohibited, limited or regulated by any applicable environmental law or regulation. Notwithstanding the foregoing, and to the extent permitted by law, the parties acknowledge and affirm that no indemnification from Tenant shall extend to any Hazardous Material or environmental condition unless the same is caused by Tenant and that Tenant shall have no liability or responsibility regarding the failure to comply with any applicable environmental law or regulation by any party other than Tenant, or for the disposal, generation, or use of any Hazardous Material by Landlord, its employees, contractors, agents or predecessors-in-interest.

Deleted: Without limiting Paragraph 12.4, Landlord and Tenant shall each indemnify, defend and hold the other harmless from and against all Losses (specifically including, without limitation, attorneys', engineers', consultants' and experts' fees, costs and expenses) arising from (i) any breach of any representation or warranty made in this Paragraph 15 by such party, and/or (ii) environmental conditions or noncompliance with any applicable law or regulation that result, in the case of Tenant, from operations in or about the Property by Tenant or Tenant's agents, employees or contractors, and in the case of Landlord, from the ownership or control of, or operations in or about, the Property by Landlord or Landlord's predecessors in interest, and their respective agents, employees, contractors, tenants, guests or other parties.

Waiver of Landlord's Lien. To the extent permitted by law, Landlord hereby waives any and all lien rights it may have, statutory or otherwise concerning the Tenant Facilities or any portion thereof which shall be deemed personal property for the purposes of this Agreement, whether or not the same is deemed real or personal property under applicable laws, and Landlord gives Tenant and Mortgagees the right to remove all or any portion of the same from time to time, whether before or after a default under this Agreement, in Tenant's and/or Mortgagee's sole discretion and without Landlord's consent. THIS IS A MUST HAVE...

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Deleted: Waiver of Landlord's Lien Landlord hereby waives any and all lien rights it may have, statutory or otherwise concerning the Tenant Facilities or any portion thereof which shall be deemed personal property for the purposes of this Agreement, whether or not the same is deemed real or personal property under applicable laws, and Landlord gives Tenant and Mortgagees the right to remove all or any portion of the same from time to time, whether before or after a default under this Agreement, in Tenant's and/or Mortgagee's sole discretion and without Landlord's consent.

17. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by for next-business-day delivery by a nationally recognized overnight carrier to the following addresses:

If to Tenant, to:	With a copy to:	If to Landlord, to:
Clear Wire, LLC Attn: Site Leasing 4400 Carillon Point Kirkland, WA 98033 Telephone: 425-216-7600 Fax: 425-216-7900 Email: siteleasing@clearwire.com	Clear Wire, LLC Attention: Legal Department 4400 Carillon Point Kirkland, WA 98033 Telephone: 425-216-7600 Fax: 425-216-7900	City of Franklin 109 3 rd Ave. Franklin, TN 37064

Landlord or Tenant may from time to time designate any other address for this purpose by written notice to the other party. All notices hereunder shall be deemed received upon actual receipt or refusal to accept delivery.

18. Marking and Lighting. Tenant shall be responsible for compliance with all marking and lighting requirements of the Federal Aviation Administration ("FAA") and the FCC. Should Landlord be cited because the Property is not in compliance and should Tenant fail to cure the conditions of noncompliance, Landlord may either terminate this Agreement or proceed to cure the conditions of noncompliance at Tenant's expense, which amounts shall be added to the Rent and any other charges or amounts due, or coming due, to Landlord. If the FAA mandates that the new light pole structure be lighted, Tenant shall install the required lighting kit at their expense and shall pay any cost to monitor such lighting.
(THIS IS A LEGAL ISSUE AS WE WILL NOT OWN THE STRUCTURE)

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19. Miscellaneous.

19.1 If Tenant is to pay Rent to a payee other than the Landlord, Landlord shall notify Tenant in advance in writing of the payee's name and address.

19.3 If any provision of the Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is

Deleted: 19.2 The substantially prevailing party in any legal claim arising hereunder shall be entitled to its reasonable attorney's fees and court costs, including appeals, if any.¶

SITE NAME
SITE NUMBER:

held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

19.4 Terms and conditions of this Agreement which by their sense and context survive the termination, cancellation or expiration of this Agreement will so survive.

19.5 This Agreement shall be governed under law of the State in which the Premises are located, and be binding on and inure to the benefit of the successors and permitted assignees of the respective parties. Venue shall be in the courts of Williamson County, Tennessee, or the federal district court of the Middle District of Tennessee.

19.6 A Memorandum of Agreement in the form attached hereto as Exhibit C may be recorded by Tenant confirming the (i) effectiveness of this agreement, (ii) expiration date of the Term, (iii) the duration of any Renewal Terms, and/or other reasonable terms consistent with this Agreement.

19.7 All Exhibits referred herein are incorporated herein for all purposes.

19.8 Premises are currently under a 25-year warranty and service commitment by the manufacturer, Musco Lighting. Tenant shall use a contractor that has been approved by Musco Lighting for the installation of the lighting fixtures to ensure warranty is not invalidated. Landlord shall provide to Tenant a contact with Musco Lighting and shall provide Tenant with copy of the warranty.

Deleted: The Tenant shall provide written validation that Tenant's occupying Premises does not adversely affect this warranty.

19.9 This Agreement constitutes the entire Agreement between the parties, and supersedes all understandings, offers, negotiations and other leases concerning the subject matter contained herein. There are no representations or understandings of any kind not set forth herein. Any amendments, modifications or waivers of any of the terms and conditions of this Agreement must be in writing and executed by both parties.

Deleted: 19.8 Landlord shall make a diligent and good faith effort to obtain a Nondisturbance Agreement for the benefit of Tenant from each lender with a security interest recorded upon the title to the Site at the time of execution of this Agreement.¶

IN WITNESS WHEREOF, the parties have entered into this Agreement effective as of the date first above written.

LANDLORD:

TENANT:

City of Franklin
A Tennessee Municipality

Clear Wireless, LLC, a Nevada limited liability company

By: _____
Name: _____
Title: _____
Date: _____
Tax I.D.: _____

By: _____
Name: _____
Title: _____
Date: _____

Deleted: 19.10 Landlord agrees not to disclose, without the written consent of Tenant, any of the terms of this Agreement or any other written agreement between the parties relating to the privileges granted herein, except as required by governmental authority, in which case Landlord shall inform Tenant prior to divulging such information.¶

SITE NAME
SITE NUMBER:

EXHIBIT A

DESCRIPTION OF LAND

to the Agreement dated _____, 200_____, by and between City of Franklin, Tennessee Municipality, as Landlord, and Clear Wireless, LLC, a Nevada limited liability company, as Tenant.

Field Code Changed

Field Code Changed

The Land is described and/or depicted as follows (metes and bounds description):

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A WRITTEN DESCRIPTION OF THE LAND WILL BE PRESENTED HERE OR ATTACHED HERETO

SITE NAME
SITE NUMBER:

EXHIBIT B

DESCRIPTION OF PREMISES

to the Agreement dated _____, 200_____, by and between City of Franklin, Tennessee Tennessee Municipality, as Landlord, and Clear Wireless, LLC, a Nevada limited liability company, as Tenant.

Field Code Changed

Field Code Changed

The Premises are described and/or depicted as follows:

A DRAWING OF THE PREMISES WILL BE PRESENTED HERE OR ATTACHED HERETO

Notes:

1. Tenant may replace this Exhibit with a survey of the Premises once Tenant receives it.
2. The Premises shall be setback from the Property's boundaries as required by the applicable governmental authorities.
3. The access road's width will be the width required by the applicable governmental authorities, including police and fire departments.
4. The type, number, mounting positions and locations of antennas and transmission lines are illustrative only. The actual types, numbers, mounting positions and locations may vary from what is shown above.
5. The locations of any utility easements are illustrative only. The actual locations will be determined by the servicing utility company in compliance with all local laws and regulations.

SITE NAME
SITE NUMBER:

EXHIBIT C

COMMUNICATIONS FACILITY

to the Agreement dated _____, 200____, by and between City of Franklin, Tennessee, Tennessee Municipality, as Landlord, and Clear Wireless, LLC, a Nevada limited liability company, as Tenant.

Field Code Changed

Field Code Changed

**RECORDED AT REQUEST OF, AND
WHEN RECORDED RETURN TO:**

400 Carillon Point
Kirkland, WA 98033
Attn: Property Manager

MEMORANDUM OF AGREEMENT

APN: _____

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This MEMORANDUM OF AGREEMENT is entered into on _____, 200____, by City of Franklin, Tennessee, a Tennessee Municipality with an address at 109 3rd Ave. South, Franklin, Tennessee 37064 (hereinafter referred to as "Owner" or "Landlord") and Clear Wireless, LLC, a Nevada limited liability company, with an address at 4400 Carillon Point 0, Kirkland, WA 98033 (hereinafter referred to as "Clearwire" or "Tenant").

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1. Owner and Clearwire entered into a Communication Tower Agreement ("Agreement") dated as of _____, 200____, effective upon full execution of the parties ("Effective Date") for the purpose of Clearwire undertaking certain Investigations and Tests and, upon finding the Property appropriate, for the purpose of installing, operating and maintaining a communications facility and other improvements. All of the foregoing is set forth in the Agreement.

2. The term of Clearwire's tenancy under the Agreement is for five (5) years commencing on start of construction of the Tenant Facilities or one hundred twenty (120) days following the Effective Date, whichever first occurs ("Term Commencement Date"), and terminating on the tenth (10th) anniversary of the Term Commencement Date with One (1) successive three (3) year options to renew.

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3. The Land that is the subject of the Agreement is described in Exhibit A annexed hereto. The portion of the Land being leased to Tenant and all necessary access and utility easements (the "Premises") are set forth in the Agreement.

In witness whereof, the parties have executed this Memorandum of Agreement as of the day and year first written above.

LANDLORD:

City of Franklin, Tennessee
a Tennessee Municipality

TENANT:

Clear Wireless, LLC,
a Nevada limited liability company

By: EXHIBIT ONLY – DO NOT EXECUTE

By: EXHIBIT ONLY – DO NOT EXECUTE

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

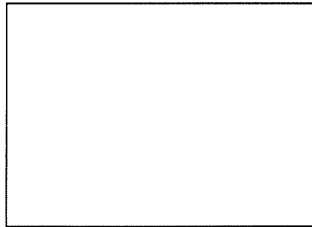
SITE NAME
SITE NUMBER:

[Notary block for a Corporation]

STATE OF _____)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of City of Franklin, a Tennessee Municipality, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



(Use this space for notary stamp/seal)

Notary Public
Print Name _____
My commission expires _____

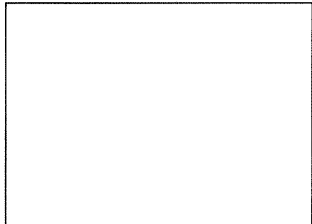
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[Notary block for Tenant]

STATE OF _____)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the _____ of Clear Wireless, LLC, a Nevada limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



(Use this space for notary stamp/seal)

Notary Public
Print Name _____
My commission expires _____

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