

BRIGHTON CITY COUNCIL ORDINANCE
Verizon Wireless Monopole
Lease of Public Land

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, APPROVING A LEASE TRANSACTION INVOLVING CERTAIN CITY-OWNED REAL PROPERTY TO VERIZON WIRELESS, ON THE TERMS AND CONDITIONS OF THAT CERTAIN *LAND LEASE AGREEMENT* DATED FEBRUARY 6, 2018; AND AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE LAND LEASE AGREEMENT FOR THE CITY.

ORDINANCE NO. 2279
INTRODUCED BY: Edwards

WHEREAS, Section 17.3 Sale or Encumbrance of Property of the Brighton Charter requires approval of the sale or encumbrance of City-owned real property by ordinance of the City Council; and

WHEREAS, the City Council finds that it is in the best interest of the citizens of the City of Brighton to lease to Verizon Wireless certain City-owned real property, as specified in and according to the terms and provisions of the Land Lease Agreement attached as Exhibit A; and

WHEREAS, the City Council finds and determines that the terms and provisions of the Land Lease Agreement are fair and reasonable to the City, and that approval of the lease transaction by this ordinance will serve the public health, safety and welfare of Brighton citizens.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, AS FOLLOWS:

Section 1. In accordance with Section 17.3 of the Charter of the City of Brighton, the City Council hereby approves the Land Lease Agreement for the lease to Verizon Wireless of certain City-owned real property described in the Land Lease Agreement with the following condition:

- 1) The Developer shall complete a Conditional Use Permit with the City of Brighton and said Conditional Use Permit shall be approved by the City of Brighton City Council via resolution prior to any building permits being issued.

Section 2. The Lease transaction shall be made in accordance with the Land Lease Agreement dated February ____, 2018, between the City and Verizon Wireless, and the use of the Property by Verizon Wireless shall be governed by the Lease and further subject to a Conditional Use Permit.

Section 2. The City Manager or his designee is hereby authorized and directed to execute the Land Lease Agreement for and on behalf of the City, and to undertake such tasks and execute such documents as may be required to successfully consummate the transaction.

INTRODUCED, PASSED ON FIRST READING AND ORDERED PUBLISHED THIS 6th DAY OF March, 2018.

CITY OF BRIGHTON, COLORADO

Kenneth J. Kreutzer, Mayor

ATTEST:

Natalie Hoel, City Clerk

APPROVED AS TO FORM:

Margaret R. Brubaker, City Attorney

**Published in the *Standard Blade*
First Publication: March 14, 2018**

PASSED ON SECOND AND FINAL READING AND ORDERED PUBLISHED BY TITLE ONLY THIS 20th DAY OF March, 2018.

CITY OF BRIGHTON, COLORADO

Kenneth J. Kreutzer, Mayor

ATTEST:

Natalie Hoel, City Clerk

**Published in the *Standard Blade*
Final Publication: March 28, 2018**

EXHIBIT A
Lease Agreement

LAND LEASE AGREEMENT

This Land Lease Agreement (“Agreement” or “Lease”) is executed and delivered to be effective the ____ day of _____, 2018, by and between the City of Brighton, a Colorado home rule municipality located at 500 South 4th Avenue, Brighton, Colorado 80601, acting by and through its Water Activity Enterprise (“LESSOR”) and Verizon Wireless (VAW) LLC d/b/a Verizon Wireless, with its principal office located at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 (telephone number 866-862-4404) (“LESSEE”). The LESSOR and LESSEE are collectively referred to hereinafter as “Parties” or individually as a “Party.”

1. **PREMISES.** LESSOR hereby leases to LESSEE a portion of that certain parcel of Adams County real property located at 4071 Harvest Lane, Brighton, Colorado 80601 (the entirety of LESSOR’s property at that address is referred to hereinafter as the “Property”), with a legal description in Exhibit “A” attached hereto and made a part hereof, and being described as a 15’ by 30’ parcel containing approximately four hundred and fifty (450) square feet (the “Land Space”), together with the non-exclusive right (the “Rights of Way”) for ingress and egress, seven (7) days a week twenty-four (24) hours a day, subject to the notice requirements of this Agreement, from the nearest established public right-of-way to the Land Space, and for the installation and maintenance of underground utility wires, cables, conduits, and appurtenances connecting such Rights of Way and Land Space, said Land Space and Rights of Way (hereinafter collectively referred to as the “Premises”) being substantially as described herein in Exhibit “B” attached hereto and made a part hereof.

2. **ADDITIONAL UTILITY ROUTE.** In the event any public utility is physically unable to use the Rights of Way, the LESSOR hereby agrees to grant an alternate route location acceptable to LESSOR in LESSOR’s reasonable discretion for underground utilities, either to the LESSEE or to the public utility.

3. **TERM RENTAL.** This Agreement shall be effective as of the date of execution by both Parties, provided, however, the initial term shall be for five (5) years and shall commence on the Commencement Date (the “Term”). Rental payments shall commence on the Commencement Date and be due at a total annual base rental rate of Twenty One Thousand Dollars (\$21,000.00) to be paid in equal monthly installments of \$1,750.00 on the first day of every month during the Term, in advance to LESSOR or to such other person, firm or place as LESSOR may, from time to time, designate in writing at least thirty (30) days in advance of any rental payment date by notice given in accordance with Paragraph 23 below. The Agreement shall commence on the first day of the month after LESSEE begins installation if its communications equipment (the “Commencement Date”). LESSOR and LESSEE acknowledge and agree that the first rental

payment(s) shall be due as of the Commencement Date, but not actually be sent by LESSEE until forty five (45) days after the Commencement Date.

Upon agreement of the Parties, LESSEE may pay rent by electronic funds transfer and in such event, LESSOR agrees to provide to LESSEE bank routing information for such purpose upon request of LESSEE.

LESSOR hereby agrees to provide to LESSEE certain documentation (the "Rental Documentation") evidencing LESSOR's interest in, and right to receive payments under, this Agreement, including: (i) documentation evidencing LESSOR's right to receive rental payments and other benefits hereunder; (ii) a complete and fully executed Internal Revenue Service Form W-9, or equivalent, in a form acceptable to LESSEE, for any party to whom rental payments are to be made pursuant to this Agreement. Delivery of Rental Documentation to LESSEE shall be a prerequisite for the payment of any rent by LESSEE and notwithstanding anything to the contrary herein, LESSEE shall have no obligation to make any rental payments until Rental Documentation has been supplied to LESSEE as provided herein.

Within fifteen (15) days of obtaining an interest in the Property or this Agreement, any assignee(s) or transferee(s) of LESSOR shall provide to LESSEE Rental Documentation in the manner set forth in the preceding paragraph. From time to time during the Term of this Agreement and within thirty (30) days of a written request from LESSEE, any assignee(s) or transferee(s) of LESSOR agrees to provide updated Rental Documentation in a form reasonably acceptable to LESSEE. Delivery of Rental Documentation to LESSEE by any assignee(s) or transferee(s) of LESSOR shall be a prerequisite for the payment of any rent by LESSEE to such party and notwithstanding anything to the contrary herein, LESSEE shall have no obligation to make any rental payments to any assignee(s) or transferee(s) of LESSOR until Rental Documentation has been supplied to LESSEE as provided herein.

4. EXTENSIONS. This Agreement shall automatically be extended for two (2) additional five (5) year terms unless LESSEE terminates it at the end of the then current term by giving LESSOR written notice of the intent to terminate at least three (3) months prior to the end of the then current term, or unless LESSOR terminates as provided below.

5. EXTENSION RENTALS. Beginning on the first anniversary of the Commencement Date and continuing throughout the Term (including any extension or additional extension term), the annual rental hereunder shall increase by 3% per year over the annual rental payable with respect to the immediately preceding year.

6. ADDITIONAL EXTENSIONS. If at the end of the second (2nd) five (5) year extension term, this Agreement has not been terminated by either Party by giving to the other written notice of an intention to terminate it at least three (3) months prior to the end of such term, this Agreement shall continue in force upon the same covenants, terms and conditions for a further two (2) additional extension terms of five (5) years each, unless and until terminated by either Party giving to the other written notice of its intention to so terminate at least three (3) months prior to the end of such term. Annual rental for each such additional five (5) year term shall be equal to the then-applicable annual

rental under this Lease, including the 3% annual increases. The Parties intend that the total Term (including all extensions) may extend for up to 25 years from the Commencement Date.

7. TAXES. LESSEE shall have the responsibility to pay any personal property, real estate taxes, assessments, or charges owed on the Property which are the result of LESSEE's use of the Premises and/or the installation, maintenance, and operation of the LESSEE's improvements, and any sales tax imposed on the rent (except to the extent that LESSEE is or may become exempt from the payment of sales tax in the jurisdiction in which the Property is located), including any increase in real estate taxes at the Property which LESSOR demonstrates arises from the LESSEE's improvements and/or LESSEE's use of the Premises. LESSOR and LESSEE shall each be responsible for the payment of any taxes, levies, assessments and other charges imposed including franchise and similar taxes imposed upon the business conducted by LESSOR or LESSEE at the Property. Notwithstanding the foregoing, LESSEE shall not have the obligation to pay any tax, assessment, or charge that LESSEE disputes in good faith at LESSEE's expense in appropriate proceedings prior to a final determination that such tax is properly assessed, provided that no lien attaches to the Premises or any of LESSOR's real property. Nothing in this Paragraph shall be construed as making LESSEE liable for any portion of LESSOR's income taxes in connection with any Property or otherwise. Except as set forth in this Paragraph, LESSOR shall have the responsibility to pay any personal property, real estate taxes, assessments, or charges owed on the Property and shall do so prior to the imposition of any lien on the Property.

LESSEE shall have the right, at its sole option and at its sole cost and expense, to appeal, challenge or seek modification of any tax assessment or billing for which LESSEE is wholly or partly responsible for payment. LESSOR shall reasonably cooperate with LESSEE at LESSEE's expense in filing, prosecuting and perfecting any appeal or challenge to taxes as set forth in the preceding sentence, including but not limited to, executing any consent or other similar document. In the event that as a result of any appeal or challenge by LESSEE, there is a reduction, credit or repayment received by the LESSOR for any taxes previously paid by LESSEE, LESSOR agrees to promptly reimburse to LESSEE the amount of said reduction, credit or repayment. In the event that LESSEE does not have the standing rights to pursue a good faith and reasonable dispute of any taxes under this paragraph, LESSOR will pursue such dispute at LESSEE's sole cost and expense upon written request of LESSEE.

8. USE; GOVERNMENTAL APPROVALS. LESSEE shall obtain and maintain during the Term all necessary permits and approvals required for its occupancy and use of the Premises, and may use the Premises for the purpose of constructing, maintaining, repairing and operating a communications facility and its necessary appurtenances. LESSEE shall have the right to replace, repair, add or otherwise modify its utilities, equipment, antennas and/or conduits or any portion thereof and the frequencies over which the equipment operates, whether the equipment, antennas, conduits or frequencies are specified or not on any exhibit attached hereto, during the Term; provided, however, any "material" modifications, repairs or replacements must be approved by LESSOR by prior written consent. As used herein the term "material" shall not include any and all changes to equipment inside the equipment space; like for like swap of antennas and related

equipment; or other additions, replacements, upgrades or alterations of Lessee's communications facilities in whole or in part within the confines of the Land Space that do not change the external physical appearance of the site. LESSEE shall cause all utilities needed for LESSEE's use of the Premises to be separately-metered, and during the Term LESSEE shall have the right to replace, repair, add or otherwise modify its separately-metered utilities, equipment, antennae and/or conduits or any portion thereof. It is understood and agreed that LESSEE's right 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 LESSEE's use of the Premises as set forth above. LESSOR shall cooperate with LESSEE in its effort to obtain such approvals and shall take no action which would adversely affect the status of the Property with respect to the proposed use thereof by LESSEE. In the event that (i) any of such applications for such Governmental Approvals should be finally rejected; or (ii) any Governmental Approval issued to LESSEE is canceled, revoked, or is otherwise withdrawn or terminated by a governmental authority; or (iii) LESSEE determines that such Governmental Approvals may not be obtained in a timely manner in the exercise of LESSEE's reasonable diligence; or (iv) LESSEE determines that any soil boring tests are unsatisfactory; or (v) LESSEE determines that the Premises is no longer technically compatible for its use; or (vi) LESSEE, in its sole discretion, determines that the use of the Premises is obsolete or unnecessary, LESSEE shall have the right to terminate this Agreement. Notice of LESSEE's exercise of its right to terminate shall be given to LESSOR in writing by certified mail, return receipt requested, and shall be effective three (3) months after the mailing date of such notice by LESSEE, or upon such later date as designated by LESSEE. All rentals paid to said termination date shall be retained by LESSOR. 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, the LESSEE shall have no further obligations for the payment of rent to LESSOR after removal of LESSEE's improvements and equipment pursuant to Paragraph 14 below.

9. INDEMNIFICATION. To the fullest extent permitted by Colorado law, each Party shall indemnify and hold the other harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of the indemnifying Party, its employees, contractors or agents, except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of the other Party, or its employees, contractors or agents. Notwithstanding the foregoing, nothing in this Agreement shall limit any rights, remedies, defenses or liability limitations available to LESSOR under the Colorado Governmental Immunity Act, or the prohibitions or restrictions of TABOR, or any other applicable Colorado law.

10. INSURANCE.

a. Notwithstanding the indemnity in section 9, the Parties hereby waive and release any and all rights of action for negligence against the other which may hereafter arise on account of damage to the Premises or to the Property, resulting from any fire or other casualty actually covered by standard fire insurance policies with extended coverage, and/or by policies of commercial general liability insurance. These waivers and releases shall apply between the Parties

and they shall also apply to any claims under or through either Party as a result of any asserted right of subrogation, provided that such insurance coverage actually applies to covered claims. All such policies of insurance obtained by either Party concerning the Premises or the Property shall waive the insurer's right of subrogation against the other Party.

b. LESSEE will maintain the following policies of insurance at all times during the Term, at its own cost:

- i. Commercial General Liability insurance with limits of \$2,000,000 per occurrence for bodily injury (including death) and for damage or destruction to property in any one occurrence; and
- ii. Commercial Auto Liability insurance on all owned, non-owned and hired automobiles with a combined single limit of one million (\$1,000,000) per occurrence; and
- iii. Workers Compensation insurance providing the statutory benefits and Employers Liability with a limit of \$1,000,000 each accident/disease/policy limit.

LESSEE will include the LESSOR as an additional insured as its interest may appear under this Agreement, on the Commercial General Liability and Auto Liability policies, by blanket additional insured Endorsement and certificates of coverage.

c. LESSOR will maintain at its own cost LESSOR's standard commercial general liability insurance for its municipal real property interests, through the Colorado Intergovernmental Risk Sharing Agency (CIRSA), but nothing in this Agreement shall relieve LESSEE of its obligation to obtain and maintain all required insurance coverage required by this Agreement during the Term.

11. LIMITATION OF LIABILITY. Except for indemnification pursuant to paragraphs 8, neither Party shall be liable to the other, or any of their respective agents, representatives, employees or contractors, for any special or consequential damages including incidental, punitive, indirect, remote, or special damages, beyond or in addition to a Party's actual damages, if any.

12. ANNUAL TERMINATION. Notwithstanding anything to the contrary contained herein, provided LESSEE is not in default hereunder beyond applicable notice and cure periods, LESSEE shall have the right to terminate this Agreement as of the annual anniversary of the Commencement Date, provided that three (3) months prior written notice is given to LESSOR. At the end of the first 5-year extension, provided LESSOR is not in default hereunder beyond applicable notice and cure periods, LESSOR shall have the right to terminate this Agreement upon the annual anniversary of the Commencement Date for reasons of public convenience or public health, safety and welfare, provided that twelve (12) months prior written notice is given to LESSEE. It is the Parties' intention that LESSOR shall not be allowed to terminate the Agreement for reasons of public convenience alone, before the passage of at least ten (10) years.

13. INTERFERENCE. LESSEE agrees to install and modulate equipment of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to any equipment of LESSOR, including LESSOR's city services, or other occupants of the Property which existed on the Property prior to the date this Agreement is executed by the Parties. In the event any after-installed LESSEE equipment causes such interference, and after LESSOR has notified LESSEE in writing of such interference, LESSEE will take all commercially reasonable steps necessary to modulate, correct and eliminate the interference, including but not limited to, at LESSEE's option, powering down such equipment and later powering up such equipment for intermittent testing. In no event will LESSOR be entitled to terminate this Agreement or relocate LESSEE's equipment due to any such interference, as long as LESSEE is making a good faith effort to remedy any interference issue. After the date of this Lease, LESSOR agrees that LESSOR and/or any other current or future occupants will be permitted to install only such equipment that is of the type and frequency which will not cause harmful interference (measurable in accordance with then existing industry standards) with the then-existing equipment of LESSEE. The Parties acknowledge that there will not be an adequate remedy at law for noncompliance with the provisions of this Paragraph and therefore, either Party shall have the right to equitable remedies, such as, without limitation, injunctive relief and specific performance.

14. REMOVAL AT END OF TERM. LESSEE shall, upon expiration of the Term, or within three (3) months after any notice to terminate the Agreement, remove its equipment cabinet(s), equipment, conduits, fixtures and all personal property and restore the Premises to its original condition, reasonable wear and tear excepted. LESSOR agrees and acknowledges that all of the equipment, conduits, fixtures and personal property of LESSEE shall remain the personal property of LESSEE and LESSEE 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 (as defined in Paragraph 33 below). If such time for removal causes LESSEE to remain on the Premises after termination of this Agreement, LESSEE 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 and the Premises reasonably restored as provided in this section.

15. HOLDOVER. LESSEE has no right to retain possession of the Premises or any part thereof beyond the expiration of that removal period set forth in Paragraph 14 herein, unless the Parties are then negotiating a new lease or lease extension in good faith. In the event that the Parties are not then in the process of negotiating a new lease or lease extension in good faith, LESSEE holds over in violation of this Agreement. In the event of any such holdover, all terms and provisions of this Agreement, including rent, insurance, licensing and permitting, et al., shall continue to apply to LESSEE's holdover occupancy.

16. IMPROVEMENTS INSTALLED BY LESSEE. LESSEE shall at its expense, in connection with LESSEE's construction of its own telecommunications facilities in the Premises under Paragraph 8, complete the following improvements for and on behalf of LESSOR: (a) transfer of siren equipment and appurtenances from the current LESSOR owned siren pole to

LESSEE's new canister pole, acceptable to the Brighton Police Department; (b) new underground fiber-optic cabling extended to the Premises acceptable to LESSOR's IT Department; (c) a ground-mounted equipment cabinet located on the Premises acceptable to LESSOR's IT Department, capable of serving the improvements and appurtenances listed in (a) and (b) above. LESSOR shall provide notice to LESSEE prior to entering the Premises to conduct work or testing on the emergency warning siren discussed in (a) above.

16. RIGHT OF FIRST REFUSAL. If LESSOR elects during the Term, to grant to a third party by easement or other legal instrument, an interest in and to that portion of the Property occupied by LESSEE, for the purpose of operating and maintaining communications facilities or the management thereof, with or without an assignment of this Agreement to such third party, LESSEE shall have the right of first refusal to match any bona fide offer on the same terms and conditions of such offer. If LESSEE fails to meet such bona fide offer within thirty (30) days after written notice thereof from LESSOR, LESSOR may sell or grant the easement or interest in the Property or portion thereof to such third person in accordance with the terms and conditions of such third party offer.

17. RIGHTS UPON SALE. Should LESSOR, at any time during the Term decide (i) to sell or transfer all or any part of the Property to a purchaser other than LESSEE, or (ii) to grant to a third party by easement or other legal instrument an interest in and to that portion of the Property occupied by LESSEE, for the purpose of operating and maintaining communications facilities or the management thereof, such sale or grant of an easement or interest therein shall be under and subject to this Agreement and any such purchaser or transferee shall recognize LESSEE's rights hereunder under the terms of this Agreement. To the extent that LESSOR grants to a third party by easement or other legal instrument an interest in and to that portion of the Property occupied by LESSEE for the purpose of operating and maintaining communications facilities or the management thereof, and in conjunction therewith, assigns this Agreement to said third party, LESSOR shall provide in such transfer that LESSEE shall have the right to look to such third party for the full performance of this Agreement.

18. QUIET ENJOYMENT. LESSOR covenants that LESSEE, on paying the rent and performing the covenants herein, shall have the right to peaceably and quietly have, hold and enjoy the Premises, subject to and in accordance with the terms of this Agreement.

19. TITLE. LESSOR represents and warrants to LESSEE as of the execution date of this Agreement, and covenants during the Term that LESSOR is seized of good and sufficient title and interest to the Property and has full authority to enter into and execute this Agreement. LESSOR further covenants that there are no liens, judgments or impediments of title on the Property, or affecting LESSOR's title to the same and that there are no covenants, easements or restrictions which prevent the LESSEE's use or occupancy of the Premises as contemplated in this Agreement.

20. INTEGRATION. It is agreed and understood that this Agreement contains all agreements, promises and understandings between LESSOR and LESSEE and that no verbal or oral agreements, promises or understandings shall be binding upon either LESSOR or LESSEE in any dispute, controversy or proceeding at law, and any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing signed by the Parties. 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.

21. GOVERNING LAW. This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of Colorado and any local and federal laws applicable to the subject matter of this Agreement.

22. ASSIGNMENT / SUBLET.

a. This Agreement may be sold, assigned or transferred by the LESSEE, with prior written notice to LESSOR but without any requirement for prior approval or consent of the LESSOR, but only to the LESSEE's principal (parent), affiliates, or subsidiary of its principal, or to any entity which acquires all or substantially all of LESSEE'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 (each, a "Permitted Assignee"). As to any other party, this Agreement may not be sold, assigned or transferred by LESSEE without the prior written consent of the LESSOR, which such consent will not be unreasonably withheld, so long as LESSEE's transferee expressly accepts and assumes all obligations of LESSEE hereunder.

b. LESSEE shall have the right to sublet all or any portion of LESSEE's equipment and/or any portion of the Premises, together with access thereto consistent with its rights and obligations with regard to access the Premises hereunder, provided that as a condition thereto such sublessee concurrently enters into a separate lease directly with LESSOR on terms acceptable to LESSOR for occupancy and use of certain space for such sublessee's cabinet, shelter or other equipment associated with such party's use of the LESSEE's Equipment and/or Premises. Any sublease that is entered into by LESSEE shall be subject to the provisions of this Agreement and shall be binding upon the successors, assigns, heirs and legal representatives of Lessee.

23. 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):

LESSOR: Director of Utilities
City of Brighton
500 South 4th Avenue
Brighton, Colorado 80601

LESSEE: Verizon Wireless (VAW) LLC
d/b/a Verizon Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
Attention: Network Real Estate

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

24. SUCCESSORS. This Agreement shall extend to and bind the heirs, personal representatives, successors and Permitted Assigns of the Parties hereto.

25. SUBORDINATION AND NON-DISTURBANCE. This Agreement shall be subordinate to any future master lease, ground lease, mortgage, deed of trust or other security interest (a "Mortgage") granted by LESSOR, which from time to time may encumber all or part of the Property or Rights-of-Way; provided, however, as a condition precedent to LESSEE being required to subordinate its interest in this Agreement to any future Mortgage, LESSOR shall obtain for LESSEE's benefit a subordination, non-disturbance and attornment agreement ("SNDA") containing substantially the following terms: any SNDA shall include the encumbering party's ("Lender's") agreement that, if Lender or its successor-in-interest or any purchaser of Lender's or its successor's interest (a "Purchaser") acquires an ownership interest in the Property, Lender or such successor-in-interest or Purchaser will honor all of the terms of the Agreement and fulfill LESSOR's obligations under the Agreement, and which SNDA shall also provide that LESSEE (1) confirms that the Agreement is subordinate to the Mortgage or other real property interest in favor of Lender, (2) agrees to attorn to Lender if Lender becomes the owner of the Property and (3) agrees to accept a cure by Lender of any LESSOR default, provided such cure is consistent with this Agreement.

26. RECORDING. LESSOR agrees to execute a short-form Memorandum of this Agreement which LESSEE may record with the appropriate recording officer. The execution date of any Memorandum of Lease is intended for recording purposes only and bears no reference to Commencement Date (of the Term or rent payments).

27. DEFAULT.

a. In the event there is a breach by LESSEE with respect to any of the provisions of this Agreement or its obligations under it, including the payment of rent, LESSOR shall give LESSEE written notice of such breach. After receipt of such written notice, LESSEE shall have fifteen (15) business days in which to cure any monetary breach, and thirty (30) calendar days in which to cure any non-monetary breach; provided that, for any performance (non-monetary) breach, LESSEE shall have such reasonable extended period as circumstances may require beyond the thirty (30) days, if the nature of the cure is such that it reasonably requires more than thirty (30) days, and LESSEE commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. LESSOR may not maintain any action or effect any remedies for default against LESSEE unless and until LESSEE has failed to cure the breach within the time periods provided in this Paragraph.

b. In the event there is a breach by LESSOR with respect to any of the provisions of this Agreement or its obligations under it, LESSEE shall give LESSOR written notice of such breach. After receipt of such written notice, LESSOR shall have thirty (30) calendar days in which to cure any such breach, provided LESSOR 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 LESSOR commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. LESSEE may not maintain any action or effect any remedies for default against LESSOR unless and until LESSOR has failed to cure the breach within the time periods provided in this Paragraph. Notwithstanding the foregoing 30-day period to the contrary, if LESSOR's failure to perform an obligation materially interferes with LESSEE's ability to conduct its business on the Property, then the cure period shall be fifteen (15) calendar days.

28. REMEDIES. Upon a default, the non-defaulting Party shall issue notice under Paragraph 27 and should the defaulting Party fail to cure as provided in Paragraph 27, 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 and at the defaulting Party's expense, including but not limited to the obtaining of reasonably required insurance policies. 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 Party may have by reason of such the non-defaulting Party may terminate the Agreement and/or pursue any remedy now or hereafter available to the non-defaulting Party under Colorado law; provided, however, that each Party shall use reasonable efforts to mitigate its damages in connection with any default.

29. ENVIRONMENTAL.

a. LESSEE will be responsible for all obligations of compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or concerns that are in any way related to the specific activity conducted by LESSEE in or on the Premises or Property.

b. LESSOR will be responsible for all obligations of compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or concerns as may now or at any time hereafter be in effect, that are or were in any way related to activity conducted by LESSOR in, on, or in any way related to the Property, unless such conditions or concerns are caused by the specific activities of LESSEE in the Premises or Property.

c. In the event that abatement of hazardous materials is required in connection with LESSEE's use of the Premises, LESSOR may elect to terminate this Agreement unless LESSEE shall take responsibility for and promptly commence any necessary abatement procedures. "Hazardous Material" shall mean any material, substance, chemical or waste identified as hazardous, toxic, solid waste or dangerous in any applicable federal, state or local Law or regulation (including petroleum, impacted soils and asbestos).

30. 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) calendar days following same or, if the Property is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt LESSEE's operations at the Premises for more than forty-five (45) days, and such damage was not caused by LESSEE, then LESSEE may, at any time following such fire or other casualty, provided LESSOR has not commenced and pursued with reasonable diligence the repair or restoration required to permit LESSEE to resume its operation at the Premises, terminate this Agreement upon fifteen (15) additional calendar days prior written notice to LESSOR. 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 rent and other payments due under this Agreement. Notwithstanding the foregoing, the rent shall abate during the period of repair following such fire or other casualty not caused by LESSEE, in proportion to the degree to which LESSEE's use of the Premises is measurably impaired.

31. CONDEMNATION. In the event of any condemnation of all or any portion of the Premises, this Agreement may be terminated by either Party, and LESSEE shall be entitled to apply for and claim that part of the award or price paid by the condemning authority for the Premises which is attributable to the improvements, fixtures, conduits, antennas, equipment and

all other things of LESSEE situated on the Premises, as well as LESSEE's relocation costs, damages and losses, and the loss of its leasehold interest (collectively, "Losses"), so long as such Losses do not reduce any award of LESSOR. It is the Parties' intent that LESSEE may on its own behalf make a claim for its Losses in any condemnation proceeding involving the Premises and that LESSOR shall have no obligation to claim on LESSEE's behalf. If LESSEE 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, LESSOR shall promptly repair any damage to the Premises caused by such condemning authority.

32. PARTIAL INVALIDITY/AUTHORITY. If any provision herein is deemed invalid by the District Court of Adams County, Colorado, 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.

33. APPLICABLE LAWS. During the Term, LESSOR and LESSEE shall use, occupy, operate and maintain the Premises in compliance with all applicable local, state and federal laws, rules, regulations, ordinances, directives, covenants, easements, zoning and land use regulations, and restrictions of record, permits, building codes, and the requirements of any applicable fire insurance underwriter or rating bureau, now in effect or which may hereafter come into effect (including, without limitation, the Americans with Disabilities Act and laws regulating hazardous substances) (collectively "Laws"). LESSEE shall, in respect to the condition of the Premises and at LESSEE's sole cost and expense, comply with (a) all Laws relating to LESSEE's specific use of the Premises and (b) all building codes, permits and approvals applicable to improvements made by LESSEE in the Premises. LESSEE acknowledges that the Property is part of the LESSOR's municipal water utility supply system, operated by the City of Brighton Water Activity Enterprise for public purposes, and as such, that the Property is or may become subject to security restrictions, regulations or restricted-access requirements mandated by the Department of Homeland Security or similar federal or state agency having jurisdiction over public utility facilities. To that extent LESSEE agrees to abide by any such restrictions, including reasonable requirements of the City's Utilities Director, which may be or become applicable to the Property.

34. SURVIVAL. The provisions of the Agreement relating to indemnification from one Party to the other Party shall survive any termination or expiration of this Agreement for the period of applicable statutes of limitation or repose. Additionally, any provisions of this Agreement which require performance subsequent to any termination or expiration of this Agreement shall also survive such termination or expiration.

35. 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.

LESSOR:

CITY OF BRIGHTON, COLORADO

By: _____
Philip Rodriguez, City Manager

ATTEST

Natalie Hoel, City Clerk

Date: _____

LESSEE:

**VERIZON WIRELESS (VAW) LLC
D/B/A VERIZON WIRELESS**

By: _____

Its: _____

Date: _____

Exhibit "A"
(Legal Description of the Property)

TRACT W, BRIGHTON EAST FARMS FILING NO. 1, COUNTY OF ADAMS, STATE OF
COLORADO

Exhibit "B" (The Premises)



