

**AGENDA REQUEST FORM**

**FOR: Council Meeting of January 2, 2018**

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**FROM: City Council Member Matthew Petty**

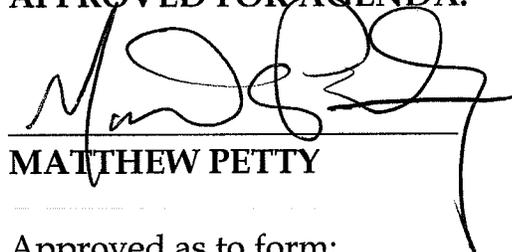
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**ORDINANCE OR RESOLUTION TITLE AND SUBJECT:**

A RESOLUTION TO APPROVE THE AGREEMENTS FOR ASSIGNMENT OF TWO LEASES FOR CELL TOWER SITES FROM SMITH COMMUNICATIONS, LLC TO AMERICAN TOWER, LLC AS REQUESTED BY SMITH COMMUNICATIONS, LLC

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**APPROVED FOR AGENDA:**



**MATTHEW PETTY**

12/28/2017

Date

Approved as to form:



**City Attorney Kit Williams**

December 28, 2017

Date



OFFICE OF THE  
CITY ATTORNEY

## DEPARTMENTAL CORRESPONDENCE



Kit Williams  
*City Attorney*

Blake Pennington  
*Assistant City Attorney*

Rhonda Lynch  
*Paralegal*

**TO: Mayor Jordan  
City Council**

**CC: Don Marr, Chief of Staff  
Paul Becker, Chief Financial Officer  
Tim Nyander, Utilities Director**

**FROM: Kit Williams, City Attorney**

**DATE: December 28, 2017**

**RE: Agreements For Assignment of Cell Tower Land Lease Agreements from  
Smith Communications, LLC to American Tower, LLC**

Smith Communications, LLC has built several cell phone towers in Fayetteville through the years, often on city property. Smith Communications now desires to sell two of these towers, one at the Township Water Tower site and the other on Ivey Road to American Tower, LLC. To protect the rights of our citizens and the City, I ensured that the City Council had the right to consent before the Lease Agreement with Smith Communications could be transferred to an independent entity. However, the City Council's power of consent is limited in that "such consent will not be unreasonably withheld or delayed." Paragraph 15 of Land Lease Agreements.

American Tower, LLC should sign the Agreements For Assignment of the Land Lease Agreements with the rights and duties of the Land Lease Agreements as clarified by the Agreements For Assignment and except for a special final provision placed within the Ivey Road Land Lease Agreement which was never used because the charity later decided it was not appropriate or desired. Therefore, American Tower, LLC will not have to comply with Paragraph 26 of that agreement which is legally withdrawn and ineffective.

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION TO APPROVE THE AGREEMENTS FOR ASSIGNMENT OF TWO LEASES FOR CELL TOWER SITES FROM SMITH COMMUNICATIONS, LLC TO AMERICAN TOWER, LLC AS REQUESTED BY SMITH COMMUNICATIONS, LLC

**WHEREAS**, on January 6, 2009, the City of Fayetteville entered into a Land Lease Agreement with Smith Communications, LLC (attached as Exhibit A) to lease city premises within its Township water tower site to Smith Communications, LLC for its cell phone tower for Eight Hundred and Fifty Dollars (\$850.00) per month (plus possible revenue sharing for subleases) for five (5) years which shall automatically be extended for four (4) additional five year terms with the rent being increased by an amount tied to Consumer Price Index for the five year extended term; and

**WHEREAS**, this Land Lease Agreement is currently in its first five (5) year extension term which shall end on January 5, 2019 unless further extended by Smith Communications or its assignee; and

**WHEREAS**, to safeguard the interests of Fayetteville's citizens, this Land Lease Agreement can only be sold, assigned or transferred to another independent business entity (such as American Tower, LLC) with the consent of the City "which such consent will not be unreasonably withheld or delayed." Paragraph 15 of the Agreement; and

**WHEREAS**, on July 20, 2010, the City of Fayetteville entered into a Land Lease Agreement with Smith Communications, LLC to lease city premises on Ivey Road for five (5) years commencing on August 1, 2010 at monthly rent of One Thousand Five Hundred Dollars (\$1,500.00) (plus possible revenue sharing for subleases) which shall automatically be extended for four (4) additional five year periods with the rent being increased by an amount tied to the Consumer Price Index for the extended five year term; and

**WHEREAS**, this Land Lease Agreement is currently in its first five (5) year extension term which shall end on July 31, 2020 unless further extended by Smith Communications or its assignee; and

**WHEREAS**, to safeguard the interests of Fayetteville's citizens, this Land Lease Agreement can only be sold, assigned or transferred to another independent business entity (such as American Tower, LLC) with the consent of the City "which such consent will not be unreasonably withheld or delayed." Paragraph 15 of the Agreement; and

**WHEREAS**, Smith Communications, LLC has requested that the City Council approve the assignment of these two leases to American Tower, LLC which proposes to purchase both towers and all relevant equipment at these sites from Smith Communications, LLC and assume all the rights and responsibilities of Smith Communications, LLC within these assigned Land Lease Agreements with the exception of Paragraph 26 of the Ivey Road site which is no longer requested, needed, nor desired by the Peace at Home Shelter.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:**

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby approves the attached Agreement For Assignment (Exhibit C) of the rights, responsibilities and duties of the Land Lease Agreement entered into on January 6, 2009 (attached as Exhibit A), and extended effective January 6, 2014 by and between the City of Fayetteville and Smith Communications, LLC to American Tower, LLC subject to the consummation of the Asset Purchase Agreement by and between Smith Communications, LLC and American Tower, LLC and acceptance of the Agreement For Assignment (Exhibit C).

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves to the attached Agreement For Assignment (Exhibit D) of the rights, responsibilities and duties of the Land Lease Agreement entered into on July 20, 2010 attached as Exhibit B and extended effective August 1, 2015, by and between the City of Fayetteville and Smith Communications, LLC to American Tower, LLC subject to the consummation of the Asset Purchase Agreement by and between Smith Communications, LLC and American Tower, LLC, the acceptance of all terms within Exhibit D, and the exception of Paragraph 26 of the Land Lease Agreement which is deleted and withdrawn upon the mutual consent of all parties and the Peace at Home Shelter organization.

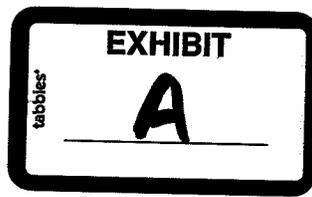
**PASSED and APPROVED** this 2<sup>nd</sup> day of January, 2018.

APPROVED:

ATTEST:

By: \_\_\_\_\_  
**LIONELD JORDAN**, Mayor

By: \_\_\_\_\_  
**SONDRA SMITH**, City Clerk/Treasurer



## LAND LEASE AGREEMENT

This Agreement, made this 6<sup>th</sup> day of January, 2009, between the CITY OF FAYETTEVILLE, ARKANSAS, 113 W. Mountain Street, Fayetteville, AR 72701, hereinafter designated FAYETTEVILLE, and SMITH COMMUNICATIONS, LLC, with its principal office located at Smith 2-Way Communications, 520 N. College Avenue, Fayetteville, AR 72701, hereinafter designated as SMITH COMMUNICATIONS. FAYETTEVILLE and SMITH COMMUNICATIONS are at times collectively referred to hereinafter as the "Parties".

1. PREMISES. FAYETTEVILLE hereby leases to SMITH COMMUNICATIONS, a portion of that certain parcel of property known as the Township Water Tank site, located in Fayetteville, Washington County, Arkansas, and described in Exhibit "A" attached hereto (the "Land Space"), together with the non-exclusive but constant (24 hours per day, 7 days a week) access and utility easement over, under, or along the existing utility and access easement, said Land Space and easement (hereinafter collectively referred to as the "Premises") being substantially as described herein in Exhibit "A" attached hereto and made a part hereof. SMITH COMMUNICATIONS agrees not to block the access easement at any time and to coordinate and cooperate with the CITY OF FAYETTEVILLE and all tenants in their use and access to their facilities.

2. SURVEY. FAYETTEVILLE also hereby grants to SMITH COMMUNICATIONS, the right to survey the site and the Premises. Fayetteville may also survey the site and provide such survey to SMITH COMMUNICATIONS. After review and acceptance of the survey by FAYETTEVILLE, the survey shall then become Exhibit "B" which shall be attached hereto and made a part hereof, and shall control in the event of boundary and access discrepancies between it and Exhibit "A".

3. TERM. This Agreement shall be effective as of February 1, 2009, with the initial term of five (5) years commencing to run from February 1, 2009. Rental payments shall commence and be due at a total monthly rent of **Eight Hundred Fifty Dollars (\$850.00)** to be paid on the first day of each month, in advance, to the City of Fayetteville.

4. EXTENSIONS. This Agreement shall automatically be extended for four (4) additional five (5) year terms unless SMITH COMMUNICATIONS, terminates it at the end of the then current term by giving FAYETTEVILLE written notice of its intent to terminate at least six (6) months prior to the end of the then current term.

5. EXTENSION RENTALS. The monthly rental for the first five year extension term shall be increased by an amount equal to the total CPI increase during the five year period of the lease; the monthly rental for the second five year extension term shall be further increased by an amount equal to the total CPI increase during the second five year period of the lease; the monthly rental for the third five year extension term shall be further increased by an amount equal to the total CPI increase during the third five year period of the lease; and the monthly rental for the fourth five year extension term shall be further increased by an amount equal to the total CPI increase during the fourth five year period of the lease.

6. USE: GOVERNMENTAL APPROVALS. SMITH COMMUNICATIONS shall use the Premises for the purpose of constructing, maintaining, repairing and operating a communications facility and uses incidental thereto. A security fence consisting of chain link construction or similar but comparable construction may be placed around the perimeter of the Premises at the discretion of SMITH COMMUNICATIONS, (not including the access easement). All improvements, equipment and conduits shall be at SMITH COMMUNICATIONS's expense and the installation of all improvements shall be at the discretion and option of SMITH COMMUNICATIONS. SMITH COMMUNICATIONS shall have the right to replace, repair, add or otherwise modify its equipment and/or conduits or any portion thereof and the frequencies over which the equipment operates, whether the equipment, conduits or frequencies are specified or not on any exhibit attached hereto, during the Term. It is understood and agreed that SMITH COMMUNICATIONS's ability to use the Premises is contingent upon its obtaining after the execution date of this Agreement all of the certificates, permits and other approvals (collectively the "Governmental Approvals") that may be required by any Federal, State or Local authorities as well as satisfactory soil boring tests which will permit SMITH COMMUNICATIONS use of the Premises as set forth above. FAYETTEVILLE shall take no action which would adversely affect the status of the Property with respect to the proposed use thereof by SMITH COMMUNICATIONS. In the event that any of such applications for such Governmental Approvals should be finally rejected; any Governmental Approval issued to SMITH COMMUNICATIONS is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority SMITH COMMUNICATIONS, shall have the right to terminate this Agreement. Notice of SMITH COMMUNICATIONS's exercise of its right to terminate shall be given to FAYETTEVILLE in writing by certified mail, return receipt requested, and shall be effective upon the mailing of such notice by SMITH COMMUNICATIONS, or upon such later date as designated by SMITH COMMUNICATIONS. All rentals paid to said termination date shall be retained by FAYETTEVILLE. Upon such termination, this Agreement shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each party to the other hereunder. Otherwise, SMITH COMMUNICATIONS shall have no further obligations for the payment of rent to FAYETTEVILLE. If this site becomes technologically unsuitable for SMITH COMMUNICATIONS's purposes, SMITH COMMUNICATIONS may terminate this lease upon ninety days notice.

7. INSURANCE. SMITH COMMUNICATIONS agrees that at its own cost and expense, it will maintain commercial general liability insurance with limits not less than \$1,000,000 for injury to or death of one or more persons in any one occurrence and \$500,000 for damage or destruction to property in any one occurrence.

8. LIMITATION OF LIABILITY. In no event will either FAYETTEVILLE or SMITH COMMUNICATIONS be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or loss or interruption of use of service, under any theory of tort, strict liability or negligence.

9. INTERFERENCE. SMITH COMMUNICATIONS agrees to install equipment of the type and frequency which will not cause material interference which is measurable in accordance with then existing industry standards to any equipment of FAYETTEVILLE or its lessees of the Property. In the event any after-installed SMITH COMMUNICATIONS's equipment causes such interference, and after FAYETTEVILLE has notified SMITH COMMUNICATIONS in writing of such interference, SMITH COMMUNICATIONS will take all commercially reasonable steps necessary to correct and eliminate the interference, including but not limited to, at SMITH COMMUNICATIONS's option, powering down such equipment and later powering up such equipment for intermittent testing. In no event will FAYETTEVILLE be entitled to terminate this Agreement or relocate the equipment as long as SMITH COMMUNICATIONS is making a good faith effort to remedy the interference issue. SMITH COMMUNICATIONS agrees to indemnify and hold Fayetteville harmless from any claim by other tenants that SMITH COMMUNICATIONS's equipment has damaged or interfered with their equipment or service to their customers. FAYETTEVILLE agrees that it or other tenants of the Property who currently have or in the future take possession of the Property will be permitted to install only such equipment that is of the type and frequency which will not cause material interference which is measurable in accordance with then existing industry standards to the then existing equipment of SMITH COMMUNICATIONS.

10. REMOVAL AT END OF TERM. SMITH COMMUNICATIONS shall, upon expiration of the Term, or within ninety (90) days after any earlier termination of the Agreement, remove its building(s), antenna structure(s) (except footings), equipment, conduits, fixtures and all personal property and restore the Premises to its original condition, reasonable wear and tear and casualty damage excepted. FAYETTEVILLE agrees and acknowledges that all of the equipment, conduits, fixtures and personal property of SMITH COMMUNICATIONS shall remain the personal property of SMITH COMMUNICATIONS and SMITH COMMUNICATIONS shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and attachments to real property under applicable Laws. If such time for removal causes SMITH COMMUNICATIONS to remain on the Premises after termination of this

Agreement, SMITH COMMUNICATIONS shall pay rent at the then existing monthly rate or on the existing monthly pro-rata basis if based upon a longer payment term, until such time as the removal of the building, antenna structure, fixtures and all personal property are completed.

11. QUIET ENJOYMENT. FAYETTEVILLE covenants that SMITH COMMUNICATIONS, on paying the rent and performing the covenants herein, shall peaceably and quietly have, hold and enjoy the Premises. FAYETTEVILLE agrees that this lease shall survive and remain in force if FAYETTEVILLE sells or transfers any part of the Land Space.

12. TITLE. FAYETTEVILLE represents and warrants to SMITH COMMUNICATIONS as of the execution date of this Agreement, and covenants during the Term that FAYETTEVILLE is seized of good and sufficient title and interest to the Property and has full authority to enter into and execute this Agreement and that there are no covenants, easement or restrictions which prevent or adversely affect the use of occupancy of the Premises by SMITH COMMUNICATIONS as set forth above.

13. INTEGRATION. It is agreed and understood that this Agreement contains all agreements, promises and understandings between FAYETTEVILLE and SMITH COMMUNICATIONS and that no verbal or oral agreements, promises or understandings shall be binding upon either FAYETTEVILLE or SMITH COMMUNICATIONS. In the event any provision of the Agreement is found to be invalid or unenforceable, such finding shall not affect the validity and enforceability of the remaining provisions of this Agreement. The failure of either Party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under the Agreement shall not waive such rights and such Party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, in law or in equity.

14. GOVERNING LAW. This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of Arkansas and venue shall be in Washington County.

15. ASSIGNMENT. This Agreement may be sold, assigned or transferred by SMITH COMMUNICATIONS without any approval or consent of FAYETTEVILLE to SMITH COMMUNICATIONS's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of SMITH COMMUNICATIONS's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition or other business reorganization. As to other parties, this Agreement may not be sold, assigned or transferred without the written consent of FAYETTEVILLE, which such consent will not be unreasonably withheld or delayed. No change of stock ownership or control of SMITH COMMUNICATIONS shall constitute an assignment hereunder. SMITH

COMMUNICATIONS may sublease any portion of the Property at its sole discretion upon notice to FAYETTEVILLE. Any sublease that is entered into by SMITH COMMUNICATIONS shall be subject to the provisions of this Agreement and shall be binding upon the successors, assigns, heirs and legal representatives of the respective parties hereto. The term "Sublease", "Sublet", "Sublessee" and any other similar term shall apply to any situation by which SMITH COMMUNICATIONS allows a third party use of the Property for co-location, whether it be by formal sublease, license or other agreement. All rights and responsibilities of SMITH COMMUNICATIONS set forth in this Agreement shall be enjoyed by and binding on any Sublessee.

(a) In the event SMITH COMMUNICATIONS subleases any portion of the Property, in accordance with this Agreement, any rental paid by any Sublessee(s) shall be divided between FAYETTEVILLE and SMITH COMMUNICATIONS in the following manner: (i) The first cell phone carrier's antenna array is paid for by the monthly rent charged to SMITH COMMUNICATIONS pursuant to this Land Lease Agreement; (ii) The gross rental paid by (and the gross value of any other type of consideration received from) the business using the second and any subsequent set of cell phone antennas shall be divided with <sup>15%</sup>50% of the gross going to SMITH COMMUNICATIONS and 25% to FAYETTEVILLE. Any Sublessee shall be instructed to pay the foregoing percentage amounts directly to SMITH COMMUNICATIONS. SMITH COMMUNICATIONS shall be responsible to Fayetteville for the collection or payment of rents by the Sublessee and their remittance to FAYETTEVILLE. However, SMITH COMMUNICATIONS shall have no liability to FAYETTEVILLE in the event of failure of payment by Sublessee. In this event, SMITH COMMUNICATIONS shall have no liability of any nature to FAYETTEVILLE for failure to sublet all or any part of the premises to any or all potential Sublessee(s); SMITH COMMUNICATIONS will provide FAYETTEVILLE with all agreements that have been executed by SMITH COMMUNICATIONS and its Sublessee.

(b) Notwithstanding any other provision of this Agreement, SMITH COMMUNICATIONS shall not be required to obtain approval from FAYETTEVILLE for the subletting of the Property or part thereof. SMITH COMMUNICATIONS shall have the sole right to determine whether it will Sublet any portion of the Property or whether it will sublease to any specific Sublessee.

16. NOTICES. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

FAYETTEVILLE:

CITY OF FAYETTEVILLE  
Office of the Mayor  
113 W. Mountain Street  
Fayetteville, AR 72701

SMITH COMMUNICATIONS, LLC:

SMITH COMMUNICATIONS, LLC  
ATTN: Michael B. Smith  
520 N. College Avenue  
Fayetteville, AR 72701

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

17. SUCCESSORS. This Agreement shall extend to and bind the heirs, personal representative, successors and assigns of the Parties hereto.

18. DEFAULT.

(a) In the event there is a breach by SMITH COMMUNICATIONS with respect to any of the provisions of this Agreement or its obligations under it, including the payment of rent, FAYETTEVILLE shall give SMITH COMMUNICATIONS written notice of such breach. After receipt of such written notice, SMITH COMMUNICATIONS shall have fifteen (15) days in which to cure any monetary breach and thirty (30) days in which to cure any non-monetary breach, provided SMITH COMMUNICATIONS shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and SMITH COMMUNICATIONS commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. FAYETTEVILLE may not maintain any action or effect any remedies for default against SMITH COMMUNICATIONS unless and until SMITH COMMUNICATIONS has failed to cure the breach within the time periods provided in this Paragraph. However, repetitive breaches relating to blocking or interfering with the access easement or the rights of other tenants to successfully operate their equipment without electronic or other interference shall give FAYETTEVILLE the right to terminate this contract even if such breaches are temporary and cured within thirty days.

(b) In the event there is a breach by FAYETTEVILLE with respect to any of the provisions of this Agreement or its obligations under it, SMITH COMMUNICATIONS shall give FAYETTEVILLE written notice of such breach. After receipt of such written notice, FAYETTEVILLE shall have thirty (30) days in which to cure any such breach, provided FAYETTEVILLE shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and FAYETTEVILLE commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. SMITH COMMUNICATIONS may not maintain any action or effect any remedies for default

against FAYETTEVILLE unless and until FAYETTEVILLE has failed to cure the breach within the time periods provided in this Paragraph. Notwithstanding the foregoing to the contrary, it shall be a default under this Agreement if FAYETTEVILLE fails, within five (5) days after receipt of written notice of such breach, to perform an obligation required to be performed by FAYETTEVILLE if the failure to perform such an obligation interferes with SMITH COMMUNICATIONS's ability to conduct its business on the Property; provided, however, that if the nature of FAYETTEVILLE's obligation is such that more than five (5) days after such notice is reasonably required for its performance, then it shall not be a default under this Agreement if performance is commenced within such five (5) day period and thereafter diligently pursued to completion.

19. REMEDIES. Upon a default, the non-defaulting party may at its option (but without obligation to do so), perform the defaulting party's duty or obligation on the defaulting party's behalf. The costs and expenses of any such performance by the non-defaulting party shall be due and payable by the defaulting party upon invoice therefor. In the event of a default by either party with respect to a material provision of this Agreement, without limiting the non-defaulting party in the exercise of any right or remedy which the non-defaulting may have by reason of such default, the non-defaulting party may terminate the Agreement and/or pursue any remedy now or hereafter available to the non-defaulting party under the laws or judicial decisions of the state in which the Premises are located; provided, however, FAYETTEVILLE and SMITH COMMUNICATIONS shall use reasonable efforts to mitigate any damages in connection with a default by FAYETTEVILLE or SMITH COMMUNICATIONS. If SMITH COMMUNICATIONS so performs any of FAYETTEVILLE's obligations hereunder, the full amount of the reasonable and actual cost and expense incurred by SMITH COMMUNICATIONS shall immediately be owing by FAYETTEVILLE to SMITH COMMUNICATIONS, and FAYETTEVILLE shall pay to SMITH COMMUNICATIONS upon demand the full undisputed amount thereof with interest thereon from the date of payment at the highest rate permitted by applicable Laws. Notwithstanding the foregoing, if FAYETTEVILLE does not pay SMITH COMMUNICATIONS the full undisputed amount within thirty (30) days of its receipt of an invoice setting forth the amount due from SMITH COMMUNICATIONS, SMITH COMMUNICATIONS may offset the full undisputed amount, including all accrued interest, due against all fees due and owing to FAYETTEVILLE until the full undisputed amount, including all accrued interest, is fully reimbursed to SMITH COMMUNICATIONS.

20. CASUALTY. In the event of damage by fire or other casualty to the Premises that cannot reasonably be expected to be repaired within forty-five (45) days following the event, SMITH COMMUNICATIONS may terminate this by sending written notice to FAYETTEVILLE. Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the Parties shall make an appropriate adjustment, as of such termination date, with respect to

payments due to the other under this Agreement. Notwithstanding the foregoing, the rent shall abate during the period of repair following such fire or other casualty in proportion to the degree to which SMITH COMMUNICATIONS's use of the Premises is impaired.

21. CONDEMNATION. In the event of any condemnation of all or any portion of the Property, this Agreement shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever occurs first. If as a result of a partial condemnation of the Premises or Property, SMITH COMMUNICATIONS, in SMITH COMMUNICATIONS's sole discretion, is unable to use the Premises for the purposes intended hereunder, or if such condemnation may reasonably be expected to disrupt SMITH COMMUNICATIONS's operations at the Premises for more than forty-five (45) days, SMITH COMMUNICATIONS may, at SMITH COMMUNICATIONS's option, to be exercised in writing within fifteen (15) days after FAYETTEVILLE shall have given SMITH COMMUNICATIONS written notice of such taking (or in the absence of such notice, within fifteen (15) days after the condemning authority shall have taken possession) terminate this Agreement as of the date the condemning authority takes such possession. SMITH COMMUNICATIONS may on its own behalf make a claim in any condemnation proceeding involving the Premises for losses related to the equipment, conduits, fixtures, its relocation costs and its damages and losses. Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the Parties shall make an appropriate adjustment as of such termination date with respect to payments due to the other under this Agreement,. SMITH COMMUNICATIONS does not terminate this Agreement in accordance with the foregoing, this Agreement shall remain in full force and effect as to the portion of the Premises remaining, except that the rent shall be reduced in the same proportion as the rentable area of the Premises taken bears to the total rentable area of the Premises. In the event that this Agreement is not terminated by reason of such condemnation, SMITH COMMUNICATIONS shall promptly repair any damage to the Premises caused by such condemning authority.

22. SUBMISSION OF AGREEMENT/PARTIAL INVALIDITY/AUTHORITY. The submission of this Agreement for examination does not constitute an offer to lease the Premises and this Agreement becomes effective only upon the full execution of this Agreement by the Parties. If any provision herein is invalid, it shall be considered deleted from this Agreement and shall not invalidate the remaining provisions of this Agreement. Each of the Parties hereto warrants to the other that the person or persons executing this Agreement on behalf of such Party has the full right, power and authority to enter into and execute this Agreement on such Party's behalf and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this Agreement.

23. APPLICABLE LAWS. SMITH COMMUNICATIONS shall, in respect to the condition of the Premises and at SMITH COMMUNICATIONS's sole cost and expense, comply with (a) all Laws relating solely to SMITH COMMUNICATIONS's

specific and unique nature of use of the Premises; and (b) all building codes requiring modifications to the Premises due to the improvements being made by SMITH COMMUNICATIONS in the Premises.

24. SURVIVAL. Any provisions of this Agreement which require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.

25. CAPTIONS. The captions contained in this Agreement are inserted for convenience only and are not intended to be part of the Agreement. They shall not affect or be utilized in the construction or interpretation of the Agreement.

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

SMITH COMMUNICATIONS, LLC

CITY OF FAYETTEVILLE

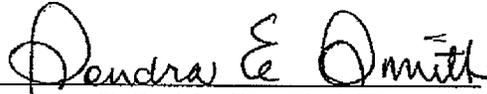
By:

  
MICHAEL B. SMITH  
President

By:

  
LIONELO JORDAN  
Mayor

Attest:

  
Sondra E. Smith, City Clerk/Treasurer





Legal Description for the Lease Area

Commencing at an existing p/k nail marking the Southwest Corner of the Southeast Quarter of the Southeast Quarter. Thence along the south line of said forty, East, 594.31 feet. Thence leaving said line of said south line, North 00 degrees 07 minutes 48 seconds West, 354.27 feet to a ½ inch set rebar with cap and the Point of Beginning. Thence continue North 00 degrees 07 minutes 48 seconds West, 45.73 feet to a ½ inch existing rebar. Thence North 72 degrees 44 minutes 11 seconds East, 71.68 feet to a fence corner. Thence East, 22.50 feet to a ½ inch set rebar with cap. Thence South 00 degrees 07 minutes 48 seconds East, 67.00 feet to ½ inch set rebar with cap. Thence West, 91.00 feet to the point of Beginning, containing 5,368.53 square feet and subject to any Easements of Record.



## LAND LEASE AGREEMENT

This Agreement, made this 20th day of July, 2010, between the CITY OF FAYETTEVILLE, ARKANSAS, 13 W. Mountain Street, Fayetteville, AR 72701, hereinafter designated FAYETTEVILLE, and SMITH COMMUNICATIONS, LLC, with its principal office located at Smith 2-Way Communications, 520 N. College Avenue, Fayetteville, AR 72701, hereinafter designated as SMITH COMMUNICATIONS. FAYETTEVILLE and SMITH COMMUNICATIONS are at times collectively referred to hereinafter as the "Parties".

1. PREMISES. FAYETTEVILLE hereby leases to SMITH COMMUNICATIONS, a site, located in Fayetteville, Washington County, Arkansas, and described in Exhibit "A" attached hereto (the "Land Space"), together with the non-exclusive but constant (24 hours per day, 7 days a week) access and utility easement over, under, or along the existing utility and access easement, said Land Space and easement (hereinafter collectively referred to as the "Premises") being substantially as described herein in Exhibit "A" attached hereto and made a part hereof. SMITH COMMUNICATIONS agrees not to block the access easement at any time and to coordinate and cooperate with the CITY OF FAYETTEVILLE and all tenants in their use and access to their facilities.

2. SURVEY. FAYETTEVILLE also hereby grants to SMITH COMMUNICATIONS, the right to survey the site and the Premises. Fayetteville may also survey the site and provide such survey to SMITH COMMUNICATIONS. After review and acceptance of the survey by FAYETTEVILLE, the survey shall then become Exhibit "B" which shall be attached hereto and made a part hereof, and shall control in the event of boundary and access discrepancies between it and Exhibit "A".

3. TERM. This Agreement shall be effective as of August 1, 2010, with the initial term of five (5) years commencing to run from August 1, 2010. Rental payments shall commence and be due at a total monthly rent of **One Thousand Five Hundred Dollars (\$1,500.00)** to be paid on the first day of each month, in advance, to the City of Fayetteville.

4. EXTENSIONS. This Agreement shall automatically be extended for four (4) additional five (5) year terms unless SMITH COMMUNICATIONS, terminates it at the end of the then current term by giving FAYETTEVILLE written notice of its intent to terminate at least six (6) months prior to the end of the then current term.

5. EXTENSION RENTALS. The monthly rental for the first five year extension term shall be increased by an amount equal to the total CPI increase during the five year period of the lease; the monthly rental for the second five year extension term shall be further increased by an amount equal to the total CPI increase during the second five year period of the lease; the monthly rental for the third five year extension term shall be further increased by an amount equal to the total CPI increase during the third five year period of the lease; and the monthly rental for the fourth five year extension term shall be further increased by an amount equal to the total CPI increase during the fourth five year period of the lease.

6. USE: GOVERNMENTAL APPROVALS. SMITH COMMUNICATIONS shall use the Premises for the purpose of constructing, maintaining, repairing and operating a communications facility and uses incidental thereto. A security fence consisting of chain link construction or similar but comparable construction may be placed around the perimeter of the Premises at the discretion of SMITH COMMUNICATIONS, (not including the access easement). All improvements, equipment and conduits shall be at SMITH COMMUNICATIONS's expense and the installation of all improvements shall be at the discretion and option of SMITH COMMUNICATIONS. SMITH COMMUNICATIONS shall have the right to replace, repair, add or otherwise modify its equipment and/or conduits or any portion thereof and the frequencies over which the equipment operates, whether the equipment, conduits or frequencies are specified or not on any exhibit attached hereto, during the Term. It is understood and agreed that SMITH COMMUNICATIONS's ability to use the Premises is contingent upon its obtaining after the execution date of this Agreement all of the certificates, permits and other approvals (collectively the "Governmental Approvals") that may be required by any Federal, State or Local authorities as well as satisfactory soil boring tests which will permit SMITH COMMUNICATIONS use of the Premises as set forth above. FAYETTEVILLE shall take no action which would adversely affect the status of the Property with respect to the proposed use thereof by SMITH COMMUNICATIONS. In the event that any of such applications for such Governmental Approvals should be finally rejected; any Governmental Approval issued to SMITH COMMUNICATIONS is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority SMITH COMMUNICATIONS, shall have the right to terminate this Agreement. Notice of SMITH COMMUNICATIONS's exercise of its right to terminate shall be given to FAYETTEVILLE in writing by certified mail, return receipt requested, and shall be effective upon the mailing of such notice by SMITH COMMUNICATIONS, or upon such later date as designated by SMITH COMMUNICATIONS. All rentals paid to said termination date shall be retained by FAYETTEVILLE. Upon such termination, this Agreement shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each party to the other hereunder. Otherwise, SMITH COMMUNICATIONS shall have no further obligations for the payment of rent to FAYETTEVILLE. If this site becomes technologically unsuitable for SMITH COMMUNICATIONS's purposes, SMITH COMMUNICATIONS may terminate this lease upon ninety (90) days notice.

7. INSURANCE. SMITH COMMUNICATIONS agrees that at its own cost and expense, it will maintain commercial general liability insurance with limits not less than \$1,000,000 for injury to or death of one or more persons in any one occurrence and \$500,000 for damage or destruction to property in any one occurrence.

8. LIMITATION OF LIABILITY. In no event will either FAYETTEVILLE or SMITH COMMUNICATIONS be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or loss or interruption of use of service, under any theory of tort, strict liability or negligence.

9. INTERFERENCE. SMITH COMMUNICATIONS agrees to install equipment of the type and frequency which will not cause material interference which is measurable in accordance with then existing industry standards to any equipment of FAYETTEVILLE or its lessees of the Property. In the event any after-installed SMITH COMMUNICATIONS's equipment causes such interference, and after FAYETTEVILLE has notified SMITH COMMUNICATIONS in writing of such interference, SMITH COMMUNICATIONS will take all commercially reasonable steps necessary to correct and eliminate the interference, including but not limited to, at SMITH COMMUNICATIONS's option, powering down such equipment and later powering up such equipment for intermittent testing. In no event will FAYETTEVILLE be entitled to terminate this Agreement or relocate the equipment as long as SMITH COMMUNICATIONS is making a good faith effort to remedy the interference issue. SMITH COMMUNICATIONS agrees to indemnify and hold Fayetteville harmless from any claim by other tenants that SMITH COMMUNICATIONS's equipment has damaged or interfered with their equipment or service to their customers. FAYETTEVILLE agrees that it or other tenants of the Property who currently have or in the future take possession of the Property will be permitted to install only such equipment that is of the type and frequency which will not cause material interference which is measurable in accordance with then existing industry standards to the then existing equipment of SMITH COMMUNICATIONS.

10. REMOVAL AT END OF TERM. SMITH COMMUNICATIONS shall, upon expiration of the Term, or within ninety (90) days after any earlier termination of the Agreement, remove its building(s), antenna structure(s) (except footings), equipment, conduits, fixtures and all personal property and restore the Premises to its original condition, reasonable wear and tear and casualty damage excepted. FAYETTEVILLE agrees and acknowledges that all of the equipment, conduits, fixtures and personal property of SMITH COMMUNICATIONS shall remain the personal property of SMITH COMMUNICATIONS and SMITH COMMUNICATIONS shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and attachments to real property under applicable Laws. If such time for removal causes SMITH COMMUNICATIONS to remain on the Premises after termination of this

Agreement, SMITH COMMUNICATIONS shall pay rent at the then existing monthly rate or on the existing monthly pro-rata basis if based upon a longer payment term, until such time as the removal of the building, antenna structure, fixtures and all personal property are completed.

11. QUIET ENJOYMENT. FAYETTEVILLE covenants that SMITH COMMUNICATIONS, on paying the rent and performing the covenants herein, shall peaceably and quietly have, hold and enjoy the Premises. FAYETTEVILLE agrees that this lease shall survive and remain in force if FAYETTEVILLE sells or transfers any part of the Land Space.

12. TITLE. FAYETTEVILLE represents and warrants to SMITH COMMUNICATIONS as of the execution date of this Agreement, and covenants during the Term that FAYETTEVILLE is seized of good and sufficient title and interest to the Property and has full authority to enter into and execute this Agreement and that there are no covenants, easement or restrictions which prevent or adversely affect the use of occupancy of the Premises by SMITH COMMUNICATIONS as set forth above.

13. INTEGRATION. It is agreed and understood that this Agreement contains all agreements, promises and understandings between FAYETTEVILLE and SMITH COMMUNICATIONS and that no verbal or oral agreements, promises or understandings shall be binding upon either FAYETTEVILLE or SMITH COMMUNICATIONS. In the event any provision of the Agreement is found to be invalid or unenforceable, such finding shall not affect the validity and enforceability of the remaining provisions of this Agreement. The failure of either Party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under the Agreement shall not waive such rights and such Party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, in law or in equity.

14. GOVERNING LAW. This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of Arkansas and venue shall be in Washington County.

15. ASSIGNMENT. This Agreement may be sold, assigned or transferred by SMITH COMMUNICATIONS without any approval or consent of FAYETTEVILLE to SMITH COMMUNICATIONS's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of SMITH COMMUNICATIONS's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition or other business reorganization. As to other parties, this Agreement may not be sold, assigned or transferred without the written consent of FAYETTEVILLE, which such consent will not be unreasonably withheld or delayed. No change of stock ownership or control of SMITH COMMUNICATIONS shall constitute an assignment hereunder. SMITH

COMMUNICATIONS may sublease any portion of the Property at its sole discretion upon notice to FAYETTEVILLE. Any sublease that is entered into by SMITH COMMUNICATIONS shall be subject to the provisions of this Agreement and shall be binding upon the successors, assigns, heirs and legal representatives of the respective parties hereto. The term "Sublease", "Sublet", "Sublessee" and any other similar term shall apply to any situation by which SMITH COMMUNICATIONS allows a third party use of the Property for co-location, whether it be by formal sublease, license or other agreement. All rights and responsibilities of SMITH COMMUNICATIONS set forth in this Agreement shall be enjoyed by and binding on any Sublessee.

(a) In the event SMITH COMMUNICATIONS subleases any portion of the Property, in accordance with this Agreement, any rental paid by any Sublessee(s) shall be divided between FAYETTEVILLE and SMITH COMMUNICATIONS in the following manner: (i) The first cell phone carrier's antenna array is paid for by the monthly rent charged to SMITH COMMUNICATIONS pursuant to this Land Lease Agreement; (ii) The gross rental paid by (and the gross value of any other type of consideration received from) the business using the second and any subsequent set of cell phone antennas shall be divided with 67% of the gross going to SMITH COMMUNICATIONS and 33% to FAYETTEVILLE. Any Sublessee shall be instructed to pay the foregoing percentage amounts directly to SMITH COMMUNICATIONS. SMITH COMMUNICATIONS shall be responsible to Fayetteville for the collection or payment of rents by the Sublessee and their remittance to FAYETTEVILLE. However, SMITH COMMUNICATIONS shall have no liability to FAYETTEVILLE in the event of failure of payment by Sublessee. In this event, SMITH COMMUNICATIONS shall have no liability of any nature to FAYETTEVILLE for failure to sublet all or any part of the premises to any or all potential Sublessee(s); SMITH COMMUNICATIONS will provide FAYETTEVILLE with all agreements that have been executed by SMITH COMMUNICATIONS and its Sublessee.

(b) Notwithstanding any other provision of this Agreement, SMITH COMMUNICATIONS shall not be required to obtain approval from FAYETTEVILLE for the subletting of the Property or part thereof. SMITH COMMUNICATIONS shall have the sole right to determine whether it will Sublet any portion of the Property or whether it will sublease to any specific Sublessee.

16. NOTICES. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

FAYETTEVILLE:

CITY OF FAYETTEVILLE  
Office of the Mayor  
113 W. Mountain Street  
Fayetteville, AR 72701

SMITH COMMUNICATIONS, LLC:

SMITH COMMUNICATIONS, LLC  
ATTN: Michael B. Smith  
520 N. College Avenue  
Fayetteville, AR 72701

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

17. SUCCESSORS. This Agreement shall extend to and bind the heirs, personal representative, successors and assigns of the Parties hereto.

18. DEFAULT.

(a) In the event there is a breach by SMITH COMMUNICATIONS with respect to any of the provisions of this Agreement or its obligations under it, including the payment of rent, FAYETTEVILLE shall give SMITH COMMUNICATIONS written notice of such breach. After receipt of such written notice, SMITH COMMUNICATIONS shall have fifteen (15) days in which to cure any monetary breach and thirty (30) days in which to cure any non-monetary breach, provided SMITH COMMUNICATIONS shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and SMITH COMMUNICATIONS commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. FAYETTEVILLE may not maintain any action or effect any remedies for default against SMITH COMMUNICATIONS unless and until SMITH COMMUNICATIONS has failed to cure the breach within the time periods provided in this Paragraph. However, repetitive breaches relating to blocking or interfering with the access easement or the rights of other tenants to successfully operate their equipment without electronic or other interference shall give FAYETTEVILLE the right to terminate this contract even if such breaches are temporary and cured within thirty days.

(b) In the event there is a breach by FAYETTEVILLE with respect to any of the provisions of this Agreement or its obligations under it, SMITH COMMUNICATIONS shall give FAYETTEVILLE written notice of such breach. After receipt of such written notice, FAYETTEVILLE shall have thirty (30) days in which to cure any such breach, provided FAYETTEVILLE shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and FAYETTEVILLE commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. SMITH COMMUNICATIONS may not maintain any action or effect any remedies for default

against FAYETTEVILLE unless and until FAYETTEVILLE has failed to cure the breach within the time periods provided in this Paragraph. Notwithstanding the foregoing to the contrary, it shall be a default under this Agreement if FAYETTEVILLE fails, within five (5) days after receipt of written notice of such breach, to perform an obligation required to be performed by FAYETTEVILLE if the failure to perform such an obligation interferes with SMITH COMMUNICATIONS's ability to conduct its business on the Property; provided, however, that if the nature of FAYETTEVILLE's obligation is such that more than five (5) days after such notice is reasonably required for its performance, then it shall not be a default under this Agreement if performance is commenced within such five (5) day period and thereafter diligently pursued to completion.

19. REMEDIES. Upon a default, the non-defaulting party may at its option (but without obligation to do so), perform the defaulting party's duty or obligation on the defaulting party's behalf. The costs and expenses of any such performance by the non-defaulting party shall be due and payable by the defaulting party upon invoice therefor. In the event of a default by either party with respect to a material provision of this Agreement, without limiting the non-defaulting party in the exercise of any right or remedy which the non-defaulting may have by reason of such default, the non-defaulting party may terminate the Agreement and/or pursue any remedy now or hereafter available to the non-defaulting party under the laws or judicial decisions of the state in which the Premises are located; provided, however, FAYETTEVILLE and SMITH COMMUNICATIONS shall use reasonable efforts to mitigate any damages in connection with a default by FAYETTEVILLE or SMITH COMMUNICATIONS. If SMITH COMMUNICATIONS so performs any of FAYETTEVILLE's obligations hereunder, the full amount of the reasonable and actual cost and expense incurred by SMITH COMMUNICATIONS shall immediately be owing by FAYETTEVILLE to SMITH COMMUNICATIONS, and FAYETTEVILLE shall pay to SMITH COMMUNICATIONS upon demand the full undisputed amount thereof with interest thereon from the date of payment at the highest rate permitted by applicable Laws. Notwithstanding the foregoing, if FAYETTEVILLE does not pay SMITH COMMUNICATIONS the full undisputed amount within thirty (30) days of its receipt of an invoice setting forth the amount due from SMITH COMMUNICATIONS, SMITH COMMUNICATIONS may offset the full undisputed amount, including all accrued interest, due against all fees due and owing to FAYETTEVILLE until the full undisputed amount, including all accrued interest, is fully reimbursed to SMITH COMMUNICATIONS.

20. CASUALTY. In the event of damage by fire or other casualty to the Premises that cannot reasonably be expected to be repaired within forty-five (45) days following the event, SMITH COMMUNICATIONS may terminate this by sending written notice to FAYETTEVILLE. Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the Parties shall make an appropriate adjustment, as of such termination date, with respect to

payments due to the other under this Agreement. Notwithstanding the foregoing, the rent shall abate during the period of repair following such fire or other casualty in proportion to the degree to which SMITH COMMUNICATIONS's use of the Premises is impaired.

21. CONDEMNATION. In the event of any condemnation of all or any portion of the Property, this Agreement shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever occurs first. If as a result of a partial condemnation of the Premises or Property, SMITH COMMUNICATIONS, in SMITH COMMUNICATIONS's sole discretion, is unable to use the Premises for the purposes intended hereunder, or if such condemnation may reasonably be expected to disrupt SMITH COMMUNICATIONS's operations at the Premises for more than forty-five (45) days, SMITH COMMUNICATIONS may, at SMITH COMMUNICATIONS's option, to be exercised in writing within fifteen (15) days after FAYETTEVILLE shall have given SMITH COMMUNICATIONS written notice of such taking (or in the absence of such notice, within fifteen (15) days after the condemning authority shall have taken possession) terminate this Agreement as of the date the condemning authority takes such possession. SMITH COMMUNICATIONS may on its own behalf make a claim in any condemnation proceeding involving the Premises for losses related to the equipment, conduits, fixtures, its relocation costs and its damages and losses. Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the Parties shall make an appropriate adjustment as of such termination date with respect to payments due to the other under this Agreement. SMITH COMMUNICATIONS does not terminate this Agreement in accordance with the foregoing, this Agreement shall remain in full force and effect as to the portion of the Premises remaining, except that the rent shall be reduced in the same proportion as the rentable area of the Premises taken bears to the total rentable area of the Premises. In the event that this Agreement is not terminated by reason of such condemnation, SMITH COMMUNICATIONS shall promptly repair any damage to the Premises caused by such condemning authority.

22. SUBMISSION OF AGREEMENT/PARTIAL INVALIDITY/AUTHORITY. The submission of this Agreement for examination does not constitute an offer to lease the Premises and this Agreement becomes effective only upon the full execution of this Agreement by the Parties. If any provision herein is invalid, it shall be considered deleted from this Agreement and shall not invalidate the remaining provisions of this Agreement. Each of the Parties hereto warrants to the other that the person or persons executing this Agreement on behalf of such Party has the full right, power and authority to enter into and execute this Agreement on such Party's behalf and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this Agreement.

23. APPLICABLE LAWS. SMITH COMMUNICATIONS shall, in respect to the condition of the Premises and at SMITH COMMUNICATIONS's sole cost and expense, comply with (a) all Laws relating solely to SMITH COMMUNICATIONS's

specific and unique nature of use of the Premises; and (b) all building codes requiring modifications to the Premises due to the improvements being made by SMITH COMMUNICATIONS in the Premises.

24. SURVIVAL. Any provisions of this Agreement which require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.

25. CAPTIONS. The captions contained in this Agreement are inserted for convenience only and are not intended to be part of the Agreement. They shall not affect or be utilized in the construction or interpretation of the Agreement.

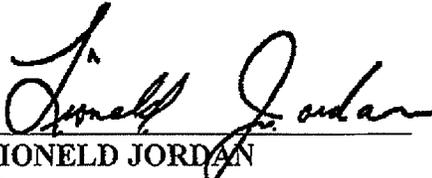
26. REQUIRED VIDEO EQUIPMENT. SMITH COMMUNICATIONS agrees to provide, install, and integrate a video camera system and other required equipment to include a secure and encrypted a wireless link between the SMITH COMMUNICATIONS facility and the Peace at Home Shelter. The aforementioned equipment shall be provided as a donation from SMITH COMMUNICATIONS to the Peace at Home Shelter to enhance security of their facility located near the leased premises. SMITH COMMUNICATIONS will also provide tower space for the camera and other equipment. All signals and recordings shall remain the property of and under the control of Peace at Home Shelter. In no event shall signals or recordings from said video equipment be transmitted by SMITH COMMUNICATIONS to any other person or organization than Peace at Home Shelter, Unless By lawful subpoena or order of any court of competent jurisdiction, or as may otherwise be required by law.

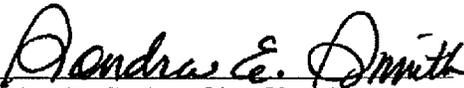
IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

SMITH COMMUNICATIONS, LLC

CITY OF FAYETTEVILLE

By:   
MICHAEL B. SMITH  
President

By:   
LIONELD JORDAN  
Mayor

Attest:   
Sondra E. Smith, City Clerk/Treasurer







**AGREEMENT FOR ASSIGNMENT**

Pursuant to the Fayetteville City Council Resolution approved on January 2, 2018, I, Mayor Lioneld Jordan, do hereby consent on behalf of the City of Fayetteville to the assignment of the Land Lease Agreement entered into between the City of Fayetteville and Smith Communications, LLC on January 6, 2009 for premises at the Township Water Tank site to American Tower, LLC subject to American Tower, LLC's complete and full acceptance of all of its responsibilities and duties within the Land Lease Agreement and its consummation of its Asset Purchase Agreement with Smith Communications, LLC.

**ATTEST:**

**CITY OF FAYETTEVILLE**

\_\_\_\_\_  
**City Clerk Sondra E. Smith**

\_\_\_\_\_  
**Mayor Lioneld Jordan**

Date: \_\_\_\_\_, 2018

American Tower, LLC does hereby agree that it shall bound by all the rights, responsibilities and duties including the timely and complete payment of the rent of the Land Lease Agreement of January 6, 2009 entered into between the City of Fayetteville and Smith Communications, LLC once it has consummated its Asset Purchase Agreement with Smith Communications, LLC and the Land Lease Agreement has been assigned to it. Further, American Tower, LLC acknowledges that the City of Fayetteville may need to expand or alter its water tank or add another water tank on this site and agrees to cooperate with the City during any such necessary construction. The City of Fayetteville agrees to work with American Tower, LLC to avoid or minimize any potential problems this construction might cause American Tower, LLC. I hereby certify that the below named person is authorized to sign for and bind American Tower, LLC.

**Witness**  
\_\_\_\_\_

**American Tower, LLC**  
By: \_\_\_\_\_

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

Name: Richard Rossi  
Vice President Legal

Title: \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
*Richard Rossi*  
*10000 W. Highway 100*  
*Greenville, SC 29615*

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

\_\_\_\_\_



**AGREEMENT FOR ASSIGNMENT**

Pursuant to the Fayetteville City Council Resolution approved on January 2, 2018, I, Mayor Lioneld Jordan, do hereby consent on behalf of the City of Fayetteville to the assignment of the Land Lease Agreement entered into between the City of Fayetteville and Smith Communications, LLC on July 20, 2010 for premises on Ivey Road to American Tower, LLC subject to American Tower, LLC's complete and full acceptance of all of its responsibilities and duties within the Land Lease Agreement (with the exception of Paragraph 26 **Required Video Equipment** which is withdrawn and no longer required upon the request of Peace at Home Shelter) and its consummation of its Asset Purchase Agreement with Smith Communications, LLC.

**ATTEST:**

**CITY OF FAYETTEVILLE**

\_\_\_\_\_  
City Clerk Sondra E. Smith

\_\_\_\_\_  
Mayor Lioneld Jordan

Date: \_\_\_\_\_, 2018

American Tower, LLC does hereby agree that it shall bound by all the rights, responsibilities and duties including the timely and complete payment of rent of the Land Lease Agreement of July 20, 2010 entered into between the City of Fayetteville and Smith Communications, LLC once such Land Lease Agreement has been assigned to it (with the exception of Paragraph 26 **Required Video Equipment** which is withdrawn and no longer required) and its consummation of its Asset Purchase Agreement with Smith Communications, LLC. I hereby certify that the below named person is authorized to sign for and bind American Tower, LLC.

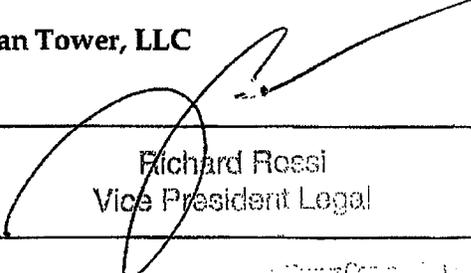
**Witness**

**American Tower, LLC**

\_\_\_\_\_

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

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

Name:   
Richard Rossi  
Vice President Legal

Title: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

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

\_\_\_\_\_