

TOWER EASEMENT AGREEMENT

THIS TOWER EASEMENT AGREEMENT (this "Easement") is made and entered into this ____ day of _____, 2019, between the **City of Casa Grande ("Grantor")** and **Casa Grande Elementary School District #4 ("Grantee")**.

RECITALS

WHEREAS, Grantor currently owns certain land and the tower ("Tower") and/or building ("Building") located thereon (collectively, the "Site") described in Exhibit A attached; and

WHEREAS, Grantee desires to obtain an easement from Grantor for a portion of the Building and Tower on the Site for the purposes of placing, operating and maintaining Grantee's telecommunications equipment; and

WHEREAS, Grantor is willing to grant such an easement to Grantee for such purpose subject to the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, other good and valuable consideration, and Grantee agreeing to perform the covenants and agreements contained within this Easement Agreement, Grantor and Grantee hereby agree as follows:

1. BASIC EASEMENT INFORMATION

- A. Basic Easement Information. In addition to the terms that are defined elsewhere in this Easement, the following terms are used in this Easement:
- i. GRANTOR: City of Casa Grande
 - ii. GRANTOR'S ADDRESS: 510 E. Florence Boulevard, Casa Grande, AZ 85122
 - iii. GRANTEE: Casa Grande Elementary School District #4
 - iv. GRANTEE'S ADDRESS: 220 W. Kortsen Road, Casa Grande, AZ 85122
 - v. PREMISES: Space on the Tower and a portion of the existing Building.
 - vi. EQUIPMENT: All the equipment and personal property listed on Exhibit B attached, together with any other equipment placed on the Premises by Grantee in accordance with Article 4 hereof.
 - vii. COMMENCEMENT DATE: November 1, 2019.
 - viii. EXPIRATION DATE: October 31, 2069.

- ix. TERM: 50 years, beginning on the Commencement Date and expiring on the Expiration Date.
 - x. RENT: \$920.00 per year; provided, however, the Grantor waives said rent payments in exchange for the deed of Elliot Park to Grantor in exchange for the use of the Tower for no additional monetary consideration during the Term.
- B. Exhibits. The following exhibits are attached to this Easement and are made part of this Easement:

EXHIBIT A Legal Description of the Site

EXHIBIT B Equipment

2. AGREEMENT AND USE

- A. Easement. Grantor hereby grants an easement on the Premises to Grantee, for the placement, operation and maintenance of the Equipment and for no other purpose.
- B. Term. The Term of the Easement shall begin on the Commencement Date and shall expire on the Expiration Date.
- C. Use. Grantee shall use the Premises only for the purpose of placing, maintaining, and operating its Equipment and uses directly incidental thereto. Grantee will not use the Premises for any purpose prohibited by applicable law. Grantee will not commit waste and will not create any nuisance or interfere with, annoy or disturb any other user of the Site. It is further understood and agreed that Grantee's right to use the Premises is contingent upon its obtaining and continually maintaining in full force and effect, after the execution date of this Easement, all the certificates, permits, and other approvals that may be required by any federal, state, or local authorities. Grantor, at no cost to Grantor, shall cooperate with Grantee in its efforts to obtain such approvals. In the event that any of such applications should be finally rejected or any certificate, permit, or approval issued to Grantee is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority so that Grantee will be unable to use the Premises for its intended purposes, this Easement shall automatically terminate.
- D. Nonexclusive. Grantee acknowledges and agrees that Grantor, at its sole discretion, has the right to grant other easements, leases or any other rights of use, of any kind or nature, to parties other than Grantee with respect to the Site, provided that any such uses entered into following the date of this Easement shall not interfere with Grantee's use and operation of its Equipment.

3. RENT

- A. Annual Rent Payment. Pursuant to Section 1(A)(x) above, Grantor has waived all rent payments that would have been due hereunder in exchange for a deed of Elliot Park from Grantee to Grantor.
- B. Utilities. Grantee shall, at its sole cost and expense, arrange for electricity, water, gas, telephone, and other utilities necessary for the operation of Grantee's Equipment to be provided to the Premises directly from such providers. Grantee shall be billed directly for the use of such services, and shall promptly pay the same when due.
- C. Limitation on Liability. Except if supplied by the Grantor, Grantor will not be in default under this Easement or be liable to Grantee or any other person, for direct or consequential damages, or otherwise, for any failure to supply any electricity, water, gas, security or other utilities, or for surges or interruptions of electricity, or other such services or utilities.
- D. Taxes or Assessments. Grantee shall additionally promptly pay when due all personal property taxes, if any, on Grantee's Equipment and personal property on the Premises, as well as any other taxes payable by Grantee.

4. ALTERATIONS; OPERATION OF EQUIPMENT

- A. Grantee's Facilities.
 - i. Grantee will obtain Grantor's prior written approval, which approval shall not be unreasonably withheld, for the type, location, mounting and placement of Grantee's Equipment placed or relocated on the Premises. All proposed construction and installation performed on the Premises must be reviewed and approved in writing by Grantor prior to the commencement of such construction. All Equipment shall be installed by licensed contractors and subject to conditions specified by Grantor, and shall be performed in a good and workmanlike manner and in compliance with all applicable Laws (as defined in Section 7. A). Notwithstanding the foregoing, after the Commencement Date, Grantee may add new equipment to the Site, provided that Grantee obtain Grantor's prior written approval of any such additional equipment, which approval may be given in Grantor's reasonable discretion. In the event equipment is added, Grantor and Grantee shall enter into a modification of this Easement to add such equipment to the Equipment listed on Exhibit B attached and to expand the Easement Area, if applicable.

- ii. Grantor will maintain the structural integrity of the tower. If any other grantee or lessee of Grantor adds equipment to the Tower, Grantee may request a copy of Grantor's or its grantee or lessee's structural analysis report at any time, provided that Grantor or its grantee or lessee may redact any proprietary information.
- iii. If Grantee adds any new Equipment to the Site per subsection (i) above, or modifies its current Equipment, Grantee will ensure that the structural integrity of the Tower will not be compromised; provided that Grantor shall remain responsible to maintain the structural integrity of the Tower. Grantor may request a copy of Grantee's structural analysis report prior to granting consent for all placement of future Equipment, or modifications to Lessee's current Equipment, on the Tower, provided that Grantee may redact any proprietary information.
- iv. Grantor's approval of any placement or specifications shall not be construed to be a warranty or representation that such plans or specifications are in conformity with any laws or ordinances.
- v. Except as set forth in subsection (i) above, Grantee shall not make or allow to be made any alterations, additions, or improvements to or of the Premises.

B. Operation of Grantee's Facilities.

- i. Grantee shall be responsible, at its sole cost, for the placement, installation, maintenance and replacement of its Equipment.
- ii. Grantee shall notify Grantor prior to accessing the Site and/or Premises either by: (i) calling Grantee's representative at 520-421-8600 no less than three days prior to accessing the Site and/or Premises describing the time and reason of the access to be made; or (ii) e-mailing the Grantor's representative at steven_turner@casagrandeaz.gov no less than three days prior to accessing the Site and/or Premises describing the time and purpose of the access to be made. In the event of an emergency requiring immediate access, Grantee shall only be required to use reasonable efforts to comply with the notification procedures specified herein, and Grantee shall provide notice and justification of such emergency access to Grantor as soon as reasonably practical.
- iii. If Grantee adds any new Equipment to the Site per Section 4(A)(i) above, or modifies its current Equipment, Grantee represents and warrants that any new, or modified, Equipment installed will not

interfere with Grantor's, or any lessee or grantee of Grantor's, use or operation of its equipment or communications.

- iv. If Grantor has concern that Grantee's new, or modified, Equipment is causing interference with other equipment at the Site and/or Premises, Grantee shall, upon evidence of the suspected interference, cease operation temporarily or reduce power if required by Grantor to, and, if requested by Grantor, and at Grantee's sole cost and expense, get an Intermodulation Study, conduct tests, perform tower work, or make emergency repairs to prevent any future interference. Such occasions, in so far as practicable, shall be preceded by notice and shall occur at times mutually agreeable to Grantor and Grantee.
 - v. Grantor represents and warrants that it will not install any equipment on the Tower that would interfere with Grantee's use or operation of its equipment or communications.
 - vi. If Grantee has concern that Grantor is causing interference with other equipment at the Site and/or Premises, Grantor shall, upon evidence of the suspected interference, cease operation temporarily or reduce power if required by Grantee to, and if requested by Grantee and at Grantor's sole cost and expense, get an Intermodulation Study, conduct tests, perform tower work, or make emergency repairs to prevent any future interference. Such occasions, in so far as practicable, shall be preceded by notice and shall occur at times mutually agreeable to Grantor and Grantee.
- C. Mechanic's Liens. Grantee shall not suffer or permit any mechanic's lien, or other lien, to be filed against the Premises, the Site, or any part thereof, by reason of work, labor, services or materials supplied or claimed to have been supplied to Grantee, or anyone claiming under Grantee. If any such mechanic's lien, or other lien, shall at any time be filed against the Premises or the Site, Grantee shall cause the same to be discharged of record within 30 days of the date of filing the same, and if Grantee shall fail to discharge such lien within such period, then Grantor may, at its option, discharge the same by paying the amount claimed to be due without inquiry into the validity of the same, and Grantee shall thereupon reimburse Grantor for any payment so made. If Grantee desires to contest any claim of a lien, Grantee shall furnish to Grantor adequate security of at least 150% of the amount of the claim, plus estimated costs and interest and, if a final judgment establishing the validity or existence of any lien for any amount is entered, Grantee shall satisfy and pay the same at once, and, on receipt of notice of payment of any such final judgment, Grantor shall return any security paid.

- D. Safety. If during the installation or maintenance of Grantee's Equipment, Grantor determines that Grantee's activities or the Equipment are unsafe, pose a hazard or violate the Laws (as defined in Section 7 below), then Grantee shall immediately, upon notice from Grantor, cease its operations, until such time as Grantee complies with the Laws. Notwithstanding the foregoing, Grantor may, at Grantor's sole cost, make such repairs or install such equipment as Grantor deems necessary to ensure that Grantee's Equipment is safe and complies with all Laws.

5. MAINTENANCE

- A. By Grantee. Grantee shall operate the Equipment with due care and maintain the Premises in a safe, clean and sanitary condition. If Grantee does not repair, replace or restore any damage or injury to the Premises or the Site caused by Grantee, its agents, employees, or invitees within 30 days' after receipt of written notice from Grantor, Grantor may repair, restore, or replace such damage at the expense of Grantee. Such expense will be paid by Grantee within 30 days after delivery of a statement for such expense.
- B. By Grantor. Grantor will maintain, repair and restore the Site and the Tower in reasonably good order and condition, except as set forth in subsection (A) above. In the event the Tower is damaged or destroyed during the Term due to weather conditions or age to the extent that Grantee cannot use the Tower, Grantor is not required to replace the Tower.

6. INSURANCE AND WAIVER

- A. Insurance.
- i. At all times during the term of this Easement, Grantee will carry and maintain, at its own cost and expense:
 1. commercial general liability insurance for claims for bodily injury or death and property damage with combined single limits of not less than \$1,000,000 per occurrence, including coverage for premises-operations and contractual liability;
 2. insurance coverage on a broad form basis insuring against "all risks of direct physical loss" on all of Grantee's Equipment and personal property located on the Premises and the Site, in an amount not less than their full replacement value;
 3. worker's compensation insurance insuring against and satisfying Grantee's obligations and liabilities under the worker's compensation laws of the state of Arizona, including employer's

liability insurance in the limits required by the laws of the state of Arizona; and

4. If Grantee operates owned, hired or non-owned vehicles on the property, comprehensive automobile liability insurance with a limit of not less than \$500,000 combined bodily injury and property damage.
 5. Grantee may satisfy its obligations hereunder through a program of self-insurance or participation in a shared-risk pool.
 - ii. Grantor's public liability and property damage insurance will not be carried for the benefit of Grantee, and Grantee will have no right or claim in the proceeds of any such insurance and no right of indemnity from claims on account of Grantor's insurance.
- B. Grantor's Insurance. At all times during the Term, Grantor will carry and maintain fire and extended coverage covering the Tower in the amount determined by Grantor in its reasonable discretion. Grantor may satisfy its obligations hereunder through a program of self-insurance or participation in a shared-risk pool.
- C. Waiver of Subrogation. Grantor and Grantee each waive any and all rights to recover against the other, or against the officers, directors, shareholders, City Council Members, Governing Board members, partners, joint ventures, employees, agents, customers, invitees or business visitors of such party, for any loss or damage to such waiving party arising from any cause covered by any property insurance required to be carried pursuant to this Section or any other property insurance actually carried by such party. Grantor and Grantee shall, from time to time, cause their respective insurers to issue appropriate waiver of subrogation rights endorsements to all property insurance policies carried in connection with the Tower or the Site or the contents of either.
- D. Waiver and Indemnity.
- i. From and after execution of this Easement, Grantee assumes all risks of its own operations, and Grantee shall indemnify and hold harmless Grantor, to the full extent permitted by law, from and against any and all claims, actions, damages, liabilities and expenses, including costs and reasonable attorneys' fees, by reason of death or injuries to persons or damage to property arising either directly or indirectly out of: (i) the use, occupancy, or enjoyment of the Premises by Grantee, its agents, employees, or contractors, or any maintenance, repair, work, activity, or other things allowed or permitted by Grantee to be done or left undone

in or about the Premises, the Building, or the Site; (ii) the actions or omissions of Grantee, Grantee's agents, servants, contractors, or employees, or of any other person entering onto the Premises, the Building, or the Site under express or implied invitation of Grantee; (iii) any breach or default in the performance of any obligation of Grantee under this Easement; (iv) the interference of other Tower users equipment caused by Grantee's expanded or modified equipment; or (v) any negligent or willful act or failure to act of Grantee, its agents, employees, or contractors. Grantee shall not, however, be required to indemnify Grantor to the extent such damages are caused by the gross negligence or willful misconduct of Grantor. Grantee's obligations under this Section shall survive expiration or earlier termination of this Easement.

- ii. From and after execution of this Easement, Grantor assumes all risks of its own operations, and Grantor shall indemnify and hold harmless Grantee, to the full extent permitted by law, from and against any and all claims, actions, damages, liabilities and expenses, including costs and reasonable attorneys' fees, by reason of death or injuries to persons or damage to property arising either directly or indirectly out of: (i) the use, occupancy, or enjoyment of the Premises by Grantor, its agents, employees, or contractors, or any maintenance, repair, work, activity, or other things allowed or permitted by Grantor to be done or left undone in or about the Premises, the Building, or the Site; (ii) the actions or omissions of Grantor, Grantor's agents, servants, contractors, or employees, or of any other person entering onto the Premises, the Building, or the Site under express or implied invitation of Grantor; (iii) any breach or default in the performance of any obligation of Grantor under this Easement; or (iv) any negligent or willful act or failure to act of Grantor, its agents, employees, or contractors. Grantor shall not, however, be required to indemnify Grantee to the extent such damages are caused by the gross negligence or willful misconduct of Grantee. Grantor's obligations under this Section shall survive expiration or earlier termination of this Easement.
- iii. If the Premises or the Equipment are destroyed or damaged by any cause to such an extent or degree that Grantee suffers shut down of service or loss of revenue or property, Grantor shall not be responsible in any way for loss of such revenue or property.

7. COMPLIANCE WITH LAWS

- A. Grantee Compliance. Grantee shall comply with all federal, state and local statutes, ordinances, laws, rules and regulations of any public authority affecting the Premises and the Equipment and the use thereon, including, but not limited to, the U.S. Department of Labor, Occupational Safety and Health Administration, the Federal Communications Commission ("FCC") and the Federal Aviation Administration (collectively, the "Laws"). Grantee shall promptly correct, at Grantee's sole expense (including without limitation payment of any fines or penalties), any noncompliance with the Laws. Grantee shall, at its own cost, obtain all federal, state and local permits and Easements necessary to operate its Equipment under this Easement. If, as a result of Grantee's operations or use of said Premises hereunder, any Laws are violated, Grantee shall protect, save harmless, defend and indemnify Grantor, its officers, employees and agents, against and from any and all penalties, fines, costs and expenses, including court costs and attorney fees, imposed upon or incurred by Grantor, its officers, employees or agents, resulting from, or connected with, such violation or violations, except for tower lighting and marking violations caused by Grantor's negligence or willful misconduct. As an FCC Grantee, Grantee is required by Part 17 of the applicable FCC rules to ensure that Tower structures upon which its radio antennas are located satisfy certain lighting and marking specifications.
- B. Environmental Matters.
- i. Grantee's Obligations.
 1. Grantee will not cause or permit the storage, treatment or disposal of any Hazardous Waste in, on, or about the Premises or any part of the Site by Grantee, its agents, employees or contractors. Grantee will not permit the Premises to be used or operated in a manner that may cause the Site or any part of the Site to be contaminated by any Hazardous Materials in violation of any Environmental Laws.
 2. To the extent allowed by law, Grantee will be solely responsible for and will defend, indemnify, and hold Grantor, its agents and employees harmless from and against all direct claims, costs, and liabilities, including reasonable attorneys' fees and costs, arising out of or in connection with: (i) Grantee's breach of its obligations in this Section; or (ii) Grantee's introduction of Hazardous Materials to the Site. Grantee's obligations under

this Section shall survive the expiration or other termination of this Easement.

- ii. Mutual Obligations. Each party will promptly notify the other party of (i) any and all enforcement, cleanup, remedial, removal, or other governmental or enforcement cleanup or other governmental or regulatory actions instituted, completed or threatened pursuant to any Environmental Laws relating to any Hazardous Materials affecting any part of the Site; and (ii) all claims made or threatened by any third party against Grantee, Grantor or any part of the Site relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials on or about the Site or any part of the Site.
- iii. Environmental Assessments. Grantor may, from time to time during the Term, conduct such environmental assessments or tasks as Grantor deems necessary, provided that Grantor will give Grantee reasonable prior notice of its entry on the Premises for such purposes and will cooperate in minimizing any disruption of Grantee's use of the Premises as a result of such activity. Grantor will make available to Grantee copies of any reports or assessments so obtained by Grantor.
- iv. Definitions.
 - 1. "Hazardous Materials" means asbestos, explosives, radioactive materials, hazardous waste, hazardous substances, or hazardous materials including, without limitation, substances defined as "hazardous substances" in the Comprehensive Environmental Response Compensation Liability Act of 1980, as amended, 42 U. S. C. Sections 9601-9657 ("CERCLA"); the Hazardous Material Transportation Act of 1975, 49 U.S.C. Sections 1801-1812; the Resource Conservation Recovery Acts of 1976, 42 U.S.C. Sections 6901-6987; the Occupational Safety And Health Act of 1970, 29 U.S.C. Sections 651 et seq., or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning hazardous materials, wastes or substances now or at any time hereinafter in effect (collectively, "Environmental Laws").
 - 2. "Hazardous Waste" means hazardous waste as defined under the Resource Conservation Recovery Act of 1976, 42 U.S.C. Sections 6901-6987.

8. END OF TERM

- A. Removal. Upon the expiration or other termination of this Easement, Grantee shall quit and surrender to Grantor the Premises in good order and condition, and Grantee shall remove all of its Equipment. If within 30 days after the termination of this Easement Grantee has not removed its Equipment and property and/or has not restored the Premises, Grantor may do so (but is not obligated to do so) and Grantee shall reimburse Grantor for its costs for removal and restoration. Grantee's obligations under this Section will survive the expiration or other termination of this Easement.
- B. Holdover. Grantee will have no right to remain in possession of all or any part of the Premises after the expiration of the Term. If Grantee remains in possession of all or any part of the Premises after the expiration of the Term, with the express or implied consent of Grantor: (a) such tenancy will be deemed to be a periodic tenancy from month-to-month only; (b) such tenancy will not constitute a renewal or extension of this Easement for any further term; and (c) such tenancy may be terminated by Grantor upon the earlier of 30 days' prior written notice or the earliest date permitted by law. In such event, the Rent will be increased to an amount equal to the fair value of the rental value of the Premises, which shall be in an amount agreed upon in writing by both parties. Such month-to-month tenancy will be subject to every other term, condition, and covenant contained in this Easement, except that any renewal, expansion or purchase options or rights of first refusal contained in this Easement shall be null and void during such month-to-month tenancy.

9. DEFAULT

- A. Grantee Events of Default. The following events are referred to, collectively, as "Grantee Events of Default" or, individually, as a "Grantee Event of Default":
- i. Grantee defaults in the due and punctual payment of Rent, and such default continues for five (5) days after written notice from Grantor;
 - ii. Grantee vacates or abandons the Premises;
 - iii. This Easement or the Premises or any part of the Premises are taken upon execution or by other process of law directed against Grantee, or are taken upon or subject to any attachment by any creditor of Grantee or claimant against Grantee, and said attachment is not discharged or disposed of within 15 days after its levy;
 - iv. Voluntary or involuntary proceedings under any bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy

laws of the United States or insolvency act of any state or for the dissolution of Grantee are instituted against Grantee, or a receiver or trustee is appointed for all or substantially all of the property of Grantee, and such proceeding is not dismissed or such receivership or trusteeship vacated within 60 days after such institution or appointment; or

- v. Grantee purports to assign this Easement, or sublet all or a portion of the Premises in whole or in part, or sublet all or any part of the Premises, in violation of the terms hereof; or
- vi. Grantee shall fail to correct and eliminate interference caused by its expanded and/or modified Equipment; or
- vii. Grantee shall fail to perform any of the other agreements, terms covenants or conditions hereof on Grantee's part to be performed, and such nonperformance shall continue for a period of 30 days after written notice thereof from Grantor to Grantee, or if such performance cannot be reasonably accomplished within such 30-day period, Grantee shall not have commenced in good faith such performance within such 30-day period or shall not have diligently proceeded therewith to completion.

- B. Grantor's Remedies. If any one or more Grantee Events of Default set forth above occurs then Grantor has the right, at its election:
 - i. To terminate this Easement, in which case Grantee's right to possession of the Premises will cease and this Easement will be terminated as if the expiration of the Term fixed in such notice were the end of the Term, and all obligations of Grantor and Grantee shall cease except as to Grantee's liability as herein provided, and Grantee shall surrender the Premises and remove all of its Equipment.
 - ii. For a Grantee Event of Default under Section 9(A)(vii) above, if Grantee has not cured such default after being given notice and an opportunity to cure, then Grantor may cure such default and charge Grantee the reasonable costs of effecting such cure, including without limitation reasonable attorneys' fees and interest, provided that Grantor shall not have the obligation to cure any such Grantee Event of Default.
- C. Grantor Events of Default. Grantor shall fail to perform any of the other agreements, terms covenants or conditions hereof on Grantor's part to be performed, and such nonperformance shall continue for a period of 30 days after written notice thereof from Grantee to Grantor, or if such performance cannot be reasonably accomplished within such 30-day period, Grantor shall not

have commenced in good faith such performance within such 30-day period or shall not have diligently proceeded therewith to completion.

D. Grantee's Remedies.

- i. If Grantor is in default hereunder, Grantee may terminate this Easement.
- ii. For a Grantor Event of Default under Section 9 (A)(vii) above, if Grantor has not cured such default after being given notice and an opportunity to cure, then Grantee may cure such default and charge Grantor the reasonable costs of effecting such cure, including without limitation reasonable attorneys' fees and interest, provided that Grantee shall not have the obligation to cure any such Grantor Event of Default.

- E. Remedies Cumulative. Each party's rights hereunder shall be in addition to, and not in lieu of, every other right or remedy provided for herein or now or hereafter existing at law or in equity by statute or otherwise, including, but not limited to injunctive relief, specific performance and damages. The exercise or beginning of exercise by either party of any one or more rights or remedies, provided herein or now or hereafter existing at law or in equity by statute or otherwise, shall not preclude the simultaneous or later exercise by such party of any or all other rights or remedies provided for in this Easement or now or hereafter existing at law or in equity or by statute or otherwise. All such rights and remedies shall be considered cumulative and nonexclusive.

10. GENERAL

- A. Casualty. If the Premises or a portion of the Tower on the Site necessary for Grantee's occupancy is damaged during the Term of this Easement by any casualty which is insurable under standard fire and extended coverage insurance policies, Grantor may, in its sole discretion, repair or rebuild the Premises to substantially the condition in which the Premises were immediately prior to such destruction. Grantor shall provide written notice to Grantee, within 30 days from the date of such casualty, detailing whether or not Grantor will rebuild or repair the Premises. If Grantor repairs or rebuilds the Premises, Rent will be abated proportionately during any period in which there is substantial interference with the operation of Grantee's business. Notwithstanding the foregoing, if the Premises are damaged to the extent that it would take, in Grantor's reasonable judgment, more than 90 days to repair, then Grantee may terminate this Easement upon notice to Grantor. If Grantor elects not repair or rebuild the Premises, then this Easement will terminate upon notice to Grantee of Grantor's election.

- B. Condemnation. In the event of a condemnation or other taking by any governmental agency of the Premises or a portion of the Site or the Tower necessary for the operation of Grantee's Equipment on the Tower, this Easement will terminate on the date the condemning authority takes possession of the Premises. The award for the Premises shall be paid to Grantor, except that Grantee will have the right to assert a separate claim against the condemning authority in a separate action, so long as Grantor's award is not otherwise reduced, for (i) moving expenses, (ii) business interruption, and (iii) improvements paid for by Grantee, including but not limited to the costs of Grantee's Equipment.
- C. Effect of Sale. A sale, conveyance or assignment of Grantor's interest in the Site will operate to release Grantor from liability from and after the effective date of such sale, conveyance or assignment upon all of the covenants, terms and conditions of this Easement, express or implied, except those liabilities which arose prior to such effective date, and, after the effective date of such sale, conveyance or assignment, Grantee will look solely to Grantor's successor-in-interest in and to this Easement. This Easement will not be affected by any such sale, conveyance or assignment, and Grantee will attorn to Grantor's successor-in-interest to this Easement, so long as such successor-in-interest assumes Grantor's obligations under the Easement from and after such effective date. Any such transfer or transfers of title or conveyances shall not disturb Grantee's rights under this Easement so long as Grantee is not in default under this Easement.
- D. Inspection. Grantor reserves the right to enter, after reasonable notice to Grantee, the Premises to inspect the same.
- E. Abandonment. If Grantor decides to abandon the Premises, it shall give prior written notice to Grantee at least 180 days in advance of such abandonment and this Easement will terminate on the date stated within such notice.
- F. Assignment. Grantee shall not assign this Easement nor sublet any part or all of the Premises without the approval of Grantor, which may be not be unreasonably withheld. This Easement shall otherwise inure to the benefit of and be binding upon the successors and assigns of the parties.
- G. Limitation on Recourse. None of Grantor's officers, City Council Members, directors, or employees will be personally liable for any judgments against Grantor. The provisions contained in the preceding sentences are not intended to, and will not, limit any right that Grantee might otherwise have to obtain injunctive relief against Grantor.

- H. Quiet Enjoyment. Grantor covenants and agrees with Grantee that so long as Grantee pays rent and observes and performs all the terms, covenants, and conditions of this Easement, Grantee may peaceably and quietly enjoy the Premises, and Grantee's possession will not be disturbed by anyone claiming by, through, or under Grantor.
- I. Time of the Essence. Time is of the essence of each and every provision of this Easement.
- J. No Waiver. The waiver by either party of any agreement, condition, or provision contained in this Easement will not be deemed to be a waiver of any subsequent breach of the same or any other agreement, condition, or provision contained in this Easement.
- K. Notices. Unless otherwise provided herein, all notices and other communications required or permitted under this Agreement shall be in writing and shall be given: (a) by United States first class mail, postage prepaid, registered or certified, return receipt requested, (b) by hand delivery (including by means of a professional messenger service), or (c) by a nationally recognized overnight delivery service that routinely issues receipts. Any such notice or other communication shall be addressed to the party for whom it is intended at its address set forth in Section 1(A), and shall be deemed to be effective when actually received or refused. Either party may by similar notice given change the address to which future notices or other communications shall be sent.
- L. Counterparts. This Easement may be executed in counterparts, and when each of the parties hereto has executed and delivered one or more counterparts this Easement shall be binding and effective, even though no single counterpart has been executed by both parties.
- M. Entire Agreement. This Easement embodies the entire agreement between the parties hereto relative to the subject matter hereof. No amendment, alteration, modification of, or addition to the Easement will be valid or binding unless expressed in writing and signed by Grantor and Grantee.
- N. Severability. If any provision of this Easement proves to be illegal, invalid or unenforceable, the remainder of this Easement will not be affected by such finding, and in lieu of each provision of this Easement that is illegal, invalid or unenforceable, a provision will be added as a part of this Easement as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

- O. Captions. The captions of the various Articles and Sections of this Easement are for convenience only and do not necessarily define, limit, describe or construe the contents of such Articles or Sections.
- P. Conflict of Interest. This Easement shall be governed by and is subject to the cancellation provisions for conflict of interests set forth in A.R.S. § 38-511.
- Q. Contingencies. This Easement is specifically contingent upon the approval of the City Council and the District's Governing Board.

SIGNATURES ON FOLLOWING PAGES

EXECUTED as of the day and year first above written.

City of Casa Grande

By: _____
Title: _____

Attest:

Approved as to Form:

STATE OF ARIZONA)
)
COUNTY OF PINAL)

The foregoing instrument, Tower Easement Agreement, consisting of ___ pages including this page and exhibits, was acknowledged before me this ___ day of _____, 2019, by _____, the _____ of Casa Grande, Arizona, an Arizona municipal corporation, on behalf of the City.

Witness my hand and official seal.

Notary Public

Casa Grande Elementary School District #4

By: _____
Title: _____

Attest:

Approved as to Form:

STATE OF ARIZONA)
)
COUNTY OF PINAL)

The foregoing instrument, Tower Easement Agreement, consisting of ___ pages including this page and exhibits, was acknowledged before me this ___ day of _____, 2019, by _____, the _____ of Casa Grande Elementary School District #4, an Arizona political subdivision, on behalf of the District.

Witness my hand and official seal.

Notary Public

EXHIBIT A

Legal Description of Tower Site

The Site is located at 1230 North Casa Grande Avenue, Casa Grande, AZ 85122. The parcel number is 506-08-117C. The Tower and Building are located on the West end of the parcel.

EXHIBIT B

Description of Equipment on Premises

Radio Communications Equipment in Building:

Kenwood KW-NXR810K2 UHF Repeater including duplexer, interface cables, power supply, and rack mount

SLR 5700 137-174M 50W Repeater, HAD4008A Antenna Quarterwave 150.8-162,
Duplexer Quantar 144-160 mhz,, , XPR 7550E 136-174mhz 5W 1000CH FKP GPS
BT WIFI GOB - enabled, Pentair Cabinet 30-in, Qube Air Conditioner 1000

Radio Communications Equipment on Tower:

UHF 6.8 db gain antenna with lightening arrestor

150-15 mhz 3DB Omni Attena 126" 2 bay bipole, N/M pigtail w/mount, 150-17 mhz 3
DB aluminum voyager antenna 250W Laird, pole mount bracket