RESOLUTION NO. 1282-22

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF PAGE, COCONINO COUNTY, ARIZONA, APPROVING A WIRELESS COMMUNICATIONS SITE LEASE AGREEMENT WITH TOWERCOM VII-B, LLC; AND AUTHORIZING THE MAYOR TO EXECUTE SAID AGREEMENT.

WHEREAS, Section 32.039, Code of the City of Page, provides that the City of Page may lease public lands or buildings pursuant to negotiation; and

WHEREAS, the City has negotiated a lease with TowerCom VII-B, LLC, for approximately 1200 square feet of undeveloped property as further described in the Wireless Communications Site Lease Agreement; and

WHEREAS, the City separately published a Notice of Intent to Lease as required by the Code of the City of Page, and no comments, objections, or additional offers were received.

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF PAGE, AS FollowS:

Section 1. Approval of Wireless Communications Site Lease Agreement

That the Mayor and City Council of the City of Page hereby approve the Wireless Communications Site Lease Agreement, which is attached hereto as Exhibit 1 and incorporated herein by reference, and authorize the Mayor to execute said agreement and any other documents required to effectuate the purposes of the agreement.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF PAGE, ARIZONA this 11th day of May, 2022, by the following vote:

Ayes 6
Nays 0
Abstentions 0
Absent 1

CITY OF PAGE

BY Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney
WIRELESS COMMUNICATIONS
SITE LEASE AGREEMENT

This Wireless Communications Site Lease Agreement ("Agreement") is entered into this ______ day of ____________, 2022, by and between the City of Page, a political subdivision of the state of Arizona ("Landlord") and TowerCom VII-B, LLC, a Delaware limited liability company ("Tenant").

RECITALS

A. Landlord owns certain real property located in the City of Page, County of Coconino, Arizona, described in Exhibit A (the "Premises").

B. Tenant acknowledges that by entering into this Agreement, Landlord is acting in its propriety capacity only.

C. Tenant desires to lease approximately 1,200 square feet on the Premises for a telecommunications site ("Leased Site"). The Leased Site is legally described on Exhibit B.

In consideration of the mutual covenants contained in this Agreement, the parties agree that the terms and conditions of this Agreement shall apply from and after the Term Commencement Date as follows:

1. Lease Term.

1.1 Commencement. This Agreement shall commence on the full execution of this Agreement ("Term Commencement Date").

1.2 Term. This Agreement shall be for an initial term of five (5) years ("Initial Term") unless sooner terminated as provided herein.

1.3 Renewal. This Agreement shall automatically renew for up to five (5) successive five (5) year periods ("Renewal Terms") on the same terms and conditions as set forth herein, unless sooner terminated as provided in this Agreement or Tenant notifies Landlord of its intention not to renew at least ninety (90) days prior to the expiration of the then current five-year term. The Initial Term and any Renewal Term shall collectively be referred to as the "Lease Term."

1.4 Holding Over. Any holding over after the expiration of the Lease Term shall be construed to be a tenancy from month to month. The provisions of this Agreement shall apply to any such holding over period.

1.5 Acceptance of the Leased Site. Tenant warrants that it has inspected the Leased Site and accepts the Site "as is" and in the condition existing as of the Term Commencement Date. Landlord hereby expressly disclaims all warranties of merchantability and fitness for a
particular purpose or absence of hazardous conditions associated with the Premises and Leased Site. Tenant has obtained such information and professional advice as Tenant has determined to be necessary related to the Premises and this Agreement.

2. **Rent.**

2.1 **Rent.** Commencing on the Term Commencement Date and on the first day of each month thereafter, Tenant shall pay to Landlord as rent One Thousand Three Hundred Forty Four Dollars ($1,344.00) per month ("Rent"), plus applicable transaction privilege taxes, fees and assessments. Rent for any fractional month shall be prorated.

2.2 **Adjustment.** Commencing on the first anniversary of the Term Commencement Date and every year thereafter during the Lease Term, the monthly Rent shall increase by an amount equal to three percent (3%) of the most recent Rent for the prior year.

2.3 **Late Fees.** If all Rent, fees, taxes, and assessments are not received within ten (10) days after they become due, Tenant shall pay a late payment fee of four percent (4%) of the overdue Rent, fees, taxes, and assessments. Tenant shall pay an additional one percent (1%) late payment fee for each additional month, or fraction thereof, until the date said Rent, fees, taxes, and assessments are paid.

2.4 **Payment Addresssee.** Rent shall be payable to the City of Page, Attention __________________________. Tenant’s monetary obligations set forth in this Agreement are conditioned upon Tenant’s receipt of an accurate and executed W-9 Form from Landlord.

3. **Permissible Use.**

3.1 **In General.** During the Lease Term, and subject to the terms and conditions of this Agreement, Tenant may use the Leased Site for the purpose of constructing, maintaining, and operating the Tenant Facilities (defined in Section 4.1) on the Leased Site and uses incidental thereto.

3.2 **Other Lease Approvals; Cooperation.** Tenant shall be responsible for obtaining and maintaining during the Lease Term all insurance, certificates, licenses, permits and other consents and approvals that may be required by any federal, state or local law for the use of the Leased Site and the conduct of its business on the Leased Site. Landlord shall cooperate with Tenant in its effort to obtain such approvals and will take no action which would adversely affect the status of the Leased Site with respect to the proposed use thereof by Tenant, unless required to do so by law or regulation. If requested by Tenant, Landlord will execute, at Tenant’s sole cost and expense, all documents required by any governmental authority in connection with any development of, or construction on, the Leased Site, including documents necessary to petition the appropriate public bodies for certificates, permits, licenses and other approvals deemed necessary by Tenant in Tenant’s absolute discretion to utilize the Leased Site for the purpose of constructing, maintaining and operating Tenant Facilities; provided however, that Landlord shall not be required to execute documents it reasonably determines to be untruthful or not representative of or in furtherance of the purposes of this Agreement. Landlord shall providewritten notice to Tenant of such determination within ten (10) days from the date of Tenant’s written request.
3.3 Regulatory Approval Processes Separate from this Agreement. The development processes, building permit processes, and similar regulatory requirements that apply to Tenant Facilities are completely separate from the plans approval processes under this Agreement. Tenant's satisfaction of any requirement of this Agreement does not count toward compliance with any regulatory requirement. Tenant shall be responsible to directly obtain all necessary permits and approvals from any and all governmental or other entities having standing or jurisdiction over the Leased Site and Tenant Facilities. Tenant bears sole responsibility to comply with all stipulations and conditions that are required in order to secure such development and other approvals.

3.4 Compliance with Laws. Tenant shall comply with all applicable laws, including but not limited to zoning and environmental laws relating to its use and possession of the Leased Site.

4. Improvements.

4.1 Tower Facilities. Tenant and its licensees and subtenants shall have the right to construct, maintain, install, repair, secure, replace, remove, and operate on the Leased Site wireless communications facilities, including, but not limited to, a tower, equipment shelters, cabinets, meter boards, utilities, antennas, equipment, any related improvements, and structures and uses incidental thereto. The facilities to be attached to the tower for three (3) wireless carriers, as shown in the rendering attached hereto as Exhibit C and incorporated by reference (“Tower Facilities”), are hereby approved by Landlord. The Tower Facilities are not subject to Section 1609(a) of the Middle Class Tax Relief and Job Creation Act of 2012 or any rule or order of the Federal Communications Commission issued pursuant to Section 1609(A) or subsequent act.

4.2 Initial Construction. Tenant shall construct and install all Tower Facilities and equipment shelters, cabinets, meter boards, utilities, and related improvements (collectively, the “Ground Facilities”) on the Leased Site at Tenant’s sole cost and expense and in a good and workmanlike manner. For all purposes in this Agreement, the Tower Facilities and Ground Facilities shall be collectively referred to as “Tenant Facilities.”

4.3 Title. Title to the Tenant Facilities and any equipment placed on the Leased Site by Tenant shall be held by Tenant or its lenders or assigns. It is the intent of the parties that Tenant’s wireless communications facility shall not constitute a fixture.

4.4 Replacements or Upgrades, and New Facilities. The addition of any facilities required for a fourth (4th) Wireless Carrier (as defined in Section 9.1) on the Leased Site shall not be installed on the tower without Landlord’s consent, which may be withheld at Landlord’s sole discretion. In the event that Landlord consents to the additional facilities for a fourth (4th) Wireless Carrier, Tenant will submit to Landlord for Landlord’s approval engineering plans for the additional facilities. Tenant shall obtain all other approvals required by law. Such replacements, upgrades or new facilities shall not materially interfere with any other existing uses; and the parties will execute a lease amendment if required herein. Approved modifications shall become part of the Tower Facilities as that term is used herein. Any replacements or upgrades of the Tower Facilities deemed industry standard at the time of installation, shall not require Landlord’s consent; however, Tenant shall provide written notice to Landlord prior to installation.
of any industry standard equipment that may deviate materially in size or number from the existing Tower Facilities.

4.5 **Radio frequency emissions.** Prior to beginning operations, Tenant shall submit a verified report which provides a calculation of its installed peak radio frequency ("RF") emissions capacity at the Leased Site, the cumulative installed peak RF emissions capacity at the Leased Site and compare the results with established federal radio frequency standards. Landlord may, at its expense, perform tests as necessary to determine compliance of the Tenant Facilities with the Federal radio frequency standards as amended from time to time. If radio frequency emissions are above federally permitted levels, Landlord may require Tenant to reimburse Landlord the cost of such tests and install warning signs, barriers or automatic shutdowns if employees must enter the Premises.

4.6 **Removal.** Within ninety (90) days after the expiration or earlier termination of this Agreement, Tenant shall remove all Tenant Facilities and items installed in or attached to the Leased Site to a depth of three feet (3') below grade. Tenant shall simultaneously restore the Leased Site to its prior condition, and repair any holes, mounting surfaces or other damage whatsoever to the Leased Site and Premises, including vegetation.

4.7 **Liens.** Tenant shall keep and hold Landlord, the Premises, and Leased Site harmless from and against any liens or claims arising out of any work performed, materials furnished or obligations incurred by Tenant, and shall indemnify and hold Landlord harmless against the same, together with all costs of suit and reasonable attorney’s fees incurred by Landlord in connection therewith.

4.8 **Subtenants and Licensee’s Facilities.** Subject to the provisions hereinabove for Tenant’s Facilities, Tenant’s licensees and subtenants shall be entitled to erect such facilities on the Leased Site and to replace or modify those improvements, including, but not limited to, antennas, dishes, cabling, and additional storage buildings or equipment shelters on the Leased Site as are reasonably required for the operation and maintenance of the communications equipment to be installed on the Leased Site by said licensees and subtenants, together with rights to the Access Routes as if said licensee or subtenant were the tenant under this Agreement.

4.9 **Interference.** Landlord shall not use, nor shall Landlord permit its lessees, licensees, invitees or agents to use, any portion of adjacent real property owned by Landlord in any way which interferes with the wireless communications signals from the Tenant Facilities or access to the Leased Site by Tenant and its employees, contractors, subtenants, and licensees. Such interference shall be deemed a material breach of this Agreement by Landlord and Landlord shall have the responsibility to terminate said interference. In the event any such interference does not cease or is not promptly rectified, Landlord acknowledges that continuing interference will cause irreparable injury to Tenant, and Tenant shall have the right, in addition to any other rights that it may have at law or in equity, to bring action to enjoin such interference or to terminate this Agreement immediately upon notice to Landlord.

5. **Maintenance.** Tenant, at its own expense, shall maintain the Leased Site and the Tenant Facilities in good and workmanlike manner. Tenant shall have sole responsibility for the maintenance, repair, and security of the Tenant Facilities. Tenant shall cause all maintenance,
repair, replacement, or enhancement of the Tenant’s Facilities to occur lien-free and in compliance with all applicable laws and ordinances. If any lien is filed against the Premises as a result of acts or omissions of Tenant or Tenant’s employees, agents or contractors, Tenant shall discharge the lien or bond the lien off in a manner reasonably satisfactory to Landlord within thirty (30) days after Tenant receives written notice that the lien has been filed.

6. **Access and Utilities.**

6.1 **Access to Leased Site.** Tenant, Tenant’s licensees, subtenants, employees, agents, contractors, subcontractors, and assigns shall be allowed access to the Leased Site twenty-four (24) hours a day, seven (7) days a week.

6.2 **Non-Exclusive Access Routes.** Landlord hereby grants to Tenant, its subtenants, licensees, agents, employees and contractors (i) an unimproved non-exclusive easement in the location described in Exhibit B for pedestrian and vehicular (including trucks) ingress and egress across the Property to extend from the nearest public right of way to the Leased Site (“Access Easement”), and (ii) a utility easement (“Utility Easement”) for the installation, repair, replacement and maintenance of utility wires, poles, cables (including fiber optic cable), conduits, pipes and lines; provided that, in the event that any public utility is unable or unwilling to use the Utility Easement in the location described in Exhibit B, at the sole option of Tenant, Landlord shall grant an alternate easement either to Tenant or directly to the public utility at no cost and in a location acceptable to Tenant and the public utility (herein the Access Easement and Utility Easement are collectively referred to as the “Access Routes”). Landlord and Tenant each shall conduct operations within the Access Routes so as to not cause material interference to other facilities or operations on the Premises.

6.3 **Payment of Utilities.** Tenant shall, at its own expense, install such utilities to the Leased Site necessary for Tenant Facilities and consistent with approval of the utility company. Tenant shall, at its own expense, install meters for electricity and other utilities necessary for Tenant Facilities and shall timely pay all utility charges associated therewith.

7. **Other Rights.** Landlord does not grant, and reserves for itself, its successors and assigns, (i) all mineral rights, seismic rights and rights to oil, gas, other hydrocarbons or minerals on, as to, under or about any portion of the Premises; (ii) rights to generate electricity from the wind or wind power on, as to or about any portion of the Premises; and (iii) the right to grant to others the rights hereby reserved. Landlord may lease or sell ground space adjacent to the Leased Site at its discretion; provided that, such use of the ground space does not interfere with the communication signals from the Tenant Facilities or use of the Access Routes.

8. **Fees, Taxes and Assessments.** Tenant shall pay, as they become due and payable, expenses required for licenses and/or permits required for the Tenant Facilities. Tenant shall pay all personal property taxes directly attributable to the Tenant Facilities. Landlord shall pay when due, all real property taxes. Tenant shall pay all other taxes, fees and assessments attributable to the Leased Site or this Agreement. Tenant shall reimburse Landlord for Tenant’s proportionate share of any increase in Landlord’s real property taxes directly attributable to the Tenant Facilities; provided that, Landlord shall provide Tenant any documentation evidencing the increase and how
such increase is attributable to the Tenant Facilities, and Tenant reserves the right to challenge any such assessment, and Landlord shall cooperate with Tenant in connection with any such challenge.

9. Assignment and Subletting.

9.1 Sublease. Tenant may sublease or license any portion of its Tenant Facilities or the Leased Site. In the event of a sublease or license, Tenant shall remain fully liable for all obligations and liabilities under this Agreement. Nothing herein shall be construed to authorize any facilities other than the approved Tenant Facilities. In addition to Rent, Tenant shall pay Landlord an annual revenue sharing fee of Five Hundred and No/100 Dollars ($500.00) for each Wireless Carrier that co-locates on the Tower Facilities, other than the first such tenant on the Tenant Facilities (the “Anchor Tenant”). Said payment shall be due and payable upon commencement of each Wireless Carrier lease and receipt of each Wireless Carrier’s lease payment by Tenant. The Anchor Tenant shall be exempt from such revenue sharing payment. For the purpose of this paragraph, Wireless Carrier shall be defined as any cellular or PCS carrier such as T-Mobile/Sprint, AT&T/Cingular and Verizon. This does not include 2-way/paging companies, wireless internet companies or governmental agencies.

9.2 Assignment. Except as set forth herein, Tenant may not assign this Agreement to another company without Landlord’s written consent, which shall not be unreasonably withheld, conditioned or delayed. Tenant may assign this Agreement or transfer its interest in this Agreement, at its sole discretion and without Landlord’s consent, to (i) an Affiliate (defined below), (ii) a commercial lending institution solely as security for financing purposes, and (iii) an entity in the business of owning telecommunication sites in connection with the sale of the Tenant Facilities. In the event of an assignment, the assignee shall assume all obligations and liabilities of Tenant under this Agreement arising after the assignment date. An assignment of this Agreement by Tenant to an Affiliate shall not relieve Tenant from liability or obligations under this Agreement unless Landlord agrees to the assignment and the Affiliate agrees to assume the obligations of this Agreement. For purposes of this Agreement, the term “Affiliate” shall mean a person or business entity, corporate or otherwise, that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with Tenant. The term “control” means the right and power, directly or indirectly, to direct or cause the direction of the management and policies of a person or business entity, corporation or otherwise, through ownership or voting securities, by contract or otherwise.

9.3 In the event of Bankruptcy. Any person or entity to which this Agreement is assigned or transferred as part of any bankruptcy proceeding shall be deemed without further act to have assumed all of the liabilities and obligations of Tenant arising under this Agreement on and after the date of such assignment. Any such assignee or transferee shall upon demand execute and deliver to Landlord an instrument confirming such assumption or transference. Any monies or other considerations payable or otherwise to be delivered in connection with such assignment or transference (i) shall be paid to Landlord; (ii) shall be the exclusive property of Landlord; and (iii) shall not constitute “property” of the Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code, to the extent permitted by law. Any monies or other considerations constituting Landlord’s property under the preceding sentence not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and be promptly paid to Landlord to the extent permitted by law.
9.4 Tenant may mortgage or grant a security interest in this Agreement and/or the Tenant’s Facilities.

9.5 No Bifurcation of Landlord’s Estate/Assignment of Lease. Without Tenant’s prior written consent, which shall not be unreasonably withheld, conditioned or delayed, Landlord shall not assign its right in this Agreement or the Rent or any rights hereunder, or sell any easement or interest in any portion of the Leased Site, except in connection with conveyance of fee simple title to the Premises, or any portion thereof which includes the Leased Site.

10. Default and Remedies.

10.1 Default by Tenant. Tenant shall be deemed in default of this Agreement if any of the following occurs:

10.1.1 Tenant fails to pay Rent in compliance with Section 2 of this Agreement or any other sums to Landlord when due, and does not cure such default within fifteen (15) days of receipt of written notice from Landlord; provided however, that only two (2) such cure periods are permitted during the Lease Term; or

10.1.2 If Tenant fails to comply with the performance of any other covenant or condition of this Agreement and does not cure such other default within thirty (30) days after written notice from Landlord specifying the default complained of, unless such default cannot reasonably be cured within thirty (30) days, in which case Tenant will not be in default as long as Tenant substantially commences to cure the default within the thirty (30) days and diligently pursues such cure to completion; or

10.1.3 If Tenant is adjudicated as bankrupt or makes any assignment for the benefit of creditors.

10.2 Landlord’s Remedies in Event of Tenant Default. In the event of a default by Tenant, Landlord shall notify Tenant, in writing, of said default. If Tenant fails to cure within thirty (30) days after the date of the notice, or in such other applicable time period as outlined above, Landlord may pursue any remedy available at law.

10.3 Default by Landlord. Landlord shall be in default if Landlord fails to comply with the performance of any covenant or condition of this Agreement and does not cure such other default within thirty (30) days after written notice from Tenant specifying the default complained of, unless such default cannot reasonably be cured within thirty (30) days, in which case Landlord will not be in default as long as Landlord commences to cure the default within the thirty (30) days and diligently pursues such cure to completion. In the event of a Landlord default and failure to cure, in addition to any other remedy available at law, Tenant may terminate this Agreement upon written notice to Landlord and shall remove the Tenant Facilities as set forth in Section 4.6.

11. Voluntary Termination by Tenant. This Agreement may be terminated by Tenant without further liability upon sixty (60) days’ prior written notice (i) if Tenant is unable to reasonably obtain or maintain any certificate, license, permit, authority or approval from any governmental authority, thus, restricting Tenant from installing, removing, replacing, maintaining or operating the Tenant Facilities or using the Leased Site in the manner intended by Tenant; (ii)
if Tenant determines that the Leased Site is not appropriate for its operations for economic, environmental or technological reasons, including, without limitation, signal strength, coverage or interference, or (iii) if Tenant otherwise determines, within its sole discretion, that it will be unable to use the Leased Site for Tenant’s intended purpose. If Tenant terminates this Agreement under this paragraph during the Initial Term or any Renewal Term, it shall pay a termination fee of Two Thousand Five Hundred and 00/100 Dollars ($2,500.00).

12. **Damage or Destruction of Tenant Facilities.** If the Tenant Facilities or any portion of the Tenant Facilities are destroyed or damaged so as to interfere with the use of the Tenant Facilities through no fault or negligence of Tenant, Tenant may elect to terminate this Agreement upon thirty (30) days’ written notice to Landlord. In such event, Tenant shall remove the Tenant Facilities from the Leased Site as set forth in Section 4.6 and this Agreement (and Tenant’s obligation to pay Rent) shall terminate upon Tenant’s fulfillment of the same. Upon termination, Tenant shall be entitled to reimbursement from Landlord of any Rent prepaid by Tenant. Landlord shall have no obligation to repair any damage to any portion of the Leased Site, except to the extent caused by Landlord, its employees, contractors, servants, or agents.

13. **Condemnation.** If Landlord receives written or other notice of a proposed taking by eminent domain of any part of the Premises affecting the Leased Premises or Access Routes, Landlord will notify Tenant of the proposed taking within five (5) days of receiving said notice and Tenant will have the option to: (i) declare this Agreement null and void and thereafter neither party will have any liability or obligation hereunder; or (ii) remain in possession of the Leased Site. With either option, Tenant shall have the right to contest the taking and directly pursue an award.

14. **Indemnity**

14.1 **Disclaimer of Liability.** Landlord shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of Tenant’s construction, maintenance, repair, access, use, operation, condition or dismantling of the Tenant Facilities or the Leased Site or Access Routes, unless such injury or damage is caused by the sole negligence or willful misconduct of Landlord or Landlord’s employees, contractors, servants, or agents.

14.2 **Indemnification.** Tenant shall indemnify and hold harmless Landlord and all associated, affiliated, allied, and subsidiary entities of Landlord, now existing or hereinafter created, and their respective officers, boards, commissions, employees, agents, attorneys, and contractors (hereinafter referred to as “Indemnities”), from and against any claim of liability or loss from personal injury or property damage arising from use and occupancy of the Leased Site or Access Routes by Tenant, its personnel, employees, agents, contractors or subcontractors, except to the extent such claims are caused by the intentional misconduct or sole negligence of any Indemnitees or persons acting under any Indemnities.

14.3. **Assumption of Risk.** Tenant undertakes and assumes for its officers, agents, affiliates, contractors and subcontractors, and employees (collectively “Tenant” for the purpose of this Paragraph 14.3), all risk of dangerous conditions, if any, on or about the Leased Site and Access Routes, and Tenant hereby agrees to indemnify and hold harmless the Indemnities against and from any claim asserted or liability imposed upon the Indemnities for personal injury or property damage.
to any person (other than from Indemnitee’s negligence or willful misconduct) arising out of the Tenant’s installation, operation, maintenance, condition or use of the Leased Site or Access Routes or Tenant’s failure to comply with any federal, state or local statute, ordinance or regulation.

14.4 Defense of Indemnitees. In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, Tenant shall, upon notice from any of the Indemnitees, at Tenant’s sole cost and expense, resist and defend the Indemnitees; provided that, the Indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without the prior written consent of Tenant.

14.5 Tenant’s obligations to indemnify do not diminish in any way Tenant’s obligations to insure; and Tenant’s obligations to insure do not diminish in any way Tenant’s obligations to indemnify. Tenant’s obligations to indemnify and provide insurance are in addition to, and do not limit, any and all other liabilities or obligations of Tenant under or connected with this Agreement. The amount and type of insurance coverage required by this Agreement will in no way be construed as limiting the scope of the indemnities in this Agreement.

15. Insurance.

15.1 Coverage. During the Lease Term, Tenant shall maintain, or cause to be maintained, in full force and effect and at its sole cost and expense, the following types and limits of insurance.

15.1.1 Worker’s compensation insurance meeting applicable statutory requirements and employer’s liability insurance with minimum limits of One Hundred Thousand Dollars ($100,000) for each accident.

15.1.2 Commercial general liability insurance with minimum limits of Two Million Dollars ($2,000,000) as the combined single limit for each occurrence of bodily injury, personal injury and property damage. The policy shall provide blanket contractual liability insurance for all written contracts, and shall include coverage for products and completed operations liability, independent contractor’s liability; coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage.

15.1.3 Automobile liability insurance covering all owned, hired, and non-owned vehicles in use by Tenant, its employees and agents, with personal protection insurance and property protection insurance to comply with the provisions of state law with minimum limits of Two Million Dollars ($2,000,000) as the combined single limit for each occurrence for bodily injury and property damage.

15.1.4 All policies other than those for Worker’s Compensation shall be written on an occurrence and not on a “claims made” basis.

15.1.5 The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated.
15.2. **Additional Insureds.** All policies, except for builders’ risk, all-risk property, business interruption and worker’s compensation policies, shall name Landlord and its agents as additional insureds (herein referred to as the “Additional Insureds”). Each policy which is to be endorsed to add Additional Insureds hereunder, shall contain cross-liability wording, as follows:

In the event of a claim being made hereunder by one insured for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is or may be made in the same manner as if separate policies had been issued to each insured hereunder, except with respect to the limits of insurance.

15.3. **Evidence of Insurance.** Current certificates of insurance for each insurance policy required to be obtained by Tenant in compliance with this Section shall be filed and maintained with Landlord within thirty (30) days of the Term Commencement Date and within ten (10) days of any renewal or change in such policies.

15.4 **Notice of Claims.** Tenant shall immediately advise Landlord of any claim or litigation that may result in liability to Landlord.

15.5. **Cancellation of Policies of Insurance.** Tenant shall endeavor to include the following endorsement in all insurance policies maintained pursuant to this Agreement:

At least thirty (30) days prior written notice shall be given to Landlord by the insurer of any intention to cancel the policies for any reason other than non-payment of premium, such notice to be given by mail to the parties to this Agreement.

15.6. **Insurance Companies.** All insurance shall be affected under valid and enforceable policies, insured by insurers licensed to do business by the State of Arizona, with an A+, AAA or better rating in “A. M. Best Insurance Guide.”

15.7. **Contractors.** Tenant shall require that each and every contractor and subcontractor who performs work on the Leased Site carry, in full force and effect, workers’ compensation, comprehensive public liability and automobile liability insurance coverage of the type which Tenant is required to obtain under the terms of this Section with appropriate limits of insurance as determined by Tenant.

16. **Regulated Substances.**

16.1 **Tenant Inspections and Testing.** Tenant shall conduct inspections and testing as it deems necessary to determine that there are no pre-existing Regulated Substances (as defined herein) on the Leased Site.

16.2 **Applicable Laws.** Tenant recognizes that assuring protection of public health, welfare and the environment from activities upon the Leased Site during the Lease Term is an important consideration for Landlord. Tenant shall, during the Lease Term, comply with all applicable federal, state and local laws, regulations and ordinances (hereinafter referred to as the
"Applicable Laws". Tenant warrants that throughout the Lease Term, Tenant will maintain compliance with all Applicable Laws.

16.3 **Regulated Substances Indemnification.**

16.3.1 **Tenant’s Obligation and Indemnity.** Tenant shall not (either with or without negligence) cause or permit the escape, disposal or release of any Regulated Substances on or from the Leased Site in any manner prohibited by law. Tenant shall indemnify and hold Landlord harmless from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, any and all sums paid for settlement of claims, attorneys’ fees, and consultants’ and experts’ fees) from the release of any Regulated Substances on the Leased Site if caused by Tenant or persons acting under Tenant.

16.3.2 **Regulated Substances** include, but are not limited to, any and all substances, materials or wastes regulated under the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq.; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601, et seq.; the Arizona Hazardous Waste Management Act, A.R.S. §§ 49-921, et seq.; the Arizona Underground Storage Tank Regulation Act, A.R.S. §§ 49-101, et seq.; as said laws have been supplemented or amended to date, the regulations promulgated pursuant to said laws and any Applicable Laws that regulate or proscribe the use, storage, disposal, presence, clean-up, transportation or release or threatened release into the environment of Regulated Substances.

16.4 **Discharges and Emissions.** In addition to the other requirements of this Section 16, Tenant shall not release, discharge, leak or emit, or permit to be released, discharged, leaked or emitted into the atmosphere, ground, soil, sewer system, surface water or groundwater any substance if such substance (as reasonably determined by any applicable governmental authority regulating Regulated Substances) does or may pollute or contaminate the same, or may adversely affect: (i) the environment, (ii) the health, welfare or safety of persons whether located on the Leased Site or elsewhere, or (iii) the condition, value, use or enjoyment of the Leased Site or any other real or personal property.

16.5 **Permits.** Tenant has or will timely obtain, maintain and comply with all provisions of all permits, licenses and other authorizations which are required under the Applicable Laws (hereinafter referred to as the "Permits").

16.7 **Notices Required.** Tenant shall notify Landlord of any notice Tenant receives from any governmental authority alleging an event of Tenant’s uncured non-compliance with the Applicable Laws or Permits of this Section. Tenant shall also promptly notify Landlord in writing of any notices of violation received by Tenant from any governmental authority pertaining to Tenant’s use of the Leased Site.

16.8 **Landlord Inspections.** Landlord shall have the right, upon seventy-two (72) hours’ written notice and accompanied by an authorized representative designated by Tenant, to inspect the Leased Site.

16.9 **Reimbursement of Landlord Costs; Remediation.** In the event the results of the inspection indicate a need for further testing and/or remediation as a result of
Tenant’s use of the Leased Site in order to comply with ADEQ or EPA remediation standards or guidelines, then Tenant hereby agrees to reimburse Landlord for its reasonable inspection costs and to pay for such additional testing and remediation as will be required as a consequence of Tenant’s use of the Leased Site. Should remediation be required as a consequence of Tenant’s use of Leased Site, Tenant shall immediately undertake such remediation as is necessary to restore the condition of the Leased Site or the Premises, if affected, and shall diligently pursue such work to completion. Tenant’s failure to timely perform its obligations under this paragraph shall be considered a material breach of this Agreement, and Tenant’s obligations under this paragraph shall continue beyond the expiration or termination hereof. Nothing in this paragraph shall constitute a waiver of any right of Tenant, including, without limitation, the right to receive contribution from any individual or entity responsible for contamination of any part of the Leased Site or the Premises.

16.10 Termination. Any instance of Tenant’s non-compliance with Applicable Laws, Permits or the provisions of this Section shall be grounds for termination of this Agreement by Landlord, subject to any applicable cure periods.

16.11 Indemnification. To the fullest extent permitted by law, Tenant agrees to indemnify, defend and hold Landlord harmless for any costs of legally required remediation of environmental contamination and from any claims, demands, actions, suits, proceedings, hearings, investigations, responsibility, liability, orders, injunctions, judgments, fines, damages, and losses of any nature whatsoever, arising out of or relating in any way to Tenant’s present or future use of, or activities or operations on or at, the Leased Site, or arising from or relating to any breach of the provisions of this Section 16. Tenant also agrees to indemnify and hold Landlord harmless any costs and expenses incurred in connection therewith, including, without limitation, any attorneys’ and expert witness fees, investigation, clean up, removal, disposal, remedial, corrective, or mitigating action costs, fines and penalties related in any way to Tenant’s use of the Leased Site. These indemnities shall survive the termination of this Agreement.

17. Title and Quiet Enjoyment. Landlord represents and warrants that (i) it holds good and marketable fee simple title to the Premises, (ii) it has full right, power, and authority to enter into and execute this Agreement, as evidenced by the authority documents required in connection with Tenant’s title policy insuring its leasehold interest in the Leased Site and Access Routes including, without limitation, an owner’s title affidavit and council approval of this Agreement or any other reasonable documentation required by the title company, (iii) there are no encumbrances or other impediments of title that might interfere with or be adverse to Tenant, and (iv) Tenant may peacefully and quietly enjoy the Leased Site and the Access Routes; provided that, Tenant is not in default hereunder after notice and expiration of all cure periods.

18. Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by a nationally recognized overnight carrier to the following addresses:

<table>
<thead>
<tr>
<th>If to Tenant to:</th>
<th>If to Landlord to:</th>
</tr>
</thead>
<tbody>
<tr>
<td>TowerCom VII-B, LLC</td>
<td>City of Page</td>
</tr>
</tbody>
</table>
Landlord or Tenant may from time to time designate any other address for this purpose by written notice to the other party. All notices hereunder shall be deemed received upon actual receipt or refusal to accept delivery.


19.1 Waiver. Failure of either party to insist on strict performance of any of the conditions, covenants, terms or provisions of this Agreement or to exercise any of its rights hereunder shall not waive such rights, but either party shall have the rights to enforce such rights at any time.

19.2 Attorney’s Fees. The prevailing party in any litigation arising hereunder shall be entitled to its reasonable attorney’s fees and court costs, including appeals, if any, as determined by a court of competent jurisdiction.

19.3 Severability. If any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to the party other than whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

19.4 Survival. Terms and conditions of this Agreement which by their sense and context survive the termination, cancellation or expiration of this Agreement will so survive, including, but not limited to, Sections, 14 (Indemnity), 15.4 and 16 (Regulated Substances).

19.5 Laws of Arizona. This Agreement shall be governed under the laws of Arizona, and be binding on and inure to the benefit of the successors and permitted assignees of the respective parties. The parties agree that the venue for any litigation regarding this Agreement shall be the county where the Leased Site is located.

19.6 No Third-Party Beneficiaries. No person or entity shall be a third-party beneficiary to this Agreement or shall have any right or cause of action hereunder. Landlord shall have no liability to third parties for any approval of plans, Tenant’s maintenance, repair or enhancement of Tenant’s Facilities, Tenant’s negligence, Tenant’s failure to comply with the provisions of this Agreement (including any absence or inadequacy of insurance required to be carried by Tenant), or otherwise as a result of the existence of this lease.

19.7 Covenant Not to Sue. The parties are aware of Sections 6003 and 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112-96, preliminarily codified at 47 U.S.C. §§ 1403 and 1455(a) ("Section 6003" and "Section 6409(a)"), are aware that such Sections have not yet been interpreted and applied by the courts, have differing views on the
Sections' potential applicability to this lease, and have consulted their respective legal counsel with respect to same. Landlord may contend, among other things, that Sections 6003 and 6409(a) are unconstitutional under the Commerce Clause, Fifth and Tenth Amendments to the U.S. Constitution, do not apply to units of government acting in a proprietary capacity or if applied to light standards in the public rights of way jeopardize the public health, safety and welfare. The resolution of such contentions, which may not come to pass, is premature. In order to reach agreement on the terms of this Agreement, and only for the purposes of it, the parties agree on a covenant not to sue as follows:

"Tenant, and its successors and assigns will not sue or contend, in any court, or before any agency or in any proceeding, that Sections 6003 or 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112-96, preliminarily codified at 47 U.S.C. §§ 1403 and 1455(a), apply to or affect approvals required to be obtained from Landlord pursuant to this lease. For the purposes of the preceding: Sections 6003 or 6409(a) include any rule, order, guidance, interpretation or decision to the extent based on either or both such Sections, and; agency includes the Federal Communications Commission."

19.8 **Entire Agreement.** This Agreement constitutes the entire Agreement between the parties, and supersedes all understandings, offers, negotiations and other leases concerning the subject matter contained herein. There are no representations or understandings of any kind not set forth herein. Any amendments, modifications or waivers of any of the terms and conditions of this Agreement must be in writing and executed by both parties.

19.9 **Captions.** The captions preceding the Sections of this Agreement are intended only for convenience of reference and in no way define, limit or describe the scope of this Agreement or the intent of any provision hereof.

19.10 **Counterparts.** This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

19.11 Tenant warrants compliance with all Federal immigration laws and regulations relating to employees and subcontractors and warrants its compliance with A.R.S. § 41-4401 including the E-verify program. A breach of this section shall be deemed a material breach of the Agreement and is subject to penalties up to and including termination of the Agreement. The City of Page retains the legal right to inspect the papers of Tenant or any subcontractor employee who works under the Agreement to ensure compliance with this provision.

19.12 If applicable, pursuant to A.R.S. § 35-393 et seq., Tenant certifies that it is not currently engaged in, and agrees for the duration of this Agreement not to engage in, a boycott of Israel.

20. **Conflict of Interest.** Landlord may cancel this Agreement pursuant to A.R.S. § 38-511 (conflict of interest), as may be amended from time to time. In the event Landlord elects to exercise its rights thereunder, Landlord agrees to immediately give notice thereof to Tenant.
21. **Memorandum of Lease.** The parties agree that a memorandum of lease in the form attached hereto as Exhibit “D,” evidencing the Term Commencement Date and other matters, shall be executed and recorded.
IN WITNESS WHEREOF, the parties have entered into this Agreement effective as of the date first above written.

LANDLORD:

City of Page, a political subdivision of the State of Arizona

By: __________________________
Name: __________________________
Title: __________________________
Date: __________________________

TENANT:

TowerCom VII-B, LLC, a Delaware limited liability company

By: __________________________
    Mark D. Naftal
    Vice President

Date: __________________________

Attest:

_______________________________________
City Clerk

Approved as to Form:

_______________________________________
City Attorney
EXHIBIT A

DESCRIPTION OF THE PREMISES

All that portion of land located in the NW1/4 SW1/4 and NW1/4 SE1/4 of Section 5, Township 40 North, Range 9 East.

AND BEING a portion of the same property conveyed to Page, Arizona, a Municipal corporation organized and existing under The Laws of The State of Arizona from United States of America by Quit Claim dated March 29, 1975 and recorded April 18, 1975 in Deed Book 541, Page 182.

Tax Parcel No. 802-10-020
EXHIBIT B

DESCRIPTION OF THE LEASED SITE AND ACCESS ROUTES

LEASED SITE

A PORTION OF THE PROPERTY DESCRIBED IN THE QUIT CLAIM DEED RECORDED IN BOOK 541, PAGE 182 OF COCONINO COUNTY RECORDS, RECORDED IN THE OFFICE OF THE CLERK OF SAID COUNTY ON APRIL 18, 1975, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE EAST RIGHT-OF-WAY LINE OF INDUSTRIAL DRIVE (60.00 FOOT RIGHT OF WAY), MARKED BY A REBAR LOCATED AT NORTHING 2144517.88 FEET, EASTING 836762.76 FEET, FROM WHICH AN ALUMINUM CAP BEARS N70°13'38"E, 1251.54 FEET; THENCE ALONG SAID RIGHT-OF-WAY LINE SOUTH 28°10'14" EAST, 20.65 FEET; THENCE DEPARTING SAID RIGHT-OF-WAY LINE NORTH 68°53'08" EAST, 237.44 FEET TO THE BEGINNING OF A CURVE TO THE LEFT; THENCE NORTHEASTERLY ALONG SAID CURVE HAVING A RADIUS OF 10.00 FEET, THROUGH A CENTRAL ANGLE OF 90°56'53", AN ARC LENGTH OF 15.87 FEET AND A CHORD BEARING OF NORTH 23° 24'42"EAST, 14.26 FEET; THENCE NORTH 22°03'44" WEST, 23.27 FEET; THENCE CONTINUING NORTH 22°03'44" WEST, 36.00 FEET; THENCE NORTH 67°56'16" EAST, 6.00 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING NORTH 67°56'16" EAST, 40.00 FEET; THENCE SOUTH 22°03'44" EAST, 30.00 FEET; THENCE SOUTH 67°56'16" WEST, 40.00 FEET; THENCE NORTH 22°03'44" WEST, 30.00 FEET TO THE POINT OF BEGINNING.

ACCESS ROUTES

A 12.00 FOOT WIDE STRIP OF LAND BEING IN THE PROPERTY DESCRIBED IN THE QUIT CLAIM DEED RECORDED IN BOOK 541, PAGE 182 OF COCONINO COUNTY RECORDS, RECORDED IN THE OFFICE OF THE CLERK OF SAID COUNTY ON APRIL 18, 1975, LYING 6.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

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TOGETHER WITH A 12.00 FOOT WIDE STRIP OF LAND, LYING 6.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

BEGINNING AT THE ABOVE DESCRIBED POINT "A"; THENCE NORTH 67°56'16" EAST, 46.00 FEET TO THE POINT OF TERMINUS BEING SIX FEET WESTERLY OF THE SOUTHEAST CORNER OF THE LEASE AREA.

ALL SIDELINES TO BE LENGTHENED OR SHORTENED TO FORM ONE CONTIGUOUS PARCEL.
EXHIBIT C
TOWER FACILITIES
EXHIBIT D

FORM OF MEMORANDUM OF LEASE

Prepared by and return to:
Holt Ney Zatcoff & Wasserman, LLP
Brian P. Cain, Esq.
100 Galleria Parkway, Suite 1800
Atlanta, Georgia 30339

Site Name: Coppermine

MEMORANDUM OF LEASE

This Memorandum of Lease is made on ________________, 2022, by and between CITY OF PAGE, a political subdivision of the state of Arizona, as Landlord, whose address is ________________, and TOWERCOM VII-B, LLC, a Delaware limited liability company, as Tenant, whose address is 241 Atlantic Boulevard, Suite 201, Neptune Beach, Florida 32266.

1. Landlord and Tenant are parties to a Wireless Communications Site Lease Agreement dated as of ________________, 2022 (the “Lease Agreement”); the terms and provisions of which are incorporated herein by this reference. The premises covered by the Lease Agreement are located in Coconino County, Arizona, as more fully described in the legal description attached hereto as Exhibit A (“Leased Site”).

2. Pursuant to the Lease Agreement, the Landlord has granted, and by these presents does grant, to the Tenant non-exclusive easements for: (a) ingress and egress, seven (7) days a week, twenty-four (24) hours a day, on foot or motor vehicle (including trucks), and (b) the installation and maintenance of utility wires, poles, cables (including fiber optic cable), conduits, and pipes over, under, or along the Landlord’s property, the location of said easements being described in Exhibit A attached hereto (the “Easements”). The easement rights herein granted include the right and authority of Tenant to grant or assign to third parties all or some of the easement rights granted to Tenant herein.

3. The Lease Agreement provides for an initial term of five (5) years and five (5) additional five (5) year terms, which shall occur automatically unless Tenant delivers written notice of intent not to renew to Landlord at least ninety (90) days prior to the expiration of the initial term, or the renewal term then in effect.

4. Without Tenant’s prior written consent, which shall not be unreasonably withheld, conditioned or delayed, Landlord shall not assign its right in the Lease Agreement or the rent thereunder or sell any easement or interest in any portion of the Leased Site, except in connection with conveyance of fee simple title to Landlord’s property as set forth in the Lease Agreement.

[Separate Form to be Executed]
Prepared by and return to:
Holt Ney Zatcoff & Wasserman, LLP
Brian P. Cain, Esq.
100 Galleria Parkway, Suite 1800
Atlanta, Georgia 30339

Site Name: Coppermine

MEMORANDUM OF LEASE

This Memorandum of Lease is made on _____________, 2022, by and between CITY OF PAGE, a political subdivision of the state of Arizona, as Landlord, whose address is 697 Vista Avenue, Page, Arizona 86040, and TOWERCOM VII-B, LLC, a Delaware limited liability company, as Tenant, whose address is 241 Atlantic Boulevard, Suite 201, Neptune Beach, Florida 32266.

1. Landlord and Tenant are parties to a Wireless Communications Site Lease Agreement dated as of _____________, 2022 (the “Lease Agreement”); the terms and provisions of which are incorporated herein by this reference. The premises covered by the Lease Agreement are located in Coconino County, Arizona, as more fully described in the legal description attached hereto as Exhibit A (“Leased Site”).

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LANDLORD:

CITY OF PAGE,
a political subdivision of the state of Arizona

By: __________________________

Name: ________________________

Title: _________________________

Attest:

____________________________
City Clerk

Approved as to Form:

____________________________
City Attorney

TENANT:

TOWERCOM VII-B, LLC,
a Delaware limited liability company

By: __________________________

Mark D. Naftal
Vice President

[ACKNOWLEDGMENTS ON FOLLOWING PAGE]
STATE OF ARIZONA  )
COUNTY OF COCONINO  )

Before me, the undersigned officer, personally appeared  
with whom I am personally acquainted, who acknowledged himself to be the  
________________________ of the City of Page, and affirmed that, being duly authorized, he executed  
the foregoing instrument on behalf of the City of Page for the purposes therein contained.  

Witness my hand and seal this ___ day of ____________, 2022.  

[Notary Seal]  

__________________________________  
Signature of Notary Public  

Print Name: ________________________  

A notary public or other officer completing this certificate verifies only the identity of the  
individual who signed the document to which this certificate is attached, and not the truthfulness,  
accuracy, or validity of that document.  

State of California  )
COUNTY OF ____________  )

On ________________________, 2022 before me, ________________________, a Notary Public, 
personally appeared Mark D. Naftal, who proved to me on the basis of satisfactory evidence to  
be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me  
that he/she/they executed the same in his/her/their authorized capacity(ies), and that by  
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the  
person(s) acted, executed the instrument.  

I certify under PENALTY OF PERJURY under the laws of the State of California that the  
foregoing paragraph is true and correct.  

WITNESS my hand and official seal.  

__________________________________  
Signature of Notary Public  

(This area for official notarial seal)
EXHIBIT A
LEASED SITE AND EASEMENTS

LEASED SITE

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ALL SIDELINES TO BE LENGTHENED OR SHORTENED TO FORM ONE CONTIGUOUS PARCEL.