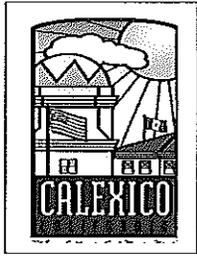


AGENDA  
ITEM

**11**



# AGENDA STAFF REPORT

**DATE:** July 15, 2020

**TO:** Mayor and City Council

**APPROVED BY:** David B. Dale, City Manager

**PREPARED BY:** Carlos Campos, City Attorney

**SUBJECT:** Easement and Assignment Agreement and Agreement for Purchase of Easement between the City of Calexico and SBA Towers X, LLC for the Calexico Water Tower Located at 352 East First Street, Calexico, CA.

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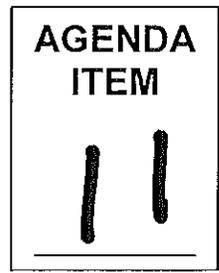
**Recommendation:**

Consideration to Approve an Easement and Assignment Agreement and an Agreement for Purchase of Easement between the City of Calexico and SBA Towers X, LLC for the Calexico Water Tower Located at 352 East First Street.

**Background:**

The City owns the property at 352 East First Street where the City-owned water tower is situated. The Water Tower is no longer used for water storage. However, in the last couple decades, the City has entered into contracts with various wireless carriers (AT&T, Sprint, T-Mobile, Verizon) and with the Customs and Border Patrol to allow the placement of wireless antennas and equipment on the Water Tower and on the ground beneath the Water Tower. Collectively, these contracts currently generate just over \$85,000 in annual lease revenues. In 2019, the City discovered a structural defect in one of the support footings of the Water Tower and made some limited repairs.

In March of this year, the City released a Request for Proposals for the acquisition of this Water Tower site and the leases. The RFP was widely distributed to companies that manage and own wireless towers and leases, and invited proposers to submit any manner of acquisition proposal provided that addressed certain minimum items: (1) as-is sale/lease of tower; (2) Water Tower retrofit commitment; (3) protection of the landmark status of the tower including the color and "City of Calexico" name on the water tank; and (4) reservation of the right of the City and



other public agencies serving the City to use the Water Tower for their equipment at no charge.

The City received proposals from one affiliate of a current tenant, AT&T Mobility, and from four cell tower infrastructure management companies, SBA Site Management, Towerpoint, Anthem Telecom and Everett Infrastructure Partners. The bids ranged in price from \$800,000 to \$1.65 Million, and variations were due mainly to differences in how the proposers responded to the four minimum items. For example, the lower bids were willing to take on the commitment to retrofit the Water Tower and wanted to purchase the property in fee, whereas the higher bids were not willing to take on the commitment to retrofit the Water Tower and only sought a shorter term easement over the property. After reviewing the proposals, the City asked four of the proposers to submit revised offers that had similar commitments (no retrofit obligation and a 55-year easement term), and also removed any consideration of revenues from the Sprint lease which was determined to have already ended. As a result, the range of bid prices narrowed from \$1.2 Million to \$1.51 Million.

Negotiations proceeded with the highest bidder, SBA, and the two agreements attached hereto and submitted for Council consideration and approval are the result of those negotiations.

#### **Discussion and Analysis:**

##### *Agreement for Purchase of Easement between the City of Calexico and SBA Towers X, LLC*

This Agreement governs the final due diligence period of approximately 45 days, establishes the purchase price of \$1.51 Million, and the conditions for the closing of the transaction.

##### *Easement and Assignment Agreement and an between the City of Calexico and SBA Towers X, LLC*

This Agreement grants the easement and establishes the operational rights and responsibilities of each of the parties over the 55-year term of the easement. Main terms address the division of responsibilities over maintenance of the Tower; City responsibility for any repair of structural defects; City entitlement to 70 percent revenue share for all new tenants (provided existing minimum revenue is maintained); City agreement not to compete with SBA (1) by leasing space for wireless facilities elsewhere on the same property or (2) by leasing space for wireless facilities on adjacent City property if the City has actual knowledge that such agreement will cause the SBA customer to terminate its agreement with SBA. However, this second restriction does not apply if the City's refusal to enter into the agreement with the SBA customer will cause the City to violate any state or federal law.

**Environmental Determination:**

No impact.

**Fiscal Impact:**

Provides for a one-time payment of approximately \$1.51 Million upon closing of the transaction with SBA. Going forward, the City will forego any lease payments from existing tenants on the site for the term of the easement, but if new tenants are added, the City may receive 70 percent of those revenues.

**Alternatives:**

The City Council may wish to consider the following alternatives:

1. Provide alternative direction to staff.

**Attachment(S)**

1. Easement and Assignment Agreement between the City of Calexico and SBA Towers X, LLC.
2. Agreement for Purchase of Easement between the City of Calexico and SBA Towers X, LLC.

## EASEMENT AND ASSIGNMENT AGREEMENT

This EASEMENT AND ASSIGNMENT AGREEMENT ("Easement Agreement") is made as of the \_\_\_\_ day of \_\_\_\_, 2020 ("Effective Date"), by and between SBA TOWERS X, LLC, a Delaware limited liability company ("SBA"), having an office at 8051 Congress Avenue, in the City of Boca Raton and State of Florida 33487, and the CITY OF CALEXICO, CALIFORNIA ("Site Owner"), a California municipal corporation whose City Hall is located at 608 Heber Avenue Calexico, California 92231. This Easement Agreement is attached to and is an exhibit to the Agreement for Purchase of Easement ("Purchase Agreement"). Capitalized terms not defined herein are defined in Schedule 1.

### Preliminary Statement:

Site Owner is the owner of the City of Calexico water tower ("Water Tower"), which is situated on the property located at 352 East First Street, in the City of Calexico, State of California, which is more particularly described in Exhibit 1 to this Easement Agreement ("Property"). All Exhibits referenced herein shall be attached to and considered a part of this Easement Agreement.

In consideration of the mutual covenants contained in this Easement Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Site Owner and SBA hereby agree as follows:

1. **GRANT OF EASEMENT:** Site Owner grants and conveys to SBA:

1.1 ***Exclusive Communication Easement.*** Exclusive rights to the Communication Easement described and depicted on Exhibit 2 to this Easement Agreement, solely for Telecommunications Purposes and related activities strictly necessary for SBA to comply with its obligations under the Existing Agreements. The Communication Easement description will include, but is not necessarily limited to, the portion of the Property leased under the Existing Agreements comprising the Water Tank and ground area beneath the Water Tower. Prior to execution hereof, Site Owner shall have the opportunity to review the proposed Communication Easement depicted on Exhibit 2 for its approval, which shall not be unreasonably withheld, conditioned or delayed. SBA's exclusivity as described herein shall not preclude Site Owner from using the Property or the Communication Easement for any purpose that is not a Telecommunications Purpose, or preclude Site Owner or any governmental entity acting with the permission of Site Owner from using the Property or Communication Easement for certain non-commercial, governmental use Telecommunications Purposes without the payment of rent to SBA, provided such permitted Telecommunications Purposes shall not include the provision of personal wireless services or telecommunication services for commercial purposes ("Governmental Attachment Rights"). For the avoidance of doubt, the Customs and Border Patrol Agreement, identified in Exhibit A shall be included within the Governmental Attachment Rights and any amendment thereof shall continue to be at no charge.

1.2 ***Non-Exclusive Access and Utility Easements.*** Non-exclusive rights to the Access and Utility Easements described and depicted on Exhibit 3 to this Easement Agreement for ingress and egress to and from the Communication Easement and First Street, and for the installation, repair, maintenance and removal of utilities providing service to the Communication Easement and the Systems, and related activities and uses.

2. **TERM:** The terms and conditions of this Easement Agreement shall bind SBA and the Site Owner throughout the Term.

3. **COMPENSATION:** SBA shall compensate Site Owner as follows:

3.1 ***Purchase Price.*** In consideration of Site Owner entering into this Easement Agreement and allowing SBA to retain One Hundred percent (100%) of the Existing Revenue during the Term, SBA agrees to pay Site Owner on the date hereof the Purchase Price identified in the Purchase Agreement. Notwithstanding SBA's right, title, and interest to the Existing Revenue pursuant to this Agreement, during the Term, Site Owner is under no obligation to enforce Customer's obligation(s) to make rental payments or cure any default relating to the non-payment of rent pursuant to the respective Customer Agreements.

3.2 ***Existing Revenue Replacement.*** In the event that the Existing Agreements expire or are terminated during the Term, SBA may replace the Existing Revenue by retaining One Hundred percent (100%) of the revenue from Future Customers, if any, until the revenue from Future Customers is equivalent to the amount of Existing Revenue lost to expiration or termination. Any revenue in excess of the Existing Revenue shall be distributed in accordance with Sections 3.3 and 3.4 below.

3.3 ***Future Customer Revenue Sharing.*** Subject to Section 3.2 above, SBA shall pay Site Owner the Revenue Share. Revenue Share payments will be calculated beginning with the first dollar generated from agreements with Future Customers, except in the event of a rent reduction of any Existing Agreement, or a termination or non-renewal of any Existing Agreement. In such event, SBA shall retain rents from the Future Customer in the amount of the Base Rent, and share any excess pursuant to this Section.

3.4 ***Revenue Share Payment.*** Revenue Share payments shall be made by check or EFT delivered one month in arrears (before the last day of the month following the month in which the rent payment was received by SBA). SBA shall also deliver to Site Owner a monthly report identifying all Future Customers which have, during the previous month, operated Systems on or from the Easements and the fee received from each such Future Customer during that month, including any past arrearage paid within that month. All Revenue Share

payments shall be computed from the first of the month following the commencement of rental payments by a Future Customer and are contingent upon SBA's receipt of an accurate W-9 form from Site Owner, attached hereto as Exhibit B, following the Effective Date hereof. Removal of a System may be cause for an adjustment to the Revenue Share payments.

4. **ASSIGNMENT OF EXISTING AGREEMENTS:** As of the Effective Date, Site Owner sells, transfers and assigns to SBA all of its right, title and interest in, to and under the Existing Agreements for the Term. SBA assumes only the obligations and liabilities of Site Owner under the Existing Agreements accruing on or after the Effective Date. During the Term, Site Owner grants to SBA the right to terminate or extend the term of the Existing Agreements pursuant to the terms and conditions of the Existing Agreements and to enter into, extend, or terminate any agreement with a Future Customer provided, however, SBA may not extend the term of any Customer Agreements beyond the Term of this Easement Agreement or subject Site Owner to additional liabilities or responsibilities without the prior written consent of Site Owner, which consent shall not be unreasonably withheld, conditioned or delayed. In the event any Customer Agreement is so extended beyond the Term of this Easement Agreement, on or before the expiration of the Term or any earlier termination date, SBA shall assign the Customer Agreements to Site Owner and shall surrender the Easements and the Property free and clear of any liens or encumbrances. Upon expiration of this Easement Agreement, SBA is obligated to return the Easements to Site Owner in the state it existed as of the Effective Date, wear and tear and damage from the elements excepted, and complete any repairs necessitated by such removal, reasonable wear and tear excepted, and SBA shall be responsible for performing or enforcing performance of any site restoration and repair obligations of Customers under any Customer Agreements that terminate on or before this Easement Agreement is terminated.

5. **RELOCATION:** In the event Site Owner performs any repair, maintenance, replacement or other restorative work upon the Water Tower Support Structure which requires the temporary relocation or movement of the Systems, such temporary relocation or movement of the Existing Customer Systems shall be at Site Owner's sole cost and expense unless otherwise provided in the Existing Agreements, while such temporary relocation or movement of Future Customer Systems shall be at SBA's sole cost and expense unless otherwise provided in the Existing Agreements. SBA shall ensure the Future Customers' cooperation with Site Owner's efforts, and will enforce any such relocation provisions in the Existing Agreements.

6. **USE OF EASEMENTS:** SBA may allow the use of the Easements in accordance with the Existing Agreements, and may market the Property to Future Customers for Telecommunications Purposes and installation of Systems upon the Easements. The Systems may be owned by SBA's Customers and shall not be deemed fixtures. SBA may remove any System during the Term. Removal of a System or all Systems shall not cause an expiration or termination of this Easement Agreement. Site Owner bears no responsibility for and SBA shall have no recourse against Site Owner in the event a Customer terminates a Customer Agreement or due to SBA's removal of any System.

6.1 **Operational Requirements.** Site Owner shall retain and continue to faithfully perform and discharge any and all of Site Owner's obligations as lessor under the Customer Agreements specifically related to fee ownership. Notwithstanding the foregoing and in addition to any obligation of SBA herein, SBA shall assume and faithfully perform and discharge any and all obligations as assignee of a leasehold interest under the Customer Agreements for the Term including, but not limited to, the following obligations:

6.1.1 **Taxes.** SBA shall have the responsibility to pay any taxes, levies, assessments, and other charges imposed upon the portion of the Property containing the Water Tower and Easements, including franchise and similar taxes, arising out of SBA's use, management, or operation of the Water Tower or any subsequent Customer Agreement or sublease entered into by SBA (collectively, "Taxes"), to the extent that SBA can pass the obligation to pay the Taxes fully to the Customers installed at the time such Taxes are imposed, pursuant to the Customer Agreements. Pursuant to Section 107.6 of the California Revenue and Taxation Code, Site Owner hereby advises, and SBA recognizes and understands, that this Easement Agreement may create a possessory interest and SBA may be subject to, and responsible for, property taxes levied on such interest, as described in California Revenue and Taxation Code Section 107. SBA will cooperate with the Imperial County Assessor in providing any information necessary for the Assessor to make a property tax determination. SBA reserves the right to challenge any such assessment, and Site Owner agrees to cooperate with SBA in connection with any such challenge.

6.1.2 **Notices.** SBA shall provide Site Owner a copy of all notices that may affect Site Owners obligations and liabilities herein, which shall include, but are not limited to, notices of nonmonetary breach and notices related to casualty events, force majeure or other notices affecting Site Owner's repair and maintenance obligations herein, given to and received from Customers within five (5) business days of dispatch or receipt. Notwithstanding the foregoing, failure of SBA to provide any other such notices to Site Owner as provided herein shall not be deemed a cause for default of this Easement Agreement.

6.1.3 **Cooperation.** SBA agrees to cooperate fully with Site Owner, at all times, in abiding by all reasonable rules, regulations, requests, and requirements which Site Owner may prescribe for the proper operation and maintenance of the Water Tower including, but not limited to, cooperating with Site Owner and Tenants in any governmental proceeding or tax matter in which SBA's assistance is necessary or desirable for Site Owner or any facility construction, maintenance, modification, or repair.

6.1.4 **Compliance with Applicable Laws.** SBA shall comply, and ensure that its contractors and representatives will comply with all applicable federal, state, and local laws, ordinances, rules and regulations, including health, safety, and environmental requirements, pertaining to its and their operations upon the Water Tower and Property during the Term.

6.1.5 Operational Limitations Within Easements. SBA shall not materially alter the physical appearance of the Water Tank or affix any paint or other materials to the Water Tank that deviates from the color scheme present on the Effective Date, other than in accordance with the use of the Water Tank for Telecommunications Purposes consistent with the uses described in the Existing Agreements. Further, SBA shall not modify or obscure with Systems the "City of Calexico" name emblazoned upon the exterior of the Water Tank. SBA shall not place any signs, designs, advertisements or other speech upon the Water Tank, without the express written consent of Site Owner, unless required by state or federal law. Site Owner reserves the right to repaint the Water Tower subject to the relocation provisions of Section 5 herein. SBA shall ensure that all Systems installed by Customers during the Term shall remain at the present elevations of all Systems affixed to the Water Tank as of the Effective Date except as otherwise approved by Site Owner in accordance with Section 7 hereof. SBA shall not use the Property, Easements or Water Tower in any manner that constitutes a public nuisance.

6.1.6 Maintenance and Repairs. SBA shall not use the Property, Easements or Water Tower for overnight storage of vehicles or equipment without the prior written consent of Site Owner. Site Owner shall maintain the Water Tank, Water Tower Support Structure and Property, except for maintenance, repairs or other work necessary to restore the Water Tank, Water Tower Support Structure and Property to good condition caused by the actions or operations of SBA and the Customers, damage from the elements and wear and tear excepted, and SBA shall perform or enforce performance of all applicable provisions of the Customer Agreements relating to Customers' repair, maintenance, and reimbursement responsibilities therein. Further, Site Owner shall be solely responsible for all costs and expenses required to perform any repairs or other work necessary to ensure the Water Tank and Water Tower Support Structure are structurally compliant for use and continuing use of the Water Tank, Water Tower Support Structure and Property as described in this Easement Agreement by the Existing Customers and Existing Customer Systems as of the date of this Easement and any new Systems approved pursuant to Section 7.1 herein. SBA shall repair any damage to the Property and Water Tower resulting from its operations at the Property and shall enforce any provision in an Existing Agreement requiring the Customer to repair damages to the Property caused by the Customer's operations. SBA shall require Future Customers to repair damages to the Property caused by the Customer's operations. SBA shall enforce all maintenance and repair obligations in the Customer Agreements on behalf of Site Owner. If an Existing Agreement allows the Customer to perform certain repairs and seek reimbursement from the lessor therein, SBA shall provide the reimbursement. Site Owner shall reimburse SBA within sixty (60) days of receipt of an invoice therefor.

6.1.7 Access. SBA may itself, and may allow its authorized representatives to, access the Easements to install, inspect, remove, operate, repair and maintain the Systems, and Site Owner agrees to allow such access to the Easements. Access shall be during normal working hours on normal business days, except when any Existing Agreement allows for greater access, in which case the rights of access herein shall conform to that Existing Agreement. In the case of an emergency or equipment malfunction, access will be permitted at any time, subject to reasonable security, safety and identification procedures required by the Site Owner. During the Term, Site Owner shall not disturb, destroy or alter the access route to the Communication Easement in effect as of the Effective Date hereof without first consulting with SBA and providing an alternative access route to the Communication Easement substantially similar to the access route in use as of the Effective Date hereof.

## 7. SITE OWNER APPROVALS:

7.1 *Site Owner Review of Plans:* Prior to entering into any agreement with a Future Customer, installing any new System, or modifying a System, SBA shall deliver Plans and a detailed structural engineering report demonstrating that the proposal will not adversely impact the structural integrity of the Water Tower or Water Tower Structural Support, including but not limited to evaluating the proposal's weight and wind loading impacts, and other relevant factors for Site Owner's approval, which shall not be unreasonably withheld, conditioned or delayed. In the absence of Site Owner's response within forty-five (45) calendar days of SBA's request to review and approve Plans, the Plans shall be deemed approved. If Site Owner disapproves of the proposed Plans for any reason, Site Owner shall identify its reason for disapproval and provide SBA the opportunity to submit revised Plans which Site Owner shall consider in accordance with this provision. In no event shall Site Owner condition its approval of Plans on an increased Revenue Share or other benefit not provided in this Easement Agreement. SBA shall provide Site Owner with a copy of the final executed agreement with the Future Customer.

## 8. UTILITIES:

8.1 *Electrical Service.* Existing Customers shall continue to utilize the electrical service in operation as of the Effective Date. Site Owner has advised SBA that as of the Effective Date, the Customers obtain separately metered service directly from the local utility and do not pay Site Owner for utility use and Site Owner does not provide utility service to Customers. SBA reserves the right, with Site Owner's prior approval, to require any Existing Customer to install a remote-readable sub-meter and engage the services of a third-party meter reading service, or to obtain electrical service directly from the utility. SBA may require Future Customers to obtain electrical service directly from the utility whenever possible; alternatively SBA shall require the Future Customer to sub-meter off of the Property's electrical service, install a remote-readable sub-meter, and engage a third-party meter reading service. Reimbursements paid to Site Owner for utilities shall not be included in the calculation of Revenue Share payments.

8.2 *Electrical System Modifications.* SBA reserves the right to make reasonable modifications to the electrical distribution system serving the Systems to accommodate the electrical requirements of the Systems. Prior to the installation or modifications of the existing utilities, SBA shall submit to the Site Owner, for its approval, plans and specifications for same. Such approval shall not be

unreasonably withheld, conditioned or delayed. All costs and expenses related to the installations and modifications for electrical services and meters shall be borne solely by SBA or its Customers.

9. **EXCLUSIVITY:**

9.1 ***Covenant Not to Compete.*** Site Owner hereby acknowledges that:

9.1.1 The agreements and covenants Site Owner is providing in this Section are reasonable and necessary to SBA's protection of its legitimate interests in the transaction contemplated by this Easement Agreement;

9.1.2 SBA will be irreparably damaged and its substantial investment in the transaction contemplated by this Easement Agreement materially impaired if Site Owner, acting solely in its proprietary and not governmental capacity, were to engage in an activity competing or interfering with the business of SBA in violation of the terms of this Section 9 or if Site Owner were to disclose or make unauthorized use of any confidential information concerning the business of the Site Owner or SBA; and

9.1.3 The scope and length of the term of this Section 9 and the geographical restrictions contained herein are fair and reasonable and not the result of overreaching, duress or coercion of any kind and the full, uninhibited and faithful observance of each of the agreements and covenants contained in this Section 9 will not cause Site Owner any undue hardship, financial or otherwise, and enforcement of each of the covenants contained in this Section 9 will not impair Site Owner's ability, if Site Owner so desires, to obtain work commensurate with Site Owner's abilities and on terms fully acceptable to Site Owner.

**9.2 Covenant Not To Compete.** During the Term, Site Owner shall not enter into any agreement, directly or through a third party, granting any third party or any then-existing Customer the right to use any portion of the Property for the installation or operation of Systems, except as provided in Section 1. Further, Site Owner shall not enter into any agreement with a then-existing Customer, for installation of equipment on any adjacent property owned by Site Owner, if Site Owner has actual knowledge that such agreement will cause the Customer to terminate its then-Existing Agreement with SBA. The covenant in the foregoing sentence shall not apply if Site Owner's refusal to enter into such agreement with a then-existing Customer will cause Site Owner to violate any state or federal law. Any actions taken to contravene the intended effect of this Section shall constitute a breach of this Easement Agreement by the Site Owner.

**9.3 Remedies.** Site Owner and SBA acknowledge that SBA will be irreparably damaged (and damages at law would be an inadequate remedy) if this Section 9 is not specifically enforced. Therefore, in the event of a breach or threatened breach by Site Owner of the provisions of this Section 9, then SBA shall be entitled to all rights or remedies which may be available at law or in equity.

10. **INTERFERENCE:** Should the Systems operated by Existing Customers cause any interference to the radio, television or other electronic components of Site Owner or the residents and tenants of the Property, SBA will eliminate or remediate the interference to an acceptable level, power down the System, or remove components of the offending System, to the extent permitted under the Existing Agreements. Should the Systems operated by Future Customers cause any interference to the radio, television or other electronic components of Site Owner or the residents and tenants of the Property ("Interference"), SBA will eliminate or remediate the Interference to an acceptable level, power down the System, or remove components of the offending System. In the event the Site Owner installs electronic equipment after the installation date of any Customer's System and such Site Owner equipment causes Interference to the Systems, then the Site Owner agrees to resolve the Interference problem or remove or relocate the offending equipment. The parties recognize and agree that it is the intention of this Section 10 that Site Owner shall not become embroiled in any disputes or proceedings between SBA and Customers arising as a result of Interference caused by Future Customers Systems or modifications to Existing Customer Systems permitted by SBA, and/or expend funds as a result thereof; therefore, SBA agrees to pay all of Site Owner's costs and attorney's fees that may reasonably be incurred by Site Owner related to any Interference disputes or proceedings between SBA and Customers arising after the Effective Date to the extent the Site Owner's involvement in such disputes or proceedings is initiated or caused by Interference from Future Customers or modifications to Existing Customer Systems permitted by SBA.

11. **QUIET ENJOYMENT:** Site Owner covenants and agrees that upon SBA's observing and performing all the terms of this Easement Agreement, SBA may peacefully and quietly enjoy the Easements, subject to the terms and conditions of this Easement Agreement.

12. **INSURANCE:** SBA shall furnish a Certificate of Insurance to Site Owner, naming Site Owner as holder, to cover any damage that may arise by virtue of the installation, removal, operation or maintenance of the Systems. The Certificate of Insurance delivered to the Site Owner will provide that coverage shall not be canceled or terminated without giving Site Owner notice in accordance with policy provisions. SBA shall procure insurance which shall provide for bodily injury and property damage coverage in not less than the following amounts:

<b><u>Combined Single Limit:</u></b>	
Bodily Injury; Property Damage	\$1,000,000.00 (per occurrence) \$2,000,000 (in general aggregate)
Excess Liability (Umbrella Form)	\$5,000,000.00

Site Owner hereby agrees that SBA may satisfy this requirement pursuant to master policies of insurance covering other locations of SBA. SBA further agrees to name Site Owner as an additional insured under such policies. In addition, SBA shall ensure that the Customers continue to be required to maintain at least the same insurances that they are required to maintain today under the Existing Agreements, and that any third parties granted rights by SBA to use the Easements are required to maintain similar insurances as the Existing Customers.

**14. INTENTIONALLY DELETED**

**15. ENVIRONMENTAL COVENANTS AND INDEMNITY:** Site Owner represents that to the best of its knowledge, without investigating thereof, that it has no knowledge of any Hazardous Substance, underground storage tanks, asbestos-containing insulation or materials or products containing PCB are located on, under or about the Property, except to extent permitted by the Existing Agreements. Neither Site Owner nor SBA will introduce or use any such Hazardous Substance on, under or about the Property in violation of any applicable law or regulation. Site Owner shall defend, indemnify, protect and hold SBA harmless from and against all claims, costs, fines, judgments and liabilities, including attorney's fees and costs, caused by or arising from the presence, Release, or threatened Release of any Hazardous Substance or the acts, omissions or negligence of the Site Owner and its respective agents, contractors and employees arising prior to the Effective Date. With respect to Future Customers, SBA shall defend, indemnify, protect and hold Site Owner harmless from and against all claims, costs, fines, judgments and liabilities, including attorney's fees and costs, caused by any Future Customer bringing any Hazardous Substance onto the Property or any Release or threatened Release of any Hazardous Substance caused by any Future Customer, or the acts, omissions or negligence of any Future Customer. With respect to Existing Customers, SBA shall defend, indemnify, protect and hold Site Owner harmless from and against all claims, costs, fines, judgments and liabilities, including attorney's fees and costs, caused by any Existing Customer bringing any Hazardous Substance onto the Property, or the acts, omissions or negligence of any Existing Customer, to the extent that SBA is indemnified pursuant to the applicable Existing Agreement, as assigned. Notwithstanding the foregoing, SBA shall not amend any Existing Agreement, or replace any Existing Agreement with a new agreement for that Customer, which reduces the Customer's indemnification obligations from those in the Existing Agreement. The foregoing indemnities shall survive any termination of this Easement Agreement. Site Owner and SBA shall each provide to the other copies of any written notice, claim, government document, or complaint alleging a legal action arising from the Release or presence of Hazardous Materials or waste on, under, or at the Property that is received by that party.

**16. GENERAL INDEMNITY:** In addition to the Environmental Indemnity set forth above, Site Owner and SBA shall each indemnify, defend and hold the other harmless against any and all costs (including reasonable attorney's fees) and claims of liability or loss arising (i) due to the breach of any representation, warranty or covenant of such indemnifying party set forth herein; and (ii) out of the use and/or occupancy of the Property and Easements by the indemnifying party. This indemnity shall not apply to any claims to the extent arising from the negligence or willful misconduct of the indemnified party.

**17. COMPLIANCE:** Both SBA and Site Owner shall comply with all applicable rules, regulations, laws, ordinances, statutes and requirements of all governmental authorities, as such pertain to their operations at the Property pursuant to this Easement Agreement.

**18. TERMINATION:** SBA shall surrender the Easements on or before the expiration of the Term or any earlier termination date, free and clear of any liens or encumbrances. Site Owner may not terminate this Easement Agreement. In the event SBA and its Customers voluntarily cease to use the Easements for a period of more than one year (for reasons other than casualty, condemnation or Act of God), the Easements shall be deemed abandoned. SBA may abandon the Easements for any reason or at any time by giving thirty (30) days' notice to Site Owner. Upon abandonment, this Easement Agreement shall be terminated, and SBA and Site Owner shall execute and record such documents reasonably required to terminate the Easements. Termination or abandonment does not entitle SBA to reimbursement of any consideration paid to Site Owner in connection with Site Owner's grant of this Easement, whether paid under this Easement or the Purchase Agreement. Upon termination of this Easement Agreement, the Easements shall be come null and void and the parties shall have no further obligations to each other, except that all provisions that by their nature are intended to survive termination, including but not limited to Sections 4, 15, 16, 18, and 22 shall survive the termination of the Easements.

**19. ASSIGNMENT OF EASEMENT AGREEMENT; SECURED PARTIES:** Provided that (i) SBA is not in default hereunder; (ii) SBA provides timely written notice of the assignment; and (iii) the assignee agrees to assume all of SBA's obligations hereunder (including those due and owing as of the effective date of assignment), SBA shall have the right to assign or transfer its interest in this Easement Agreement, in whole or part, to (a) any parent, subsidiary or Affiliate of SBA; (b) any entity with which or into which SBA is merged or consolidated; or (c) any corporation which acquires 51% or more of SBA's assets. Any assignment hereof by SBA other than pursuant to these terms and other than as collateral to a Secured Party, as described below, shall be subject to the prior written approval of Site Owner, which shall not be unreasonably withheld, conditioned or delayed, provided the proposed assignee unconditionally assumes all of SBA's obligations hereunder and provides Site Owner with a written assumption of SBA's liabilities and obligations under this Easement. SBA may assign, mortgage or grant a lien on and/or a security interest in all of SBA's interest in and to this Easement Agreement and the Easements, and may assign this Easement Agreement and the Easements to any Secured Party or Secured Parties as collateral security for the repayment of any indebtedness to the Secured Parties, provided SBA transmits advance written notice thereof to Site Owner. Nothing contained herein shall be construed to grant a lien upon or security interest in any of Site Owner's assets. Should the Secured Parties exercise any rights of SBA under this Easement Agreement, Site Owner agrees to accept such exercise of rights by the Secured Parties as if same had been exercised by SBA, so long as Site Owner provided advance written notice of SBA's intended assignment, mortgage or grant of a lien on and/or a security interest in any or all of SBA's interest in and to this Easement Agreement and the Easements to a Secured Party. This

Easement Agreement may not be amended in any respect which would be reasonably likely to have a material adverse effect on the Secured Parties' interest or surrendered, terminated or cancelled, without the prior written consent of the Secured Parties. If this Easement Agreement is terminated or rejected in any bankruptcy proceeding Site Owner will enter into a new easement agreement with the Secured Party upon the same terms of this Easement Agreement, provided the Secured Party reimburses the Site Owner for its reasonable costs, including attorneys' fees, to process, prepare, and review the new easement agreement. If any Secured Party shall succeed to SBA's interest under this Easement Agreement, such Secured Party shall have no liability for any defaults of SBA accruing prior to the date that such Secured Party succeeds to such interest. Site Owner hereby waives any and all lien rights it may have, statutory or otherwise, in and to the Easements and/or the Systems or any portion thereof.

## 20. CASUALTY; CONDEMNATION:

20.1 Casualty. In the event of damage to or destruction of the Property or any part thereof not caused by SBA or any Customer which renders the Property unusable or inoperable, and as a result of which SBA determines that the Property is no longer suitable for SBA or the Customers to continue their operations and any necessary repairs have not been completed or cannot be reasonably completed within ninety (90) days from the date of the damage, SBA shall have the right, but not the obligation, to terminate this Easement Agreement and all of its duties and obligations therein upon written notice to Site Owner. If SBA does not terminate this Easement Agreement, any Revenue Share payment to Site Owner shall be reduced or abated in proportion to the actual reduction or abatement of rent paid by the Future Customers subject to Section 3.3.

20.2 Condemnation. In the event of condemnation, unless SBA is allowed by the condemning authorities to continue its operation on the Property, this Easement Agreement shall terminate as of the date title to the lands vests in the condemning authority or the date SBA is required to cease its operation, whichever is earlier. SBA shall be entitled to seek its own award from the condemning authority provided such award does not reduce any award to Site Owner.

21. DEFAULT: In the event of a default by SBA, Site Owner agrees to notify SBA and any Secured Parties in writing of such default, and to give SBA and/or any Secured Parties the right to cure any monetary default within a period of not less than twenty (20) days and sixty (60) days in which to cure any non-monetary default from SBA's receipt of the written default notice. If SBA or any Secured Parties shall fail to cure the default in accordance with this Section, Site Owner shall have the right to injunctive relief, to require specific performance of this Easement Agreement, and to pursue an action for damages (including, without limitation, Site Owner's reasonable attorneys' fees and all reasonable costs and expenses incurred by Site Owner as a result of such violations). All of Site Owner's rights and remedies provided under this Easement Agreement are cumulative and may be pursued singularly, in any combination, and in any order. The failure to enforce any of the terms and provisions contained herein shall in no event be deemed to be a waiver of the right to thereafter strictly enforce the terms and provisions hereof. Notwithstanding anything to the contrary in this Easement Agreement, in no event may Site Owner terminate this Easement Agreement as a result of SBA's failure to cure any violation of the terms contained herein. In the event that any dispute or claim arises that could impair the use or possession of the Systems by SBA or its Customers, SBA shall have the right to seek injunctive relief. In no event will a Secured Party have any obligation to cure a default by SBA. In the event of a default by Site Owner, SBA agrees to notify Site Owner in writing of such default, and to give Site Owner the right to cure the default within a period of not less than thirty (30) days from receipt of the written notice. In the event Site Owner's default is the failure to maintain the structural sufficiency of the Water Tank or Water Tower Support Structure, Site Owner may cure by either performing, or having performed, the necessary repairs, or allow SBA or an SBA affiliate to construct a wireless communications tower as a replacement structure, for use as described herein. If a default by SBA or Site Owner is of such a nature that it cannot be reasonably cured in such thirty (30) day period, and if the defaulting party proceeds promptly to cure the same with due diligence, the time for curing such default shall be extended for such a period of time as may be reasonable to complete such curing. In the event that SBA or Site Owner has issued a notice of default for any non-monetary default and the defaulting party disputes that it is in default, such defaulting party shall, within ten (10) calendar days of receipt of said notice, submit to the other party a written request for dispute resolution. Upon receipt of a timely request for dispute resolution, the cure period provided above is tolled. Each party shall designate a senior representative ("Senior Representative") and the Senior Representatives for the parties shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve the controversy related to the default. Prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving the dispute. If the dispute cannot be resolved through dispute resolution within a reasonable time, not to exceed thirty (30) days, then the parties shall be free to pursue: (i) any other remedies it may have under this Easement, applicable law or in equity relating to such default; (ii) arbitration or other legal action pursuant to Section 22 below, and (iii) may suspend or delay performance of its obligations under this Easement.

22. DISPUTES: SBA and Site Owner agree that, upon mutual agreement of the parties, any controversies relating to, in connection with, or arising out of this Easement Agreement, its modifications, making or the authority or obligation of the signatories hereto, whether involving the principals, agents, brokers or others who actually subscribe hereto, may be resolved by arbitration. In the event that the parties agree to arbitrate any such controversy, the arbitration proceedings shall be held in the County and State in which the Property is located and shall be governed by one (1) JAMS arbitrator of pursuant to JAMS' "Comprehensive Arbitration Rules and Procedures" as they exist at the time of the proceedings (including provisions for payment of fees and expenses) unless both parties mutually agree to instead utilize JAMS "Streamlined Arbitration Rules and Procedures." Arbitration shall not be mandatory and shall only be used if mutually agreed in writing by the parties with respect to any particular controversy. If either party participates in an action against the other party arising out of or in connection with this Easement Agreement or any covenants or obligations hereunder, then the prevailing party shall be entitled to have

or recover from the other party, upon demand, all reasonable attorneys' fees, costs and expenses, including, without limitation, court costs, filing fees, recording costs, and all other legal and administrative costs and expenses incurred in connection therewith.

23. **RIGHT OF FIRST REFUSAL FOR SALE OF FUTURE CUSTOMER REVENUE SHARE:** This Section shall only apply if one or more Future Customers has installed a System upon the Easements, generating a Revenue Share payable to Site Owner. This Section shall not apply in the event of a third party offer to purchase the entirety of the Property, including the Revenue Share payments. If at any time during the Term, Site Owner receives a bona fide written offer from a third party to pay Site Owner for the right to purchase and receive the Revenue Share payments ("Offer") which Site Owner desires to accept, Site Owner shall first give SBA written notice of such Offer, including a copy of the proposed contract or letter of intent, prior to becoming obligated under such Offer, with such notice giving SBA the right to pay Site Owner for future Revenue Share payments. SBA shall have a period of thirty (30) days after receipt of Site Owner's notice and terms to exercise SBA's right to purchase the Revenue Share payments and exercise this right of first refusal by notifying Owner in writing. If SBA has not exercised its right to purchase the Revenue Share payments in writing to Site Owner within such thirty (30) day period, the Offer will be deemed rejected by SBA.

24. **NO WARRANTY.** Except as expressly set forth herein, Site Owner makes no representation or warranty of any kind as to the present or future condition of or suitability of the Site Owner's Property, Water Tower, Water Tank or Easements for SBA's use and disclaims any and all warranties express or implied with respect to the physical, structural, or environmental condition of Site Owner's Property, Water Tower, Water Tank, Improvements thereon, and Easements, and the merchantability or fitness for a particular purpose.

25. **REPRESENTATIONS OF SITE OWNER:** Site Owner represents, warrants and agrees that to the best of its knowledge: (i) it is the legal owner of indefeasible and marketable title to the Property with the right, power and authority to enter into this Easement Agreement and to grant the Easements to SBA, and any consents and authorizations required in connection with the execution and delivery of this Easement Agreement have been obtained; (ii) except for the Existing Agreements and the Title Encumbrances disclosed on Exhibit C, no leases, mortgages, deeds of trust or other encumbrances affect the Water Tower as of the Effective Date, (iii) Site Owner has delivered to SBA true, correct and complete copies of the Existing Agreements, and, to Site Owner's best knowledge, no party is in default of any of their respective obligations under the Existing Agreements; and (iv) Site Owner shall not use nor permit its affiliates, licensees, invitees or agents to use any portion of the Water Tower or any other property owned or controlled by Site Owner, either directly or indirectly, in a manner which could result in default of the Existing Agreements or otherwise interfere with the operations of SBA and/or any Customers.

26. **ESTOPPEL CERTIFICATE:** Each party shall, within ten (10) days after request by the other party, execute and deliver to the requesting party, or the party designated by requesting party, a statement certifying (i) that this Easement Agreement is unmodified and in full force and effect (or, if there have been modifications, stating the modifications and that the modified Easement Agreement is in full force and effect); (ii) whether or not, to the best knowledge of the responding party, the requesting party is in default in performance of any of its obligations under this Easement Agreement, and, if so, specifying each such default; (iii) that there are no amounts due to Site Owner by SBA; and, (iv) any other information reasonably requested concerning this Easement Agreement.

26. **SURVIVORSHIP:** The provisions of and covenants contained in this Easement Agreement shall run with the land and shall bind and inure to the benefit of the Parties, and their respective successors, heirs and assigns. In the event of a sale or transfer of the Property, Site Owner shall provide SBA with the contact information (name, telephone, email) for the purchaser, as well as a copy of the bill of sale or deed.

27. **RECORDATION:** SBA, at its option, shall have the right to record a Memorandum of this Easement Agreement, in the form attached hereto, with the county clerk's office in which the Property is located and/or the county clerk's office in which this Easement Agreement was executed.

28. **INTERPRETATION.** The singular includes the plural and the plural includes the singular. The word "or" is not exclusive and the word "including" is not limiting. References to a law include any rule or regulation issued under the law and any amendment to the law, rule or regulation. References to a Section, Exhibit or Schedule mean a Section, Exhibit or Schedule contained in or attached to this Easement Agreement or the Purchase Agreement. This Easement Agreement will be interpreted and enforced in accordance with its provisions and without the aid of any custom or rule of law requiring or suggesting construction against the party drafting or causing the drafting of the provisions in question.

29. **MISCELLANEOUS:** (a) This Easement Agreement and all Exhibits attached hereto constitute the entire agreement and understanding of Site Owner and SBA with respect to the subject matter of this Easement Agreement, and supersedes all offers, negotiations and any other written or verbal agreements; (b) any amendments to this Easement Agreement must be in writing and executed by both parties; (c) this Easement Agreement is governed by, enforced and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws; (d) if any term of this Easement Agreement is found to be void or invalid, such provision shall be fully severable herefrom and such invalidity shall not affect the remaining terms of this Easement Agreement, which shall continue in full force and effect; (e) the section headings of this Easement Agreement have been inserted for convenience of reference only, and shall in no way modify or restrict the terms of this Easement Agreement; (f) this Easement Agreement may be executed in any number of counterparts and by facsimile, each of which shall, when executed, be deemed to be an original and all of which shall be deemed to be one and the same instrument; and (g) Site Owner and SBA each represent that the signatories of this Easement Agreement presently have and shall maintain

full authority to enter into this Easement Agreement and to bind and obligate their respective organizations to the terms, rights and obligations under this Easement Agreement.

30. **NOTICES:** All notices required under or permitted by this Easement Agreement shall be given and served in writing, delivered personally, by overnight courier, or if sent by United States Mail, certified or registered, return receipt requested, providing proof of such service, and addressed to the following parties:

If to Site Owner: City of Calexico  
City Hall  
608 Heber Avenue  
Calexico, California 92231  
ATTN: City Manager

If to SBA: SBA Towers X, LLC  
8051 Congress Avenue  
Boca Raton, Florida 33487  
ATTN: Site Administration

With a copy to:

[EXECUTION PAGES FOLLOW]

The parties hereto have executed this Easement Agreement as of the Effective Date.

**SITE OWNER:**

**THE CITY OF CALEXICO, CALIFORNIA**

\_\_\_\_\_

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

Its: \_\_\_\_\_

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

**SBA:**

**SBA TOWERS X, LLC,  
a Delaware limited liability company**

By: Neil Seidman

Its: Senior Vice President

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

**ATTACHMENTS:**

Schedule 1- Definitions  
Exhibit A- Existing Agreements  
Exhibit B- W-9 Form  
Exhibit C- Title Encumbrances  
Memorandum of Easement Agreement  
    Exhibit 1- Legal Description of Property  
    Exhibit 2- Communication Easement Description  
    Exhibit 3- Access and Utility Easement Description  
    Exhibit 4- Existing Agreements

## SCHEDULE 1

### DEFINITIONS

The following defined terms shall apply throughout this Easement Agreement:

1. Access and Utility Easement- that portion of the Property for ingress and egress to and from the Communication Easement and First Street, a public right-of-way, and for the installation, repair, maintenance and removal of utilities providing service to the Communication Easement and the Systems, and any related activities and uses, as described on Exhibit 3.
2. Affiliate- a party controlling, controlled by, or under common control with SBA.
3. Base Rent- the total annualized rent pursuant to all Existing Agreements as of the Effective Date hereof, in the amount of Eighty-Five Thousand Eight Hundred Forty-Six and 00/100 Dollars (\$85,846.00), which shall increase in accordance with the escalations in the Existing Agreements.
4. Communication Easement- the portion of the Property granted to Existing Customers pursuant to the Existing Agreements, and the portion of the Property actually in use by the Existing Customers, as further described on Exhibit 2.
5. Customers- collectively, the Existing Customers and Future Customers.
6. Customer Agreements – collectively the Existing Agreements and any agreements with Future Customers granting occupancy and use of the Easements during the Term.
7. Easements- collectively, the Communication Easement and Access and Utility Easements.
8. Existing Agreements- the lease and license agreements encumbering the Property as of the Effective Date, and identified in Exhibit A as may be amended from time-to-time shall remain Existing Agreements.
9. Existing Customers- third parties operating Systems at the Property as of the Effective Date pursuant to the Existing Agreements. Existing Customers who execute amendments or new agreements for the same or enhanced Systems shall remain Existing Customers.
10. Existing Revenue- the revenue generated by the Existing Agreements.
11. Future Customers- third parties operating Systems at the Property pursuant to leases, licenses or other agreements between SBA and those third parties granting occupancy of the Property during the Term.
12. Hazardous Substance- shall mean any substance which is (i) designated, defined, classified or regulated as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under any Environmental Law, as currently in effect or as hereafter amended or enacted, (ii) a petroleum hydrocarbon, including crude oil or any fraction thereof and all petroleum products, (iii) PCBs, (iv) lead, (v) asbestos, (vi) flammable explosives, (vii) infectious materials, or (viii) radioactive materials. "Environmental Law(s)" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Sections 9601, et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901, et seq., the Toxic Substances Control Act, 15 U.S.C. Sections 2601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. 5101, et seq., and the Clean Water Act, 33 U.S.C. Sections 1251, et seq., the California Hazardous Waste Control Act, Health and Safety Code Section 25100 et seq.; the Hazardous Substance Account Act, Health and Safety Code Section 25330 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Section 25249.5 et seq.; California Health and Safety Code Section 25280 et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste Management Act, Health and Safety Code Section 25170.1 et seq.; California Health and Safety Code Section 25501 et seq. (Hazardous Materials Release Response Plans and Inventory); or the California Porter-Cologne Water Quality Control Act, Water Code Section 13000 et seq., as said laws have been supplemented or amended to date, the regulations promulgated pursuant to said laws and any other federal, state or local law, statute, rule, regulation or ordinance which regulates or proscribes the use, storage, disposal, presence, cleanup, transportation or release or threatened release into the environment of Hazardous Materials.
13. Memorandum- the Memorandum of Easement Agreement, attached to and made a part of this Easement Agreement.
14. Offer- a bona fide written offer from a third party to pay Site Owner for the right to purchase and receive the Revenue Share payments.
15. Plans- the plans and specifications depicting a proposed System design and location upon the Water Tower.

16. Release shall mean any depositing, spilling, leaking, pumping, pouring, placing, emitting, discarding, abandoning, emptying, discharging, migrating, injecting, escaping, leaching, dumping, or disposing into the environment.
17. Revenue Share- an amount equal to Seventy percent (70 %) of the total revenue collected by SBA from Future Customers utilizing the Easements, in excess of the Base Rent.
18. Secured Party- third parties to which SBA may assign, mortgage or grant a security interest or lien in all of SBA's interest in and to this Easement Agreement and the Easements.
19. System- a wireless communication facility which may consist of antennas, mounts, poles, platforms, electronic equipment, transmission lines, utility lines and supporting equipment, used for Telecommunication Purposes. System does not include any new towers, whether temporary or otherwise.
20. Telecommunications Purposes- the transmission, reception and relay of communication signals, intended to provide radio frequency coverage to the Property and areas surrounding the Property over the wireless spectrum.
21. Term- a period of fifty-five (55) years commencing on the Effective Date.
22. Water Tank- the structure comprising the uppermost portion of the Water Tower above the existing mechanical room, approximately one hundred (100) feet above the natural grade of the Property. The Water Tank includes the steel angle guardrail and catwalk affixed thereto.
23. Water Tower- the approximately one hundred forty-one (141) foot structure on the Property, containing the Water Tank and Water Tower Support Structure.
24. Water Tower Support Structure- the portion of the Water Tower below the Water Tank, comprising the legs and foundation of the Water Tower.

## EXHIBIT A

### EXISTING AGREEMENTS

Site Owner sells, assigns and transfers to SBA, as of the effective date herein, all of its right, title and interest in, to and under the following existing lease or license agreements, as amended, and any assignments thereof from a third party or prior owner of the Property to Site Owner, affecting any portion of the Property leased by Site Owner under the Existing Agreements:

1. (AT&T) That certain California Lease Agreement dated as of September 12, 2005, by and between New Cingular Wireless PCS, LLC, a Delaware limited liability company.
2. (Customs and Border Patrol) That certain U.S. Government Lease for Real Property, dated as of November 12, 2000, by and between the City of Calexico and the United States of America on behalf of the Immigration and Naturalization Service, predecessor in interest to Customs and Border Patrol.
3. (T-Mobile) That certain Non-Exclusive License Agreement for Cellular Site, dated as of June 18, 2014, by and between the City of Calexico and T-Mobile West LLC, a Delaware limited liability company.
4. (Verizon) That certain Ground Lease and Tower License Agreement, dated as of May 1, 1992, by and between the City of Calexico, and Contel Cellular of California, Inc., as a general partner of California RSA No. 7 Limited Partnership, as amended by that certain Amendment and Extension of Lease Agreement dated as of January 25, 1999 by and between the City of Calexico, and Dobson Cellular of Imperial, Inc., an Oklahoma corporation as successor to Contel Cellular of California, Inc., and as further amended by that certain Second Amendment and Extension of Lease Agreement, dated as of June 4, 2008, by and between the City of Calexico and Cellco Partnership, a Delaware partnership d.b.a. Verizon Wireless and as further amended by that certain Third Amendment to Ground Lease and Tower License Agreement, dated as of May 21, 2013, by and between the City of Calexico and Cellco Partnership, a Delaware partnership d.b.a. Verizon Wireless, and as further amended by that certain Fourth Amendment to Ground Lease and Tower License Agreement, dated as of October 17, 2014, by and between the City of Calexico and Cellco Partnership, a Delaware partnership d.b.a. Verizon Wireless.

EXHIBIT B

W-9 FORM

[To be provided prior to execution.]

EXHIBIT C

TITLE ENCUMBRANCES

**MEMORANDUM OF EASEMENT AND ASSIGNMENT AGREEMENT**

This Memorandum of Easement and Assignment Agreement is entered into this \_\_\_\_ day of \_\_\_\_, 2020 by and between **THE CITY OF CALEXICO, CALIFORNIA** (hereinafter referred to as "Site Owner") and **SBA TOWERS X, LLC**, a Delaware limited liability company (hereinafter referred to as "SBA").

1. Site Owner and SBA entered into an Easement Agreement on this date pursuant to which Site Owner has granted to SBA an exclusive easement on a portion of the Property identified in Exhibit 1, which Easement area is more clearly defined and described on Exhibit 2 and Exhibit 3, for the purpose of installing, removing, operating and maintaining radio communication systems and other accessories. All of the foregoing is set forth in the Easement Agreement.
2. The term of the Easement Agreement shall be for a period of fifty-five (55) years commencing on \_\_\_\_\_.
3. On the date hereof, Site Owner sold, transferred and assigned to SBA all of its right, title and interest in and to those agreements identified in Exhibit 4, attached hereto and made a part hereof.

Accepted by:     Site Owner  
  
**THE CITY OF CALEXICO, CALIFORNIA**  
  
BY: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
State Of: \_\_\_\_\_  
County Of: \_\_\_\_\_

Accepted by:     SBA  
  
**SBA TOWERS X, LLC**, a Delaware limited liability company  
  
BY: \_\_\_\_\_  
Print Name: Neil Seidman  
Title: Senior Vice President  
Date: \_\_\_\_\_  
State Of: Florida  
County Of: Palm Beach

[Notary block on next page.]

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Signature of Notary Public  
\_\_\_\_\_  
Printed name of Notary

Place Notary Seal and/or Stamp Above

My Commission Expires \_\_\_\_\_

STATE OF FLORIDA )  
COUNTY OF PALM BEACH )

SS:

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_ day of \_\_\_\_\_, 2020 by NEIL SEIDMAN as Senior Vice President of SBA TOWERS X, LLC, a Delaware limited liability company, on behalf of the company. He is personally known to me and did not take an oath.

\_\_\_\_\_  
Signature of Notary Public  
\_\_\_\_\_  
Printed name of Notary

Place Notary Seal and/or Stamp Above

My Commission Expires \_\_\_\_\_

**EXHIBIT 1**  
**to Memorandum of Easement Agreement**

**LEGAL DESCRIPTION OF PROPERTY**

[To be provided prior to execution]

**EXHIBIT 2**  
**to Memorandum of Easement Agreement**

**COMMUNICATION EASEMENT**

That portion of the Property on which any Systems exist on the date of this Easement Agreement together with the portion of the Property leased by Site Owner under the Existing Agreements, as substantially described as follows:

~~[To be provided prior to execution]~~

Site Owner herein agrees that this legal description may be substituted at a later date upon presentation of a survey of the property more clearly defining the location thereof, subject to Site Owner's advance written consent.

[THE REMAINDER OF THE PAGE IS BLANK]

**EXHIBIT 3**  
**to Memorandum of Easement Agreement**

**ACCESS AND UTILITY EASEMENTS**

That portion of the Property provided by Site Owner under the Existing Agreements for Existing Customer access to the Systems and utility providers, substantially described as follows:

All rights of ingress and egress across the portion of the Property containing the Water Tower, to and from the Communication Easement described in Exhibit 2 hereof, providing access to a publicly dedicated roadway, including but not limited to East First Street (hereinafter the "Access Easement") provided SBA may not install or authorize others to install utilities within the Access Easement;

A non-exclusive easement in, to, under and over portion of the Property containing the Water Tower for ingress and egress to the Communication Easement, risers, conduits, shafts, raceways or other designated space to connect the telecommunications equipment to other locations inside or outside the structure as is necessary to install wiring, electronic equipment and other personal property, and to support and maintain the Systems (hereinafter the "Utility Easement"), along with the right to use said Access Easement and Utility Easement for the development, repair, maintenance and removal of utilities providing service to the Communication Easements and the Systems, as defined herein, and any related activities and uses.

Site Owner herein agrees that this legal description and drawing may be substituted at a later date upon presentation of a survey of the property more clearly defining the location thereof, subject to the advance written consent of Site Owner.

[THE REMAINDER OF THE PAGE IS BLANK]

**EXHIBIT 4**  
**to Memorandum of Easement Agreement**

**EXISTING AGREEMENTS**

Site Owner sells, assigns and transfers to SBA, as of the effective date herein, all of its right, title and interest in, to and under the following existing lease or license agreements, as amended, and any assignments thereof from a third party or prior owner of the Property to Site Owner, affecting any portion of the Property leased by Site Owner under the Existing Agreements:

1. (AT&T) That certain California Lease Agreement dated as of September 12, 2005, by and between New Cingular Wireless PCS, LLC, a Delaware limited liability company.
2. (Customs and Border Patrol) That certain U.S. Government Lease for Real Property, dated as of November 12, 2000, by and between the City of Calexico and the United States of America on behalf of the Immigration and Naturalization Service, predecessor in interest to Customs and Border Patrol.
3. (T-Mobile) That certain Non-Exclusive License Agreement for Cellular Site, dated as of June 18, 2014, by and between the City of Calexico and T-Mobile West LLC, a Delaware limited liability company.
4. (Verizon) That certain Ground Lease and Tower License Agreement, dated as of May 1, 1992, by and between the City of Calexico, and Contel Cellular of California, Inc., as a general partner of California RSA No. 7 Limited Partnership, as amended by that certain Amendment and Extension of Lease Agreement dated as of January 25, 1999 by and between the City of Calexico, and Dobson Cellular of Imperial, Inc., an Oklahoma corporation as successor to Contel Cellular of California, Inc., and as further amended by that certain Second Amendment and Extension of Lease Agreement, dated as of June 4, 2008, by and between the City of Calexico and Cellco Partnership, a Delaware partnership d.b.a. Verizon Wireless and as further amended by that certain Third Amendment to Ground Lease and Tower License Agreement, dated as of May 21, 2013, by and between the City of Calexico and Cellco Partnership, a Delaware partnership d.b.a. Verizon Wireless, and as further amended by that certain Fourth Amendment to Ground Lease and Tower License Agreement, dated as of October 17, 2014, by and between the City of Calexico and Cellco Partnership, a Delaware partnership d.b.a. Verizon Wireless.

## AGREEMENT FOR PURCHASE OF EASEMENT

This AGREEMENT FOR PURCHASE OF EASEMENT (this "Agreement") is dated as of the \_\_\_\_ day of \_\_\_\_\_, 2020, between SBA TOWERS X, LLC, a Delaware limited liability company ("SBA"), having an address at 8051 Congress Avenue, Boca Raton, Florida 33487, and THE CITY OF CALEXICO, CALIFORNIA, a municipal corporation ("Site Owner"), having an address at 608 Heber Avenue, Calexico, California 92231, Attn: City Manager, Email Address ddale@calexico.ca.gov, FEI Number 95-6000684.

### Preliminary Statement:

Site Owner has agreed to sell the Site Owner Assets (as defined below), to SBA, and SBA has agreed to purchase the Site Owner Assets from Site Owner, on the terms, covenants and conditions set forth in this Agreement. In addition, Site Owner has agreed to enter into the Easement (defined in Section 5.7 below) with SBA at Closing.

Site Owner and SBA hereby agree as follows:

1. **DEFINITIONS.** Capitalized terms used but not otherwise defined in this Agreement will have the meanings set forth in Exhibit "A".

2. **SALE AND PURCHASE.** In consideration of the mutual covenants contained in this Agreement, and other good and valuable consideration, Site Owner agrees to sell and convey the Site Owner Assets to SBA and SBA agrees to purchase the Site Owner Assets from Site Owner, on the terms, covenants and conditions set forth in this Agreement. In addition, Site Owner agrees to enter into the Easements with SBA at Closing for a portion of the Water Tower located at 352 East First Street, Calexico, California 92231, together with certain ground area underlying the Water Tower as more particularly described in the Easements.

### **3. PURCHASE PRICE AND METHOD OF PAYMENT.**

3.1 ***Purchase Price.*** The Purchase Price of the Site Owner Assets (including the consideration for the entering into of the Easement) is One Million Five Hundred Ten Thousand and 00/100 Dollars (\$1,510,000.00), subject to all adjustments, credits and proration contained in this Agreement. In the event the Included Revenue being generated by Included Leases on the Property is less than \$85,846.00 annually at Closing, then the Purchase Price shall be reduced by the amount the Included Revenue is less than \$85,846.00 multiplied by 17.59. SBA shall pay the Purchase Price to Site Owner by wired funds.

3.2 ***Rent Reconciliation.*** Notwithstanding anything contained in Section 8 to the contrary, at Closing,

SBA shall withhold an amount equal to the rent payments due under the Existing Agreements during the period of time commencing on the Closing Date and expiring on the last day of the first calendar month after the Closing Date, such amount to be reconciled once the Existing Customers under the Existing Agreements commence payment of rent directly to SBA, whereupon either party owing the other party a sum of money from such Existing Agreement rent payments will promptly pay the sum to the other party in Current Funds within fifteen calendar days following SBA receiving such rent payment directly from such Existing Customer.

4. **REPRESENTATIONS AND WARRANTIES OF SITE OWNER.** As a material inducement to SBA to enter into this Agreement, Site Owner represents and warrants to SBA as follows:

4.1 ***Authority.*** Site Owner is a California municipal corporation, duly organized, validly existing and in good standing under the laws of the state of California. All documents, including this Agreement, executed or to be executed by Site Owner (a) have been duly authorized, and have been or will be duly executed and delivered by Site Owner, (b) are or will be legal, valid and binding obligations of Site Owner, and (c) do not and will not violate any provisions of any agreement to which Site Owner is a party or Site Owner is bound. Site Owner has the full right, power and authority, without the necessity of obtaining the consent or approval of any other Person, to enter into this Agreement and to perform Site Owner's obligations under this Agreement.

4.2 ***Real Property.*** Site Owner has good and marketable fee simple title to the Property, which is legally described on Schedule 4.2 attached hereto and made a part hereof, and the Water Tower thereon. Site Owner will enter into the Easement with SBA at Closing for access to and use of the Water Tower, free and clear of all liens and encumbrances.

4.3 ***Existing Agreements.*** Site Owner has attached hereto as Schedule 4.3, true, correct and complete copies of the Existing Agreements. Site Owner will assign its interests in the Existing Agreements to SBA at Closing free and clear of all liens and encumbrances, excepting only the Permitted Exceptions. Except for the rights of the Existing Customers, as tenants only, pursuant to the Existing Agreements, to the best of Site Owner's knowledge, without investigation thereof, no Person other than SBA will on the Closing Date be in, or have any right or claim to, possession of the Site Owner Assets (or the Water Tank). Other than the Existing Agreements, there are no leases, subleases, licenses or other occupancy agreements (written or oral) which grant any possessory

interest in or to the Site Owner Assets, or which grant other rights with respect to the use of the Site Owner Assets (including the portion of the Water Tower and ground thereunder granted pursuant to the Easements). Furthermore, Site Owner represents and warrants that to the best of Site Owner's knowledge, without investigation thereof: (i) each Existing Agreement is in full force and effect and has not been modified, terminated, non-renewed or amended, nor has any Existing Customer given notice (written or oral) of an intent to terminate the Existing Agreement; (ii) each Existing Customer has accepted and remains in possession of its premises under its Existing Agreement and operates and maintains its equipment thereon; (iii) Site Owner is collecting the rent set forth in each Existing Agreement on a current basis and there are no past due amounts thereunder; (iv) except as expressly set forth in the Existing Agreements, no Existing Customer is entitled to any rental concessions or abatements in rent for any period subsequent to the Closing Date; (v) Site Owner has not given notice to any Existing Customer claiming that the Existing Customer is in default under its Existing Agreement, and, to the best of Site Owner's knowledge, there is no event which, with the giving of notice or the passage of time or both, would constitute such a default; (vi) Site Owner has not received notice from any Existing Customer claiming that Site Owner is in default under the Existing Agreement, or claiming that there are defects, offsets or defenses in the Water Tower, which default or defect remains in any manner uncured; (vii) except as expressly set forth in the Existing Agreements, there are no security deposits or prepaid rentals under any of the Existing Agreements; (ix) no Existing Agreement provides for non-monetary rent or other consideration to the Site Owner thereunder; and (x) no Existing Customer is an Affiliate of Site Owner.

4.4 **Defects.** Except as expressly set forth in this Agreement or in the Easements, Site Owner makes no further warranty or representation whatsoever concerning the Site Owner Assets, Water Tower or Improvements, including without limitation, the condition, fitness, or utility for any purpose thereof, of any improvements thereto with applicable laws, ordinances, or governmental regulations. Except as expressly set forth in this Agreement or in the Easements, SBA's right to use Site Owner Assets is strictly on an "as is" basis with all faults, existing as of the Closing Date, subject to Site Owner's ongoing repair and maintenance obligations contained in Section 6 of the Easements. To the best of Site Owner's knowledge, there are no physical, structural or mechanical defects in the Water Tower or other Improvements, other than those conditions described in the Request for Proposals for Acquisition of Existing Macro Cell Site and Leases (352 First Street Water Tower) issued by Site Owner on April 6, 2020, to which SBA submitted a proposal thereunder and was subsequently selected by Site Owner for the opportunity to enter into this Agreement and the Easements.

4.5 **Utilities and Access.** To the best of Site Owner's knowledge, without investigation thereof, all electric, telephone, drainage facilities and other utilities required for use and operation of the telecommunications facilities on the Water Tank are installed within valid, written, recorded easements and such utilities are in good working order, meet all current codes and ordinances and are of adequate size and capacity to service the telecommunications facilities on the Water Tank. Site Owner is not responsible for the payment of any utilities charges for electricity or any other utility service used by any Existing Customer.

4.6 **Mechanics' Liens.** To the best of Site Owner's knowledge, without investigation thereof, on the Closing Date, there will be no outstanding contracts made or authorized by Site Owner for the Water Tower or any other work or services to the Site Owner Assets, including professionals such as architects, engineers and planners, which have not been fully paid for.

4.7 **Taxes and Assessments.** All ad valorem real property taxes for the Property and all personal property taxes for the Site Owner Assets that are due and payable have been fully paid, and further, there are no existing or pending special assessments, fees or similar obligations affecting the Property, Water Tower and Improvements, which may be assessed by any Governmental Authority.

4.8 **Condemnation.** To the best of Site Owner's knowledge, without investigation thereof, there are no present or pending legal or administrative proceedings relative to condemnation, or other taking by any Governmental Authority, of any portion of the Property.

4.9 **Legal Compliance; No Proceedings.** To the best of Site Owner's knowledge, without investigation thereof, the use, operation, and maintenance of the Site Owner Assets by Site Owner and the Existing Customers and, all other Persons is in full compliance with all applicable Legal Requirements and with all easements, restrictive covenants, reservations and similar matters of record. Further, to the best of Site Owner's knowledge, without investigation thereof, there are no outstanding notices of violation currently in effect for the Water Tower or Site Owner Assets, and there are no other suits, actions or proceedings pending or, threatened, against or affecting the Site Owner Assets before any Governmental Authority, and Site Owner is not in default under any judgment, order, writ, injunction, rule or regulation of or issued by any Governmental Authority.

4.10 **Permits.** To the best of Site Owner's knowledge without investigation thereof, all Permits have been issued, are fully paid for and are in full force and effect and no Person is attempting to build a macro telecommunications facility within one (1) mile within the

City of Calexico, and Site Owner has not received notice of the same.

4.11 *Hazardous Materials.* To the best of Site Owner's knowledge without investigation thereof, the Property has not in the past been used, and is not presently being used, for the handling, storage, transportation, or disposal of hazardous or toxic substances, materials, pollutants or waste (or similar items under applicable environmental Legal Requirements). To the best of Site Owner's knowledge, there has been no release of any such items into the environment from the Property.

4.12 *No Other Contracts.* Site Owner has not entered into any other contract of sale for, and has not given any Person the option to purchase, any portion of the Property, Water Tower or Site Owner Assets.

4.13 *Accurate Documents.* To the best of Site Owner's knowledge without investigation thereof, all contracts, documents, reports, deeds, leases, title insurance policies, title opinions, surveys and other items relating to the Site Owner Assets and delivered to SBA pursuant to this Agreement are true, correct and complete copies of the originals thereof.

4.14 *Accuracy of Representations and Warranties.* For purposes of any representation or warranty based on Site Owner's knowledge contained herein shall mean the personal knowledge of David Dale, City Manager, Liliana Falomir, Public Works Manager, and Karla Lobotos, Finance Director, who represent all employees of the Seller with responsibility for the subject matter of the transaction contemplated by this Agreement. All of Site Owner's representations and warranties contained in this Agreement and Site Owner's liability therefore will survive the Closing. SBA will have no duty to investigate or inquire about the accuracy or veracity of any representation or warranty of Site Owner.

## 5. INSPECTION PERIOD.

5.1 *Access.* SBA and its representatives, will have access to the Site Owner Assets and the financial records of the Site Owner Assets at any time during normal business hours during the Inspection Period, at SBA's sole cost and expense, to show the Site Owner Assets to third parties and to perform any tests, inspections, surveys, studies, environmental site assessments and measurements which SBA reasonably deems necessary or appropriate. SBA will restore any disturbed Site Owner Assets to its prior condition. SBA will indemnify and hold Site Owner harmless from any Claims suffered or incurred by Site Owner as a result of SBA's entry upon the Property prior to the Closing.

5.2 *Key Documents.* Within five business (5) days following its execution of this Agreement, Site Owner

will furnish to SBA true, correct and complete copies of all records, documentation and other information in its possession (or in the possession of Site Owner's attorneys or other representatives) as SBA may reasonably request concerning the ownership, use, operation and condition of the Site Owner Assets and Water Tower. The Inspection Period shall automatically be extended one day for each day past five that Site Owner fails to deliver the documents required by this Section to SBA.

5.3 *Survey/Mapping.* During the Inspection Period, SBA shall, at its sole cost and expense, procure a survey and an engineer's mapping depicting the Easements, prepared by a professional and properly licensed land surveyor and engineer.. The resultant Easement survey and mapping shall be attached as Exhibits 2 and 3 of the Easement Agreement at Closing, following Site Owner's acknowledgement and approval of its accuracy, such approval not to be unreasonably withheld, conditioned or delayed.

5.4 *Governmental and Third Party Contact.* SBA may, but is not obligated to, contact any Governmental Authority about any Permits or Legal Requirements concerning the Site Owner Assets, and may, but is not obligated to, contact any Existing Customer or other Person about the Easements, the Existing Agreements or any other aspects of the Site Owner Assets. Within three (3) business days following SBA's request, Site Owner shall execute and deliver to SBA a letter in the form attached hereto as Exhibit "E" authorizing any Existing Customer to review, return and communicate with SBA regarding the applicable Existing Customer Estoppel.

5.5 *Changes During Inspection Period.* During the Inspection Period, Site Owner will not (a) permit any new occupancy of, or enter into any new lease, license or other occupancy agreement for, space on the Water Tower or Water Tank or any ground space subject to the Easements, (b) renew, modify or terminate the Existing Agreements, (c) take any action or fail to take any action that would constitute a default under the Existing Agreements, or (d) enter into or renew any management, maintenance, service or other agreement affecting the Water Tower or any ground space subject to the Easements, without SBA's prior written approval in each instance, which approval will not be unreasonably withheld or delayed.

5.6 *Conduct During Inspection Period.* During the Inspection Period, Site Owner (a) will conduct its business in the usual and ordinary course, (b) will use its best efforts to maintain and preserve the Site Owner Assets and Property, and (c) will not encumber, modify or alter the Site Owner Assets in any material respect.

5.7 *Termination.* SBA will have the right, in its sole and absolute discretion, to terminate this Agreement

at any time during the Inspection Period for any reason whatsoever, including but not limited to (i) a breach of this Agreement by Site Owner, (ii) a material adverse change in the Site Owner Assets prior to Closing, (iii) the failure to obtain any approvals deemed necessary by SBA, (iv) the failure to obtain confirmation from the Existing Customers that the Existing Agreement is in full force and effect, or (v) any other reason in SBA's sole and absolute discretion; provided, however, that in the event that SBA terminates this Agreement for any reason other than as per Section 5.7(i)-(iv) above, SBA shall reimburse Site Owner for all actual out-of-pocket expenses incurred to date, not to exceed \$10,000.00. SBA will notify Site Owner in writing of its intention to terminate this Agreement pursuant to this Section prior to 9:00 p.m. E.S.T. on the last day of the Inspection Period (or, if the last day of the Inspection Period is not a Business Day, prior to 9:00 p.m. E.S.T. on the first Business Day following the end of the Inspection Period). If SBA fails to so notify Site Owner within such time period, all rights of SBA to terminate this Agreement pursuant to this Section will be null and void and of no further force or effect.

5.8 **Easement.** At Closing, Site Owner and SBA shall enter into the Easements, in the form attached hereto as Exhibit "D" SBA (the "Easements"). The terms of the Easements are incorporated herein by reference.

6. **CLOSING.** If all representations and warranties contained in this Agreement are true and correct, and all conditions precedent contained in this Agreement are satisfied and this Agreement is not terminated in accordance with Section 5.6, Site Owner and SBA agree that the Closing will be consummated at 2:00 p.m. E.S.T. on the Closing Date, which will be conducted by nationally recognized overnight courier service. At the Closing, Site Owner will deliver the items listed on Exhibit "B" to SBA, each fully executed and acknowledged as required, and SBA will deliver the items listed on Exhibit "C" to Site Owner at Closing, each fully executed and acknowledged as required.

7. **EXPENSES.** Each of Site Owner and SBA will pay its own attorneys' fees and costs incurred in connection with the negotiation of this Agreement and consummation of the Closing. Site Owner will pay the cost of all transfer taxes (including any documentary stamp taxes), with respect to the transactions contemplated by this Agreement. SBA will pay the cost of a title insurance policy insuring SBA's interests in the Site Owner Assets (if SBA elects to obtain a title insurance policy) and any costs associated with its inspection of the Site Owner Assets (including the Water Tower) during the Inspection Period. Any items of cost or expense not specifically allocated above will be paid by the party to the transaction that customarily bears such cost or expense within the county in which the Property is located.

8. **PRORATIONS.** All taxes, real estate assessments, utility charges and similar expenses related to the Site Owner Assets will be prorated as of 12:01 A.M. on the Closing Date on the basis of a 365-day year (it being understood that Site Owner shall be responsible for all such expenses covering all periods (or portions thereof) prior to the Closing Date and shall be entitled to all Site Owner Assets income attributable to all periods (or portions thereof) prior to the Closing Date, and SBA being responsible for all such expenses for all periods (or portions thereof) and entitled to all such income attributable to all periods (or portions thereof) on or subsequent to the Closing Date). Rents actually collected under the Existing Agreements will be prorated as of 12:01 a.m. on the Closing Date on the basis of a 30-day month. If Site Owner receives any rents or other receipts subsequent to the Closing Date which relate to any period of time subsequent to the Closing Date, Site Owner will use best efforts to promptly pay to SBA in Current Funds that portion of the rents attributable to the period of time subsequent to the Closing Date. All utility deposits and reservation fees paid by or on behalf of Site Owner in connection with the Site Owner Assets will be assigned and transferred to SBA, if any. If any of the prorations cannot be calculated accurately on the Closing Date, then the same will be calculated within sixty (60) days after the Closing Date and either party owing the other party a sum of money based on such subsequent prorations will promptly pay the sum to the other party in Current Funds. The terms of this Section will survive the Closing.

9. **RISK OF LOSS.** Site Owner will bear all risk of loss to the Site Owner Assets, whether by fire, casualty or otherwise from the Effective Date through and including the Closing Date.

10. **INDEMNITY.**

10.1 **Site Owner's Indemnity.** After the Closing Date, Site Owner will indemnify, defend and hold harmless SBA from and against any Claims arising out of (a) any breach of any representation or warranty by Site Owner, (b) any breach or default by Site Owner under this Agreement, and (c) any act or omission of Site Owner or its agents or representatives relating to the Water Tower or Site Owner Assets and occurring during the period of time prior to the Closing, including any act or omission, or series of similar or related acts or omissions commencing prior to the Closing Date and continuing after the Closing Date.

10.2 **SBA's Indemnity.** After the Closing Date, SBA will indemnify, defend and hold harmless Site Owner from and against any Claims arising out of (a) any breach of any representation or warranty by SBA, (b) any breach or default by SBA under this Agreement, and (c) any act or omission of SBA or its agents or representatives relating to the period of time subsequent to the Closing, excluding, however, any Claims arising out of any act or omission, or series of similar or related acts or omissions of

Site Owner or its agents or representatives, commencing prior to the Closing Date and continuing after the Closing Date..

11. **DEFAULT.**

11.1 ***SBA's Default.*** If SBA fails to perform its obligations under this Agreement, Site Owner will have the right of specific performance, without waiving Site Owner's right to sue SBA for damages, or a combination of specific performance and damages. No remedy conferred upon Site Owner is intended to be exclusive of any other remedy, and each remedy will be cumulative and in addition to every other remedy available under this Agreement, at law or in equity. No single or partial exercise of any remedy will preclude any other or further exercise thereof.

11.2 ***Site Owner's Default.*** If Site Owner fails to perform any of Site Owner's obligations under this Agreement, SBA will have the right of specific performance, without waiving SBA's right to sue Site Owner for damages, or a combination of specific performance and damages. No remedy conferred upon SBA is intended to be exclusive of any other remedy, and each remedy will be cumulative and in addition to every other remedy available under this Agreement, at law or in equity. No single or partial exercise of any remedy will preclude any other or further exercise thereof.

12. **BROKER.** Neither SBA nor Site Owner has dealt with any real estate agent, broker or finder in connection with the transaction contemplated by this Agreement.

13. **INTERPRETATION.** The section headings in this Agreement have been inserted for convenience of reference only and do not define, modify or describe the scope or intent of any of the terms of this Agreement. This Agreement will be interpreted and enforced in accordance with its provisions and without the aid of any custom or rule of law requiring or suggesting construction against the party drafting or causing the drafting of the provisions in question.

14. **NOTICES.** All notices, demands or communications required or permitted under this Agreement will be in writing and delivered by hand or mailed by certified mail, return receipt requested, postage and registration or certification charges prepaid, or by nationally recognized overnight courier service, to the party entitled thereto at the address first set forth above, or such other party(ies), or address(es) as either party specifies by written notice to the other from time to time. Courtesy copy by email is permissible, but shall not constitute notice under this Section.

15. **ATTORNEYS FEES AND COSTS.** In the event of any litigation or arbitration arising out of this Agreement, the prevailing party will be entitled to recover all expenses

and costs incurred, including reasonable attorneys' fees and costs. This Section will survive the Closing.

16. **GOVERNING LAW.** This Agreement will be governed by and construed and enforced in accordance with the internal laws of the State of California without regard to principles of conflicts of laws.

17. **JURISDICTION AND VENUE.** The parties acknowledge that a substantial portion of the negotiations, anticipated performance and execution of this Agreement occurred in Imperial County, California. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought in the courts of record of the State of California in Imperial County. Each party consents to the jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court. Service of any court paper may be effected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws, rules of procedure or local rules.

18. **INTEGRATION.** All prior understandings and agreements between the parties with respect to the subject matter of this Agreement, are merged in this Agreement. Neither party is relying upon any statement, covenant or representation made by any other party which is not embodied in this Agreement.

19. **AMENDMENTS.** No purported amendment to or waiver of any term of this Agreement will be binding upon any party, or have any other force or effect in any respect, unless the same is in writing and signed by the party to be charged.

20. **ASSIGNMENT.** Except as set forth herein, neither SBA nor Site Owner may assign this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, either party may assign this Agreement to any Affiliate without the other party's consent, after which the assignee may enforce all rights and remedies of the assigning party under this Agreement. SBA may designate a nominee to take title to the Easement and Existing Agreements and Site Owner shall convey the Easement and Existing Agreements to such nominee.

21. **BINDING EFFECT.** This Agreement will be binding upon, and will inure to the benefit of, the Site Owner, SBA and their respective successors and assigns.

22. **FURTHER ASSURANCES.** Each party will, from time to time, execute, acknowledge and deliver such further instruments, and perform such additional acts, as the other party may reasonably request in order to effectuate the intent of this Agreement, including cooperating with SBA in connection with changing ownership information with the FCC. This Section will survive the Closing.

23. **THIRD PARTIES.** Nothing in this Agreement, whether express or implied, is intended to confer any rights

or remedies to any Persons other than Site Owner, SBA and their respective successors and assigns.

The parties hereto have executed this Agreement on the dates set forth below.

SITE OWNER:

THE CITY OF CALEXICO, CALIFORNIA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

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

SBA:

SBA TOWERS X, LLC

By: \_\_\_\_\_  
Name: Thomas P. Hunt  
Title: Executive Vice President and General Counsel

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

Schedule of Exhibits

- |              |   |  |
|--------------|---|--|
| Exhibit "A"  | - | Defined Terms                                  |
| Exhibit "B"  | - | List of Site Owner's Closing Documents         |
| Exhibit "C"  | - | List of SBA's Closing Documents                |
| Exhibit "D"  | - | Form of Easements                              |
| Exhibit "E"  | - | Tenant Authorization Letter                    |
| Schedule 4.2 | - | Legal Description of Property                  |
| Schedule 4.3 | - | True and Correct Copies of Existing Agreements |

## Exhibit "A"

### Defined Terms

The following terms will have the following meanings throughout this Agreement:

**"Affiliate"** - with respect to a Person, any other Person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the first Person.

**"Business Day"** - any day other than a Saturday, Sunday or a day upon which banking institutions in the State of Florida are authorized or required by law to close.

**"Claim"** - any claim, damage, loss, liability, obligation, demand, defense, judgment, suit, proceeding, disbursement or expense, including reasonable attorneys' fees or costs (including those related to appeals).

**"Closing"** - the date upon which the consummation of the purchase and sale of the Site Owner Assets occurs in accordance with the terms of this Agreement.

**"Closing Date"** - the second (2nd) Business Day following the expiration of the Inspection Period, unless extended by the terms of this Agreement or by mutual consent of SBA and Site Owner.

**"Code"** - the federal Internal Revenue Code of 1986, as amended.

**"Current Funds"** - wired funds, cashier's check or certified check.

**"Effective Date"** - the later of the dates that Site Owner and SBA have executed this Agreement.

**"Existing Agreements"** - the lease and license agreements encumbering the Property as of the Effective Date, and identified in Schedule 4.3 as may be amended from time-to-time shall remain Existing Agreements.

**"Existing Customers"** - each of the lessees, licensees or other occupants under the Existing Agreements.

**"FAA"** - Federal Aviation Administration.

**"FCC"** - Federal Communications Commission.

**"Governmental Authority"** - the United States of America, the state, county, town or other municipality in which any of the Property is located, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any of them (including the FAA, the FCC, any drainage district, street lighting district or special taxing district).

**"Improvements"** - all equipment shelters, storage facilities, cabinets, anchors, guy wires and other improvements which are located on or appurtenant to the Water Tower as permitted by the Existing Agreements.

**"Included Lease"** - any Existing Agreement provided (a) (1) such Existing Customer has not filed bankruptcy, (2) such Existing Agreement does not expire within six (6) months following the Closing Date, (3) the applicable Existing Customer has not sent a notice of non-renewal to Site Owner or a notice to Site Owner or SBA of intent to terminate or repudiate the applicable Existing Agreement, and (4) such Existing Customer has not sent a notice of default by the landlord under such Existing Customer prior to the Closing Date, and (b) the applicable Existing Customer has installed and operates and maintains its equipment on the Water Tank and the applicable Existing Customer has commenced paying rent under the applicable Existing Agreement. No Existing Agreement with an Affiliate of Site Owner shall be considered an Included Lease.

**"Included Revenues"** - an amount equal to the product of twelve (12) times the rent payments paid or payable (provided the same are not more than thirty (30) days delinquent) by Existing Customers under an Existing Agreement in the thirty (30) day period preceding the Closing Date; provided, however, such amount (a) shall not include any security deposits,

prepaid rents (unless taken into income by SBA), refunds to tenants, sales, property, excise or similar taxes imposed by Governmental Authorities and collected from subtenants and pass through expenses collected from any Existing Customers, and (b) shall include, in the case of prepaid rent, an apportioned amount of such prepaid rent attributable to such thirty (30) day period.

"Inspection Period" - the period commencing on the Effective Date and ending on the first Business Day following the forty-fifth (45<sup>th</sup>) calendar day thereafter.

"Legal Requirements" - any law, ordinance, order, rule or regulation of any Governmental Authority which pertains to the Site Owner Assets or Site Owner, including all building, zoning, land use, subdivision, setback, platting, health, traffic, environmental, hazardous waste, natural resources or flood control matters.

"Permits" - all permits, licenses, authorizations, certificates of occupancy, certificates of completions, variances and similar approvals of any Governmental Authority having jurisdiction over the Property.

"Permitted Exceptions" - exceptions to title which SBA fails to object to in writing during the Inspection Period.

"Person" - a natural person, corporation, partnership, limited liability company, trust, joint venture, unincorporated association, Governmental Authority or other entity.

"Property" - the real property described on Schedule 4.2 upon which the Water Tower, located at 352 East First Street, Calexico, California 92231, is located.

"Purchase Price" - the amount set forth in Section 3.1.

"Service Contracts" - all service contracts, maintenance contracts and management contracts, if any, affecting the Site Owner Assets.

"Site Owner Assets" - Site Owner's interests in the Existing Agreements subject to the terms of the Easements. Site Owner Assets also includes SBA's interest in the Water Tower and portions of the ground area thereunder granted pursuant to the Easements. For the avoidance of doubt, except for the interest in the Water Tower and portions of the ground area thereunder granted pursuant to the Easements, SBA is not taking fee title or other interest in or to the Property.

"Water Tank" - the structure comprising the uppermost portion of the Water Tower above the existing mechanical room, approximately one hundred (100) feet above the natural grade of the Property. The Water Tank includes the steel angle guardrail and catwalk affixed thereto.

"Water Tower" - the approximately one hundred forty-one (141) foot structure on the Property, which includes the Water Tank.

Exhibit "B"

List of Site Owner's Closing Documents

1. The Easement.
2. The Bill of Sale and Assignment.
3. The Existing Customer Estoppels.
4. The Income and Expense Affidavit.
5. Originals of all Existing Agreements and Permits.
6. A notice from Site Owner to each of the Existing Customers, in form and substance reasonably acceptable to SBA, informing the Existing Customers of the sale of the Site Owner Assets to SBA.
7. Evidence that all utility charges for the Water Tower have been paid through a date not more than thirty (30) days prior to the Closing Date.
8. Evidence of the termination of the Services Contracts which SBA has not elected to assume.
9. An affidavit to SBA's title insurer, in form and substance reasonably acceptable to SBA, which will be sufficient to have the standard printed exceptions deleted from the title insurance policy of SBA and its lender.
10. An affidavit certifying that Site Owner is not a "foreign person" under Section 1445(f)(3) of the Code.
11. A 1099-S form.
12. A certificate from Site Owner, in form and substance reasonably acceptable to SBA, certifying that all representations and warranties of Site Owner remain true and correct as of the Closing Date.
13. All keys and other security access devices to the Improvements.
14. Any other documents or instruments required by this Agreement or reasonably requested by SBA to consummate the Closing.

Exhibit "C"

List of SBA's Closing Documents

1. The Purchase Price subject to all adjustments, credits and prorations provided for in this Agreement.
2. The Easement.
3. The Bill of Sale and Assignment.
4. A certificate from SBA, in form and substance reasonably acceptable to Site Owner, certifying that all representations and warranties of SBA remain true and correct as of the Closing Date.
5. Any other documents or instruments required by this Agreement or reasonably requested by Site Owner to consummate the Closing.

Exhibit "D"

Easement

Exhibit "E"

\_\_\_\_\_, 2018

{LANDLORD NAME}  
{LANDLORD ADDRESS}

Re: Authority for \_\_\_\_\_ ("Tenant") to Execute Tenant Estoppel(s) Relating to {LANDLORD NAME} as Being Requested by SBA Towers X, LLC, or an affiliate ("SBA")

Dear \_\_\_\_\_:

SBA is preparing to send out the tenant estoppel letter(s) with respect to your Tenant's lease(s) as included in our Purchase and Sale Agreement dated \_\_\_\_\_, under which SBA may take assignment of certain leases and purchase certain assets from your company, {LANDLORD NAME}.

In an effort to have this/these letter(s) acknowledged and returned in a timely manner, we respectfully request that by execution of this letter you give your consent to Tenant to conduct its review process of our estoppel(s) and return it/them to our attention without delay.

If you have any questions or need further information on the status of this/these estoppel letter(s), please feel free to contact me for assistance at 561-981-9917 or via email: echace@sbsite.com.

Sincerely,

Elizabeth T. Chace  
Sr. Paralegal, Mergers & Acquisitions

I, \_\_\_\_\_, as \_\_\_\_\_, of the above named company, do give consent to \_\_\_\_\_ to review, return, and communicate as necessary with SBA Towers X, LLC, or an affiliate, regarding the estoppel letter(s) being requested with this letter.

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

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

Its: \_\_\_\_\_

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

Schedule 4.2

Legal Description of Property

Schedule 4.3

True and Correct Copies of Existing Agreements