

**BUILDING AND ROOFTOP LEASE AGREEMENT**

This LEASE AGREEMENT (“Agreement”), dated as the latter of the signature dates below (the “Effective Date”), is entered into by the University of Montana, having its principal mailing address at 32 Campus Drive, Missoula, MT, 59812, (the “Lessor”) and Gold Creek Cellular of Montana Limited Partnership d/b/a Verizon Wireless (the “Lessee”).

**RECITAL**

Lessor owns or controls that certain plot, parcel, or tract of land, together with all rights and privileges arising in connection therewith, located at Jesse Hall, University of Montana, in the County of Missoula, State of Montana (collectively, the “Premises”). Lessee desires to use a portion of the Premises in connection with its federally licensed communications business. Lessor desires to grant to Lessee the right to use a portion of the Premises in accordance with this agreement.

In consideration of the mutual covenants contained herein and intending to be legally bound hereby, the parties hereto agree as follows:

**AGREEMENT****1. Premises.**

Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, on the terms and subject to the conditions contained herein, roof top space located at Jesse Hall, University of Montana, City and County of Missoula, State of Montana, to locate its communications antenna and associated equipment; access to electricity and other utility facilities required for operation of its communications antennas and associated equipment; and reasonable space within the interior of the building to store necessary and required equipment (collectively, the “Leased Premises”). The Leased Premises may be located adjacent to other leased premises on Lessor’s property (collectively, the “Site”). The space required in the interior and exterior of the leased property, together with such easements as are necessary for the antennas and initial installation shall be described on attached Exhibit A (“Exhibit A”). The parties acknowledge and agree that Lessee intends to locate at the Leased Premises: a broadband communications antenna and associate cables, wires, electrical equipment, base station, storage cabinets and/or fencing (the “Antenna Facilities”). The Leased Premises may be used only for the installation, maintenance, and operation of Lessee’s equipment in accordance with F.C.C. licenses held by Lessee.

Lessor hereby reserves the right to require Lessee to move its antenna locations to a reasonable distance on the transmission roof top to accommodate Lessor’s own needs for its antennas and/or the needs of other Lessees. Lessor grants to Lessee reasonable access to the Leased Premises for purposes of installation, maintenance, modification, relocation, and removal or the Antenna Facilities.

Lessee further acknowledges that it has examined the Leased Premises prior to the making of this Agreement, and knows the condition thereof, and that no representation as to the condition or state of repairs thereof have been made by the Lessor, or its agent, which are not herein expressed, and

Lessee hereby accepts the Leased Premises in their present condition at the Effective Date of this Agreement.

## **2. Term.**

- (a) The initial term of this Agreement shall be for a period of five (5) years (the "Initial Term"), commencing on the Execution Date of this Agreement by the Lessor and Lessee (the "Commencement Date"). The Initial Term will terminate on the fifth annual anniversary of the Commencement Date.
- (b) This agreement will automatically renew for four (4) additional five (5) year terms (each 5 year term shall be defined as the "Extension Term"), upon the same terms and conditions unless the Lessee notifies the Lessor in writing of Lessee's intention not to renew this Agreement at least three (3) months prior to the expiration of the existing term.
- (c) If Lessee remains in possession of the Premises after the termination of this Agreement then Lessee will be deemed to be occupying the Premises on a month to month basis (the "Holdover Term"), subject to the terms and conditions of this Agreement.
- (d) The Initial Term, the Extension Term, and the Holdover Term are collectively referred to as the Term ("Term").

## **3. Rent.**

- (a) Commencing on the first day of the month following the Execution Date of this Agreement (the "Rent Commencement Date"), Lessee will pay the Lessor a monthly rental payment of \$1850.00 per month ("Rent"), at the address set forth above, on or before the fifth (5<sup>th</sup>) day of each calendar month in advance. In partial months occurring after the Rent Commencement Date, Rent will be prorated. The initial Rent payment will be forwarded by Lessee to Lessor within thirty (30) days after the Rent Commencement Date.
- (b) Starting in year two (2) of the Agreement and continuing thereafter for each year that the Agreement remains in full force and effect, the Rent payments shall increase by three percent (3%) per year.
- (c) All charges payable under this Agreement such as utilities and taxes shall be billed by Lessor within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by Lessor, and shall not be payable by Lessee. The foregoing shall not apply to monthly rent which is due and payable without a requirement that it be billed by Lessor. The provisions of the forgoing sentence shall survive the termination or expiration of this Agreement.

## **4. Governmental Approvals.**

- (a) Lessor and Lessee understand and agree that Lessee's ability to use the Premises is contingent upon its obtaining, after the Execution Date of this Agreement, all the certificates, permits, and other approvals (collectively the "Governmental Approvals") that may be required by any Federal, State, or Local authorities, as well as a satisfactory building structural analysis which will permit Lessee use of the Premises as set forth below. 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 any such applications for such Governmental

Approvals should be finally rejected or Lessee determines that such Governmental Approvals may not be obtained in a timely manner, or any Governmental Approvals issued to Lessee is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority or that Lessee determines that the Leased Premises are no longer technically compatible for its use or that Lessee, in its sole discretion, will be unable to use the Premises for their intended purposes, 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 required, and shall be effective upon the mailing of such notice 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 parties shall have no further obligations, including the payment of money, to each other.

#### **5. Conditions Precedent.**

Lessee shall pay, at its option and own expense, the cost of a rooftop analysis documentation of (i) antenna load; (ii) antenna size; (iii) transmission line direction; (iv) wind loading; and (v) installation on Lessor's rooftop [client specifics].

This Agreement is conditioned upon Lessee obtaining, at its expense, all government approvals detailed in **Section 4** of this Agreement.

#### **6. Possession.**

Lessee shall take possession of the Leased Premises upon satisfactory roof top engineering as described in **Section 5** of this Agreement and acceptance by Lessor. All rooftop analysis is at Lessee's cost. Lessee may waive and cancel this lease within 90 days without any penalty, if in its sole discretion it determines that the rooftop is unacceptable for that use.

#### **7. Permitted Use.**

Lessee may use the Premises for the transmission and reception of communications signals; the installation, construction, maintenance, operation, repair, replacement, and upgrade of its Antenna Facilities; for the ground storage of the Antenna Facilities; and any other items necessary to the successful and secure use of the premises. The installation of the Antenna Facilities shall be done according to plans approved by Lessor, which approval shall not be reasonably withheld.

Lessee shall, at its expense, comply with all present and future federal, state, and local laws, ordinances, rules, and regulations (including laws and ordinances relating to health, radio frequency emissions, other radiation and safety), if applicable, in connection with the use, operation, maintenance, construction, and/or installation of the Antenna Facilities and/or the Premises. Lessor agrees to reasonably cooperate with Lessee in obtaining any federal licenses and permits required for or substantially required by Lessee's use of the Premises.

Upon termination of this lease, within ninety (90) days, remove its equipment, fixtures, and all personal property and restore the Premises to its original condition, reasonable wear and tear excepted. Such removal shall be done in a workmanlike and careful manner and without interference or damage to the Site, or any other equipment, structures, or operations on the Site, including use of the Site by Lessor or any of Lessor's assignees or lessees, in full compliance with the provisions of this Agreement.

Lessor reserves the right to install additional bracketing material or similar structural supports to allow for the co-location of other lessees' antenna or similar radiating or broadcasting equipment. Lessor agrees, as a precondition to any such additional installation, to provide all reasonable and necessary assurances to Lessee that such co-location will not disturb, disrupt, or cause harm to Lessee's antenna or radiating or broadcasting equipment.

#### **8. Upgrades.**

Lessee may update and replace the Antenna Facilities, provided that the replacement Antenna Facilities are not greater in number or size than described in Exhibit A. Lessee shall submit to Lessor a detailed proposal for any such replacement Antenna Facilities and any supplemental that may be requested for evaluation by Lessor and prior approval. Any such upgrade or replacement shall be subject to the provisions of **Section 7** of this Agreement.

#### **9. Termination.**

Lessee shall have the right to terminate this Agreement at any time and without further liability to Lessor, provided that all sums due hereunder have been paid in full if (i) Lessee cannot obtain all certificates, licenses, or other approvals (collectively "Approvals") required from any governmental authority and/or any easements required from any third party to operate its Antenna Facilities; (ii) such Approvals are canceled, expired, lapse, withdrawn, or terminated; (iii) Lessor fails to hold the legal right to lease the property on which the Antenna Facilities is located; or (iv) Lessor does not have the authority to enter into this Agreement under **Sections 10 and 27** of this Agreement. If Lessee, in its sole discretion, determines that it will be unable to use the Leased Premises for the used intended by this Agreement, it may terminate this Agreement upon not less than one hundred eighty (180) days prior written notice to Lessor. Lessor may terminate this Agreement if Lessee ceases operations at the Leased Premises and Lessee shall remain liable for not less than one hundred eighty (180) days rent from the date Lessee ceases operations. In the event Lessee breaches any of the terms of this Agreement, Lessor may terminate this Agreement and shall be entitled to any other rights or remedies available at law or in equity.

#### **10. Title.**

Lessor covenants 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 other liens, judgments, or impediments of title of the property, or affecting Lessee's title to the same and there are no covenants, easements, or restrictions which prevent the use of the Premises by Lessees as set forth in this agreement.

#### **11. Lessee Property.**

All Antenna Facilities installed by Lessee at the Leased Premises shall remain the property of Lessee.

#### **12. Maintenance.**

Lessee shall, at its own expense, maintain the Antenna Facilities on or attached to the Premises in safe condition, in good repair, and in a manner suitable to the Lessor so as to not conflict with the use of or other leasing of the Property by Lessor. In carrying out its maintenance responsibilities, Lessee

shall not interfere with the use of the Leased Premises, related facilities, or other equipment of other Lessees and shall comply with the requirements of this agreement.

Lessee shall have sole responsibility for the maintenance, repair, and security of its equipment, personal property, Antenna Facilities, and leasehold improvements, and shall keep the same in good repair and condition during the term of this Agreement. Lessee shall keep the premises free of debris and anything of dangerous, noxious, or offensive nature, which would create a hazard or undue vibration, heat, noise, or interference.

Lessee shall be allowed reasonable access to the Leased Premises to maintain the Antenna Facilities and perform its obligations under this agreement.

### **13. Site Maintenance.**

Lessor shall maintain the Leased Premises in good order and repair so that it will adequately support all of Lessee's properly engineered and installed Antenna Facilities.

### **14. Report of Damages.**

Lessee shall make an immediate report to Lessor of the occurrence of any damage. Lessee, its agents, and its contractors shall bring no substances on to the Leased Premises which could cause any environmental contamination and bring no volatile substances on the Leased Premises.

### **15. Environmental.**

Lessor represents and warrants that the Leased Premises are free of hazardous substances as of the Effective Date of this Agreement, and, to the best of Lessor's knowledge, the Leased Premises have never been subject to any contamination or hazardous condition resulting in any environmental investigation, inquiry, or remediation. Lessor and Lessee agree that each will be responsible for 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 condition or other matters as may now or at any time hereafter be in effect, that are now or were related to that party's activity conducted in or on the property.

### **16. Utilities.**

If Permitted by the local utility company servicing the Leased Premises, Lessee shall furnish and install an electrical submeter on the Leased Premises for the measurement of electrical power used by Lessee's installation and operation of the Antenna Services. Lessee shall pay for its own power consumption used thirty (30) days after receipt of an invoice from Lessor indicating the usage amount. Lessor shall, at all times, provide electrical service and telephone service access within the Leased Premises. Lessee shall be permitted to install, maintain, and/or provide access to and use of, as necessary, a temporary power source.

If an electrical submeter cannot be installed on the premises, Lessee will pay Lessor a reasonable monthly fee for utilities charges for electricity, telephone service, or any other utilities consumed by Lessee on the Leased Premises.

### **17. Interference.**

Lessee's installation, operation, and maintenance of its Antenna Facilities shall not damage or interfere in any way with Lessor's site operations or related repair and maintenance activities or with such activities of other Lessees of the Site, nor with the operation of the facilities of any other Lessee. Lessor, at all times during this Agreement, reserves the right to take any action it deems necessary, in its sole discretion, to repair, maintain, alter, or improve the Lease Premises in connection with the Site operations as may be necessary, including leasing parts of the Site and surround ground space to others.

Lessor guarantees to Lessee Lessor's subsequent non-interference with Lessee's communications operations, subject to Lessor's operation and maintenance of its Site.

If Lessor receives a requires for co-location on the Site from any other third party, it shall submit a proposal, complete with all technical specifications reasonably requested by Lessee to Lessee for review for non-interference. Lessor shall not be required to provide Lessee with any specifications or information claimed to be of a proprietary nature by the third party. The third party shall be responsible for the reasonable cost of preparing technically specifications for its proposed transmission facility. Lessee shall have thirty (30) days following receipt of such proposal to make any objections thereto, and failure to make any objection within those thirty (30) days shall be deemed consent by Lessee to the installation of antennas or transmission facilities, pursuant to such proposal. If Lessee gives notice of objection due to interference during such thirty (30) day period and Lessee's objections are verified by Lessor to be valid, then Lessor shall not proceed with the proposal.

#### **18. Indemnity.**

To the extent permitted by applicable law, Lessor and Lessee shall indemnify and hold one another harmless from any and all liability, loss, expense, attorney fees, or claims for injury or damages arising out of this agreement in proportion to and to the extent such injury or damages are caused by or result from the negligent or intentional acts or omissions of the indemnifying party, or indemnifying party's officers, agents or employees, including liability or loss arising from environmental contamination as provided in this Agreement. The liability of the Lessor under this paragraph is subject to the limitations and damages and immunities of the Lessor as provided by law.

#### **19. Taxes**

Lessee shall be responsible for paying all personal property taxes assessed directly upon and arising solely from its own use of the Antenna Facilities on the Leased Premises during the Term of this Agreement. Lessee shall reimburse Lessor for Lessee's proportional share of the real estate taxes, upon timely receipt of a copy of the tax bill and request for reimbursement from Lessor. For purposes herein, Lessee's proportional share shall be determined based upon the square footage of the Premises relative to Lessor's entire parcel of real estate.

#### **20. Insurance.**

Lessee shall maintain, at its sole cost during the Term of this Agreement, commercial general liability insurance insuring Lessee against liability for personal injury, death, or damage to personal property arising out of the use of the Leased Premises by Lessee. Such insurance shall provide coverage in an amount not less than three million (\$3,000,000) for personal injury, death, or damage to personal property. Lessee shall provide Lessor with a certificate of insurance evidencing such coverage, which

shall state that the carrier has insured Lessee for all liabilities under this Agreement and that it will not cancel or change any policy of insurance issued to Lessee except after thirty (30) days notice in writing to Lessor. Lessor shall be added to the policy as an additional insured. Lessee's requirement to furnish insurance in accordance with this paragraph or the furnishing of such insurance does not and shall not relieve Lessee from its obligations to Lessor under any other provision of this Agreement for any deficiency amount of which Lessee is responsible to Lessor. Lessor shall insure the property and building of which the Premises is a part thereof, against loss or damage under a policy or policies of fire and extended coverage.

### **21. Default and Right to Cure**

(a) The following will be deemed a default by Lessee and a breach of this Agreement: (i) non-payment of Rent when such Rent remains unpaid for more than thirty (30) days after written notice from Lessor of such failure to pay; or (ii) Lessee's failure to perform any other term or condition under this Agreement within forty-five (45) days after receipt of written notice from Lessor specifying the failure. No such failure will be deemed to exist if Lessee has commenced to cure such default within such period and provided that such efforts are prosecuted to completion within reasonable diligence. Delay in curing a default will be excused if due causes beyond the reasonable control of Lessee. If Lessee remains in default beyond any applicable cure period, Lessor will have the right to exercise any and all rights and remedies available.

(b) The following will be deemed a default by Lessor and a breach of this Agreement: Lessor's failure to perform any term or condition, or breach of any warranty or covenant under this agreement within forty-five (45) days after receipt of written notice from Lessee specifying the failure. No such failure will be deemed to exist if Lessor has commenced to cure such default within such period and provided that such efforts are prosecuted to completion within reasonable diligence. Delay in curing a default will be excused if due causes beyond the reasonable control of Lessee. If Lessee remains in default beyond any applicable cure period, Lessor will have the right to exercise any and all rights and remedies available.

### **22. Assignment.**

This lease may be assigned by Lessee with the express prior written consent of Lessor, which consent shall not be unreasonably withheld, provided that no assignment shall relieve Lessee of any of its obligations under this Agreement, and provided further that no assignee may use the Leased Premises for other than an ISM/MMDS/BRS/EBS communications system without the express written consent of Lessor and that the assignee is a qualified, facially viable entity. Any assignee must agree in writing to assume all applicable rights and obligations of this Agreement.

### **23. Notices.**

All notices must be in writing and sent by U.S. certified mail, postage prepaid, return receipt requested or by overnight express delivery to the following addresses:

Lessor:

University of Montana Office of Operations and Finance  
129 University Hall

University of Montana  
Missoula, MT 59812  
Telephone: (406) 243-4662

Lessee:

Gold Creek Cellular of Montana Limited Partnership,  
a Colorado limited partnership d/b/a Verizon Wireless

[Address]

Telephone:

**24. Compliance with Laws.**

Lessor represents that the Leased Premises are in compliance with all building life, safety, disability, and other laws, codes, and regulations of any governmental or quasi-governmental authority. Lessee agrees that, subject to Lessor's compliance with the terms of this paragraph, any improvements constructed by Lessee on the Leased Premises shall be in compliance with all applicable laws, codes, and regulations and shall indemnify owner for all expenses and damages if Lessee does not do so.

**25. Condemnation.**

If all or substantially all of Lessor's property upon which the Leased Premises are located is condemned by an authorized governmental or quasi-governmental authority, this Agreement shall terminate upon the date of the taking and each Party shall have the right to maintain their own respective actions against the condemning authority for their respective damages and neither Party shall have any interest in any award granted to the other. If a taking occurs, the Rent shall be prorated to the date of the taking, and any excess rent shall be promptly repaid to Lessee.

**26. Casualty.**

If any part of the Antenna Facilities or Leased Premises is damaged by fire or other casualty so as to render the Leased Premises unsuitable, in Lessee's sole determination, then Lessee may terminate this Agreement by providing written notice to the Lessor, which termination will be effective as of the date of such damage or destruction. Upon such termination, Lessee will be entitled to collect all insurance proceeds payable to Lessee on account thereof and Lessee shall be reimbursed for any prepaid Rent on a prorated basis. If notice of casualty termination is given, or if Lessor or Lessee take measures to rebuild the Antenna Facilities, Lessor agrees to use its reasonable efforts to permit Lessee to place temporary transmission and reception facilities on the Site at no additional Rent until Lessee is able to activate a replacement transmission facility at another location or the reconstruction of the Antenna Facilities is completed.

**27. Miscellaneous.**

- (a) **Quiet enjoyment.** Lessor covenants that Lessee, on paying the rent and performing covenants, shall peaceably and quietly have, hold, and enjoy the Premises.
- (b) **Authority.** Each party represents and warrants that it has full authority to enter into and sign this Agreement.



- (c) **Successors.** The terms and conditions of this Agreement shall extend to and bind the heirs, personal representatives, successors and assigns of Lessor and Lessee.
- (d) **Governing Law.** This Agreement shall be construed pursuant to the laws of the State of Montana. Any legal action on the part of the Parties to this Agreement to enforce or interpret the terms of this Agreement shall be brought in the Fourth Judicial District, Missoula Count, Montana.
- (e) **Modification.** This Agreement may not be amended or modified unless authorized representatives of the Lessor and Lessee consent in writing to the amendment or modification.
- (f) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the Parties and supersedes all prior and contemporaneous oral or written agreements and representations between the Parties or their representatives. All exhibits are incorporated by reference.
- (g) **Severability.** If any term or condition of this Agreement is found unenforceable, the remaining terms and conditions will remain binding upon the Parties as though the unenforceable provision were not contained herein.
- (h) **Recording.** Lessee may record a memorandum on the real estate records concerning the existence of this Agreement.

*[The rest of this page is left intentionally blank]*

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be effective as of the last date written below.

**“LESSOR”**

University of Montana Department of Operations & Finance

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

Name: Paul Lasiter

Title: Vice President, Operations & Finance

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

**“LESSEE”**

Gold Creek Cellular of Montana Limited Partnership,

a Colorado limited partnership d/b/a Verizon Wireless

By: ATC Sequoia LLC, a Delaware limited liability company

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

Title: Attorney-in-Fact

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