

**HARDIN COUNTY FISCAL COURT
RESOLUTION NO. 2016-080**

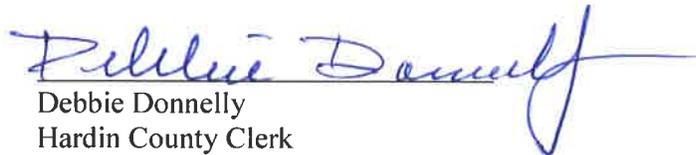
BE IT RESOLVED, upon recommendation of Judge/Executive Harry L. Berry, with the concurrence of the Emergency Services Committee, to approve the option to lease and lease agreement with Kentucky RSA 4 Cellular General Partnership. This agreement permits applicable testing and tower construction at 170 North Provident Way.

BE IT FURTHER RESOLVED, to authorize the County Judge/Executive and County Attorney to sign all documents concerning this lease.

ADOPTED, by the Hardin County Fiscal Court in its regular meeting on 14 June 2016.


Harry L. Berry
Hardin County Judge/Executive

ATTEST:


Debbie Donnelly
Hardin County Clerk

OPTION TO LEASE AND LEASE AGREEMENT

I.

OPTION TO LEASE REAL PROPERTY

THIS OPTION TO LEASE REAL PROPERTY (the “Option Agreement”) is made and entered into this ___ day of _____, 20__, by and between Hardin County Fiscal Court, whose address is 150 North Provident Way, Elizabethtown, KY 42701 (the “Optionor(s)”) and Kentucky RSA 4 Cellular General Partnership (a Kentucky general Partnership) with principal office and place of business at 2902 Ring Road, Elizabethtown, KY 42701 (the “Optionee”) (collectively “Parties”).

WITNESSETH:

WHEREAS, the Optionor(s) is the owner of certain real property located in Hardin County, **Kentucky** as more particularly described on Exhibit A attached hereto and incorporated herein by reference (the “Base Property”); and

WHEREAS, the Optionor(s) wishes to grant to the Optionee, and the Optionee wishes to obtain from the Optionor(s), an option to lease a portion of the Base Property upon the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the mutuality, receipt and sufficiency of which are hereby acknowledged, the Parties hereto do agree as follows.

1. In consideration of **One Thousand Eight Hundred Dollars and Zero Cents (\$1,800.00)** paid by the Optionee to the Optionor(s) (the "Option Consideration"), the receipt of which is hereby acknowledged by the Optionor(s), the Optionor(s) hereby grants to the Optionee an exclusive and irrevocable option to lease a portion of the Base Property (the "Option"), upon the terms and conditions hereinafter set forth, upon the exercise of the Option at any time before 4:00 p.m. prevailing time on _____, (the "Option Period") as set forth in Paragraph 5 thereof.
2. The Parties hereto anticipate that the portion of the Base Property which is the subject of this Option will comprise approximately a **40' x 20'** area, together with a right of way to be given by the Optionor(s) for the purposes of ingress and egress throughout the term of the lease. The Optionee shall obtain an accurate survey of the portion of the Base Property to be leased by it by a registered land surveyor licensed in the Commonwealth of Kentucky at the sole expense of the Optionee. A copy of the survey shall be provided to the Optionor(s). The description of the portion of the Base Property to be leased by Optionee, together with the right of way shall be determined by the surveyor and shall hereafter be referred to as the "Property". The Optionee shall obtain said survey within a reasonable time following the date of the Option Agreement.
3. During the term of the Option, the Optionee may enter onto the Base Property at its own risk to obtain soil samples and to bore soil for the purposes of determining the suitability of the Property for a communications tower.
4. Upon the Optionee's proper exercise of the Option in accordance with Paragraph 5 hereof, the Optionor(s) shall be deemed to have immediately executed, acknowledged and delivered to the Optionee the Lease Agreement contained in Section II hereof. The description of the Property which shall be subject to the

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Lease Agreement shall be that determined by the registered land surveyor in accordance with Paragraph 2 hereof.

5. If the Optionee elects to exercise the Option in accordance with the terms hereof, notice of such election shall be deemed sufficient if personally delivered or sent by registered or certified mail, return receipt requested, to the address of the Optionor(s) set forth in Paragraph 14 hereof.
6. The Optionor(s) agrees not to sell, lease or offer for sale or lease the Base Property, or any portion thereof, during the term of this Option or any renewal or extension of the Option.
7. In the event the Optionee fails to exercise the Option as set forth herein (unless such failure is due to the discovery of a defect in the Property or other matter unsatisfactory to the Optionee), the Optionor(s) shall have the right to retain the Option Consideration.
8. The Optionee may assign this Option with written consent of the Optionor(s), which consent shall not be unreasonably withheld, and upon any assignment such assignee shall have all the rights, remedies and obligations as if it were the original Optionee hereunder. From and after any such assignment, the term "Optionee" shall refer to such assignee.
9. Each party hereto shall bear any and all of its own expenses in connection with the negotiation, execution or settlement of this Option.
10. Risk of loss with respect to the Property during the term of this Option and during the term of the lease shall be upon the Optionor(s). If, during the term of the Option,

any portion of the Property shall be acquired by public authority under the right or threat of eminent domain, the Optionee may, at its sole option, either (i) exercise the Option, and in such event, all sums received from the public authority by the Optionor(s) by reason of the taking of a portion of the Property shall reduce the rent due under the lease, or (ii) terminate this Option and thereupon the Optionor(s) shall be obligated to return to the Optionee the full amount of the Option Consideration previously paid to the Optionor(s) in "good and collected funds."

11. The Parties hereto represent to each other that neither has engaged any broker to represent their interests in connection with the transactions contemplated hereby, and each agrees to indemnify the other against any and all claims made by any brokers engaged or purported to be engaged by the other for brokerage commissions or fees in connection with the transactions contemplated hereby.
12. The Optionor(s) represents, warrants and covenants to the Optionee that the Optionor(s) has not caused or permitted, and shall not cause or permit, and to the best of Optionor(s)' knowledge no other person has caused or permitted any hazardous material (as defined by any applicable federal, state or local law, rule or regulation) to be brought upon, placed, held, located or disposed of at the Property. In the event any such contamination occurs for which the Optionee becomes legally liable, the Optionor(s) shall indemnify the Optionee against all claims, damages, judgments, penalties and costs and expenses, including reasonable attorneys' fees, which Optionee may incur.
13. This Option Agreement and the rights and obligations of the Parties hereto shall be construed in accordance with the laws of the Commonwealth of Kentucky.

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14. For the purposes of giving notice as permitted or required herein, the address of the Optionor(s) shall be: PO Box 568, Elizabethtown, KY 42702-0568; the Optionee's address shall be: P.O Box 5012, Elizabethtown, KY 42702-5012. Any inquiry by the Optionor to the Optionee regarding the terms and conditions of the Option Agreement or Lease Agreement, or otherwise related to the Option Agreement or Lease Agreement, shall be made in writing and submitted to the attention of the Optionee's Lease Administrator at the above address.
15. The Optionee shall have the right, in its sole discretion, to record this Option in the Office of the Clerk of the County Court of Hardin County, **Kentucky**.

II.

LEASE AGREEMENT

16. In the event the Optionee elects to exercise the Option to lease the Property, the terms of the Lease Agreement ("Lease Agreement" or "Lease") shall become immediately effective upon such exercise and shall be as follows.
 - (a) The term of the Lease shall commence on the date that the Optionor(s) receives proper notice that the Optionee has exercised the Option, pursuant to Paragraph 5 therein. The initial term shall expire **five (5) year(s)** from the commencement date of the Lease Agreement and shall include **four (4) additional five (5)-year terms** per the Lease Agreement. Optionee may, by providing written notice at least sixty (60) days prior to the expiration of the original or any renewal Lease term, elect to unilaterally terminate this Lease at the end of any original or renewal Lease term. Such notice must be personally delivered or sent via registered or certified mail, return receipt

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requested, to the address of the Optioner(s) set forth in Paragraph 14 hereof. The Lease amount shall be adjusted at the end of each term by an increase of 12%.

- (b) The Optionee shall pay to the Optionor(s) rent for the Property in the sum of Nine Thousand Dollars and Zero Cents (\$9,000.00) yearly, to be paid in advance. All rent payments shall be personally delivered or mailed to the Optionor(s) at the address set forth in Paragraph 14 hereof. Any check payment of the rent due under the Lease shall be payable to the order of Optionor(s).
- (c) The Optionee shall be entitled to use and occupy the Property for the purpose of erecting, maintaining and operating a communications tower ("Tower") and communications facilities thereon ("Facilities") and for all such other uses as Optionee may, in its sole discretion, deem necessary in connection therewith.
- (d) The Optionor(s) shall be responsible for the payment of all real estate taxes which shall be assessed against the Property during the term of the lease. The Optionee shall pay all charges for heat, water, gas, electricity, sewer use charges and any other utility used or consumed on the Property. The Optionee shall, at its own cost and expense, maintain and keep in full force and effect during the term of the lease public liability insurance with coverage in the amount of at least one million dollars (\$1,000,000.00) per person for bodily injury, disease, or death and shall maintain property insurance on any property the Optionee located on the Property.

- (e) The Optionee may assign the lease. The Optionee may sublet all or part of the space on the Tower or ground space.
- (f) The Optionor(s) covenants that upon the Optionee's payment of the rent agreed upon herein, as well as Optionee's observing and performing all of the covenants and conditions contained in the Lease, the Optionee may peacefully and quietly enjoy the Property subject to the terms and conditions set forth in the Lease.
- (g) The Optionee agrees to maintain an access road in a passable manner for the term of the lease.
- (h) Optionee's Payment of Taxes, Fees and Assessments. Optionee shall pay directly to the applicable federal, state or local governmental unit or agency ("Governmental Entity") or to Optionor if Optionor is invoiced by such Governmental Entity, all taxes, fees, assessments or other charges assessed by any Governmental Entity directly against Optionee's Equipment and/or Optionee's use of the Facility. Optionee shall also pay to Optionor Optionee's Pro Rata Share of all taxes, fees, assessments or charges including, but not limited to, personal property taxes attributable to Optionee's equipment and antenna(s), municipal franchise fees, use fees, municipal application fees, installation fees and increases thereof. "Pro Rata Share" shall mean the fraction of decimal equivalent of dividing one (1) by the total number of then existing users occupying a tower on the last day of the applicable calendar year.
- (i) Optionor(s), at its sole cost and expense and subject to the approval of Optionee, which approval shall not unreasonably be withheld, has the right

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to erect, maintain and operate on the Tower, wireless, radio and related communication facilities, including utility lines, transmission lines, air conditioned equipment shelter or cabinets, electronic equipment, radio transmitting and receiving antennas and supporting structures (“Optionor Facilities”), subject to (A) a site application outlining the equipment Optionor(s) intends to install (“Site Application”), to be submitted by Optionor prior to installation of Optionor Facilities on the Tower, and (B) a co-location agreement setting forth the terms and conditions related to the use, operation, maintenance, and installation/modification of Optionor Facilities (“Co-Location Agreement”), to be executed prior to installation of Optionor Facilities on the Tower. **Optionor(s) shall not be charged rent for its use and installation of Optionor’s Facilities on the Tower.**

17. This Option and Lease Agreement contains the entire agreement between the Parties hereto and no modification or amendment shall be binding upon any party unless made in writing and signed by each of the Parties hereto.
18. Upon the termination or other end of this Lease Agreement, Optionee and Optionor(s) shall have the right to remove any and all of its property (real or personal) from the Property regardless of whether or not such property may be considered a fixture thereto.
19. Upon abandonment of the property, Optionee shall have thirty (30) days to dismantle and remove the Tower and any/all equipment located on Optionor’s property.
20. Before Optionor(s)’ interest in the Property or Lease, or any part thereof, whether separately or in connection with other property owned by the Optionor(s), is sold,

assigned or transferred in any manner whatsoever (with or without consideration), the Optionee shall have a right of first refusal to acquire whatever interest in the Property or Lease that the Optionor(s) proposes to transfer (the "Proposed Transfer"), on the terms and conditions set forth in this Section 20 (the "Right of First Refusal").

- (a) Optionor(s) shall deliver to the Optionee a written notice (the "Notice") stating (i) the name of the proposed purchaser or transferee and the material terms and conditions of the Proposed Transfer, together with a complete copy of any written offer made to the Optionor(s) to acquire any interest in the Property ("Offer").
- (b) At any time within thirty (30) days after receipt of the Notice, the Optionee may, by giving written notice to the Optionor (s) ("Optionee's Notice"), elect to exercise its Right of First Refusal and acquire the interest in the Property or Lease proposed to be transferred pursuant to the Proposed Transfer at the purchase price and on the same terms and conditions as are contained in the Offer. If the Offer includes consideration other than cash, the cash equivalent value of the non-cash consideration shall be determined by the Optionee in good faith. In the event, Optionee exercises its right to acquire the interest in the Property or Lease, the Optioner(s) shall convey, assign and/or transfer said interest to Optionee free and clear of all liens and encumbrances whatsoever (other than this Lease, which Lease shall remain in effect). All taxes, rents and other assessments applicable to the transferred interest, if any, shall be prorated to the date of closing. The Closing shall occur within thirty (30) days from the date of Optionee's Notice.

- (c) If the Optionee declines to exercise its Right of First Refusal to acquire the interest in the Property or Lease proposed to be transferred, the Optioner(s) may sell or transfer same in accordance with the terms of the Offer subject, however, to this Lease and the Optionee's rights thereunder.

EXECUTION OF AGREEMENT(S)

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals.

Hardin County Fiscal Court

Kentucky RSA 4 Cellular General Partnership

Sign: 

Sign: _____

Date: June 14, 2014

Date: _____

("Optionor(s)")

("Optionee")

**By: Judge Harry L. Berry
Hardin County Judge Executive**

**By: Scott W. McCloud
Authorized Representative**

COMMONWEALTH OF KENTUCKY

COUNTY OF HARDIN

The foregoing instrument was acknowledged before me this 14th day of June, 20 , by **Judge Harry L. Berry**, as **Judge Executive** on behalf of **Hardin County Fiscal Court**, to be his free act and deed.

Mary Gregory

NOTARY PUBLIC STATE AT LARGE

My commission expires: 12/14/18

COMMONWEALTH OF KENTUCKY

COUNTY OF HARDIN

The foregoing instrument was acknowledged before me this day of , 20 , by **Scott W. McCloud**, as Authorized Representative on behalf of **Kentucky RSA 4 Cellular General Partnership**, to be his free act and deed.

NOTARY PUBLIC STATE AT LARGE

My commission expires:

This instrument prepared by:

John E. Selent
DINSMORE & SHOHL LLP
101 South 5th Street, Suite 2500
Louisville, KY 40202
(502) 540-2300

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