

**HENDERSON COUNTY
BOARD OF COMMISSIONERS**

MEETING DATE: February 4th, 2019

SUBJECT: Revised Lease – Bearwallow Mountaintop Site

PRESENTER: Jimmy Brissie, Emergency Services Director

ATTACHMENTS: (1) Lease agreement

SUMMARY OF REQUEST:

Henderson County Emergency Services maintains five (5) mountaintop transmitter sites for the installation of our emergency communications system. Each of these sites are located on property which the County leases for the installation of our towers, buildings and equipment. Several of these sites have been in use since the 1980s. One of these sites is the Bearwallow Transmitter site. Our existing lease agreement for this site was executed in 1995 with George Barnwell Farms, LLC. Working with the landowner and legal counsel we have developed an updated lease agreement for a new term which meets the current market rates matching our other lease agreements. Funds have been included in the budget for the increase in lease payment.

BOARD ACTION REQUESTED:

Approve the attached lease between Henderson County and George Barnwell Farms, LLC. and authorize the County Manager so sign the lease on behalf of Henderson County.

Suggested Motion:

I move to approve the attached lease between Henderson County and George Barnwell Farms, LLC. and authorize the County Manager so sign the lease on behalf of Henderson County.

MEMORANDUM OF LEASE

George Barnwell Farms, LLC
hereby lease(s) to Henderson County,

for a term beginning the 4th day of March, 2019
(Month) (Year)

and continuing for a period of 7 years, including 1 additional 5 year renewal, the following property being described as a 150ft by 150ft section of Parcel Number 1018101, recorded in Deed Book 1620 Page 395, which is further described in Exhibit A.

The provisions set forth in a written lease agreement between the parties dated the 4th day of February, 2019, are hereby incorporated in this memorandum.

Nancy Lyda,
Agent for Lessor

BY: _____ [Seal]
Nancy Lyda

HENDERSON COUNTY, NORTH CAROLINA,
Lessee

BY: _____ [Seal]

Steve Wyatt, County Manager

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

Personally appeared before me this day, Nancy Lyda, and acknowledged the due and voluntary execution of the foregoing Memorandum of Lease for the purposes therein stated.

This the ___ day of _____, 2019.

Notary Public

My commission expires:

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

Personally appeared before me this date, Steve Wyatt, County Manager of Henderson County, North Carolina, and acknowledged the due and voluntary execution of the foregoing Memorandum of Lease for the purposes therein stated.

This the ___ day of _____, 2019.

Notary Public

My commission expires:

STATE OF NORTH CAROLINA

LEASE

COUNTY OF HENDERSON

THIS LEASE, entered into as of the 4th day of March, 2019, by and between the George Barnwell Farms, LLC (hereinafter collectively referred to as "Landlord"), and Henderson County, North Carolina, (hereinafter referred to as "Tenant");

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the following described real property located in Henderson County, North Carolina, on the terms and conditions hereafter set forth.

1. LEASED PREMISES; USE OF PREMISES. Landlord hereby leases, demises and leases unto Tenant, and Tenant hereby leases from Landlord, for the purposes set forth herein, the parcel of (hereinafter called the "Premises") measuring approximately one-hundred fifty (150) feet by one-hundred fifty (150) feet of Parcel Number 1018101, as shown on the drawing attached hereto as Exhibit "A".

The Premises shall be used for the operation and maintenance of a communications tower ("the Tower") and all reasonably related purposes. Tenant shall have the right to reasonably clear and thereafter to reasonably keep clear the Premises, access road, guy anchor locations and any utility easement areas of trees, bushes, rocks, and other conditions affecting the use of the Premises. Landlord has no obligation to clear or keep clear the Premises. Tenant shall have the following obligations with respect to the Premises and the Tower:

- A. To construct a fence around Tower and any buildings constructed on the Premises, of a design and size meeting industry standards in the communications tower industry, intended to keep persons who do not have Tenant's permission to enter from entering the Premises;
 - B. To provide adequate warning signs of a size and design consistent with industry standards, and surrounding the Premises to discourage people attempting to enter the Premises;
 - C. To construct and maintain adequate anchors and guy wires pursuant to industry standards to hold the Tower in place, given its location at the top of a mountain, and to prevent injury to persons or property;
 - D. To undertake other practical measures consistent with industry standards to prevent unauthorized persons from entering the Premises, and sustaining injury from the Tower or its guy wires.
2. ACCESS TO PREMISES. Tenant shall have access for purposes of ingress, egress, and regress to the Leased Premises over the existing road and/or a road to be constructed by Lessee serving the

Tower site. The Landlord assumes no responsibility for the construction or maintenance of said road, which construction and maintenance shall be the sole responsibility of the Lessee. Tenant shall have the right to maintain and repair said roadway, including such work as may be necessary for slope and drainage, and to install such poles, wires, pipes, cables, conduits and related appurtenances as shall be necessary for the proper conduct of Tenant's business and for electricity, water, telephone and gas.

3. UTILITIES. Tenant shall be responsible to obtain and pay for service for all utilities required by Tenant for the operation of its Tower.
4. PARKING. Tenant shall have the right to reasonably park vehicles on or about the Premises and the lands immediately adjacent thereto during periods of construction, site inspections, and at times of necessary repair work. Notwithstanding anything to the contrary contained herein, Tenant shall not at any time interfere with the properties or operations of the remaining property of the Landlord or that of any adjoining property owner.
5. GUY WIRES. Tenant intends to maintain a self-supporting tower on site but shall retain the right to run reasonable and necessary guy wires from the Tower to be constructed on the Premises, over, and across the adjoining lands of Landlord as may be reasonably necessary for the proper support of the Tower, including at such points the rights to install anchors of such size and materials as shall be necessary to secure the guy wires. The guy wires and anchors shall be located in a manner consistent with communications tower industry standards, but the Tenant shall have the right to relocate said guy wires and anchors in the event Tenant desires to increase or decrease the height of the aforementioned tower or relocate the same within the boundaries of the Premises. Tenant may relocate such guy wires and anchors only after receiving the written consent of Landlord. In no event shall the Tower exceed 150 feet in height, unless approved by Landlord.
6. Non-Interference Provision. Lessor represents and warrants to Lessee that Lessor will not install, nor allow anyone else to install, any communications equipment, which causes any type of interference with any equipment maintained, owned, or operated on the premises by Lessee. Lessor shall, upon request by Lessee, provide proof of such non-interference by submitting to Lessee a copy of an Interference Compatibility Study for any equipment added by Lessor, their successors or assigns, or any other of Lessor's lessees.
7. LEASE TERM. This Lease shall have an initial term of seven (7) years, commencing on the date of the Lease. This Lease shall automatically renew for at least one (1) additional five (5) year term and may continue thereafter unless either party gives the other six (6) months' notice immediately prior to the end of any five (5) year term of their intent not to allow renewal of the Lease.
8. RENT. The Tenant shall make annual payments to the Landlord, in advance, in the sum of \$7200.00. Tenant shall be solely responsible for all costs in connection with the Tower and

operation thereof. The first such rent payment shall be due on March 4th , 2019, with subsequent annual payments being due on January 1 of each year.

9. PERMITTED ACCESS. Landlord shall be able to access the Tower site at any reasonable time to inspect the site and ensure the terms of this lease are in order.
10. LANDLORD'S OTHER LANDS. Tenant may enter upon the adjacent or nearby lands of landlord from and after the date of execution of the Lease by Landlord solely for the purpose of making surveys and conducting soil, engineering and other tests to the extent reasonably necessary for said surveys or soil, engineering and other tests.
11. ASSIGNMENT; SUBLEASING. Tenant shall not have the right, at any time, to assign this Lease, or sublet the Premises, in whole or in part, without first obtaining Landlord's written consent. Provided, that Tenant shall have the right to allow any emergency service agency serving the area to include their equipment within Tennant's building and tower without additional consent.
12. SUCCESSORS AND ASSIGNS. During the lease term Tenant shall peacefully and quietly enjoy the Premises, and easements granted hereunder, subject to the terms of this Lease. All the terms covenants and conditions of this Lease shall inure to the benefit of and shall be binding upon the parties hereto, their heirs and assigns, and shall be deemed to run with the land.
13. DEFAULT. Tenant shall be deemed to be in default of this Lease if Tenant fails to correct any default after Landlord has given Tenant written notice of any default hereunder and Tenant has failed to cure the same within thirty (30) days after receipt of such notice. Upon default by Tenant, Landlord shall have the right, at Landlord's option, to declare this Lease at an end or to re-enter the Premises and take possession thereof, or to take any other action which may be necessary or desirable for the enforcement of any right or remedy allowed Landlord by this Lease Agreement or by law.
14. All correspondence relating to this Lease shall be sent to the following addresses:
Landlord: George Barnwell Farms, LLC
c/o Nancy Lyda; 79 Beehive View Ln, Hendersonville NC 28792
Tenant: Henderson County c/o Emergency Services
1 Historic Courthouse Square, Hendersonville, NC 28793
15. IMPROVEMENTS. All improvements including buildings, fixtures, towers, improvements and equipment erected, located, placed or constructed by Tenant upon the Premises or the guy anchor locations shall remain personal property of Tenant, shall be removed by Tenant upon the expiration of the Lease. Tenant shall repair the Premises upon the removal of any such improvements at Tenant's expense, leaving the Premises in the same condition as at the commencement of the Lease.

16. INDEMNIFICATION. Tenant shall be in exclusive control and possession of the Premises. Landlord shall not be liable for any injury or damages to any property or any person on or about the Premises, nor for any injury or damage to any property of Tenant. Tenant shall indemnify and hold Landlord harmless from and against any and all claims, liability, damage or loss to persons, including loss of life, or to property, including reasonable attorneys' fees and other costs of representation, which may arise out of Tenant's use or occupancy of the Premises, or out of any act of Tenant, its employees, agents and invitees. Tenant represents that it is insured with liability insurance in an amount equal to \$1,000,000, and that it will maintain said liability insurance with coverage in the amount of \$1,000,000 per occurrence and \$5,000,000 aggregate.
17. GOVERNING LAW. This Lease shall be governed by the laws of the State of North Carolina.
18. REGULATIONS. Tenant shall comply with all governmental regulations, rules and laws, and shall obtain any necessary licenses to construct the Tower on the Premises as required by the Federal Aviation Authority, or other governmental entity. Tenant covenants that it will use the leased premises in accordance with all relevant governmental authority and shall not violate any law, regulation or other governmental code with respect to the use of the premises.
19. ACKNOWLEDGEMENTS. When properly completed, a certificate in substantially the following form may be used and shall be sufficient under the law of this State to satisfy the requirements for a notarial certificate for one or more individuals, acting in his, her, or their own right or, whether or not so stated in the notarial certificate, in a representative or fiduciary capacity, including one or more individuals acting on behalf of an unincorporated association, as an officer or director of a corporation, as a partner of a general or limited partnership, as a manager or member of a limited liability company, as the trustee of a trust, as the personal representative of a decedent's estate, as an agent or attorney in fact for another, as the guardian of a minor or an incompetent, or as a public official. The authorization of the form in this section does not preclude the use of other forms. This section applies to notarial certificates made before, on, and after December 1, 2005.
20. NON-APPROPRIATION CLAUSE. No provision of this Lease Agreement ("Agreement") shall be construed or interpreted as creating a pledge of the faith and credit of the County within the meaning of any Constitutional debt limitation. No provision of this Agreement shall be construed or interpreted as creating a delegation of governmental powers nor as a donation by or a lending of the credit of the County within the meaning of the Constitution of North Carolina. This Agreement shall not directly or contingently obligate the County to make any payments beyond those appropriated in the sole discretion of the County for any fiscal year in which this Agreement is in effect; provided, however, that any failure or refusal by the County to appropriate funds which results in the failure by the County to make any payment coming due under this Agreement will in no way obviate the occurrence of the event of default resulting from such nonpayment. No deficiency judgment may be rendered against the County in any action for breach of a contractual obligation under this Agreement, and the taxing power of the County is not and may not be pledged directly or indirectly or contingently to secure any moneys due under this Agreement. No provision of this Agreement shall be construed to pledge or create a lien of any class or source of the County's moneys, nor shall any provision of this Agreement restrict the future issuance of any

of the County's bonds or obligations payable from any class or source of the County's moneys. To the extent of any conflict this provision and any other provision of this Agreement, this provision shall take priority.

IN WITNESS WHEREOF, this lease has been executed as of the day and year first above written.

HENDERSON COUNTY,
Tenant

BY: _____(Seal)
Steve Wyatt, County Manager

North Carolina, Henderson County.

I _____, do hereby certify that _____ and _____ personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and (where an official seal is required by law) official seal this the _____ day of _____, 2019.

(Official seal)

Signature, Notary Public

Print Name, Notary Public

My Commission expires:_____

IN WITNESS WHEREOF, this lease has been executed as of the day and year first above written.

Nancy Lyda
Agent for Lessor

BY: _____ (Seal)
Nancy Lyda, Agent for Lessor

North Carolina, Henderson County.

I _____, do hereby certify that
_____ and _____ personally appeared before me
this day and acknowledged the due execution of the foregoing instrument. Witness my hand and (where an
official seal is required by law) official seal this the _____ day of _____, 2019.

(Official seal)

Signature, Notary Public

Print Name, Notary Public

My Commission expires: _____

EXHIBIT A

