

**When recorded please mail to:**  
Kristi Salskov, CMC, Town Clerk  
Town of Pinetop-Lakeside  
325 W. White Mountain Blvd.  
Lakeside, AZ 85929

## TOWN OF PINETOP-LAKESIDE

### RESOLUTION NO. 23-1676

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PINETOP-LAKESIDE, NAVAJO COUNTY, ARIZONA, APPROVING TO GRANT AN EIGHT (8) FOOT WIDE UTILITY EASEMENT TO CELLULAR ONE OF NORTH-EAST ARIZONA FOR THE LEASED PREMISES AT MOUNTAIN MEADOW RECREATION COMPLEX (EXHIBIT "B") AS NEEDED FOR THE INSTALLATION, OPERATION, INSPECTION, MAINTENANCE, AND REPAIR OF NECESSARY UTILITIES AS DISPLAYED IN EXHIBIT "B" AND DESCRIBED IN EXHIBIT "A".**

**WHEREAS**, Cellular One of North-East Arizona and the Town of Pinetop-Lakeside have agreed to a Ground Lease Agreement (Exhibit C) for a communications facility at Mountain Meadow Recreation Complex approved by Resolution 22-1604 (Exhibit D); and

**WHEREAS**, Cellular One of North-East Arizona needs an eight (8) foot easement granted for the installation, operation, inspection, maintenance, and repair of necessary utilities from the point of connection with the Utility Companies' distribution networks to the building located on the leased premises (Exhibit B); and

**WHEREAS**, the granted utility easement (as depicted on Exhibit "B" and legally described on Exhibit "A" and referred to herein as the "Utility Easement") shall automatically terminate upon the termination of the Ground Lease Agreement.

**NOW, THEREFORE, BE IT RESOLVED** that the Town Council of the Town of Pinetop-Lakeside, Navajo County, Arizona, hereby approve to grant the Utility Easement to Cellular One of North-East Arizona; and authorize the Town Manager to execute all documents necessary in connection with this agreement and take such further action as may be necessary to implement the Utility Easement.

**PASSED AND ADOPTED** by the Town Council of the Town of Pinetop-Lakeside, Navajo County, Arizona this 6<sup>th</sup> day of July 2023.



TOWN OF PINETOP-LAKESIDE

*Stephanie Irwin*

Stephanie Irwin, Mayor

ATTEST:

*Kristi Salskov, CMC*  
Kristi Salskov, CMC  
Town Clerk

APPROVED AS TO FORM:

*William J. Sims, III*  
William J. Sims, III  
Town Attorney

**EXHIBIT A**  
**LEGAL DESCRIPTION**

**EXHIBIT "A"**

**Legal description**

AN 8.00 FOOT WIDE UTILITY EASEMENT BEING A PORTION OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 9 NORTH, RANGE 22 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, NAVAJO COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A USFS ALUMINUM CAP LABELED RLS 11758, MARKING THE CENTER WEST 1/16TH CORNER OF SAID SECTION 36;

THENCE SOUTH 52°15'10" WEST A DISTANCE OF 62.45 FEET;

THENCE SOUTH 00°00'00" EAST A DISTANCE OF 50.00 FEET;

THENCE NORTH 90°00'00" WEST A DISTANCE OF 35.00 FEET;

THENCE SOUTH 00°00'00" EAST A DISTANCE OF 4.00 FEET TO THE CENTERLINE OF SAID 8.00 FOOT UTILITY EASEMENT, LYING 4.00 FEET ON EACH SIDE AND ALSO BEING THE POINT OF BEGINNING;

THENCE NORTH 90°00'00" WEST A DISTANCE OF 15.00 FEET;

THENCE NORTH 89°45'21" WEST A DISTANCE OF 479.76 FEET;

THENCE NORTH 05°49'21" WEST, A DISTANCE OF 121.52 FEET;

THENCE NORTH 35°22'30" WEST, A DISTANCE OF 42.03 FEET;

THENCE NORTH 00°25'06" EAST, A DISTANCE OF 49.17 FEET;

THENCE SOUTH 89°33'58" WEST, 48.57 FEET TO A POINT ON THE EASTERLY PROPERTY LINE OF PARCEL 212-39-009A AND BEING THE POINT OF TERMINUS.

**EXHIBIT B**  
**SITE SURVEY**



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**EXHIBIT C**  
**GROUND LEASE AGREEMENT**

Exhibit C

**GROUND LEASE  
AGREEMENT**

THIS GROUND LEASE AGREEMENT (collectively referred to as "Lease" or "Lease Agreement," or "Agreement") is made and entered into as of this 31<sup>st</sup> day of February *P.M.*, 2022 by and between the Town of Pinetop-Lakeside, a political subdivision of the State of Arizona ("Lessor"), and Cellular One of North East Arizona, a division of Smith Bagley, Inc., a District of Columbia corporation, ("Lessee"), also referred to herein as "Party" individually, and "Parties" collectively.

1. **Premises.** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor a 50 x 50 portion of that certain real property particularly described as follows:

Exhibit "A" attached hereto and incorporated herein by this reference, hereinafter referred to as the "Survey". The Survey depicts the Leased Premises in relation to adjacent properties and shows the Access Easement and Utility Easement described below.

Exhibit "B" attached hereto and incorporated herein by this reference indicates the approximate location of the 50 x 50 portion of property, hereinafter referred to as the "Leased Premises."

2. **Use.** Lessor hereby grants permission to Lessee to occupy the Leased Premises to install, construct, and operate a transmission tower, and radio and microwave communications equipment (referred to throughout this Agreement as "Communications Facility"). Such equipment shall include, but not be limited to, an equipment building and an emergency gasoline-, propane-, butane-, diesel-, or other fuel powered generator at a location on the Leased Premises suitable for Lessee's needs. The building will house equipment necessary for Lessee's communication operations. The emergency generator will be used at Lessee's option, but in most cases only in the event of a power failure. For the purposes of this Lease, the transmission tower and all of Lessee's equipment, building, generator, cables, wires, antennas, switches, microwave dishes, and accessories shall hereinafter collectively be referred to as "Communications Facility." Lessee covenants that it will keep the Communications Facility in good repair as required by all applicable laws. Lessee shall also comply with all rules and regulations enforced by the Federal Communications Commission with regard to the lighting, marking and painting of towers.

3. **Term.**

A. **Primary Term.** The Primary Term of this Lease shall be for five (5) years and shall commence on April 1, 2022 (the "Commencement Date") and shall terminate at midnight on March 31, 2027 unless sooner terminated as provided herein.

**GROUND LEASE  
AGREEMENT**

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3. **Term.**

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- B. **Extended Terms.** Lessee is granted the option to extend the Primary Term of this Lease for four (4) additional periods of five (5) years each ("Extended Term") provided Lessee has materially abided by the terms and conditions of this Lease and is not in default hereunder. Each Extended Term shall automatically occur unless Lessee provides written notice to Lessor of its intention to not to extend the term during the last three (3) months of the primary term or any extension term thereof, as the case may be, but in no event shall such notice be less than thirty (30) days prior to the expiration of any such term.
4. **Rent.**
- A. **Rent Terms.** Lessee agrees to pay Lessor for the Leased Premises, **Eight Hundred Dollars (\$800.00)**, each month payable in advance on or before the 5<sup>th</sup> day of each month during the Initial Term or any Extended Term of this Lease. Payments shall be sent to the address designated under "Lessor" in Section 8 of this Agreement. Any payment made pursuant to this Section 4 shall be termed "Rent."
- B. **Rent Adjustment.** The amount of Rent payable hereunder, as stated in Section 5.A above, shall increase by two percent (2%) annually beginning the first anniversary date of the Extended Term, and on anniversary date of the Extended Term every year thereafter.
- C. **Prorated Rent.** Rent for any period during the term hereof which is less than one (1) fiscal year shall be prorated based on a three hundred and sixty-five (365) day year.
5. **Access and Utilities.** Lessee is hereby given and granted rights-of-way for ingress, egress, and regress to the Leased Premises over, under, upon, and across adjoining lands and rights-of-way owned by Lessor as may be required for the purpose of erection, installation, operation, inspection, repair, maintenance, and removal of Lessee's Communications Facility and other necessary appurtenances and an easement thereon for telephone lines and power lines used in connection with Lessee's Communications Facility ("Access Easement"). The Access Easement is depicted on the Survey. Lessee may improve any Access Easement by grading, graveling, or paving it. An easement for utilities (the "Utility Easement") is depicted on the Survey. The Utility Easement may be used for the installation, operation, inspection, maintenance, and repair (whether by Lessee or by Lessee's designated Utility Companies) of necessary utilities from the point of connection with the Utility Companies' distribution networks to Lessee's building located on the Leased Premises. The Utility Easement shall be sufficiently wide for providing the applicable utilities to the Leased Premises, but in no event wider than thirty (30) feet.

It is understood that Lessee and the Utility Companies providing services to Lessee shall have access to all areas of the Leased Premises via the Utility Easement as necessary for installation, operation, inspection, maintenance, and/or repair of such services. Lessor shall advise Lessee of any Utility Company requesting an easement under, over, upon and/or across the Leased Premises.

**6. Utilities at Lessee's Cost.** Lessee shall be solely responsible for and promptly pay all charges for gas, electricity, telephone service, or any other utility used or consumed by Lessee on the Leased Premises. Lessee shall have an electrical current meter installed at the Leased Premises, and the cost of such meter and of installation, maintenance, and repair thereof shall be paid for by Lessee.

**7. Holding Over.** Should Lessee, with Lessor's consent, hold possession of the Leased Premises or any portion thereof after the date upon which the Leased Premises are to be surrendered, Lessee will become a Lessee on a month-to-month basis upon all the terms, covenants, and conditions of this Lease except those pertaining to Lease term and, during any such month-to-month tenancy, Lessee shall pay monthly Rent in the amount which was paid by Lessee during the immediately preceding Lease year. Lessee will continue occupancy from month-to-month until terminated by Lessor or Lessee by the giving of thirty (30) days written notice to the other. Nothing in this Section is to be construed as a consent by Lessor to the occupancy or possession of the Leased Premises by Lessee after the expiration of the Lease term.

**8. Notice.** All notices or demands are deemed to have been given or made when delivered in person or mailed by certified, registered, or express mail, return receipt requested, postage prepaid, United States mail, and addressed to the respective Parties as follows:

**Lessor:**  
Town of Pinetop-Lakeside  
325 W. White Mountain Blvd.  
Lakeside, Arizona 85929  
Attn: Town Manager

**Lessee:**  
Smith Bagley, Inc., dba  
Cellular One of North East Arizona  
1500 S. White Mountain Road  
Show Low, Arizona 85901  
Attn: Chief Legal Officer

The address to which any notice or demand may be given to either Party may be changed by written notice.

9. **Liability and Indemnity.** To the extent permitted by law, Lessee agrees to defend, indemnify and save Lessor and its officials, officers, employees and agents harmless from any and all liability, claims, lawsuits, and costs, including reasonable attorneys' fees, costs and expert witness' fees, to the extent arising from or in any way relating to Lessee's use of the Leased Premises or this Lease Agreement. Lessee agrees to use and occupy the Leased Premises at Lessee's own risk, and hereby releases Lessor, its officials, officers, agents and employees, from any and all liability, claims, lawsuits or costs, or any other damages or injuries to the fullest extent permitted by law. To the extent permitted by law, Lessor, in turn, agrees to defend, indemnify and save Lessee and its officials, officers, employees and agents harmless from all liability, claims, lawsuits, and costs, including reasonable attorneys' fees, costs and expert witness' fees to the extent arising from or in any way relating to Lessor's use of the Leased Premises or this Lease Agreement. The obligations under this Section 9 shall survive termination of this Agreement.

10. **Termination.** In addition to as otherwise provided in this Agreement, this Agreement may be terminated, without any penalty or further liability accruing thereafter, immediately upon written notice or as otherwise provided below, as follows:

- A. By Lessor, if Lessee fails to make any monetary payment due under this Agreement within ten (10) days after Lessee's receipt of written notice of default from Lessor;
- B. By Lessor if Lessee defaults (other than a default described in Section 10 A. above) and fails to cure such default within thirty (30) days after written notice of such default is received; provided, however, that if such default is capable of being cured, but not within such 30-day period, this Agreement may not be terminated so long as Lessee commences appropriate curative action within such 30-day period and thereafter diligently prosecutes such cure to completion as promptly as possible;
- C. By Lessee if any part of Lessee's Tower or other improvements, fixtures or equipment is damaged and/or destroyed by fire or other casualty, or taken by in the exercise of the power of eminent domain by any governmental or other authority, or by deed in lieu of condemnation, then Lessee may terminate this Agreement by providing written notice to Lessor, which termination shall be effective as of the date of such damage and/or destruction, or the vesting of title in such taking;

- D. By Lessee upon sixty (60) days prior written notice if Lessee determines, in its reasonable discretion exercised in good faith, that based on (i) technology, or (ii) changes in system design or system usage patterns, Lessee's use of the Communications Equipment (as the same may have been modified from time to time) is no longer consistent with the optimal operation of Lessee's communication system;
- E. By either Party upon a default of any covenant or term of this Agreement by the other Party which default is not cured within thirty (30) days of receipt of written notice of default (without, however, limiting any other rights available to the Parties pursuant to any other provisions of this Agreement); or
- F. By either Party upon sixty (60) days prior written notice if it is unable to obtain or maintain any license, permit or other permits necessary for the construction and/or operation of its equipment, improvements, business or intended use of the Licensed Premises and/or Property.

If at any time during the initial term or any extended term Lessee abandons the Leased Premises then any improvements made by Lessee shall become the property of Lessor. For purposes of this section, abandonment shall mean (i) twelve (12) months after Lessee has removed all its equipment on the Leased Premises; and (ii) Lessor provides Lessee written notice of its claim of abandonment pursuant to paragraph 8 hereinabove; and (iii) Lessee does not provide a written response to Lessor's notice of abandonment within ninety (90) days following Lessee's receipt of Lessor's notice of abandonment.

#### **11. Defaults and Remedies.**

- A. Notwithstanding anything in the Lease to the contrary, neither Party shall be in default under this Lease until thirty (30) days after receipt of written notice of a default from the other Party, or such shorter period as may be provided in the Lease, regulations and/or guidelines (the "cure period"); provided, however, where any such default cannot reasonably be cured within such cure period, the Party alleged to be in default shall not be deemed to be in default under the Lease if said Party commences to cure such default within said cure period and thereafter diligently pursues such cure to completion, provided that in no event shall the cure period extend beyond sixty (60) days.

- B. In the event of either Party's failure to comply with any material provision of this Lease, the other Party may, at its option, cure the default of the other Party at the expense of the defaulting Party, without affecting its right to demand, sue for, and collect all of its damages arising out of the other Party's default, or terminate this Lease without affecting its right to sue for any other damages to which it may be entitled. The failure by either Party to make timely payment of all fees or amounts due and payable in connection with the use of the Leased Premises that would adversely affect Lessee's use of Leased Premises shall be deemed to be a material breach of this Lease, and shall entitle the other Party to terminate this Lease unless such amounts are paid within ten (10) days after written notice of nonpayment. The prevailing Party in any dispute arising under or related to this Lease shall be entitled to recover its reasonable attorneys' fees, costs and expert witness' fees.
- C. The rights and remedies stated in this Lease are not exclusive; and the Parties, in the event of a breach hereof or a dispute, are entitled to pursue any of the remedies provided herein, by law, or by equity. For example, and without limiting the generality of the preceding sentence, the notice and cure provisions in this Section 11 do not apply to Section 10. To terminate this Agreement pursuant to Section 10 only the notice and cure provisions of Section 10 apply. However, if a party pursues remedies under both Sections 10 and 11 the cure periods of those sections shall be contemporaneous and shall not be cumulative.
- D. No course of dealing between the Parties or any delay on the part of a Party to exercise any right it may have under this Lease shall operate as a waiver of any of the rights hereunder or by law or equity provided, nor shall any waiver of any prior default operate as a waiver of any subsequent default, and no express waiver shall affect any term or condition other than the one specified in such waiver and that one only for the time and in the manner specifically stated.

- E. In the event either Party shall be rendered unable in whole or in part by force majeure to carry out any covenant, agreement, obligation or undertaking to be kept or performed by such Party under this Lease, such covenant, agreement, obligation or undertaking, insofar as the same shall be affected by such force majeure, shall be suspended during the continuance of any liability so caused, and such default shall be remedied with all reasonable dispatch. The term "force Majeure" as employed in this section shall include acts of God, strikes, lockouts, or other, acts of a public enemy, war, blockades, riots, epidemics, earthquakes, explosions, accidents, the delays of carriers, or inability by reason of governmental regulation to obtain materials, acts of public authorities, or other causes whether or not of the same kind as specifically enumerated, not within the control of the Party claiming suspension and which by the exercise of due diligence or the payment of money such Party is unable to overcome. Lessee acknowledges that the current COVID-19 pandemic does not and will not relieve Lessee of making Rent payments hereunder.
- F. If it is determined that Lessee is in default of this Lease Lessee shall be responsible for the remaining term of this Lease in effect at time of default and shall be paid in full within sixty (60) days upon receipt of a notice of default.

12. **Taxes.** Lessee shall pay annually or more frequently if required by law an amount equal to any increase in real estate taxes or transaction privilege taxes that are directly attributable to any improvement to the Leased Premises made or Rent paid by Lessee, and Lessor shall pay annually or more frequently if required by law when due all other real estate taxes and assessments attributable to the Leased Premises. If Lessee's share of such tax is paid by Lessor, Lessee shall reimburse Lessor for the amount of any such tax payment within sixty (60) days of receipt of sufficient documentation indicating the amount paid and the calculation of Lessee's pro-rata share. Upon written request by Lessee, Lessor shall furnish evidence of payment of assessments and Lessor's share of all taxes.

13. **Insurance.** Lessee, at Lessee's expense, shall maintain in force during the term of the Lease insurance as required by Exhibit C.

**14. Tests.** Lessee is hereby given the right to survey, soil test, radio coverage test, and to conduct any other investigations needed to determine if the surface and location of the Leased Premises is suitable for Lessee's use as intended by this Lease; provided, however, that following such tests the Leased Premises shall be restored to their original condition. If a third-party contractor conducts such testing, Lessor and Lessor's officials, officers, employees and agents shall be named as additional insured under the third-party contractor's insurance policy. Prior to commencing such tests by a third-party contractor, Lessee shall provide Lessor a copy of the third-party contractor's insurance policy for review and approval by Lessor, which approval shall not be unreasonably denied.

**15. Fixtures.** Lessor covenants and agrees that no part of the improvements constructed, erected, or placed, including but not limited to, the tower, storage cabinets or buildings, or fencing by Lessee on the Leased Premises or other real property owned by Lessor shall be or become, or be considered as being, affixed to or a part of Lessor's real property; and any and all provisions and principles of law to the contrary notwithstanding, it is the specific intention of Lessor to covenant and agree hereby that all personal property and improvements of every kind and nature constructed, erected, or placed by Lessee on the Leased Premises, or other real property owned by Lessor, shall be and remain the property of the Lessee despite any default or termination of this Lease. Upon termination of this Lease Agreement for any reason, Lessee shall if directed to do so by Lessor remove all improvements, fixtures and equipment from the Leased Premises and restore the Leased Premises to the condition that existed at the inception of the Term.

**16. Assignment and Subletting by Lessee.** Lessee may, without Lessor's consent, assign or sublet any or all of Lessee's interest in this Lease, any part thereof, the leaseholder's interest of Lessee created hereby, and/or any or all of Lessee's right, title, and interest in and to any or all of the Leased Premises provided that each such assignment or sublease is expressly made subject to the provisions of this Lease. Notwithstanding the above, the Parties agree that any additional Lessee on the Communications Facility shall be a sublessee of Lessee.

**17. Right of First Refusal.** If Lessor elects, during the Term (i) to sell or otherwise transfer all or any portion of its interest in this Lease or its interest in the Property, or (ii) to grant to a third party by easement or other legal instrument an interest in and to that portion of the Property leased by Lessee, or a larger portion thereof, 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 meet any bona fide offer of sale or transfer 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.

**18. Rights Upon Sale.** Should Lessor, at any time during the Term decide to sell or transfer all or any part of Lessor's right to the Property to a purchaser or transferee other than Lessee, then (i) this Agreement shall remain in full force and effect and such sale or transfer 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, and (ii) Lessee shall have the right to look to Lessor for the full performance of this Agreement prior to such transfer and to look to the purchaser or transferee for the full performance of this Agreement on and after the purchase or transfer.

**19. Permits.** Lessor acknowledges that following the execution of this Lease, Lessee will be contacting the appropriate local governmental agencies for the purpose of obtaining all building permits and approvals, zoning changes and/or approvals, variances, use permits, and other governmental permits and approvals (collectively, "Permits") necessary for the construction, operation, and maintenance of the Communications Facility. Lessor agrees to fully cooperate with Lessee in obtaining the Permits and, without limiting the generality of the foregoing, to execute any applications, maps, certificates, or other documents that may be required in connection with the Permits; provided that such cooperation shall not require the payment of any fees or costs by Lessor.

**20. Consent.** Whenever under the Lease the consent or approval of either Party is required or a determination must be made by either Party, no such consent or approval shall be unreasonably withheld or delayed, and all such determinations shall be made on a reasonable basis and in a reasonable manner.

**21. Debt Security.** Lessee may, without Lessor's consent, pledge, mortgage, convey by deed of trust, assign, create a security interest in, or otherwise execute and deliver any and all instruments for the purpose of securing any bona fide indebtedness or evidence thereof any or all of Lessee's interest in this Lease, any part thereof, the leaseholder's interest of Lessee created hereby, and any and all of Lessee's right, title, and interest in and to any and all of the Communications Facility. Promptly on Lessee's or Lessee's lenders request, Lessor shall execute and deliver, and shall assist in facilitating the execution and delivery of all documents requested by any of Lessee's lenders including but not limited to waivers of Lessor's right to levy or distrain upon for Rent any of Lessee's property given as security for a debt, consents that none of the Communications Facility shall become fixtures, consents as to the procedure for Lessee's lenders sale of the Communications Facility, consents to giving of notice to Lessee's lenders in the event of Lessee's default under the provisions of the Lease, consents to Lessee's assignment to Facility, and subordinations of Lessor's and Lessor's lenders' interests to that of Lessee's lenders. Lessor hereby covenants, represents, and warrants for Lessee's reliance thereon that all persons and entities who, at the time of Lessee's execution of this Lease and/or thereafter, hold a security interest in any and all of this Lease, the Leased Premises, any portion thereof, and improvements and personal property thereon securing any indebtedness of Lessor, Lessor's predecessors or successors in interest promptly on Lessee's or Lessee's lenders' request shall execute and deliver to Lessee's lenders documentation evidencing Lessor's agreement to subordination of Lessor's interest therein to the present and future interest of Lessee's lenders. Failure of Lessor and all other persons and entities to execute and deliver to Lessee's lenders all documents requested by said lenders shall entitle Lessee to terminate this Lease immediately without and further obligation to Lessor. Notwithstanding any provision of this Section 21 to the contrary, all Rent payable to Lessor hereunder shall be paid prior to any payment by Lessee to Lessee's lenders.

**22. Hazardous Substances.** Lessor represents that it has not made any use of the Premises that has resulted in any environmental contamination or violation of any local, state or federal environmental laws or regulations and Lessor states that it will not make any use of the premises that will result in any such environmental contamination or violation of any local, state or federal environmental laws or regulations.

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 as may now or at any time hereafter be in effect, that are or were in any way related to Lessee's activities on the Premises.

Lessee shall hold Lessor harmless and indemnify Lessor from and assume all duties, responsibility and liability at Lessee's sole cost and expense, for all duties, responsibilities, and liability (for payment of penalties, sanctions, forfeitures, losses, costs, or damages) and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding including, but not limited to, providing an attorney, paying all reasonable attorneys' fees, costs and expenses, paying any and all settlement payments or judgments or awards which is in any way related to: (i) Lessee's failure to comply with any environmental or industrial hygiene law, including without limitation 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 concerns or conditions as may now or at any time hereafter be in effect from conditions caused by Lessee's activities on the Property; and (ii) any environmental or industrial hygiene conditions arising out of or in any way related to the condition of the Property or activities conducted thereon, unless such environmental conditions are specifically caused by Lessee's activities.

Notwithstanding the foregoing, Lessor acknowledges that Lessee is permitted to and will use at the Leased Premises those Hazardous Substances customary to the operation of the Communications Facility, and that Lessee shall be solely liable for the proper use, storage, and removal of those Hazardous Substances used by Lessee in the operation of the Communications Facility at the Leased Premises.

For purposes of this Section, "Hazardous Substance" means:

- A. Hazardous substances, hazardous materials, toxic substances, or solid waste (as defined or classified now or hereafter by local, state and/or federal law, statute, ordinance or regulation, the foregoing being referred to collectively herein as "Environmental Law");
- B. Flammable explosives, radioactive materials, petroleum, asbestos, or polychlorinated biphenyls; and,
- C. Waste, refuse, substance, element, compound or mixture, including disease-causing agents, which after release into the environment cause contamination, and which will or may reasonably be anticipated to cause any organism, either directly or indirectly through the feed chain, death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions including malfunctions in reproduction or physical deformations in such organisms or their offspring, including but not limited to crude oil or any fraction thereof, natural gas, liquefied natural gas or synthetic gas.

The provisions of this Paragraph shall survive termination of this Lease.

**23. Initial Dispute Resolution.** If a dispute arises out of or relates to this Agreement or its breach, the Parties shall endeavor to settle the dispute first through direct discussions between each other or the Parties' representatives, who shall have the authority to settle the dispute. If the Parties' representatives are not able to promptly settle the dispute the Parties shall submit the dispute to mediation.

**24. Mediation.** If the dispute cannot be settled pursuant to the provisions of Paragraph 23 of this Lease, the Parties shall endeavor to settle the dispute by mediation. Once one Party files a request for mediation with the other Party the Parties agree to conclude such mediation within sixty (60) days of filing of the request. Either Party may terminate the mediation at any time after the first session, but the decision to terminate shall be delivered in person to the mediator. Any mediation shall take place under the laws governing mediation in the State of Arizona.

**25. Cost of Dispute Resolution.** The prevailing Party in any dispute arising out of or relating to this Agreement or its breach that is resolved by a binding dispute resolution procedure shall be entitled to recover from the other Party reasonable attorneys' fees, costs and expenses incurred by the prevailing Party in connection with such dispute resolution process.

**26. Fences.** During the Lease Term, and in exercising the rights, powers, privileges, and immunities provided hereunder, Lessee shall fence in only that portion of the Leased Premises as is reasonably needed for Lessee's improvements and for the proper and efficient operation and protection of Lessee's Communications Facility. The fence shall consist of concrete blocks, be at least six feet in height and have barbed wire installed at its top. In most cases Lessee will only fence reasonable areas around Lessee's building, transmission tower, and each individual guy anchor (if a guyed tower is utilized). Lessor shall not prohibit Lessee's access to the Leased Premises, or be entitled to use such portion so fenced, for any purposes. However, Lessor shall have the privilege of using that portion of the surface of the Leased Premises not enclosed by fence so long as Lessor does not interfere with Lessee's operations. To the extent permitted by law, Lessor further agrees to indemnify and save Lessee harmless from all claims arising or alleged to arise from any act or omission of Lessor or Lessor's agents, employees, or contractors, or other Lessees of Lessor within such portion of the Leased Premises not fenced in, and this indemnity shall survive the termination of this Lease.

**27. Condemnation of Leased Premises.** In the event that any government, public body, or other condemning authority shall take, or if Lessor shall transfer in lieu of such taking, all or such part of the Leased Premises thereby making it physically or financially infeasible for the Leased Premises to be used in the manner intended by this Lease, Lessee shall have the right to terminate this Lease effective as of the date of the taking by the condemning Party and Rent shall be prorated appropriately. However, if only a portion of the Leased Premises is taken, and Lessee does not elect to terminate this Lease under this provision, then Rent provided under this Lease shall continue.

**28. Entire Agreement and Binding Effect.** This Lease and attached exhibits, as signed by the Parties hereto, constitute the entire agreement between Lessor and Lessee; no prior written promises, nor prior, contemporaneous, or subsequent oral promises or representations, shall be binding. This Lease shall not be amended or changed except by written instrument signed by the Parties hereto. Any strikeouts and/or hand written changes to this Lease shall be void and have no effect unless initialed by both parties. Section captions herein are for convenience only and neither limit nor amplify the provisions of this Lease. The invalidity of any portion of this Lease shall not have any effect on the balance thereof. The provisions of this Lease shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of said Lessor and Lessee.

**29. Choice of Law.** The Parties expressly acknowledge and agree this Lease shall be construed and enforced in accordance with the laws of the State of Arizona. Further, the Parties agree that any suit filed to enforce or interpret this Agreement shall be filed solely with the appropriate court in Navajo County, Arizona.

**30. Waiver.** The failure of either Party to enforce any provision of this Lease shall not be construed as a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with every provision of this Lease.

**31. Knowing Consent and Authority to Consent.** The Parties knowingly and expressly consent to the foregoing terms and conditions. Each signatory is authorized to enter into the Lease on behalf of its respective Party.

**32. Jointly Drafted.** The Parties expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be constructed neither against nor in favor of either Party but shall be constructed in a neutral manner.

**33. Relationship of the Parties.** Nothing in this Lease shall be deemed to constitute a partnership or joint venture between the Parties, nor shall either Party be deemed the agent of the other. This Lease shall not be construed to create rights, expressed or implied, on behalf of, or for the use of, any parties, aside from the Town of Pinetop-Lakeside and Smith Bagley, Inc. and shall not be obligated, separately or jointly, to any third parties or any third party beneficiaries by virtue of this Lease.

**34. Counterparts.** This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such ".pdf" signature page were an original thereof.

**35. Other Conditions.**

- A. Lessor and Lessee shall cooperate fully in maintaining in full force and effect during the term of this Lease and any extension thereof all necessary permits and approvals, zoning approvals, variances, use permits and other governmental permits and approvals ("Local Permits") necessary to carry out the intent of this lease.
- B. Whenever under the Lease the consent or approval of either Party is required or a determination must be made by either Party, no such consent or approval shall be unreasonably withheld or delayed, and all such determinations shall be made on a reasonable basis and in a reasonable manner.
- C. Lessor covenants that the Lessee shall upon paying the Rent and observing the other covenants and conditions herein upon its part to be observed, peaceably and quietly hold and enjoy the Leased Premises during the term of this Lease or as it may be extended without hindrance, ejection or molestation by the Lessor, any person or persons claiming under the Lessor or any other Lessee of the Lessor, subject to Lessor's right of access to the Leased Premises for the purposes described herein.
- D. This Lease shall supersede any prior agreements between the Parties.

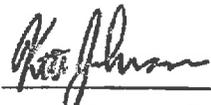
IN WITNESS WHEREOF, Lessor and Lessee have signed and sealed this Lease as of the date and year first above written.

**LESSOR:**

**LESSEE:**

**Town of Pinetop/Lakeside**

**Smith Bagley, Inc.**

By: 

By: 

Name: Keith Johnson

Name: Justin E. Hinkle

Title: Town Manager

Title: Chief Executive Officer

**Exhibit "A"**

Survey



**Exhibit "E"**

**Leased Premises**



**Exhibit "C"**  
**Insurance**

1. **Liability Insurance.** Lessee shall provide and obtain in full force while this Agreement is in effect, comprehensive general public liability insurance for bodily injury and property damage with limits of at least Five Million Dollars (\$5,000,000) in aggregate with a deductible of not to exceed Five Thousand Dollars (\$5,000) per occurrence written by an insurance company reasonably satisfactory to Lessor and licensed to do business in Arizona. All insurance shall specifically identify this Agreement; shall contain express conditions that Lessor is to be given thirty (30) days advance written notice of any cancellation, material adverse modification or termination of coverage; shall provide that such insurance shall not be reduced or eliminated because of any acts of Lessee or its officers, directors, partners, agents or employees; shall list Lessor and its officials, officers, employees and agents as additional insured with loss to be adjusted and paid to Lessor and Lessee as their interests may appear; and shall provide that such coverage shall be primary and not contributing with respect to any insurance maintained by Lessor except in the case of Lessor's gross negligence or willful misconduct. Any rights of Lessor under such insurance shall not limit, in any manner whatsoever, any rights Lessor may have against Lessee under this Agreement. Lessee shall provide Lessor with a certificate of insurance (ACORD form or equivalent) approved by the Lessor. Lessee shall provide proof of insurance coverage required by this Exhibit "C" within thirty (30) days after execution of this Agreement. If Lessee fails to maintain any required insurance, Lessor may purchase it on Lessee's behalf, and Lessee shall upon demand immediately reimburse Lessor for the cost thereof.
  
2. **Personal Property Insurance.** Lessor assumes no responsibility for the equipment and other personal property of Lessee. Lessee shall maintain personal property damage insurance for all its personal property located on the Lease.

**EXHIBIT D**

**RESOLUTION NO. 22-1604**

**When recorded please mail to:**  
Jill Akins, MMC, Town Clerk  
Town of Pinetop-Lakeside  
325 W. White Mountain Blvd.  
Lakeside, AZ 85929

**TOWN OF PINETOP-LAKESIDE**

**RESOLUTION NO. 22-1604**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PINETOP-LAKESIDE, NAVAJO COUNTY, ARIZONA, APPROVING A GROUND LEASE AGREEMENT BETWEEN THE TOWN OF PINETOP-LAKESIDE AND CELLULAR ONE OF NORTH-EAST ARIZONA FOR A 50' X 50' PORTION ON PARCEL 212-39-002 AS NEEDED FOR THE INSTALLATION, CONSTRUCTION AND OPERATION OF A COMMUNICATIONS FACILITY AS DISPLAYED IN EXHIBIT A AND B.**

**WHEREAS**, Cellular One of North-East Arizona has approached the Town of Pinetop-Lakeside to assist in finding an appropriate location for a transmission tower. The Town agreed to provide a location on the premises of Mountain Meadow Recreation Complex; and

**WHEREAS**, the communications facility will consist of 50' x 50' space for a transmission tower and radio and microwave communications equipment. Additional requirements include easements for utilities and ingress/egress as displayed on Exhibit A and B; and

**WHEREAS**, Cellular One is proposing a five (5) year Ground Lease Agreement with the Town of Pinetop-Lakeside with the option to extend the primary term of the lease for four (4) additional periods of five (5) years. The Ground Lease Agreement includes a rent payment to the Town of Pinetop-Lakeside of \$800.00 per month.

**NOW, THEREFORE, BE IT RESOLVED** that the Town Council of the Town of Pinetop-Lakeside, Navajo County, Arizona, hereby approve the Ground Lease Agreement between the Town of Pinetop-Lakeside and Cellular One of North-East Arizona; and authorize the Town Manager to execute all documents necessary in connection with this agreement.

**PASSED AND ADOPTED** by the Town Council of the Town of Pinetop-Lakeside, Navajo County, Arizona this 3<sup>rd</sup> day of February 2022.

**TOWN OF PINETOP-LAKESIDE**

*Stephanie Irwin*

Stephanie Irwin  
Mayor

ATTEST:

*Jill Akins*

Jill Akins, MMC  
Town Clerk



APPROVED AS TO FORM:

*William Sims*

William J. Sims, III  
Town Attorney