

**Water Tower Lease Agreement for  
Wireless Internet Service**

**THIS LEASE**, entered into the \_\_\_\_\_ day of April 2018, by and between LTD Broadband LLV, having its principal place of business at P.O. Box 3064, Blooming Prairie, MN 55917 (hereinafter referred to as "Tenant"), and Kandiyohi County, Minnesota, acting on behalf of the Green Lake Sanitary Sewer and Water District having its principal place of business at 14403 138<sup>th</sup> Ave NE, Spicer, MN (hereinafter referred to as "Landlord").

**WITNESSETH:**

**WHEREAS**, Tenant desires to erect and operate transmission and receiving antennas on the top of the water towers located at Spicer, New London & Green Lake (The "Water towers") in accordance with the terms and conditions set forth herein; and

**WHEREAS**, Landlord, in consideration of rental payments to be received of Tenant, desires to grant Tenant a non-exclusive Lease for space on the top of the Water towers for the placement of said transmission and receiving antennas thereat, but subject to compliance with all terms and conditions set forth herein;

**NOW THEREFORE**, in consideration of the covenants and agreements hereinafter set forth to be performed by the parties hereto, it is agreed by and between Landlord and Tenant as follows:

1. **Term.** The Term of the Lease shall be for five (5) years, commencing upon the execution date of this Lease agreement. Thereafter the Lease may be extended on an annual basis upon agreement between the Tenant and Landlord.
2. **Water towers; Permitted Use.** Subject to approval by Landlord of Tenant's plans, Tenant may mount transmission and receiving antennas on the top of the Water tower (the "Water towers"). Tenant may run such cabling and other lines and equipment from the Water towers into the base of the Water towers where it shall have equipment not larger than ~~fourthree~~ (34) by ~~three-six~~ (36) feet at the base and not taller than eight (8) feet in height. Landlord will maintain the space occupied by said equipment in an indoor environment and shall provide access to standard 110-volt electric power as reasonably available. Landlord cannot guarantee 24 hour electric power as Landlord does not maintain the electrical grid.-
3. **Construction; Maintenance.** Tenant shall utilize existing steel supports on the Water tower for Tenant's use. Tenant's transmission and receiving antennas shall be installed in such a way as to do no physical harm to the Water tower and shall be of adequate strength to give reasonable and normal support. Said construction and Tenant's subsequent maintenance of the transmission and receiving antennas shall be at Tenant's sole risk and cost and shall be in compliance with all applicable laws and ordinances. No alteration shall be undertaken by Tenant prior to the Tenant receiving written consent of the Landlord, which consent shall not be unreasonably withheld.
4. **Access.** Landlord and its agents shall have the right to enter and inspect the Water towers at all times. Tenant shall be granted regular access to the tower structures between ~~8~~7:00 a.m. and ~~4~~3:30 p.m. on any normal Monday through Friday working day if Tenant has provided at least a 2 days notice to Landlord. All other times between ~~4~~3:30 p.m. and ~~8~~7:00 a.m. on normal working days and during entire weekends and holidays requested access by Tenant shall be considered by Landlord as an emergency call out. Emergency call out costs for personnel of Landlord shall be billed to Tenant at \$70.00 per hour for all times other than normal ~~8~~7:00 a.m. to ~~4~~3:30 p.m.

working days. Tenant shall give 24 hours prior notice regarding required routine maintenance and installation work. Access to the tower structure by Tenant shall not be permitted unless Tenant's designated service personnel are accompanied by Landlord or Landlord's representative.

5. **Rent.** The tower rental period shall begin ~~April~~May 1, 2018. If wireless internet service equipment is installed and operational before ~~April~~May 1, 2018, the Tenant shall pay the same rate per month, or prorated for a partial month if applicable, as identified regarding the initial twelve month period. The Tenant shall pay as rent for the use of up to three towers the sum of \$499.96 per month for the first twelve months. The sum of \$508.58 per month for the second twelve month period. The sum of \$517.20 per month for the third twelve month period. The sum of \$525.82 per month for the fourth twelve month period. And, the sum of \$534.44 per month for the fifth twelve month period. Rent payments are due and payable on the first day of each month for the previous month's rent.
6. **Special Provision.** The highest priority of use of the Water Towers for transmission antennas is use by the Landlord regarding its operations. The Landlord has several communications systems on the water tower for its own operations. The Tenant is responsible to understand these technologies and not cause any interference, this will also include any and all future technologies implemented by the Landlord. Should the Landlord object to the interference or placement of Tenant's equipment, the Tenant shall move or remove its equipment to the satisfaction of the Landlord within three working days after giving such notice to the Tenant. The Landlord has a standing contract with another wireless internet service provider on said water towers and if that wireless internet service provider objects to the interference or placement of Tenant's equipment, the Tenant shall move or remove his equipment to the other party's satisfaction within three working days after giving such notice to the Tenant. If Landlord required Tenant to move or remove its equipment relying upon this provision, this shall constitute termination of this lease without either party claiming damages.
7. **Indemnity and Defense of Landlord.** Tenant shall indemnify, defend and hold harmless against and from any and all loss, costs, damages, and claims to the extent of such damage arises from Tenant's negligence or wrongful acts or from any activity, work, or thing done, or permitted by the Tenant in the Water towers, and shall further indemnify, defend and hold harmless Landlord against and from any and all loss, costs, damages, and claims to the extent such damages arises from Tenant's negligence or wrongful acts arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any act or negligence of the Tenant, or of its agents, contractors, servants, invitees, or employees, and from and against all costs, attorneys' fees, expenses and liabilities incurred or paid in connection with any such claim or any action or proceeding brought against the Landlord by reason of Tenant's use of the Water towers.

Neither Landlord nor its agents shall be liable for any incidental or consequential damages or for any damage to property entrusted to employees of the Water tower, nor for loss of or damage to any property by theft or otherwise, nor for any injury or damage to persons or property resulting from fire, explosion, falling pipes, appliances, electrical, or plumbing work therein, nor from the roof, street, or sub-surface, nor from any other place or resulting from dampness, nor from any other cause whatsoever, unless caused by or due to the gross negligence of Landlord, it's agents, servants, or employees. Tenant shall give prompt notice to Landlord in case of fire or accidents in

the Water towers or in the Water tower or of defects therein or in the fixtures or equipment.

8. **Rights of Landlord.** The Landlord reserves the following rights: (a) to change the name of the Water tower without notice or liability to Tenant; (b) constantly to have access to the Water towers; (c) to grant to anyone the non-exclusive right to conduct any particular business or undertaking in the Water tower; and (d) at any time, and from time to time, whether at the insistence of Landlord or pursuant to government requirements, at Landlord's expense, to decorate or make repairs, alterations, additions, or improvements, whether structural or otherwise, in or to the Water tower or any part thereof, including the Water towers. Landlord shall give notice to tenant of Landlord's intended action to be taken under this provision of the Lease if that action is likely to have an effect on the Tenant's equipment.
9. **Assignment and Subletting.** Tenant shall not sublet or grant access to the Water towers or any part thereof or assign this Lease, or permit any business to be operated in or from the Water towers by any person, firm or corporation other than Tenant without the prior written consent of Landlord, which consent shall not be unreasonably withheld or denied.
10. **Damage or Destruction.** If the Water towers or the Water tower are damaged by fire or other casualty, Landlord may elect to immediately terminate this Lease or if Landlord elects to so repair, Tenant to the extent of its obligation to maintain and repair the Water towers shall also promptly repair such damage. There shall be no abatement of Rent by reason of any portion of the Water towers or Water tower being unusable for a period of thirty (30) days or less.
11. **Defaults.** The occurrence of any of the following shall constitute an event of default:
  - (a) A failure by Tenant to make any payment required to be made by Tenant hereunder, where such failure continues for ten (10) days after notice that such payment was due. Provided however no written notice of the failure to pay rent is required of the Landlord.
  - (b) A failure by Tenant to observe and perform any other provision of this Lease to be observed or performed by Tenant, where such failure continues for twenty (20) days after written notice thereof by Landlord.

If an event of default shall occur, Landlord may, at any time thereafter, at Landlord's option, terminate the agreement by providing written notice of the termination to Tenant and if the reason for the default is not remedied by Tenant within 15 days of the notice of termination the contract shall be terminated. Landlord may also exercise any or all rights at law or in equity, which are permitted by Minnesota State Law in the event of a default.

12. **Rules and Regulations.** Tenant shall faithfully observe and strictly comply with the Rules and Regulations attached to this Lease and such other rules and regulations as Landlord may from time to time reasonably adopt.
13. **Requirements by Law.** Tenant, at Tenant's sole cost and expense, shall promptly comply with all present and future laws, orders, regulations, and requirements of all public authorities and any fire underwriters insurance rating agency or similar organization which may impose any violation, order or duty upon Landlord or Tenant with respect to use of the Water towers.
14. **Surrender of Water towers.** At the expiration of the Term hereof, or termination of the contract as per paragraph 11, Tenant will remove its antenna and other trade

fixtures excluding in-the-wall cabling, and repair any damage which may be caused to the Water towers and Water tower as a result of such removal, reasonable wear and tear excepted.

15. **Liens.** Tenant shall do all things necessary to prevent the filing of any mechanic's material provider's, or other lien against the Water towers or the Water tower or the interest of the Landlord by reason of any work, labor, services, or material performed or supplied or claimed to have been performed or supplied to Tenant, or anyone holding the Water towers, or any part thereof, though or under Tenant. If any such lien shall at any time be filed, Tenant shall either cause the same to be immediately vacated and canceled of record. If Tenant in good faith determines that such lien should be contested. Tenant shall furnish such security, surety bond or otherwise, as may be necessary or be prescribed by law to release the same as a lien. If Tenant shall fail to vacate or release such lien, Landlord may, but shall not be obligated to, vacate or release the same. Tenant shall repay to Landlord, on demand, all sums disbursed or deposited by Landlord pursuant to the foregoing provisions of this paragraph, including Landlord's costs and expenses and reasonable attorneys' fees incurred in connection therewith.
16. **Insurance.** Tenant shall obtain and keep in force during the Term of this Lease a Commercial General Liability policy of insurance as well as an Automobile Liability insurance policy protecting Tenant and Landlord against claims for bodily injury, personal injury, and property damage based upon, involving or arising out of the use, occupancy or maintenance of the Water towers and all areas appurtenant thereto. Such insurance shall be on a \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate basis. The limits of said insurance required by this Lease or as carried by Tenant shall not, however, limit the liability of Tenant nor relieve Tenant of any obligation hereunder. All insurance to be carried by Tenant shall be primary to and not contributory with any similar insurance carried by Landlord, whose insurance shall be considered excess insurance only. The Landlord shall be shown as an additional insured on Tenant's Insurance Policy, and Tenant shall provide Landlord with a copy of that policy. The Tenant's insurance carrier shall be required to provide the Landlord with 30-days written notice of policy cancellation. Tenant shall also obtain and keep in force during the Term of this lease sufficient property coverage to repair or replace its property used at the Water Tower. The deductible for such property coverage shall be the sole responsibility of the Tenant. All insurance policies shall contain a full waiver of subrogation in favor of the Landlord.
17. **Subordination.** This Lease is and shall at all times, unless Landlord shall otherwise elect, be subject and subordinate to all covenants, restrictions, easements and encumbrances now or hereafter affecting the fee title to the Water tower and to all ground and underlying leases and mortgages or financing of refinancing.
18. **Attornment.** Tenant agrees that, in the event of a sale, transfer, or assignment of the Landlord's interest in the Water tower or any part thereof, including the Water towers, Tenant will attorn to and recognize such transferee, purchaser, ground or underlying lessor or mortgagee as Landlord under this Lease.
19. **Estoppel Certificate.** Tenant shall, at any time and from time to time execute, acknowledge and deliver to Landlord a statement in writing (i) certifying that this Lease is unmodified and in full force and effect and the dates to which the rental and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or

specifying such defaults, if any, which are claimed. Any such statement may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the real property of which the Water towers are in part.

20. **Interest on Past Due Obligations.** If Tenant shall fail to pay Rent required to be paid hereunder after the same becomes due and payable in accordance with paragraph 5 hereof, such unpaid amounts shall bear interest from the due date thereof to the date of the payment at the lesser of eighteen percent (18%) per annum, or such other rate as is the highest legal rate of interest in effect on the date said sum is due and payable hereunder which may be charged to Tenant in the state where the Water tower is located.
21. **Transfer of Landlord's Interest.** In the event of any transfer of Landlord's interest in the Water towers or in the real property of which the Water towers are a part, the transferor shall be automatically relieved of any and all obligations and liabilities on the part of Landlord accruing from and after the date of such transfer.
22. **Accord and Satisfaction.** No payment by Tenant or receipt by Landlord of a lesser amount than that stipulated herein for Rent shall be deemed to the other than on account of the earliest stipulated Rent then due, nor shall any endorsement or statement on a check or letter accompanying any check or payment be deemed an accord and satisfaction and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy in this Lease, at law or in equity.
23. **Fees or Commissions.** Tenant covenants, warrants and represents to Landlord that there are no possible claims for broker's commissions or finders' fees in connection with this Lease.
24. **Notices.** Every notice to be given under this Lease shall be in writing and shall be sent by Certified or Registered Mail, postage prepaid, return receipt requested, or overnight courier, and shall be addressed to the respective party's mailing address "Attn: General Manager"; and the same shall be deemed given when received or refused by the addressee. Either party may designate, by similar written notice to the other party, any other address for such purposes. Except with respect to service of a summons and other papers in a lawsuit, each of the parties hereto waive personal or any other service than as provided for in this paragraph. Notwithstanding the foregoing, either party hereto may give the other party telephone notice of the need for emergency repairs.
25. **Entire Agreement.**
  - (a) This Lease, the exhibits and addenda, if any, attached hereto set forth all of the covenants, promises, agreements, conditions, and understanding, between the parties.
  - (b) All prior conversations or writings between the parties hereto or their representatives are merged herein and extinguished.
  - (c) This Lease shall not be modified, except by a writing subscribed to by the party to be charged, or be canceled by Tenant or the Water towers surrendered except with the prior express written authorization of Landlord, unless in accordance with paragraph 1 or as otherwise specifically provided herein.
26. **Liability of Landlord.** Anything contained in this Lease to the contrary notwithstanding, Tenant agrees that Tenant shall look solely to the estate and property of the Landlord in the real estate of which the Water towers is a part and the rentals

there from for the collection of any judgment (or other judicial process) requiring the payment of money by Landlord in the event of any default or breach by Landlord with respect to any condition, covenant, or agreement of this Lease to be observed and/or performed by Landlord, subject, however to the prior rights of any ground or underlying lessor or mortgagee of the real estate of which the Water towers is a part, or part thereof.

27. **Successors and Assigns.** Except as otherwise provided in this Lease, all of the conditions, covenants, and agreements of this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representative, successors and assigns. Each provision of this Lease to be performed by Tenant shall be construed as both a covenant and a condition, and if there shall be more than one Tenant, they shall all be bound, jointly and severally, by the provisions of this Lease.
28. **Governing Law.** This agreement shall be governed by the laws of the State of Minnesota and any disputes, causes of action or claims shall be brought in the Eighth Judicial District Court, Kandiyohi County, Minnesota and the parties hereto consent to the jurisdiction of such Court.

**IN WITNESS WHEREOF**, Landlord and Tenant have executed the Lease, in triplicate, as of the Date(s) set forth below their respective signatures hereto.

KANDIYOHI COUNTY BOARD OF  
COMMISSIONERS

LTD Broadband

\_\_\_\_\_  
It's Chairperson

\_\_\_\_\_  
Authorized Signature

ATTEST:

\_\_\_\_\_  
County Auditor

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Approved as to form and execution this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
County Attorney

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