

OPTION & LAND LEASE BETWEEN THE CITY OF RAPID CITY AND SBA TOWERS IX, LLC

This Option and Land Lease, hereinafter referred to as "Lease", is made the last day executed below by and between **CITY OF RAPID CITY**, a South Dakota municipal corporation, having an address of 300 6th Street, Rapid City, South Dakota 57701, hereinafter referred to as "Lessor", and **SBA TOWERS IX, LLC**, a Delaware limited liability company, having an office at 8051 Congress Avenue, 2nd Floor, Boca Raton, Florida 33487-1307, hereinafter referred to as "Lessee."

1. The Option.

(a) For the sum of One Thousand Two Hundred and No/100 Dollars (\$1,200.00) (the "Option Fee"), to be paid to Lessor by Lessee upon execution of this Lease and other good and valuable consideration, Lessor hereby grants to Lessee the exclusive and irrevocable option for one (1) year from the date hereof (the "Initial Option Period"), to lease the Leased Space (as defined below) on the terms and conditions set forth below (the "Option"). The Option may be extended for an additional one (1) year period upon written notification to Lessor by Lessee accompanied by the payment of an additional One Thousand Two Hundred and No/100 Dollars (\$1,200.00) (the "Additional Option Fee"), delivered to Lessor prior to the end of the Initial Option Period. The Initial Option Period, as it may be extended, is referred to herein as the "Option Period."

(b) In the event the Additional Option Fee is not made and/or written notice not delivered by the due date for the same, then the Option will terminate and this Lease will terminate and Lessor will be entitled to retain all previously paid sums as full payment for the Option granted hereunder. However, if Lessor accepts any Additional Option Fee, Rent (as defined below), and/or written notice after the due date for the same, then Lessee's failure to make timely payment of the additional fee will be deemed waived and this Lease will be reinstated. Upon Lessee's exercise of the Option, Lessee shall be entitled to a credit for all Option Fees paid against Rent due under this Lease.

(c) During the Option Period, Lessee shall have the right to enter the Premises (as defined below) to conduct tests and studies, at Lessee's expense, to determine the suitability of the Leased Space for Lessee's intended use. The tests may include, without limitation, surveys, soil tests, environmental assessments and radio wave propagation measurements.

(d) Lessee may exercise the Option by delivery of written notice to Lessor in accordance with the Notice provision specified herein. Upon Lessee's exercise of the Option, the Initial Term (as defined below) shall commence.

2. Leased Space and Premises. Upon Lessee's exercise of the Option, Lessor shall lease, and hereby leases, to Lessee approximately 3,600 (45' x 80') square feet of space as depicted in Exhibit A attached hereto (the "Leased Space") within the property located approximately at East Catron Blvd., Rapid City, County of Pennington, State of South Dakota 57701, Property Parcel ID: 3819200001 with the legal description set forth in Exhibit B attached hereto ("Premises"). Lessor also hereby grants to Lessee the right to survey the Leased Space at Lessee's cost. The Leased Space legal and access and utility easement set forth in the survey will replace Exhibit A as soon as it becomes available. In the event of any discrepancy between the description of the Leased Space contained herein and the survey, the survey will control. The Leased Space will be utilized to construct, support and operate a wireless communications facility, including a communications tower, antennas, cables, and related structures and improvements (collectively the "Structures"), including the uses as permitted and

described in Section 11 of this Lease and for any other purpose with the Lessor's prior written consent which shall not be unreasonably withheld, conditioned or delayed. Lessee agrees to accommodate Lessor's communications equipment, used exclusively for Lessor's purposes, primary business, at one mutually agreeable elevation on the tower at a rate of one dollar (\$1.00) per year so long as tower space, capacity and ground space for any required Lessor ground equipment are available. Lessor's equipment, installation height and ground space shall be mutually agreed upon by Lessee and Lessor at a later date. Prior to installation of any equipment, Lessor agrees to execute an Antenna Site Agreement ("ASA"), substantially similar to the one attached hereto as Exhibit C. Lessor at Lessor's sole cost and expense shall be responsible for the installation of its antennas and equipment on the tower. Lessor shall be entitled to replace their communication equipment with equivalent equipment upon prior written amendment of the ASA. Any replacement of Lessor's initial equipment shall be installed at the sole cost and expense of Lessor.

3. Term. The initial term of this Lease will be five (5) years (the "Initial Term") from the "Commencement Date" specified below (in no event shall this date be earlier than the date on which Lessee exercises the Option) and shall automatically renew for up to six (6) additional terms of five (5) years each (each a "Renewal Term", collectively with the Initial Term referred to hereinafter as the "Term") unless Lessee notifies Lessor of its intention not to renew prior to commencement of the succeeding Renewal Term.

4. Rent. The rent for the Lease will be One Thousand Two Hundred and No/100 Dollars (\$1,200.00) per month (the "Rent"), paid monthly in advance, which Lessee will pay to Lessor at the place as Lessor will designate to Lessee in writing. If the Initial Term or any Renewal Term does not begin on the first day or end on the last day of a month, the Rent for that partial month will be prorated by multiplying the monthly Rent by a fraction, the numerator of which is the number of days of the partial month included in the Initial Term or Renewal Term and the denominator of which is the total number of days in the full calendar month. Beginning with the second (2nd) year of this Lease and every year thereafter, the then current monthly rental fee will be increased by three (3%) percent. Each such year shall commence on the corresponding anniversary of the Commencement Date (as defined below). Lessee is entitled to withhold payment of Rent until such time as Lessee receives a completed W-9 form from Lessor, setting forth the Federal tax identification number of Lessor or the person or entity to whom the Rent checks are to be made payable as directed in writing by Lessor. The parties acknowledge and agree that the foregoing is a reasonable requirement in order to allow Lessee to comply with applicable legal requirements.

In addition to the Rent, Lessor shall receive an additional fifteen (15%) percent revenue sharing beginning with the second (2nd) carrier for each broadband telephony sublessee, including but not limited to, PCS providers such as AT&T, Verizon, T-Mobile and Sprint-Nextel, using the Structures or the Leased Space. Notwithstanding the foregoing, all revenue sharing contained herein shall be payable one month in arrears upon Lessee's receipt of rental payment from its sublessees. In the event the first (1st) sublessee is no longer a tenant on the Leased Space, the second (2nd) sublessee who collocated on the Leased Space will take the place of the first (1st) sublessee for purposes of being excluded from the revenue sharing provisions of this section.

5. Ingress and Egress. Lessor hereby grants to Lessee easements (the "Easements") for ingress, egress, regress and parking of vehicles (including trucks and heavy machinery) over the Premises

adjacent to the Leased Space for construction, operation and maintenance of the Structures on the Leased Space, and for installation, construction, operation and maintenance of underground and above ground telephone, telegraph, fiber and power lines, in connection with its use of the Leased Space. The term of these Easements will commence upon exercise of the Option and will continue until the last to occur of (i) expiration of the Initial Term or Renewal Term, or (ii) removal by Lessee of all of the Structures, and any other property from the Leased Space after expiration of the Initial Term or Renewal Term. The location and configuration of the Easements will be agreed upon by the parties within ten (10) business days after the latter of Lessee's exercise of the Option, or Lessee's approval of the survey. The Easements shall be included in any recorded Memorandum (as hereinafter defined) of this Lease. In addition, at Lessee's request and expense, these Easements will be set forth in a separate easement agreement (the "Easement Agreement") which Lessor and Lessee agree to execute and which Lessee will have recorded as an encumbrance on the property of Lessor. In all events, the Easements and this Lease shall be binding upon all subsequent owners, successors and assigns of the Premises.

Lessee agrees that Lessor may, at Lessor's expense, relocate the above described Easements to another comparable location on the Premises provided that: (a) Lessee receives no less than sixty (60) days prior written notice thereof; (b) Lessee approves the proposed new location of the easements, which approval will not be unreasonably withheld or delayed; (c) Lessee's access and beneficial use and enjoyment of the Leased Space is not interrupted, obstructed or materially affected; and (d) the utility services to the Leased Space are not interrupted.

6. Title and Quiet Possession. Lessor represents and covenants that Lessor owns the Leased Space and the Premises (including the property that is subject to the Easements) in fee simple terms, free and clear of all liens, encumbrances and restrictions of every kind and nature, except for those as set forth below:

<u>Name of Lien holder</u>	<u>Type of Lien</u>
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Lessor represents and warrants that there are no matters affecting title that would prohibit, restrict or impair the leasing of the Leased Space, use or occupancy thereof, or the granting of the Easements in accordance with the terms and conditions of this Lease. Lessor represents and warrants to Lessee that Lessor has the full right, power and authority to enter into this Lease and that Lessee will have quiet and peaceful possession of the Leased Space and the Easements throughout the Term

7. Subordination, Non-disturbance and Attornment.

(a) Lessee agrees that this Lease will be subject and subordinate to any mortgages or deeds of trust now or hereafter placed upon the Leased Space and to all modifications thereto, and to all present and future advances made with respect to any such mortgage or deed of trust; provided that, the holder of any such instrument agrees in writing that Lessee's possession of the Leased Space will not be disturbed so long as Lessee will continue to perform its duties and obligations under this Lease and Lessee's obligation to perform the duties and obligations will not be in any way increased or its rights diminished by the provisions of this paragraph. Lessee agrees to attorn to the mortgagee, trustee, or

beneficiary under any such mortgage or deed of trust, and to the purchaser in a sale pursuant to the foreclosure thereof; provided that, Lessee's possession of the Leased Space will not be disturbed so long as Lessee will continue to perform its duties and obligations under this Lease. Lessee's obligations hereunder are conditioned upon receipt by Lessee, within ten (10) business days after Lessee's notice of its intent to exercise the Option, or within ten (10) business days after the date of creation of any future mortgages or deeds of trust, of a Subordination, Non-disturbance and Attornment Agreement in form reasonably acceptable to Lessee, from any holder of a mortgage, deed to secure debt, or deed of trust to which this Lease is, or will become, subordinate.

(b) **Secured Parties.** Lessee may from time to time grant to certain lenders selected by Lessee and its affiliates (the "Lenders") a lien on and security interest in Lessee's interest in this Lease and all assets and personal property of Lessee located on the Leased Space (the "Personal Property") as collateral security for the repayment of any indebtedness to the Lenders. Lessor hereby agrees to subordinate any security interest, lien, claim or other similar right, including, without limitation, rights of levy or distraint for rent, Lessor may have in or on the Personal Property, whether arising by agreement or by law, to the liens and/or security interests in favor of the Lenders, whether currently existing or arising in the future. Nothing contained herein shall be construed to grant a lien upon or security interest in any of Lessor's assets. Should Lender exercise any rights of Lessee under this Lease, including the right to exercise any renewal option(s) or purchase option(s) set forth in this Lease, Lessor agrees to accept such exercise of rights by Lenders as if same had been exercised by Lessee, and Lessor, by signing below, confirms its agreement with this provision. If there shall be a monetary default by Lessee under this Lease, Lessor shall accept the cure thereof by Lenders within fifteen (15) days after the expiration of any grace period provided to Lessee under this Lease to cure such default, prior to terminating the Lease. If there shall be a non-monetary default by Lessee under this Lease, Lessor shall accept the cure thereof by Lenders within thirty (30) days after the expiration of any grace period provided to Lessee under this Lease to cure such default, prior to terminating this Lease. This Lease may not be amended in any respect which would be reasonably likely to have a material adverse effect on Lenders' interest therein or surrendered, terminated or cancelled, without the prior written consent of Lenders. If this Lease is terminated as a result of a Lessee default or is rejected in any bankruptcy proceeding, Lessor will enter into a new lease with Lenders or their designee on the same terms as this Lease within fifteen (15) days of Lenders' request made within thirty (30) days of notice of such termination or rejection, provided Lenders pay all past due amounts under this Lease. The foregoing is not applicable to normal expirations of the term of this Lease. In the event Lessor gives Lessee any notice of default under the terms of this Lease, Lessor shall simultaneously give a copy of such notice to Lender at an address to be supplied by Lessee. Lessee shall have the right to record a memorandum of the terms of this paragraph.

8. Governmental Approvals and Compliance. During the Term, Lessee will make reasonable efforts to comply with all applicable laws affecting Lessee's use or occupancy of the Leased Space, the breach of which might result in a penalty on Lessor or forfeiture of Lessor's title to the Leased Space. Lessee will not commit, or suffer to be committed, any waste on the Leased Space. During the Option Period and the Term Lessor agrees to cooperate with Lessee in order to obtain the necessary permits for construction

and use of the Leased Space and its Structures (including any modification(s) to the tower or Leased Space or the addition(s) of equipment or sublessees to the tower or Leased Space), including, but not limited to, zoning approvals/permits and building permits. Lessor further agrees during the Option Period and the Term, not to take any action that may adversely affect Lessee's ability to obtain all of the necessary permits required for construction of the Structures. Lessee will obtain any necessary governmental licenses or authorizations required for the construction and use of Lessee's intended Structures on the Leased Space and will furnish copies of same to Lessor as same are issued. If and to the extent Lessee is at any time required to landscape or provide screening around the outside of the tower or Leased Space, Lessor hereby grants Lessee an easement ten (10) feet in width around the perimeter of and adjacent to the Leased Space in order to comply with such landscaping or screening requirements.

Notwithstanding the foregoing, nothing herein shall exempt Lessee from permitting and zoning processes required by the jurisdiction, nor shall any Lessor action required hereunder be construed as granting any concession related to building and/or zoning code regulations.

9. Assignment and Subleasing. Lessee is expressly permitted to assign, or transfer its rights under this Lease to entities controlling, controlled by or under common control with Lessee, as part of a sale of all or substantially all of its assets, or to its lender in connection with financing. Upon such assignment, Lessee shall be relieved of all liabilities and obligations under this Lease. Any transfer of this Lease by merger, consolidation or liquidation or any change in the ownership of, or power to vote, the majority of its outstanding voting stock shall not constitute an assignment for the purposes of this paragraph. Otherwise, Lessee may not assign this Lease without the prior written consent of Lessor, which consent will not be unreasonably withheld, conditioned or delayed. Lessee shall have the right to freely sublet or transfer space to third parties on the Leased Space without obtaining the prior written consent of Lessor. Lessor may not assign the Rent or this Lease or any rights hereunder, or grant any interest in any portion of the Premises, except in connection with conveyance of fee simple title to the Premises, without the prior written consent of Lessee, which consent shall not be unreasonably withheld. In the event that Lessee from time to time subleases all or a portion of the Leased Space or as otherwise reasonably required by Lessee for work at the Leased Space, Lessor hereby grants to Lessee a temporary construction easement over such portion of the Premises as is reasonably necessary for such work. Following the completion of such work, Lessee shall, at Lessee's sole cost and expense, promptly repair any damage to the temporary easement area arising from Lessee's use thereof.

10. Notices. All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to this Lease will be in writing, signed by the notifying party, or officer, agent or attorney of the notifying party, and will be deemed to have been effective upon delivery if served personally, including but not limited to delivery by messenger, overnight courier service or by overnight express mail, or upon posting if sent by registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

To Lessor: City of Rapid City
Attn: Public Works Director
300 Sixth Street
Rapid City, SD 57701

Phone # - (605) 394-4165

Rent Payable to: City of Rapid City
Attn: Finance Office
300 Sixth Street
Rapid City, SD 57701

To Lessee: SBA TOWERS IX, LLC
8051 Congress Avenue
Boca Raton, FL 33487-1307
RE: Rapid City 8/SD15772-B
Attn: Site Administration
Phone # - (561) 995-7670

The address to which any notice, demand, or other writing may be delivered to any party as above provided may be changed by written notice given by the party as above provided. Simultaneously with any notice of default given to Lessee under the terms of this Lease, Lessor shall deliver a copy of such notice to Lender at an address to be provided by Lessee.

11. Lessee Improvements. Lessee has the right, at its sole expense, to make the improvements on the Leased Space as it may deem necessary, including any improvements necessary for the construction and operation of the Structures. Lessee will be responsible for the cost of any site preparation work necessary to prepare the Leased Space to support the Structures. All Lessee's improvements, including but not limited to, prefabricated buildings, generators, fencing, Structures and any other improvements will remain the property of Lessee. The Structures may be used for the transmission, reception and relay of communication signals, including, without limitation, radio frequency signals. Lessee will make all improvements in a workmanlike manner and will repair any damage to the Premises caused in the installation or removal of the tower or equipment. Upon termination of this Lease, Lessee shall restore the Leased Space to its original condition at the commencement of this Lease to a level of two (2) feet below grade, except for ordinary wear and tear and damages by the elements or damages over which Lessee had no control.

12. Insurance, Lessor - Lessor, at all times during the Term of this Lease, will maintain in full force a comprehensive public liability insurance policy covering all of their operations, activities, liabilities and obligations on the Premises, having limits not less than One Million Dollars (\$1,000,000) which will name Lessee as an additional insured party. On or before the Commencement Date, Lessor will give Lessee a certificate of insurance evidencing that such insurance is in effect and shall be issued by an insurance company authorized to do business in the state in which the Premises are located and shall provide thirty (30) days prior written notice to the Lessee of any cancellation of such policy. Lessor shall deliver to Lessee a renewal certificate evidencing that such insurance is in effect within ten business days of Lessee's request for such insurance.

Lessee - Lessee, at all times during the Term of this Lease, will maintain in full force a comprehensive public liability insurance policy covering all of its operations, activities, liabilities and obligations on the Leased Space, having limits not less than Two Million Dollars (\$2,000,000). On or before the Commencement Date, Lessee will give Lessor a certificate of insurance evidencing that such insurance is in effect. Lessee shall deliver to Lessor a renewal certificate evidencing that such insurance is in effect within

ten (10) business days of Lessor's request for such certificate. The insurance policy shall be issued by an insurance company authorized to do business in the state in which the Leased Space is located and Lessee shall provide thirty (30) days prior written notice to the Lessor of any cancellation of such policy. Any insurance required to be provided by Lessee may be provided by a blanket insurance policy covering the Leased Space and other properties leased or owned by Lessee provided that such blanket insurance policy complies with all of the other requirements with respect to the type and amount of insurance.

13. Operating Expenses. Lessee will pay for all water, gas, heat, light, power, telephone service, and other public utilities furnished to the Leased Space and used by Lessee throughout the Term hereof, and all other costs and expenses of every kind whatsoever in connection with the use, operation, and maintenance of the Leased Space by Lessee and all activities conducted thereon by Lessee.

14. Taxes. Lessee will pay any personal property taxes assessed on, or any portion of the taxes attributable to the Structures. Lessor will pay when due all real property taxes and all other fees and assessments attributable to the Premises.

15. Maintenance. Lessee will use best efforts to maintain the Leased Space in good condition and state of repair. Except insofar as Lessee is made responsible by this Lease, Lessor will maintain the premises surrounding the Leased Space in good condition and state of repair.

16. Hold Harmless. Lessor will be held harmless by Lessee from any liability (including reimbursement of reasonable attorneys' fees and all costs) for damages to any person or any property in or upon the Leased Space at Lessee's invitation, or for damages to any person or property resulting from the actions of Lessee (including damages caused by or resulting from the existence of the Structures) on the Leased Space, unless the damages are caused by, or are the result of, the willful misconduct or negligence of Lessor or any of Lessor's agents, servants, employees, licensees or invitees. Notwithstanding any provisions herein to the contrary, it is understood and agreed that all property kept, installed, stored or maintained in or upon the Leased Space by Lessee will be so installed, kept, stored or maintained at the risk of Lessee. Lessor will not be responsible for any loss or damage to equipment owned by Lessee which might result from tornadoes, lightning, wind storms, or other Acts of God; provided, however, Lessor will be responsible for, and agrees to hold Lessee harmless from any liability (including reimbursement of reasonable legal fees and all costs), for damages to any person or any property in or upon the Premises or Leased Space arising out of the willful misconduct or negligence of Lessor or any of Lessor's agents, servants, employees, licensees or invitees. Except for willful misconduct, Lessee will in no event be liable in damages for Lessor's business loss, business interruption or other consequential damages of whatever kind or nature, regardless of the cause of the damages, and Lessor, and anyone claiming by or through Lessor, expressly waives all claims for the damages.

17. Termination Rights.

(a) Lessee may terminate this Lease, at its option, after giving Lessor not less than sixty (60) days prior written notice to cure, if: (i) any governmental agency denies a request by Lessee for a permit, license or approval which is required for Lessee to construct or operate the Structures on the Leased Space or any such permit is either revoked or not renewed; (ii) Lessee determines that technical problems or radio interference problems from other antennas or from

nearby radio transmitting facilities, which problems cannot reasonably be corrected, impair or restrict Lessee from using the Leased Space for Lessee's intended purpose; (iii) Lessee determines that it does not have acceptable and legally enforceable means of ingress and egress to and from the Leased Space; (iv) Lessor does not have legal or sufficient ownership of or title to the Leased Space or Premises or the authority to enter into this Lease; (v) utilities necessary for Lessee's contemplated use of the Leased Space are not available; (vi) the Leased Space is damaged or destroyed to an extent which prohibits or materially interferes with Lessee's use of the Leased Space or Lessee's equipment and attachments thereto; (vii) the Premises now or hereafter contains a Hazardous Material; (viii) Lessee is unable to obtain a Subordination, Non-disturbance and Attornment Agreement; (ix) a material default by Lessor occurs; (x) Lessor fails to perform any of the material covenants or provisions of this Lease or if any representation or warranty contained herein is found to be untrue; (xi) the Leased Space is the subject of a condemnation proceeding or taking by a governmental authority, or quasi-governmental authority with the power of condemnation, or if the Leased Space is transferred in lieu of condemnation (rent will be abated during the period of condemnation or taking); (xii) the use of the site will not sufficiently benefit Lessee economically or commercially; (xiii) if Lessee determines, in its sole discretion that it will not be viable to use the site for its intended purpose; or (xiv) if Lessee determines, in its sole discretion, that it will be unable to use the site for any reason. In the event of termination by Lessee or Lessor pursuant to this provision, Lessee will be relieved of all further liability hereunder. Any rental fees paid prior to the termination date will be retained by Lessor. In the event Lessor fails to perform its obligations under this Lease for any reason other than Lessee's breach, Lessee may pursue all remedies available at law and in equity. Lessor hereby acknowledges that Lessee will incur significant expenses in reliance on this Lease, and therefore agrees to pay Lessee for all consequential damages which Lessee will suffer as a result of Lessor's breach. In the event Lessor fails to comply with the terms of this Lease, Lessee may, in its sole and absolute discretion, cure any such default, and to the extent Lessee incurs any expenses in connection with such cure (including but not limited to the amount of any real property taxes Lessee pays on behalf of Lessor), Lessor agrees to promptly reimburse Lessee for such expenses incurred and hereby grants Lessee a security interest and lien on the Premises, to secure Lessor's obligation to repay such amounts to Lessee. In addition, Lessee may offset the amount of any such expenses incurred against any rent payable hereunder.

(b) Lessor may only terminate this Lease, at its option, in the event of a material default by Lessee or Lessee's failure to pay Rent when due, which default or failure is not cured within sixty (60) days after Lessee's receipt of written notice of such default or failure. No such failure to cure a material default, however, will be deemed to exist if Lessee has commenced to cure such default within said period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a material default will be excused if due to causes beyond the reasonable control of Lessee.

18. Exclusivity. As part of Lessee's right to the undisturbed use and enjoyment of the Leased Space, Lessor shall not at any time during the Option Period or the Term of this Lease (i) use or suffer or permit another person to use any portion of the Premises or any adjacent parcel of land now or hereafter owned, leased or managed by Lessor for the uses permitted herein or other uses similar

thereto, or (ii) grant any interest in or an option to acquire any interest in any portion of the Premises that permits (either during the Option Period or the Term of this Lease) any of the uses permitted under this Lease without the prior written consent of Lessee, in Lessee's sole discretion.

19. Binding on Successors. The covenants and conditions contained herein will apply to and bind the heirs, successors, executors, administrators and assigns of the parties hereto. Further, this Lease will run with the land and all subsequent purchasers will be subject to the terms and conditions specified herein.

20. Access to Leased Space/Premises. Lessee shall have at all times during the Term the right of access to and from the Leased Space and all utility installations servicing the Leased Space on a 24 hours per day/7 days per week basis, on foot or by motor vehicle, including trucks and heavy machinery (including the right to park such vehicles, trucks and machinery within the Easements and the Premises adjacent to the Leased Space and the Easements), for the installation and maintenance of utility wires, cables, conduits and pipes over, under and along the right-of-way extending from the nearest accessible public right-of-way.

21. Governing Law. The parties intend that this Lease and the relationship of the parties will be governed by the laws of the State in which the Leased Space is located. The parties further agree that they shall submit to the jurisdiction of the South Dakota courts for resolution of any dispute relating to or arising under this Lease.

22. Entire Lease. All of the representations and obligations of the parties are contained herein, and no modification, waiver or amendment of this Lease or of any of its conditions or provisions will be binding upon a party unless in writing signed by that party or a duly authorized agent of that party empowered by a written authority signed by that party. The waiver by any party of a breach of any provision of this Lease will not operate or be construed as a waiver of any subsequent breach of that provision by the same party, or of any other provision or condition of this Lease.

23. Survey and Testing. Lessee will have the right during the Term of this Lease (and the Option Period, if applicable) to survey, soil test, and make any other investigations necessary to determine if the surface and subsurface of the Leased Space are suitable for construction and operation of the Structures. If Lessee, prior to completion of the Structures determines that for any reason the surface or subsurface of the Leased Space is not suitable to construct and operate the Structures, this Lease, upon written notice given to Lessor prior to completion of the Structures will become null and void; provided that at Lessee's sole expense the Leased Space will be promptly restored to the extent contemplated by the Lessee Improvements section above and provided further that Lessee will deliver copies of all soil tests and investigation reports to Lessor.

24. Oil, Gas and Mineral Rights. Lessor does not grant, lease, let or demise hereby, but expressly excepts and reserves here from all rights to oil, gas and other minerals in, on or under and that might be produced or mined from the Leased Space; provided, however, that no drilling or other activity will be undertaken on or beneath the surface of the Leased Space or Easements area to recover any oil, gas or minerals. This Lease is given and accepted subject to the terms and provisions of any valid oil, gas and mineral lease covering the Leased Space or any part thereof, now of record in the office of the County Clerk, provided, however, that any future oil, gas or mineral lease covering the above-described lands or any part thereof will be in all respects subordinate and inferior to the rights, privileges, powers, options, immunities, and interests granted to

Lessee under the terms of this Lease.

25. Hazardous Waste.

(a) The term "Hazardous Materials" will mean any substance, material, waste, gas or particulate matter which is regulated by the local governmental authority where the Leased Space is located, the State in which the Leased Space is located, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," or restricted hazardous waste" under any provision of state or local law, (ii) petroleum, (iii) asbestos, (iv) polychlorinated biphenyl, (v) radioactive material, (vi) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. '1251 et seq. (33 U.S.C. '1317), (vii) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. '6901 et seq. (42 U.S.C. '6903), or (viii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act. 42 U.S.C. '9601 et Seq. (42 U.S.C. '9601). The term "Environmental Laws" will mean all statutes specifically described in the foregoing sentence and all applicable federal, state and local environmental health and safety statutes, ordinances, codes, rules, regulations, orders and decrees regulating, relating to or imposing liability or standards concerning or in connection with Hazardous Materials.

(b) Lessor represents and warrants that, to the best of Lessor's knowledge, (i) the Leased Space has not been used for the use, manufacturing, storage, discharge, release or disposal of hazardous waste, (ii) neither the Leased Space nor any part thereof is in breach of any Environmental Laws, (iii) there are no underground storage tanks located on or under the Leased Space, and (iv) the Leased Space is free of any Hazardous Materials that would trigger response or remedial action under any Environmental Laws or any existing common law theory based on nuisance or strict liability. If any such representation is in any manner breached during the Term of this Lease (a "Breach"), and if a Breach gives rise to or results in liability (including, but not limited to, a response action, remedial action or removal action) under any Environmental Laws or any existing common law theory based on nuisance or strict liability, or causes a significant effect on public health, Lessor will promptly take any and all remedial and removal action as required by law to clean up the Leased Space, mitigate exposure to liability arising from, and keep the Leased Space free of any lien imposed pursuant to, any Environmental Laws as a result of a Breach.

(c) In addition, Lessor agrees to indemnify, defend and hold harmless Lessee, its officers, partners, successors and assigns from and against any and all debts, liens, claims, causes of action, administrative orders and notices, costs (including, without limitation, response and/or remedial costs), personal injuries, losses, attorneys' fees, damages, liabilities, demands, interest, fines, penalties and expenses, consultants' fees and expenses, court costs and all other out-of-pocket expenses, suffered or incurred by Lessee and its grantees as a result of (a) any Breach, or (b) any matter, condition or state of fact involving Environmental Laws of Hazardous Materials which existed on or arose during the Term of this Lease and which failed to comply with (i) the Environmental Laws then in effect or (ii) any existing common law theory based on nuisance or strict liability.

(d) Lessor represents and warrants to Lessee that Lessor has received no notice that the property or any part thereof is, and, to the best of its knowledge and belief, no part of the Premises is

located within an area that has been designated by the Federal Emergency Management Agency, the Army Corps of Engineers or any other governmental body as being subject to special hazards.

(e) The covenants of this section will survive and be enforceable and will continue in full force and effect for the benefit of Lessee and its subsequent transferees, successors and assigns and will survive the Term of this Lease.

26. Mechanic's and Landlord's Liens. Lessee will not cause any mechanic's or materialman's lien to be placed on the Leased Space and Lessee agrees to indemnify, defend and hold harmless Lessor from any such lien from a party claiming by, through or under Lessee. Additionally, Lessor disclaims and waives any now existing or hereafter arising landlord's lien or other statutory or non-statutory lien or security interest in Lessee's and/or its sublessees' communication facilities, equipment, improvement, fixtures or other property.

27. Headings. The headings of sections and subsections are for convenient reference only and will not be deemed to limit, construe, affect, modify or alter the meaning of the sections or subsections.

28. Time of Essence. Time is of the essence of Lessor's and Lessee's obligations under this Lease.

29. Severability. If any section, subsection, term or provision of this Lease or the application thereof to any party or circumstance will, to any extent, be invalid or unenforceable, the remainder of the section, subsection, term or provision of this Lease or the application of same to parties or circumstances other than those to which it was held invalid or unenforceable, will not be affected thereby and each remaining section, subsection, term or provision of this Lease will be valid or enforceable to the fullest extent permitted by law.

30. Real Estate Broker. Lessor represents and warrants that Lessor has not signed a listing agreement, dealt with or otherwise agreed to pay a broker's commission, finder's fee or other like compensation to anyone in connection with the lease of the Leased Space or the transaction contemplated by this Lease and Lessor agrees to indemnify and hold Lessee harmless from and against any such claims or costs, including attorneys' fees, incurred as a result of the transaction contemplated by this Lease.

31. Further Assurances. During the Option Period and Term of this Lease, each of the parties agree to do such further acts and things and to execute and deliver the additional agreements and instruments (including, without limitation, requests or applications relating to zoning or land use matters affecting the Structures) as the other may reasonably require to consummate, evidence or confirm this Lease or any other agreement contained herein in the manner contemplated hereby. If Lessor fails to provide requested documentation within thirty (30) days of Lessee's request, or fails to provide any Non-Disturbance Agreement required in this Lease, Lessee may withhold and accrue the monthly rental until such time as all such documentation is received by Lessee.

32. Right to Register or Record. Lessee may request that Lessor execute a Memorandum of Option and Land Lease, Memorandum of Land Lease or Short Form of Lease (collectively a "Memo") for recording in the public records. Lessor agrees and authorizes Lessee to attach and/or insert a certified legal description of the Leased Space and Easements, once complete, to the Memo and record same in the public records.

33. Interpretation. Each party to this Lease and its counsel have reviewed and had the option to revise this Lease. The

normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Lease or of any amendments or exhibits to this Lease.

34. Condemnation. Lessor shall fully advise Lessee in a timely manner of all condemnation proceedings or prospective condemnation proceedings in order that Lessee may fully protect and prosecute its rights and claims relating to the Leased Space. If the whole of the Leased Space shall be taken or condemned by, or transferred in lieu of condemnation to, any governmental or quasi governmental authority or agency with the power of condemnation during the Option Period or the Term of this Lease, Lessee shall be entitled to any award based upon its leasehold interest as set forth in this Lease, along with the value of all Lessee's improvements, including, but not limited to, the Structures, prefabricated buildings, generators, fencing and any other improvements and for all of Lessee's other personal property, trade fixtures, fixtures, moving expenses, business damages, business interruption, business dislocation, prepaid Rent or other losses or expenses as may be incurred. In the event only a portion of the Premises, which portion does not include the whole of the Leased Space, shall be taken or condemned by, or transferred in lieu of condemnation to any governmental or quasi-governmental authority or agency with the power of condemnation during the Option Period or the Term of this Lease, Lessee shall have the option to either: (1) terminate this Lease; or (2) continue in possession of the property pursuant to the terms of this Lease with a proportionate reduction in Rent equal to that portion, if any, of the Leased Space so taken, condemned or transferred in lieu of condemnation. In either event, Lessee shall be entitled to any award based upon its leasehold interest in the portion of the Premises condemned, taken or transferred in lieu of condemnation, along with the value of all Lessee's improvements, including, but not limited to, the Structures, prefabricated buildings, generators, fencing and any other improvements and for all of Lessee's other personal property, trade fixtures, fixtures, moving expenses, business damages, business interruption, business dislocation, prepaid Rent or other losses or expenses as may be incurred. Nothing contained herein shall prohibit Lessee from making its own claims against any condemning authority for any losses or damages Lessee shall incur as a result of a condemnation, or sale in lieu of condemnation, of the whole or any portion of the Premises.

35. Right of First Refusal. If at any time during the term of this Lease, Lessor receives a bona fide written offer from any company or its affiliates (a) engaged in the business of owning, operating or maintaining wireless communications facilities, or (b) having any interest as a landlord, tenant or any other capacity in any wireless communications ground lease or easement (the "Offer") to sell, assign, convey, lease or otherwise transfer or create any interest in the current or future Rent, the Premises or the Leased Space, or any portion thereof, which Lessor desires to accept, Lessor shall first give Lessee written notice (including a copy of the proposed contract) of such Offer prior to becoming obligated under such Offer, with such notice giving Lessee the right to acquire the interest described in the Offer on the terms set forth in the Offer. Lessee shall have a period of thirty (30) days after receipt of Lessor's notice and terms to exercise Lessee's right of first refusal by notifying Lessor in writing. If Lessee has not exercised its right of first refusal in writing to Lessor within such thirty (30) day period, the Offer will be deemed rejected. Lessor may not assign the Rent or this Lease or any rights

hereunder, or grant any interest in any portion of the Premises, except in connection with conveyance of fee simple title to the Premises, without the prior written consent of Lessee, in Lessee's sole and absolute discretion. Any action taken by Lessor as part of a scheme or contrivance to circumvent the intent of this Section will cause the monthly Rent payable to Lessor or its successors or assigns to be reduced by fifty percent (50%) for all terms remaining under this Lease.

36. Prevailing Party. In the event that any dispute between the parties related to this Lease should result in litigation, the prevailing party in such litigation shall be entitled to recover from the other party all reasonable fees and expenses of enforcing any right of the prevailing party, including without limitation, reasonable attorney's fees and expenses.

37. Date of Lease. The parties acknowledge that certain obligations of Lessor and Lessee are to be performed within certain specified periods of time which are determined by reference to the date of execution of this Lease. The parties therefore agree that wherever the term "date of execution of this Lease," or words of similar import are used herein, they will mean the date upon which this Lease has been duly executed by Lessor and Lessee whichever is the later to so execute this Lease. The parties further agree to specify the date on which they execute this Lease beneath their respective signatures in the space provided and warrant and represent to the other that such a date is in fact the date on which each duly executed his or her name.

COMMENCEMENT DATE: The date that Lessee exercises its Option.

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the last day and year specified below.

LESSOR: THE CITY OF RAPID CITY,
a South Dakota municipal corporation

LESSEE: SBA TOWERS IX, LLC,
a Delaware limited liability company

By: _____

By: _____

Print Name: Steve Allender

Print Name: Alyssa Houlihan

Title: Mayor

Title: Vice President, Site Leasing

Date: _____

Date: _____

Attest:

Witness: _____

Print Name: _____

Print Name: Pauline Sumption

Title: Finance Officer

(seal)

Witness: _____

Print Name: _____

Notary Public:

I do hereby certify that STEVE ALLENDER and PAULINE SUMPTION, who are personally known to me to be the persons named herein, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Notary Public:

I do hereby certify that ALYSSA HOULIHAN, who is personally known to me, or who has proved by sufficient evidence to be the person named herein, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this _____ day of _____, 20____.

Witness my hand and seal this _____ day of _____, 20____.

Notary Signature

Notary Signature

My Commission Expires: _____

EXHIBIT A

Current Sketch/Survey of the Leased Space within the Premises

The Leased Space shall consist of 3,600 (45' x 80') square feet ground space along with easement rights for access to the Leased Space and parking by vehicle, trucks, heavy machinery or foot from the nearest public way and for the installation of utility wires, poles, cables, conduits and pipes on the Premises in the approximate locations as depicted below:

DESCRIPTION OF LEASED SPACE TO BE INSERTED UPON COMPLETION OF SURVEY

Initials: _____

Initials: _____

EXHIBIT B

LEGAL DESCRIPTION OF THE PREMISES

Initials: _____

Initials: _____

EXHIBIT C

ANTENNA SITE AGREEMENT

Initials: _____

Initials: _____