

NON-EXCLUSIVE TOWER ATTACHMENT LEASE AGREEMENT

THIS NON-EXCLUSIVE TOWER ATTACHMENT LEASE AGREEMENT (“Lease”) is executed this ____ day of _____ 2000, by and between **Beaufort-Jasper Water and Sewer Authority (“Lessor”)** and _____ (“lessee”).

WHEREAS, Lessor owns an elevated water tank located on _____ **property formally known as _____, designated by the Lessee as _____**, upon which Lessee desires to mount certain of Lessee’s antennae, other equipment and related devices; and

WHEREAS, Lessee desires to lease from Lessor a certain designated space on Lessor’s elevated water tank.

WHEREAS, Lessor retains the right to contract with other parties to attach equipment on the Lessor’s elevated water tank so long as said equipment does not cause interference with reception of Lessee’s equipment.

WHEREAS, Lessor desires to allow a designated space for Lessee’s equipment on its elevated water tank and to insure Lessee’s equipment does not interfere with Lessor’s daily operations and maintenance.

WHEREAS, Lessor desires to consolidate all existing communications antennas and equipment with Lessee’ proposed installation to improve the aesthetics of the elevated tank.

WHEREAS, Lessor desires to be indemnified and held harmless from and against any and all damages caused by the operation, maintenance or installation of any and all equipment.

NOW THEREFORE, for and in consideration of the terms and mutual promises herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee as follows:

1. **Property.** Lessor hereby grants Lessee the right to install, maintain, operate and remove communication equipment and appurtenances as designated on Lessor’s elevated water tank on Lessor’s Property which is more particularly described in Exhibit “A” attached hereto (“property”) together with easements for ingress, egress and utilities during the initial term and any renewal terms, as those terms are hereinafter defined, over the real property described in Exhibit “B” attached hereto (“Easement”).

2. **Use.** Lessee shall be permitted to install antennae, cabling, emergency power generators and related equipment on the Property and to install or improve utilities on the Property and the Easement. A description of the equipment, mounting height of the antennae, and other personal property owned by Lessee which Lessee anticipates shall be located on a

designated space on the Lessor's elevated tank located on the Property and a diagram on installation on the elevated water tank located on the Property are attached hereto as Exhibit "C" ("equipment"). The permission granted to the Lessee for installation of equipment is contingent upon the approval of the Lessee's plans that demonstrate relocation of existing communication equipment (to include coax cable, antennae, brackets, hardware, etc.) owned by other communication carriers. All costs and labor associated with these modifications shall be the responsibility of the Lessee and shall be considered to be an integral part of this agreement. Any agreements among various communication carriers associated with these modifications shall be the responsibility of the Lessee. Prior to installation, all installation plans, including plans for the attachment of Lessee's equipment for relocation of existing equipment owned by other carriers to Lessor's elevated tank, and any personal property owned by the Lessee that is to be located on the Property or attached to the elevated water tank must be approved by the Lessor, which approval shall not be unreasonably conditioned, withheld or delayed by Lessor. In the event that Lessee has not received notice of any objection or modifications from Lessor to the plans within thirty (30) days of the date of the receipt of the plans by the Lessor, plans shall be deemed effectively approved by the Lessor and Lessee may commence installment of the equipment. Any personal property owned by Lessee, whether fixed or attached to the Property or the elevated water tank shall remain the exclusive property of Lessee without regard to whether the personal property is described on Exhibit "C". The Lessee's equipment shall not be permanently attached or welded to Lessor's elevated water tank. If welded attachments are approved, Lessee shall be responsible for replacing interior or exterior tank coatings that are damaged by welding. All replacement of coatings shall meet the exact specifications of the existing tank coating and must be completed within sixty (60) days of the time that welding on the tank occurs. All costs associated with the new coatings, to included BJWSA's operational cost (i.e. draining elevated tank), shall be borne by Lessee. Lessor hereby grants Lessee designated access to the elevated water tank and the Property for the purpose of installing and maintaining the Equipment and appurtenances.

3. **Initial Term.** The initial term of this Lease shall be for a period of five (5) years commencing on the day of execution of this agreement.

4. **Renewal Terms.** Lessee shall have the right to extend this lease for an additional four (4) 5-year Renewal Terms ("Renewal Terms"), 25 years total. The Renewal Terms shall be on the same terms and conditions as set forth in this Lease except that rent shall increase as provided in paragraph 5(b). This Lease shall automatically be renewed for the Renewal Terms unless (1) Lessee notifies Lessor of Lessee's intention not to renew the Lease at least forty-five (45) days prior to the expiration of the Initial Term or the Renewal Term which is then in effect, or (2) Lessor notifies Lessee of Lessor's intention not to renew the Lease at least forty-five (45) days prior to the expiration of the Initial Term or the Renewal Term which is then in effect.

5. **Consideration.**

(a) **Initial Term.** Lessee shall pay to Lessor as rental the sum of EIGHTEEN THOUSAND AND 00/100 (\$18,000.00) DOLLARS per annum (“Lease Payment”) for a designated space on Lessor’s elevated water tank located on the Property which shall include Lessee’s right to use and occupy a designated ground space surrounding Lessor’s elevated water tank as approved by Lessor. The lease payment maybe invoiced monthly should Lessee desire. The Lease Payment shall be increased annually commencing one (1) year from the date of this Lease at the rate of five (5%) percent of the previous years rental, i.e., year two the annual rental is \$18,900.00, year three the annual rental is \$19,845.00, year four the annual rental is \$20,837.25, and year five the annual rental is \$21,879.12. The Lease Payment shall be paid annually in advance with the first such annual payment due on the commencement date and thereafter on each anniversary of the commencement date unless Lessee has requested monthly payments pursuant to this section.

(b) **Renewal Term.** In the event that Lessee elects to renew this Lease as provided in paragraph 4, rent shall be increased annually during the Renewal Terms during each year of each Renewal Term at the rate of five (5%) percent of the previous years Lease Payment.

6. **Utilities.** Lessee will arrange for separate metering for all required electrical or other utility connections to support their equipment.

7. **Water Tank Purpose.** Lessee recognizes that the primary function of the elevated water tank is to provide water storage for Lessor and its customers. Lessee understands that Lessor may find it necessary from time to time to interrupt Lessee’s use of the Premises for maintenance of the water tank. Lessor shall provide Lessee with at least thirty (30) days prior written notice for non-emergency maintenance, “Maintenance Period”, and, if necessary, Lessee agrees to remove its antennas or coax from the water tank provided that such removal shall not exceed a period of thirty (30) days. If required to remove its antennas or coax, Lessee shall have the right to relocate its antennas or coax in any manner as set out in this Paragraph and/or Lessee may terminate this Lease upon thirty (30) days written notice to the Lessor at any time during the thirty (30) day relocation period and neither party shall have any further rights or obligations arising hereunder, except Lessee shall have the duty to remove its Equipment as set forth herein, and the parties shall have those rights and obligations that are to survive the termination of this Lease.

- a. Lessee, at its sole cost and expense, may relocate temporarily its antennas to a different location on the water tank, provided, however, that such relocation shall not exceed the “Maintenance Period” and that relocation space is available on the water tank at a location sufficient to meet Lessee’s coverage or engineering needs and sufficient to allow maintenance performed by the Lessor. Lessee shall be allowed to relocate to any location on the water tank that is not being used or intended to be used by Lessor and will not cause interference with any other equipment located on the water tank. Such temporary location shall not interfere with

- the Lessor's maintenance or any other users on the water tank; or
- b. Lessee, at its sole cost and expense, may use a temporary transmission site or cell on wheels ("COW") on Lessor's Property at a location sufficient to meet Lessee's coverage or engineering needs.

8. **Lessor's Representations and Warranties.** Lessor represents and warrants that all operations conducted by Lessor in connection with the elevated water tank and the Property including the lighting systems meet with all applicable rules and regulations of the Federal Aviation Administration and all applicable codes and regulations of the city, county and state concerned. Lessor shall maintain its lighting system in a proper operating and safe condition and shall comply with all notice requirements of the Federal Aviation Administration regarding the failure, malfunction or repair of the elevated water tank lighting systems. The cost of painting and repairing Lessor's elevated water tank shall be borne by Lessor unless the damage to the elevated water tank is caused by Lessee, in which case Lessee shall repair such damage, or, at its option, Lessee may reimburse Lessor for its costs and expenses incurred in such repair. Cost of painting Lessee's Equipment shall be borne by Lessee, and shall be performed routinely to maintain the appearance of the equipment and shall be the same color of the elevated water tank and must have prior approval of the Lessor. Lessor will not be responsible for damage to the Lessee's equipment while performing maintenance on the Property or the elevated water tank.

In the event Lessor fails to maintain the elevated water tank lighting systems as provided herein, Lessee shall have the right to withhold rental payments to Lessor if Lessor fails to make said lighting repairs after Lessee has given Lessor thirty (30) days written notice of the need to provide maintenance and repairs. Lessee shall have the right to apply such rents withheld hereunder to make the necessary repairs and provide the necessary maintenance, and Lessee shall not thereafter be responsible for the rents withheld to Lessor.

9. **Conditions Precedent.** Lessee's obligation to perform under this Lease shall be subject to and conditioned upon:

- a. Lessee securing appropriate and necessary approvals for Lessee's intended use of the Property, as well as any future regulations or requirements, from the Federal Communications Commission, the Federal Aviation Administration and any other federal, state or local regulatory authority having jurisdiction over Lessee's proposed use of the Property;

- b. Lessee may conduct radio frequency propagation studies ("RF Studies") on the Property. If the RF Studies do not provide results which meet with the personal satisfaction of Lessee, or if the RF Studies provide results which demonstrate that operation of the Lessee's equipment will disrupt or interfere with any program of the Lessor, Lessee shall have no obligation to perform under this Lease;

Lessee's inability to successfully satisfy these conditions or the occurrence of any other event which effectively prohibits Lessee's intended use of the Property shall relieve Lessee from any obligation to perform under this Lease and shall entitle Lessee to restitution of any unearned rental payments which have been paid to Lessor.

10. **Termination.** Except as otherwise provided herein, this Lease may be terminated

without any penalty or further liability upon written notice as follows:

(a) 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 (without, however, limiting any other rights available to the parties pursuant to other provisions hereof); provided, that if the defaulting party commences efforts to cure the default within such period, the non-defaulting party shall no longer be entitled to declare a default;

(b) Upon thirty (30) days written notice by Lessee if Lessee is unable to obtain or maintain through no fault of Lessee any license, permit or other governmental approval necessary to the construction and operation of the Lessee's Equipment or business, including its ability to manage a PCS network for Sprint PCS pursuant to which the space is leased and the equipment will be installed; or

(c) By Lesser by giving Lessee six (6) months notice that the elevated water tank is going to be abandoned or relocated.

(d) In any of the events of default or termination of this Lease, the Lessee must leave the Property in its original condition, normal wear and tear excepted.

(e) By Lessee giving six (6) months written notice the use of the property is unacceptable for technical reasons including property being unacceptable as part of Lessee's network design.

11. **Liability Insurance.** During the Initial Term and the Renewal Terms, Lessee shall maintain, at its own respective expense, insurance covering claims for public liability, personal injury, death and property damage under a policy of general liability insurance, with limits of not less than Five Hundred Thousand Dollars (\$500,000.00) per person and One Million Dollars (\$1,000,000.00) per occurrence, and property damage insurance of not less than Fifty Thousand Dollars (\$50,000.00). Such insurance shall insure against liabilities arising out of or in connection with Lessee's use or occupancy of the Property subject to the standard exceptions found in the Commercial General Liability Insurance Policy.

12. **Environmental Compliance.** Lessor warrants and represents to the best of Lessor's actual knowledge and belief that the Property, the Easement and the improvements thereon are free of contaminants, oils, asbestos, radon, PCBs, hazardous substances or wastes as defined by federal, state or local environmental laws, regulations or administrative orders or other materials the removal of which is required or the maintenance of which is prohibited, regulated or penalized by any federal, state or local government authority ("Hazardous Materials"). This Lease shall at the option of Lessee be void and of no further force or effect if Hazardous Materials are discovered to exist on the Property after Lessee takes possession of the Property, and Hazardous Materials are not the result of Lessee's operation, and Lessee shall be entitled to a refund of all consideration given Lessor under this Lease.

13. **Interference.** Lessee covenants that the equipment will not cause interference with the operation of any other wireless communications equipment located on the elevated tank as of the date of this Lease. Lessor shall be responsible for curing any and all interference to the operation of the equipment caused by the operation of equipment owned by a

third party to this Lease which is in privity of contract with Lessor (“Third Party”). In the event that such interference cannot be eliminated or rectified to Lessee’s personal satisfaction within seventy-two (72) hours of the receipt of notice by Lessor from Lessee of the existence of interference (“Notice Date”), Lessor shall require the party causing the interference to disconnect utility service to their equipment until such time as the interference can be eliminated or rectified to the personal satisfaction of Lessee. If said interference cannot be eliminated or rectified to Lessee’s personal satisfaction within thirty (30) days of the Notice Date, Lessor shall at the request of Lessee, require the party causing the interference to immediately remove its equipment from the elevated water tank and the Property or Lessee may at the sole discretion and option of Lessee terminate this Lease upon notice to Lessor.

14. **Subrogation.**

(a) **In General.** All insurance policies required under this Lease shall, if possible, contain a waiver of subrogation provision under the terms of which the insurance carrier waives all of its rights to proceed against Lessor or Lessee, as the case may be. If waivers of subrogation are obtained, the party procuring such insurance shall use its best efforts to obtain a certificate of insurance which notes the waiver of subrogation and a copy of the insurance policy endorsement which evidenced the insurance carrier’s assent to the waiver of subrogation.

(b) **Mutual Release.** Lessor and Lessee each release the other and their respective representative from any claims by them or any one claiming through or under them by way of subrogation or otherwise for damage to any person or to the Property and to the fixtures, personal property, improvements and alterations in or on the Property that are caused by or result from risks insured against under any insurance policy carried by them and required by this Lease; provided that such releases shall be effective only if and to the extent that the same do not diminish or adversely affect the coverage under such insurance policies. Lessor shall be named as additional insured on any insurance policy procured by Lessee, and Lessee shall be named as an additional insured on any insurance policy procured by Lessor pursuant to this Lease.

15. **Notices.** All notices or demands by or from Lessor to Lessee, or Lessee to Lessor, shall be in writing. Such notices or demands shall be mailed to the other party at the following address:

Lessor: Beaufort-Jasper Water & Sewer Authority
P.O. Box 2149
Beaufort, SC 29901
Attn: Director of Operations and Maintenance

Lessee: _____

With Copy to: _____

16. **Destruction of Premises:** If the Property or the elevated water tank are destroyed or damaged so as to hinder the effective use of the elevated water tank in Lessee's judgement, Lessee may elect to terminate this Lease as of the date of the damage or destruction by so notifying the Lessor. In such event, all rights and obligations of Lessee to Lessor shall cease as of the date of the damage or destruction, and Lessee shall be entitled to the reimbursement of any rent prepaid by Lessee.

17. **Title and Quiet Enjoyment.** Lessor warrants that (i) it has the full right, power and authority to execute this Lease; (ii) it has good and marketable title to the Property and the Easement free and clear of any liens, encumbrances or mortgages. Lessor further warrants that Lessee shall have the quiet enjoyment of the Property during the term of this Lease and that

Lessor shall indemnify Lessee from and against any loss, cost or damage including attorneys fees, associated with a breach of the foregoing covenant of quiet enjoyment.

18. **Assignment.** Any sublease or assignment of this Lease that is entered into by Lessor or Lessee shall be subject to the provisions of this Lease. Additionally, Lessee may, upon notice to Lessor, mortgage or grant a security interest in this Lease and Equipment, and may assign this Lease and the Equipment to any such secured parties or holders of security interests including their successors and assigns (hereinafter collectively referred to as (“Secured Parties”). In such event, Lessor shall execute such consent to leasehold financing as may be reasonably required by Secured Parties. Lessor agrees to notify Lessee and Lessee’s Secured Parties simultaneously of any default by Lessee and to give Secured Parties the same right to cure any default as Lessee except that the cure period for any Secured Party shall not be less than 10 days after the receipt of the default notice. Lessee may assign this Lease with the consent of Lessor to an affiliate of Lessee or to an entity which acquires Lessee’s assets or stock and continues in the business of offering wireless telecommunication services. If a termination, disaffirmance or rejection of the Lease pursuant to any laws (including any bankruptcy or insolvency laws) by Lessee shall occur, or if Lessor shall terminate this Lease for any reason, Lessor will give to the Secured Parties prompt notice thereof, and Lessor will give the Secured Parties the right to enter upon the Property during a 30-day period commencing upon the Secured Party’s receipt of such notice for the purpose of removing any Equipment. Lessor acknowledges that the Secured Parties shall be third-party beneficiaries of this Lease.

19. **Successors and Assigns.** This Lease shall run with the Property described on Exhibit “A” and shall be binding upon and inure to the benefit of the parties, their respective heirs, successors, personal representatives and assigns.

20. **Waiver of Lessor’s Lien.** Lessor hereby waives any and all lien rights it may have, statutory or otherwise, in and to the Equipment or any portion thereof, regardless of whether or not same is deemed real or personal property under applicable laws.

21. **Waiver of Incidental and Consequential Damages.** Lessor will not assert any claim whatsoever against Lessee for loss of anticipatory profits or any other indirect, special, incidental or consequential damages incurred by Lessor as a result of the construction, maintenance, operation or use of the Property or the Easement by Lessee.

22. **Miscellaneous.**

(a) The substantially prevailing party in any litigation arising hereunder shall be entitled to its reasonable attorney’s fees and court costs, including appeals, if any.

(b) Each party agrees to furnish to the other, within ten (10) days after request, such truthful estoppel information as the other may reasonable request.

(c) This Lease constitutes the entire agreement and understanding of Lessor and Lessee with respect to the subject matter hereof and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth

herein. Any amendments to said Lease must be in writing and executed by Lessor and Lessee.

(d) If either Lessor or Lessee is represented by a real estate broker in this transaction, that party shall be fully responsible for any fees due such broker and shall hold the other party harmless from any claims for commission by such broker.

(e) Lessor agrees to cooperate with Lessee in executing any documents necessary to protect Lessee's rights under this Lease or Lessee's use of the Property and to take any further action which Lessee may reasonably require as to effect the intent of this Lease.

(f) This Lease shall be construed in accordance with the laws of the state in which the Property is situated.

(g) If any term of this Lease is found to be void or invalid, such validity shall not affect the remaining terms of this Lease, which shall continue in full force and effect.

(h) Lessee may file of record in the property records in the county in which the Property and Easement(s) are located, a Memorandum of Lease which sets forth the names and addresses of Lessor and Lessee, the legal description of the Property and the Easements, the duration of the Initial Term and the quantity and duration of the Renewal Terms.

(i) Lessor shall cooperate with Lessee's efforts to evaluate the elevated water tank and to comply with governmental regulations affecting Lessee's use of the Property by providing information about the elevated water tank, the elevated water tank's location and prior filings made by Lessor with governmental agencies.

(j) This Lease may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties, it being understood that all parties need not sign the same counterpart.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Non-Exclusive Tower Attachment Lease Agreement as of that date and year first above written.

WITNESSES:

LESSOR:

Beaufort-Jasper Water & Sewer Authority

By: William D. Moss, Jr.
Title: General Manager

WITNESSES:

LESSEE:

By: _____
Title: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

The foregoing instrument was acknowledged before me this _____ day of _____, 2000 by William D. Moss, Jr. as General Manager of Beaufort-Jasper Water & Sewer Authority.

Notary Public for South Carolina
My commission expires: _____

STATE OF _____)
)
COUNTY OF _____)

PROBATE

The foregoing instrument was acknowledged before me this _____ day of _____, 2000 by _____ as the _____ of _____.

Notary Public
My commission expires: