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2010026665

**Filed: AS RECEIVED**

Drafted By ~~\_\_\_\_\_~~  
 Attorney Kelley E. Langdon  
 Land Management  
 American Tower Corporation  
 10 Presidential Way  
 Woburn, MA 01801  
 ATC Site No. 82210  
 Site Name: North Gretna  
 Tax Parcel ID#: \_\_\_\_\_

*Return To:*

**Old Republic Site Management Services**  
**17330 Preston Road, Suite 150A**  
**Dallas, Texas 75252**

**MEMORANDUM OF LEASE AND ASSIGNMENT AGREEMENT**

THIS MEMORANDUM OF LEASE & ASSIGNMENT AGREEMENT ("*Memorandum*") is made effective as of the date of the latter signature hereof (the "*Commencement Date*") and is by and between Tenant and Landlord.

**RECITALS**

- A. WHEREAS, Landlord is the owner of that certain parcel of land (the "*Property*") located in the County of Douglas, State of Nebraska as more particularly described on Exhibit A; and
- B. WHEREAS, Landlord has leased, via a document entitled "LEASE AND ASSIGNMENT AGREEMENT" (Hereinafter referred to as the "Agreement"), to Tenant a portion of the Property (the "*Premises*"), together with easements for ingress and egress and the installation and maintenance of utilities (the "*Easement*"), both being approximately located as shown on Exhibit B (the Premises and the Easement will collectively be referred to herein as the "*Site*"); and
- C. WHEREAS, Landlord desires to assign to Tenant Landlord's beneficial interest in certain licenses, leases and other agreements relating to the Premises as more particularly described herein below; and
- D. WHEREAS, Landlord and Tenant desire to provide public notice of the Agreement.

NOW, THEREFORE, in consideration of the sum of \$10.00, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt, adequacy and sufficiency of all of which are hereby acknowledged, the parties hereto hereby agree as follows:

ATC SITE NAME: North Gretna NE  
 ATC SITE NUMBER: 82210

*506399444*

1. **Business Terms.** For the purposes of this Agreement, the following capitalized terms have the meanings set forth in this paragraph 1.

(a) **Tenant:** American Tower Delaware Corporation a Delaware corporation

(b) **Tenant's Notice Address:**  
American Tower Delaware Corporation.  
c/o American Tower  
10 President Way  
Woburn, MA 01810  
Attn: Land Management

with a copy to:  
American Tower Delaware Corporation c/o American Tower  
116 Huntington Ave.  
Boston, MA 02116  
Attn: Law Department

(c) **Landlord:** Jerald L. Rohwer and Alan J. Rohwer

(d) **Landlord's Address:**  
**Rohwer Brothers, LLC**  
c/o: Jerald L. Rohwer and Alan J. Rohwer  
20929 F Street  
Omaha, NE 68022

(e) **Landlord's Tax ID Number:**

(f) **Commencement Date:**

(g) **Term:** Forty Nine (49) years, commencing on the Commencement Date (as defined in paragraph 1(f) hercof) and continuing until midnight of the day immediately prior to the 49<sup>th</sup> anniversary of the Commencement Date.

2. **Use.**

(a) Tenant shall be permitted to use the Site for the purpose of constructing, maintaining, securing and operating a communications facility, including, but not limited to, the construction or installation and maintenance of towers, replacement towers, structural tower base(s), communications equipment, one or more buildings or equipment cabinets, radio transmitting and receiving antennas, and related facilities on the Premises (collectively, the "**Tower Facilities**"), to facilitate the use of the Site as a site for the transmission and receipt of wireless communication signals including, but not limited to, voice, data and internet transmissions and for any other uses which are incidental thereto (the "**Intended Use**"). Tenant may, at its sole expense, use any and all appropriate means of restricting access to the Premises or the Tower Facilities, including, without limitation, construction of a fence. Tenant may, at Tenant's sole expense, construct new, or replace the existing Tower Facilities on the Site and Tenant shall maintain the Premises in a reasonable condition throughout the Term, reasonable wear and tear and damage from casualty and condemnation excepted. Landlord shall cooperate with Tenant in executing any documents necessary to protect Tenant's rights under the Agreement or facilitate Tenant's and Tenant's sublessees' and licensees', or such parties' sublessees' or licensees', use of the Site and will take such further action as Tenant may reasonably require to effect the intent of the Agreement.

(b) Landlord shall cooperate with Tenant, at no out-of-pocket expense to Landlord, in its efforts to obtain, maintain, renew and reinstate all of certificates, permits, licenses, zoning, variances and other approvals which may be required from any federal, state or local authority as well as any necessary easements (collectively,

the "*Approvals*"), and Landlord shall take no action which would adversely affect the status of the Site with respect to Tenant's Intended Use thereof.

(c) Landlord agrees to execute within 15 days after receipt of a written request from Tenant any and all documents necessary in Tenant's reasonable judgment to protect Tenant's rights or the rights of Tenant's sublessees or licensees, or such parties' sublessees or licensees, under the Agreement, to facilitate Tenant's use of the Site as contemplated under the Agreement, or to allow Tenant to obtain, maintain, renew or reinstate the Approvals. Tenant will provide all documents for execution on Tenant's standard forms or, in the case of zoning applications or other situations regulated by governmental bodies, on forms specified by such governmental body. Documents provided for execution may include without limitation, affidavits relating to title curative measures, non-disturbance agreements, memorandums of lease, memorandums of amendment, and zoning applications and other related documents required to obtain zoning approval. Landlord further irrevocably appoints Tenant as attorney-in-fact coupled with an interest to execute any document which Landlord fails to execute within 15 days after Landlord's receipt of a request for execution. In addition, the parties agree that Tenant shall be entitled to liquidated damages for the revenue lost by Tenant as a result of any delay caused by Landlord's unwillingness to execute a document or to take any other action deemed necessary by Tenant to protect Tenant's leasehold rights or to facilitate the Intended Use.

### **3. Assignment of Current Agreements.**

(a) *Current Agreements.* Landlord hereby transfers and assigns to Tenant all of Landlord's beneficial rights, title and interest in, to and under all of the existing leases, licenses and other agreements located at, or involving use of, the Site, which shall include but shall not be limited to, those listed on Exhibit C attached hereto (the "*Current Agreements*"), including without limitation, the right to receive any and all rents and other monies due Landlord thereunder and under any and all extensions thereof ("*Contract Revenues*"). Notwithstanding the foregoing assignment to Tenant, Landlord agrees that Landlord remains the fee owner of the Property and Landlord remains obligated to comply with all obligations of the lessor or landlord under the Current Agreements which relate to the ownership, maintenance, operation and use of the Property. Such obligations are hereby expressly excluded from the foregoing transfer and assignment. Landlord hereby acknowledges and agrees that as of the Commencement Date none of the improvements located at the Premises pursuant to the Current Agreements encroach outside the Premises.

(b) *Modification & Extension of Current Agreements.* Landlord and Tenant hereby agree that following the assignment of the Current Agreements to Tenant, Tenant may modify or extend through the end of the Term of the Agreement any such Current Agreement independently of, and without participation, execution or acknowledgement of Landlord.

### **4. Improvements; Utilities; Access.**

(a) Tenant shall have the right, at Tenant's sole cost and expense, to erect and maintain on the Site improvements, personal property and facilities, including without limitation, the Tower Facilities and other related facilities. The Tower Facilities are the exclusive property of the Tenant throughout the term as well as upon the expiration or termination of this Agreement. Tenant may remove all of the above-ground portions of the Tower Facilities within one hundred eighty (180) days following the expiration or termination of the Agreement. Landlord grants Tenant the right to clear all trees, undergrowth, or other obstructions and to trim, cut, and keep trimmed all tree limbs which may interfere with or fall upon the Tower Facilities or the Site. Landlord grants Tenant a non-exclusive easement in, over, across and through the Property and other real property owned by Landlord as may be reasonably required for construction, installation, maintenance, and operation of the Tower Facilities. If the tower on the Premises is replaced with a guyed tower by Tenant, Landlord also grants Tenant an easement in, over, across and through the Property or any other real property owned by Landlord as may be necessary to Tenant during the Term of the Agreement for the installation and maintenance and removal of and reasonable access to guy wires and guy wire anchors which may be located outside of the Site.

(b) Tenant shall have the right to install utilities, at Tenant's expense, and to improve present utilities on the Property and the Site (including but not limited to the installation of emergency power generators). Tenant shall have the right to permanently place utilities on (or to bring utilities across or under) the Site to

service the Site and the Tower Facilities. If utilities necessary to serve the equipment of Tenant or the equipment of Tenant's licensee(s) or sublessee(s), or such parties' licensee(s) or sublessee(s), cannot be located within the Site, Landlord agrees to cooperate with Tenant and to act reasonably in allowing the location of utilities on the Property or other real property owned by Landlord without requiring additional compensation from Tenant or Tenant's licensee(s) or sublessee(s), or such parties' licensee(s) or sublessee(s). Landlord shall, upon Tenant's request, execute a separate recordable written easement or lease to the utility company providing such service evidencing this right.

(c) Landlord represents and warrants to Tenant that Tenant shall at all times during the Agreement enjoy ingress, egress, and access from the Site 24 hours a day, 7 days a week, by foot and by vehicle (including trucks), to an open and improved public road which are adequate to service the Site and the Tower Facilities. If no such public road exists or ceases to exist in the future, Landlord will grant an appropriate easement to Tenant, Tenant's licensee(s), sublessee(s), such parties' licensee(s) and sublicensee(s) and assigns so that Tenant may, at its own expense, construct a suitable private access drive to the Site and the Tower Facilities. To the degree such access is across other property owned by Landlord, Landlord shall execute an easement evidencing this right without requiring additional compensation from Tenant. Landlord shall maintain access to the Easement, as well as any additional easements conveyed to tenant, in a free and open condition so that no interference is caused to Tenant by other tenants, licensees, invitees or agents of Landlord which may utilize the easement. To the extent damage (including wear and tear caused by normal usage) to the Easement or any other route contemplated hereunder intended to provide Tenant with access to the Site and the Tower Facilities is caused by Landlord or Landlord's tenants, licensees, invites or agents, Landlord shall repair same at its own expense.

(d) Landlord grants Tenant (including, without limitation, Tenant's sublessees and licensees, and such parties' sublessees and licensees) a license to use such portions of the Landlord's property contiguous to the Site on a temporary basis as are reasonably required from time to time during the Term of this Agreement for the construction, installation and maintenance of the Tower Facilities, including (i) access to the Site for construction machinery and equipment, (ii) storage of construction materials and equipment during construction or replacement of the Tower Facilities, and (iii) use of a staging area for construction, installation and removal of equipment.

(e) Tenant shall have the right to install and maintain during the Term of the Agreement identifying signs or other signs required by any governmental authority on or about the Site, including any access road to the Site.

5. **Transfer of the Lessor's Interest Property.** For purpose of notification only, Landlord shall provide Tenant with no less than 30 days advance written notice prior to the sale or transfer of all or any portion of Landlord's interest in the Property.

6. **Option to Purchase Premises.** Landlord hereby grants Tenant the option to purchase the Premises, including applicable easements for utilities and/or access, guy wire and guy anchor easements (if applicable), upon the expiration of the Term for the nominal consideration which shall not exceed the greater of the minimum requirement according to the Nebraska law or One Hundred Dollars. If Tenant elects to exercise said option, Tenant shall notify Landlord in writing 18 months prior to expiration of Term. Upon Tenant's exercise of said option, Landlord agrees to cooperate with Tenant as necessary to obtain appropriate zoning, permitting, subdivision and government approvals and to convey the Premises to Tenant by general warranty deed and grant of easements in a form reasonably acceptable to Tenant. Landlord agrees that the foregoing cooperation shall include, but is not limited to, Landlord's recording covenants on the Parent Parcel which would restrict the use and development of the Parent Parcel to ensure that the Premises satisfies any jurisdictional fall zone or other land use requirements or stipulations.

7. **Option for Additional Ground Space.** Landlord grants to Tenant an irrevocable option to expand the Premises to include an additional One Thousand (1,000) square feet contiguous to the Premises, in a shape and location to be designated by Tenant by written notice to Landlord (the "***Option Area***"). Landlord hereby agrees to give Tenant no less than 30 days written notice prior to entering into a lease or other use or occupancy agreement pertaining to any portion of the Property. During the foregoing 30 day period Tenant may elect to designate the Option Area by written notice to Landlord, in which case such Option Area would no longer be available for use by Landlord or a third party. Tenant may, at its expense, have a survey prepared of the Option Area. Landlord

agrees that the legal description of the area as shown on the survey shall then become the legal description of the Option Area. Landlord hereby grants to Tenant, its agents, employees and independent contractors the right to enter upon the Option Area at any time after the Execution Date, to perform or cause to be performed test borings of the soil, environmental audits, engineering studies and to conduct a survey. Landlord grants the right to clear trees and other obstructions which may interfere, in Tenant's sole discretion, at Tenant's cost, with Tenant's ability to conduct such activities. In which event, Tenant agrees to reimburse the Landlord for the replacement of planting of mature trees. In the event that Tenant, its agents, employees and/or independent contractors cause any damage to Landlord's real property or personal property while performing the test borings of the soil, environmental audits, engineering studies or survey, upon receiving written request from the Landlord, Tenant shall either restore the real and/or personal property back to its original condition before the damage (reasonable wear and tear thereby excepted) or reimburse the reasonable costs incurred by the Landlord to repair Landlord's damaged real property and/or replace Landlord's damaged personal property. Upon request, Landlord shall provide Tenant with any necessary keys or access codes needed to access the Option Area.

8. **Assignment.** Any sublease, license or assignment of this Agreement that is entered into by Landlord or Tenant is subject to the provisions of the Agreement. Landlord may assign the Agreement in its entirety to any third party in conjunction with a sale of the Property subject to paragraph 16 hereof. Landlord shall not otherwise assign less than Landlord's full interest in the Agreement without the prior written consent of Tenant. Tenant may assign the Agreement without prior notice to or the consent of Landlord. Additionally, Tenant may mortgage or grant a security interest in the Agreement and the Tower Facilities, and may assign this Agreement and the Tower Facilities to any such mortgagees or holders of security interests including their successors and assigns (hereinafter collectively referred to as "**Secured Parties**"). If requested by Tenant, Landlord shall execute such consent to such financing as may reasonably be required by Secured Parties. In addition, if requested by Tenant, Landlord agrees to notify Tenant and Tenant's Secured Parties simultaneously of any default by Tenant and to give Secured Parties the same right to cure any default as Tenant. If a termination, disaffirmance or rejection of the Agreement by Tenant pursuant to any laws (including any bankruptcy or insolvency laws) occurs, or if Landlord shall terminate this Agreement for any reason, Landlord will give to Secured Parties prompt notice thereof and Secured Parties shall have the right to enter upon the Premises during a 30-day period commencing upon Secured Parties' receipt of such notice for the purpose of removing any Tower Facilities. Landlord acknowledges that Secured Parties are third-party beneficiaries of the Agreement.

9. **Conflict of Terms.** In the event of a conflict between this Memorandum of Lease and the Agreement, the terms and provisions in the Agreement shall supersede and control.

[SIGNATURE AND NOTARY PAGES NEXT]

IN WITNESS WHEREOF, Landlord and Tenant have each executed this Memorandum as of the dates written below.

LANDLORD:

WITNESSES:

Gerald L. Rohwer  
Gerald L. Rohwer

C Jan Headley  
Signature  
Print Name: C Jan Headley

Date: 2-28-10

Lisa K. Headley  
Signature  
Print Name: Lisa K. Headley

Acknowledgment

LANDLORD  
STATE OF Nebraska  
COUNTY OF Douglas

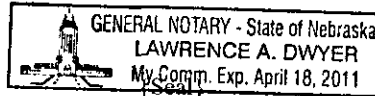
)  
) ss:  
)

On 2/28/10 before me, Lawrence A. Dwyer, personally  
(here insert name of Notary Public)  
Appeared Gerald L. Rohwer, personally known to me (or proved to me on  
*Name(s) of Document Signer(s)*

the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which they person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature: Lawrence A. Dwyer  
Notary Public  
My Commission Expires: 4/18/11



**LANDLORD:**

**WITNESSES:**

By Alan J. Rohwer  
Alan J. Rohwer

Date: 2-28-10

Signature C Jan Headley  
Print Name: C Jan Headley

Signature Lisa K Headley  
Print Name: Lisa K. Headley

**Acknowledgment**

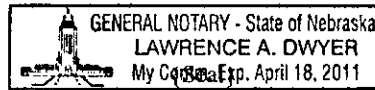
**LANDLORD**  
STATE OF Nebraska )  
COUNTY OF Douglas ) ss:  
)

On 2/28/10 before me, Lawrence A. Dwyer, personally  
*(here insert name of Notary Public)*  
Appeared Allan J. Rohwer, personally known to me (or proved to me on  
*Name(s) of Document Signer(s)*

the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which they person(s) acted, executed the instrument.

WITNESS my hand and official seal.


Signature: Lawrence A. Dwyer  
Notary Public  
My Commission Expires: 4/18/11



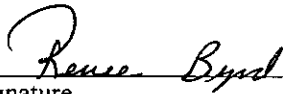
TENANT:

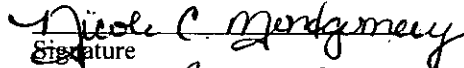
American Tower Delaware Corporation,  
a Delaware corporation

By:

  
Steven O. Vondran  
SVP, Leasing Operations

WITNESSES:

  
Signature  
Print Name: Renee Byrd

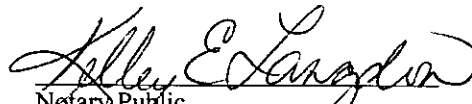
  
Signature  
Print Name: Nicole C. Montgomery

TENANT:

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF MIDDLESEX

Then personally appeared the said, Steven O. Vondran of American Towers, Inc., a Delaware corporation as aforesaid, signer and sealer of the foregoing instrument, and acknowledged the same to be his/her free act and deed as SVP, Leasing Operations of American Towers, Inc., a Delaware corporation and the free act and deed of said corporation, before me.

  
Notary Public  
My Commission Expires:

The following exhibits are attached hereto and incorporated herein:

- Exhibit A Description or Depiction of Property
- Exhibit B Description or Depiction of Site
- Exhibit C Current Agreements





EXHIBIT A

DESCRIPTION OR DEPICTION OF PROPERTY

The Property is described and/or depicted as follows:

**Parcel A: The East 1/2 of the Northeast 1/4 of the Northwest 1/4 of Section 1, Township 14, Range 10 East of the 6th P.M., Douglas County, Nebraska.**

**Parcel B: The East 1/2 of the West 1/2 of the Northeast 1/4 of the Northwest 1/4 of Section 1, Township 14 Range 10, East of the 6th P.M., Douglas County, Nebraska.**

EXHIBIT B

DESCRIPTION OR DEPICTION OF SITE

Locations are approximate. Tenant may, at its option, replace this exhibit with a copy of the survey of the Site.

LEASE AREA

Part of the NE 1/4 of the NW 1/4 of Section 1, Township 14 North, Range 10 East of the 6th P.M., Douglas County, Nebraska, more particularly described as follows:

Commencing at the N 1/4 corner of said Section 1; thence S00°04'37"W (assumed bearing) along the East line of said NW 1/4 of Section 1, a distance of 33.00 feet to a point on the South right-of-way line of "F" Street; thence N90°00'00"W along said South right-of-way line of "F" Street, a distance of 985.93 feet; thence S00°08'20"W, a distance of 50.00 feet to the point of beginning; thence S89°51'40"E, a distance of 50.00 feet; thence S00°08'28"W, a distance of 60.00 feet; thence N89°51'40"W, a distance of 50.00 feet; thence N00°08'28"E, a distance of 60.00 feet to the point of beginning.

Said tract of land contains an area of 3000 square feet or 0.069 acres, more or less.

INGRESS AND EGRESS EASEMENT

Part of the NE 1/4 of the NW 1/4 of Section 1, Township 14 North, Range 10 East of the 6th P.M., Douglas County, Nebraska, more particularly described as follows:

Commencing at the N 1/4 corner of said Section 1; thence S00°04'37"W (assumed bearing) along the East line of said NW 1/4 of Section 1, a distance of 33.00 feet to a point on the South right-of-way line of "F" Street; thence N90°00'00"W along said South right-of-way line of "F" Street, a distance of 965.93 feet to the point of beginning; thence S00°08'20"W, a distance of 50.05 feet; thence N89°51'40"W, a distance of 20.00 feet; thence N00°08'20"E, a distance of 50.00 feet to a point on said South right-of-way line of "F" Street; thence S90°00'00"E along said South right-of-way line of "F" Street, a distance of 20.00 feet to the point of beginning.

Said tract of land contains an area of 1000 square feet or 0.023 acres, more or less.

EXHIBIT B (cont.)

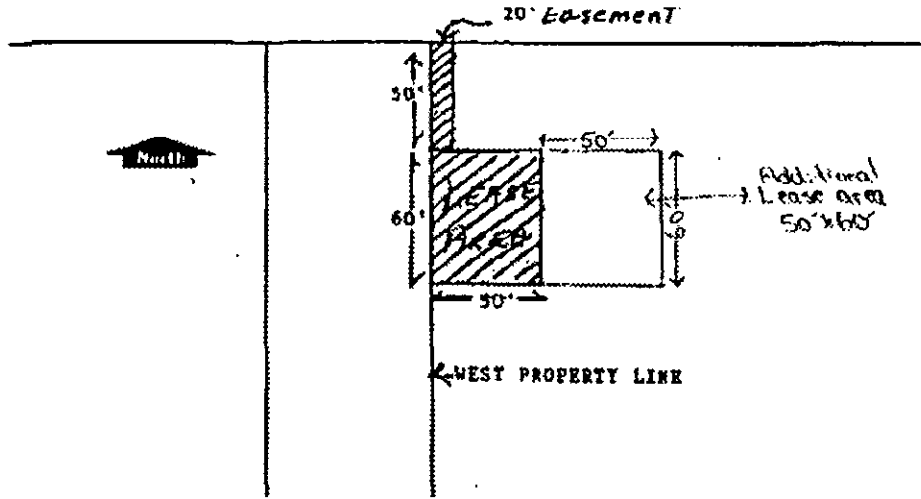


EXHIBIT C

CURRENT AGREEMENT(S)

**\*\* FILED: AS IS**

1. Option and Lease Agreement dated March 13, 1996 by and between Jerald L. Rohwer and Alan J. Rohwer, as Lessor and Omaha Cellular Telephone Company, as Lessee, a Memorandum of which was recorded with Douglas County Register of Deeds on April 4, 1996 in Book 3674-96, Pages 221-224.
2. Lease Agreement (Expanded Compound) dated April 17, 2000 by and between Jerald L. Rohwer and Alan J. Rohwer, as Landlord and American Tower Delaware Corporation, as Tenant.