

LAKEHAVEN UTILITY DISTRICT  
King County, Washington

**Resolution No. 2005-1055**

**A RESOLUTION** of the Board of Commissioners of the Lakehaven Utility District, King County, Washington, approving the execution of a lease agreement for a parcel of real property owned by the District.

**WHEREAS**, the District owns real property utilized in the provision of municipal water and sewer service, and

**WHEREAS**, an entity in the business of providing telecommunication services has expressed an interest in locating telecommunications facilities at the 305<sup>th</sup> Street Tank property located at South 302nd Street/56<sup>th</sup> Avenue South, and

**WHEREAS**, the Board, after holding a public hearing to consider the leasing of such parcel for the location of telecommunications facilities, believing the execution of a lease agreement to be in the best interests of the District;

NOW, THEREFORE, **BE IT RESOLVED** as follows:

1. The Board hereby finds that, pursuant to the water and sewer system comprehensive plans, the District has a continuing need for ownership of the following parcel of property:
  - 305<sup>th</sup> Street Tank property at South 302<sup>nd</sup> Street/56<sup>th</sup> Avenue South
2. The Board additionally finds that the lease of a portion of the 305<sup>th</sup> Street Tank property at South 302<sup>nd</sup> Street/56<sup>th</sup> Avenue South to Clearwire LLC, under terms and conditions substantially as set forth in the "Lease Agreement" attached hereto as Exhibit "A", would be in the best interests of the District.
3. The General Manager is hereby authorized to execute a lease agreement substantially in the form as set forth in Exhibit "A" with Clearwire LLC.

**ADOPTED** by the Board of Commissioners of Lakehaven Utility District, King County, Washington, at an open public meeting this 10th day of November, 2005.

ATTEST:

Edward C. Stewart      ✓      \_\_\_\_\_      \_\_\_\_\_  
President and Commissioner      Yea      Nay      Abstain

Beverly J. Weddle ✓  
Vice President and Commissioner    Yea    Nay    Abstain

Donald H. Miller ✓  
Secretary and Commissioner    Yea    Nay    Abstain

R. M. Mayer ✓  
Commissioner    Yea    Nay    Abstain

Thomas M. Jaramola ✓  
Commissioner    Yea    Nay    Abstain

Approved as to form: A. H. R. [Signature]  
General Counsel

**LAKEHAVEN UTILITY DISTRICT**  
**LEASE AGREEMENT FOR TELECOMMUNICATIONS FACILITIES**

**Exhibit A**

**Real Property Description**

305<sup>th</sup> Street Tank Site: South 302<sup>nd</sup> Street/56<sup>th</sup> Avenue South.  
The East 330 feet of the North half of the South half of the Southwest quarter of the Southwest quarter Section 2, Township 21 North, Range 4 East, Willamette Meridian, Situate in King County Washington

Together with the North 162 feet of the East 330 of the South half of the South half of the Southwest quarter of the Southwest quarter Section 2, Township 21 North, Range 4 East, Willamette Meridian, Situate in King County Washington

Tax Parcel No. 022104 9159 and 022104 9227

(Description of premises attached)

## LAKEHAVEN UTILITY DISTRICT

### SITE LEASE FOR TELECOMMUNICATIONS FACILITIES

THIS INDENTURE of lease ("Agreement"), made this 15<sup>th</sup> day of February, 2005, by and between LAKEHAVEN UTILITY DISTRICT formerly Federal Way Water and Sewer District, a municipal corporation, having a mailing address of PO Box 4249, Federal Way, Washington, 98063-4249, as successor in interest to Water District No. 124, a Washington Municipal Corporation (hereinafter referred to as "Lessor") and Clearwire LLC, a Nevada limited liability company, having an office at 5808 Lake Washington Blvd NE, Suite 300, Kirkland, WA 98033 (hereinafter referred to as "Lessee").

#### BACKGROUND

Lessor owns that certain plot, parcel or tract of land, together with all rights and privileges arising in connection therewith, located at 30200 51<sup>st</sup> Ave. S, Auburn, WA 98001, in the County of King, State of Washington (collectively "Property"). A legal description of the Property is incorporated herein at Exhibit A. Lessee desires to use a portion of the Property in connection with its federally licensed communications business. Lessor desires to grant to Lessee the right to use a portion of the Property in accordance with this Agreement.

1. **LEASE OF PREMISES.** Lessor leases to Lessee portions of the Property consisting of (a) a room/cabinet/ground area space of approximately 45 square feet; and (b) space on the structure together with such easements as are necessary for the antennas and initial installation as described on attached **Exhibit B** (collectively, "Premises").
2. **PERMITTED USE.** Lessee may use the Premises for the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair and replacement of its communication facility and related equipment, cables, accessories and improvements, which may include a suitable support structure, associated antennas, equipment shelters or cabinets and fencing and any other items necessary to the successful and secure use of the Premises (collectively the "Communication Facility"); such use may include the right to test, survey and review title on the Property (collectively, the "Permitted Use"). Lessor and Lessee agree that any portion of the Communication Facility that may be described on **Exhibit B** will not be deemed to limit Lessee's Permitted Use. If **Exhibit B** includes conceptual drawings of the initial installation of the Communication Facility, Lessor's execution of this Agreement will signify Lessor's approval of **Exhibit B**. Lessee has the right to make Property improvements, alterations or additions appropriate for Lessee's use including the right to modify, supplement, upgrade, expand the equipment, increase the number of antennas or relocate the Communication Facility ("Lessee's Changes") within the Premises at any time during the term of this Agreement with Lessor's approval, which approval shall not be unreasonably withheld or delayed; except that Lessee may replace the equipment without such consent. Furthermore, Lessee agrees that if Lessee's Changes increase the

number of antennas and related cables in excess of those shown in **Exhibit B**, Lessor may increase the monthly rent by seventy-five dollars (\$75) per additional antenna if such antenna shall be installed during the initial term and two hundred and fifty (\$250) dollars if such additional antenna be installed during any extension term. Lessee agrees to comply with all applicable governmental laws, rules, statutes and regulations, relating to its use of the Communication Facility on the Property.

3. **TERM.**

(a) The initial lease term will be Five (5) years ("Initial Term"), commencing upon the Commencement Date, as defined below. The Initial Term will terminate on the last day of the month in which the tenth annual anniversary of the Commencement Date occurs.

(b) This Agreement will automatically renew for Four (4) additional five (5) year Term(s) (each five (5) year term shall be defined as the "Extension Term"), upon the same terms and conditions unless either party notifies the other, in writing, of its intention not to renew this Agreement at least six (6) months prior to the expiration of the existing Term.

(c) If Lessee remains in possession of the Premises after the termination or expiration of this Agreement then Lessee will be deemed to be occupying the Premises on a month-to-month basis (the "Holdover Term"), subject to the terms and conditions of this Agreement.

(d) The Initial Term, the Extension Term and the Holdover Term are collectively referred to as the Term ("Term").

4. **RENT.**

(a) Commencing on the date that Lessee commences construction (the "Commencement Date"), Lessee will pay the Lessor a monthly rental payment of One Thousand Two **Hundred Dollars (\$1200.00)**, ("Rent"), at the address set forth above, on or before the 5<sup>th</sup> day of each calendar month in advance. Rent will be prorated for any partial month.

(b) Beginning with year two (2) of the Initial Term, and each year thereafter, including throughout any Extension Terms exercised, the monthly rent will be increased by four percent (4%) over the previous year's rent.

5. **APPROVALS.**

(a) Lessor agrees to cooperate with Lessee's efforts to obtain all governmental licenses, permits, approvals or other relief required of or deemed necessary or appropriate by Lessee for its use of the Premises, including without limitation applications for zoning

variances, zoning ordinances, amendments, special use permits, and construction permits (collectively referred to as "Governmental Approvals"). Lessor authorizes Lessee to prepare, execute and file all required applications to obtain Governmental Approvals for Lessee's Permitted Use under this Agreement and agrees to reasonably assist Lessee with such applications. Lessee has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of Lessee's choice.

(b) Lessee may also obtain, at Lessee's sole cost and expense, soil boring, engineering procedures, environmental investigation or other tests or reports (collectively the "Tests") on, over, and under the Property, necessary to determine if the Lessee's use of the Premises will be compatible with Lessee's engineering specifications, system, design, operations or Governmental Approvals. Lessee shall obtain approval from Lessor for any tests that Lessee requires on site such approval not to be unreasonably withheld.

6. **INTERFERENCE**

Lessor acknowledges that it shall not interfere, nor permit its other lessees, employees or agents, to unreasonably interfere, with Lessee's use of the Premises. Lessee shall not use the Premises in any way that interferes with the use of the Property by Lessor, or other lessees, employees, or agents of Lessor. Lessee acknowledges that the Communication Facility it installs will not cause communication interference with other communication facilities which exist on or off the Premises on the date this Agreement has been signed by both parties. Lessee further acknowledges that, should its Communication Facility cause such communication interference with other communication facilities on or off the site, Lessee will, after written notice thereof from Lessor cause the communication interference to cease, within thirty (30) days. If the interference, communication or other, cannot be resolved, either party will be entitled to terminate this Agreement, and render it null and void, consistent with its rights under Paragraph 10 hereunder.

7. **SECURITY**

The parties acknowledge Lessee's obligation to provide and maintain security for Lessee's performance of the lease terms. It is agreed that Lessee shall be required to provide a form of security acceptable to the Lessor, whether it be a letter of credit, cash deposit or a Lease Bond. If providing a bond, it has to be issued from a surety licensed in the State of Washington. The amount of security will be Sixteen thousand eight hundred forty five dollars and ninety six cents (\$16,845.96) during the Initial Term and the amount of rent for the last year of the lease during any Extension Term. The Bond will guarantee the terms of the lease agreement.

8. **IMPROVEMENTS/ACCESS**

Lessee shall have a nonexclusive right, at its expense, to erect and maintain on the Premises,

improvements, personal property and facilities necessary to operate its Communication Facilities. Lessee shall not be entitled, without the written consent of the Lessor which consent will not be unreasonably withheld, to make or install any improvements to its facilities not described herein or otherwise alter its use of the Premise, except for the replacement of equipment as allowed under Section 2 of this Agreement. A pre-construction meeting shall be held at least ten (10) working days prior to installation of facilities. Lessor shall have final approval over construction and/or installation of improvements, which approval shall not be unreasonably withheld or delayed. Lessor shall provide Lessee, Lessee's employees, agents, contractors, subcontractors and assigns with access to the Premises twenty-four (24) hours per day, seven days per week, at no charge to Lessee during normal working hours, however Lessee is not permitted to access the site without an escort provided by the Lessor or a prearranged alternative as described in Exhibit C. Lessee's exercise of access rights shall not cause undue inconvenience to Lessor. Lessee shall keep and maintain such facilities in commercially reasonable condition and repair during the term of this Agreement, normal wear and tear excepted. At the end of the lease, the Premises shall be returned to Lessor in good, usable condition, normal wear and tear excepted. As partial consideration for Rent paid under this Agreement, Lessor hereby grants Lessee a non-exclusive easement, for the term of the lease, for ingress and egress to the Premises adequate to install and maintain the improvements and necessary appurtenances.

9. **OPERATING CONDITIONS**

Lessee agrees to abide by each and every operating condition set forth in **Exhibit C**, attached hereto. Failure to abide by any such operating condition shall constitute a material breach of the Agreement and, upon written notice to Lessee and failure to cure within fifteen (15) business days, Lessor shall have the right to terminate this Agreement in accordance with the terms and conditions set forth herein and enforce such termination in a court of competent jurisdiction. Notwithstanding the foregoing, if Lessee has commenced to cure the breach within said five (5) day period, and such efforts are prosecuted to completion with reasonable diligence, Lessor shall not terminate this Agreement.

10. **TERMINATION**

(a) Either party may terminate this Agreement (i) for any reason at the end of any lease Term on the provision of written notice of not less than six (6) months prior to the end of such lease Term; or (ii) on thirty (30) days prior written notice, if the other party remains in default under either Paragraph 16 or Paragraph 6 of this Agreement after the applicable cure periods.

(b) Lessee may terminate this Agreement upon written notice to Lessor, if Lessee is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now and hereafter

intended by Lessee; or if Lessee determines in its sole discretion that the cost of obtaining or retaining the same is commercially unreasonable.

(c) Lessee may terminate this Agreement on sixty (60) days written notice to Lessor for any reason, so long as Lessee pays Lessor a termination fee equal to six (6) months Rent, at the current rent rate, provided, however, that no such termination fee will be payable on account of the termination of this Agreement by Lessee under any one or more of Paragraphs 6, 10(a), 10(b), 18, 19, or 20 of this Agreement.

11. **REMOVAL/RESTORATION.**

All portions of the Communication Facility brought onto the Property by Lessee will be and remain Lessee's personal property and, at Lessee's option, may be removed by Lessee at any time during the Term. Lessor covenants and agrees that no part of the Communication Facility constructed, erected or placed on the Premises by Lessee will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of the Lessor that all improvements of every kind and nature constructed, erected or placed by Lessee on the Premises will be and remain the property of the Lessee and may be removed by Lessee at any time during the Term. Within one hundred twenty (120) days of the termination of this Agreement, Lessee will remove all such improvements. Lessee will not be required to remove from the Premises or the Property any underground utilities.

12. **MAINTENANCE/UTILITIES.**

(a) Lessee will keep and maintain the Premises in good condition, reasonable wear and tear and damage from the elements excepted. Lessor will maintain and repair the Property and access thereto, in good and Tenatable condition, subject to reasonable wear and tear and damage from the elements.

Lessee will be solely responsible for and promptly pay all utilities charges for electricity, telephone service or any other utility used or consumed by Lessee on the Premises. Lessor will fully cooperate with any utility company requesting an easement over, under and across the Property in order for the utility company to provide service to the Lessee.

13. **INDEMNIFICATION/INSURANCE.**

(a) Lessee agrees to indemnify, defend and hold Lessor harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly from the installation, use, maintenance, repair or removal of the Communication Facility or Lessee's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Lessor, its employees, agents or independent contractors, or Lessor's breach of this Agreement. Lessor agrees to indemnify, defend and hold Lessee harmless from and against any and all injury, loss,



damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly from the actions or failure to act of Lessor or its employees or agents, or Lessor's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Lessee, its employees, agents or independent contractors, or Lessee's breach of this Agreement.

(b) Notwithstanding anything to the contrary in this Agreement, each of Lessee and Lessor hereby waives any claims that each may have against the other with respect to consequential, incidental or special damages.

(c) Lessee shall procure a policy of commercial general liability insurance which names the Lessor as an additional insured with limits not less than \$2,000,000 per occurrence/\$5,000,000 aggregate.

(d) Lessee shall procure a policy of Automobile Liability Insurance with coverage of at least \$1,000,000 combined single limit and in the aggregate for Bodily Injury and Property Damage per occurrence. Coverage includes Contractual Liability, Owned, Non-Owned Leased, Hired Car Liability and associated defense costs. Lessor, its directors, officers, and Employees will be named as Additional Insureds.

14. **WARRANTIES.**

(a) Lessee and Lessor each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power and authority to enter into this Agreement and bind itself hereto through the party set forth as signatory for the party below.

(b) Lessor represents and warrants that: (i) Lessor solely owns the Property as a legal lot in fee simple, or controls the Property by lease or license; (ii) the Property is not encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect Lessee's Permitted Use and enjoyment of the Premises under this Agreement; (iii) as long as Lessee is not in default then Lessor grants to Lessee, actual, quiet and peaceful use, enjoyment and possession of the Premises; (iv) Lessor's execution and performance of this Agreement will not violate any Laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on the Lessor.

15. **ENVIRONMENTAL.**

(a) Lessor and Lessee agree that each will be responsible for compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or covenants, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene condition or matters as may now or at any time hereafter be in

effect, that are now or were related to that party's activity conducted in, or on the Property.

(b) Lessee agrees to defend, hold harmless and indemnify Lessor from, and to assume all duties, responsibilities and liabilities at its sole cost and expense, (for payment of penalties, sanctions, forfeitures, losses, costs, or damages) and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is related to Lessee's (i) failure to comply with any environmental or industrial hygiene law in its use or occupancy of the Premises, including without limitation any regulations, guidelines, standards or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or matters as may now or hereafter be in effect, or (ii) any environmental or industrial hygiene conditions that arise out of or are in any way related to Lessee's activities on the Premises, unless the environmental conditions are caused by the Lessor. Lessor agrees to defend, hold harmless and indemnify Lessee from, and to assume all duties, responsibilities and liabilities at its sole cost and expense, (for payment of penalties, sanctions, forfeitures, losses, costs; or damages) and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is related to Lessor's (i) failure to comply with any environmental or industrial hygiene law in its ownership, use or occupancy of the Premises, including without limitation any regulations, guidelines, standards or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or matters as may now or hereafter be in effect, or (ii) any environmental or industrial hygiene conditions that arise out of or are in any way related to Lessor's or any other person's activities on the Premises, unless the environmental conditions are caused by the Lessee.

(c) The indemnifications of this Paragraph 15 specifically include reasonable costs, expenses and fees incurred in connection with any investigation of Property conditions or any clean-up, remediation, removal or restoration work required by any governmental authority. The provisions of this Paragraph 15 will survive the expiration or termination of this Agreement.

(d) Lessor represents to the best of its knowledge that the Premises have not been used for the generation, storage, treatment or disposal of hazardous materials, hazardous substances or hazardous waste. In addition, to the best of Lessor's knowledge, Lessor represents that no hazardous materials, hazardous substances, hazardous wastes, pollutants, asbestos, polychlorinated biphenyls (PCBs), petroleum or other fuels (including crude oil or any fraction or derivative thereof) or underground storage tanks are located on or near the Premises. Notwithstanding any other provision of this Agreement, Lessee relies upon the representations stated herein as a material inducement for entering into this Lease.

16. **DEFAULT AND RIGHT TO CURE.**

(a) The following will be deemed a default by Lessee and a breach of this Agreement: (i) non-payment of Rent if such Rent remains unpaid for more than thirty (30) days after receipt of written notice from Lessor of such failure to pay; or (ii) Lessee's failure to perform any other term or condition under this Agreement within forty-five (45) days after receipt of written notice from Lessor specifying the failure. No such failure, however, will be deemed to exist if Lessee has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Lessee. If Lessee remains in default beyond any applicable cure period, Lessor will have the right to exercise any and all rights and remedies available to it under law and equity.

(b) The following will be deemed default by Lessor and a breach of this Agreement. Lessor's failure to perform any term, condition or breach of any warranty or covenant under this Agreement within forty-five (45) days after receipt of written notice from Lessee specifying the failure. No such failure, however, will be deemed to exist if Lessor has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Lessor. If Lessor remains in default beyond any applicable cure period, Lessee will have the right to exercise any and all rights available to it under law and equity, including the right to cure Lessor's default and to deduct the costs of cure from any monies owed to Lessor by Lessee.

17. **NOTICES.**

All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notice will be addressed to the parties as follows:

If to Tenant, to:	With a copy to:	If to Landlord, to:
Clearwire LLC Attn: Property Manager 5808 Lake Washington Blvd NE, Suite 300 Kirkland, WA 98033 Telephone: 425-216-7600 Fax: 425-216-7900	Clearwire LLC Attention: Legal Department 5808 Lake Washington Blvd NE, Suite 300 Kirkland, WA 98033 Telephone: 425-216-7600 Fax: 425-216-7900	Lakehaven Utility District Attn: Administration P.O. Box 4249 Federal Way, Washington 98063-4249

Either party hereto may change the place for the giving of notice to it by thirty- (30) days prior written notice to the other as provided herein.

18. **SEVERABILITY.**

If any term or condition of this Agreement is found unenforceable, the remaining terms and conditions will remain binding upon the parties as though said unenforceable provision were not contained herein. However, if the invalid, illegal or unenforceable provision materially affects this Agreement then the Agreement may be terminated by either party on ten (10) days prior written notice to the other party hereto.

19. **CONDEMNATION.**

In the event Lessor receives notification of any condemnation proceedings affecting the Property, Lessor will provide notice of the proceeding to Lessee within forty-eight (48) hours. If a condemning authority takes all of the Property, or a portion sufficient, in Lessee's sole determination, to render the Premises unsuitable for Lessee, this Agreement will terminate as of the date the title vests in the condemning authority. The parties will be entitled to share in the condemnation proceeds in proportion to the values of their respective interests in the Property, which for Lessee will include, where applicable, the value of its Communication Facility, moving expenses, prepaid Rent, and business dislocation expenses. Lessee will be entitled to reimbursement for any prepaid Rent on a prorata basis.

20. **CASUALTY.**

Lessor will provide notice to Lessee of any casualty affecting the Property within forty-eight (48) hours of the casualty. If any part of the Communication Facility or Property is damaged by fire or other casualty so as to render the Premises unsuitable, then Lessee may terminate this Agreement by providing written notice to the Lessor, which termination will be effective as of the date of such damage or destruction. Upon such termination, Lessee will be entitled to collect all insurance proceeds payable to Lessee on account thereof and to be reimbursed for any prepaid Rent.

21. **WAIVER OF LESSOR'S LIENS.**

Lessor hereby waives any and all lien rights it may have, statutory or otherwise, concerning the Communication Facility or any portion thereof. The Communication Facility shall be deemed personal property for purposes of this Agreement, regardless of whether any portion is deemed real or personal property under applicable law, and Lessor hereby consents to Lessee's right to remove all or any portion of the Communication Facility from time to time in Lessee's sole discretion and without Lessor's consent.

22. **APPLICABLE LAWS**

The Lessee, in the use and occupation of the demised premises and in the operation of any activity thereon, shall comply with all requirements of all applicable laws, orders, ordinances, rules and regulations of the federal, state, county and municipal authorities.

23. **TIME OF THE ESSENCE/WAIVER**

Time is of the essence in all matters relating to the performance of each and every term of this Agreement herein. Any failure by either party to enforce any right arising hereunder shall not be deemed a waiver of such right.

24. **ASSIGNMENT/SUBLEASE.**

Subject to the written approval of Lessor, which approval will not be unreasonably withheld, Lessee may assign or sublet all or any part of the Premises, and all or any rights, benefits, liabilities and obligations of this Agreement provided that the assignee or sublessee assumes, recognizes and also agrees to become responsible to the Lessor for the performance of all terms and conditions of this Agreement. Upon notification to Lessor by Lessee of any such action, Lessee will be relieved of all-future performance, liabilities and obligations under this Agreement to the extent of such assignment or sublease. Notwithstanding the foregoing, Lessee will have the right to assign this Agreement, in whole or in part, to an affiliate or partner without Lessor's consent.

25. **MISCELLANEOUS.**

(a) **Amendment/Waiver.** This Agreement cannot be amended, modified or revised unless done in writing and signed by an authorized agent of the Lessor and an authorized agent of the Lessee. No provision may be waived except in writing signed by both parties.

(b) **Memorandum/Short Form Lease.** Either party will, at any time upon prior written notice from the other, execute, acknowledge and deliver to the other a

recordable Memorandum or Short Form of Lease. Either party may record this Memorandum or Short Form of Lease at any time, in its absolute discretion.

(c) **Bind and Benefit.** The terms and conditions contained in this Agreement will run with the Property and bind and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns.

(d) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements.

(e) **Governing Law.** This Agreement will be governed by the laws of the state in which the Premises are located, without regard to conflicts of law.

(f) **Interpretation.** Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term "including" will be interpreted to mean "including but not limited to"; (iii) whenever a party's consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of the Agreement and are incorporated by reference into this Agreement; (v) use of the terms "termination" or "expiration" are interchangeable; and (vi) reference to a default will take into consideration any applicable notice, grace and cure periods.

(g) **Estoppel.** Either party will, at any time upon fifteen (15) days prior written notice from the other, execute, acknowledge and deliver to the other a statement in writing (i) certifying that this Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying this Agreement, as so modified, is in full force and effect) and the date to which the Rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to such party's knowledge, any uncured defaults on the part of the other party hereunder, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrance of the Premises. The requested party's failure to deliver such a statement within such time will be conclusively relied upon by the requesting party that (i) this Agreement is in full force and effect, without modification except as may be properly represented by the requesting party, (ii) there are no uncured defaults in either party's performance, and (iii) no more than one month's Rent has been paid in advance.

(h) **No Electronic Signatures/No Option.** The submission of this Agreement to any party for examination or consideration does not constitute an offer, reservation of or option for the Premises based on the terms set forth herein. This Agreement will become effective as a binding Agreement only upon the handwritten legal execution, acknowledgment and delivery hereof by Lessor and Lessee.

26. **RELOCATION.**

(a) At any time after the initial Term as specified in this Agreement, Lessor may, no more than once, per Term, upon twelve (12) months prior written notice to Lessee, elect to have Lessee relocate its Telecommunication Facility from the Premises to any other portion of the Property or any adjoining real property owned by Lessor (the "Alternate Premises"), subject to the terms set forth below.

(b) The size, location and dimensions of the Alternate Premises shall be chosen by Lessor but must, in Lessee's reasonable judgment, be at least as suitable for the purposes of operating telecommunication facilities as the size, location and dimensions of the Premises. If the Alternate Premises is not suitable for Lessee's operations, as determined by Lessee in its sole judgment, then Lessee may terminate this Agreement with no further liability or penalty. In the event Lessee elects to terminate as aforesaid, Lessor shall have the option to withdraw its exercise of the relocation option, and in such event, Lessee's election to terminate shall be deemed null and void.

(c) Lessee shall not be required to conduct such relocation in a manner which would cause any material deterioration or diminution of such quality or which would cause any interruption of such service. Any relocation of Lessee by Lessor shall be made and completed, if reasonably possible, on a weekend so as not to disrupt Lessee's business operations conducted on the Premises.

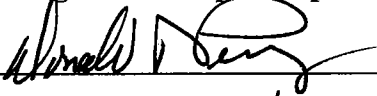
(d) The relocation of Lessee's Telecommunication Facility to the Alternate Premises shall not cause the Fee payable under this Agreement to be increased.

(e) The relocation of Lessee's Telecommunication Facility to the Alternate Premises shall be accomplished by Lessee at Lessee's sole expense.

(f) Upon the relocation of Lessee's Telecommunication Facility from the Premises to the Alternate Premises, all references in this Agreement to the Premises shall be deemed to be references to the Alternate Premises. Following such relocation, Lessee may, at its expense, prepare plans delineating the Alternate Premises, which shall then replace Exhibit "B" of this Agreement.

**"LESSOR"**

**Lakehaven Utility District, Formerly Federal Way  
Water and Sewer District, a municipal corporation,  
successor in interest to Water District No. 124,  
a Washington municipal corporation.**


By: 

Print Name: Donald T. Perry

Its: General Manager

Date: 2/15/06

Approved as to form:



General Counsel

**"LESSEE"**

**Clearwire LLC, a Nevada limited liability company**

By: 

Print Name: John Storch

Its: V. P. of Network Deployment

Date: 12-05-05

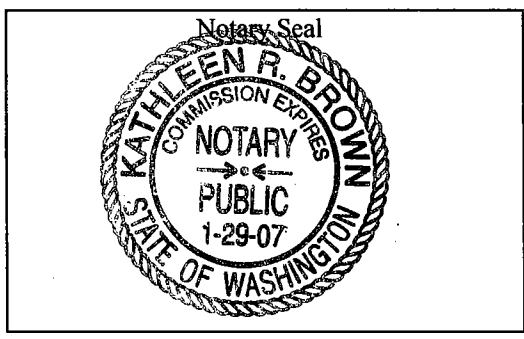


LESSOR ACKNOWLEDGMENT

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that DONALD T. PERRY is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the GENERAL MANAGER OF LAKEHAVEN UTILITY DISTRICT to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 2/15/2006



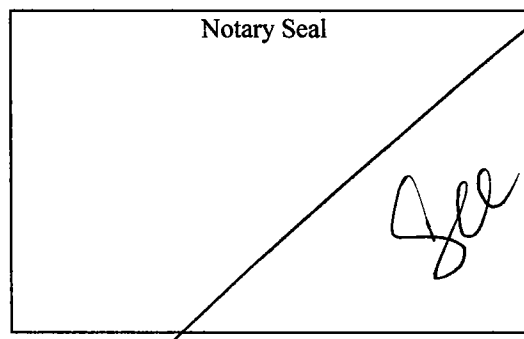
Kathleen R. Brown  
(Signature of Notary)  
KATHLEEN R. BROWN  
(Legibly Print or Stamp Name of Notary)  
Notary Public in and for the State of Washington  
My appointment expires: 1/29/2007

LESSEE ACKNOWLEDGMENT

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as \_\_\_\_\_ of \_\_\_\_\_ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_



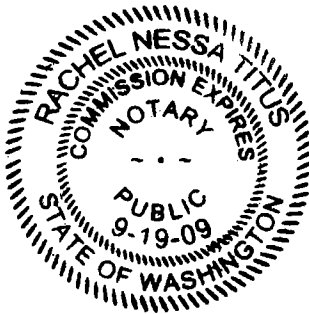
See Attached  
(Signature of Notary)  
(Legibly Print or Stamp Name of Notary)  
Notary Public in and for the State of Washington  
My appointment expires: \_\_\_\_\_

STATE OF WASHINGTON

COUNTY OF KING

On December 5, 2005, before me, Rachel Nessa Titus, Notary Public, personally appeared John A. Storch, the VP of Network Deployment of Clearwire LLC, a Nevada limited liability company personally know to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribe to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



A handwritten signature in black ink that reads "Rachel Nessa Titus".

Print Name: Rachel Nessa Titus  
Notary Public in and for the State of Washington,  
residing in Seattle, WA  
My commission expires: 9/19/09

**EXHIBIT A**

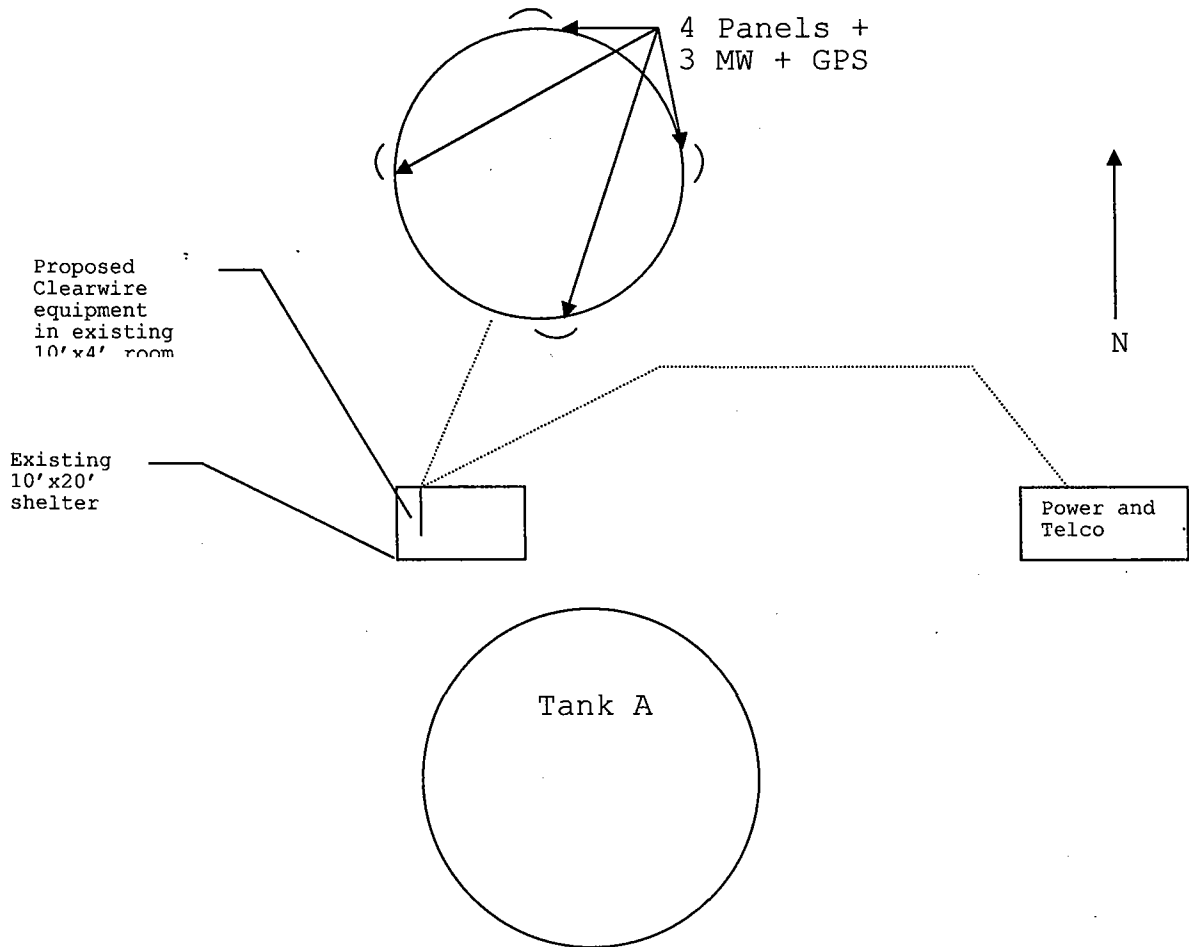
**LEGAL DESCRIPTION OF PROPERTY**

305<sup>th</sup> Street Tank Site: South 302<sup>nd</sup> Street/56<sup>th</sup> Avenue South.  
The East 330 feet of the North half of the South half of the  
Southwest quarter of the Southwest quarter Section 2, Township 21  
North, Range 4 East, Willamette Meridian, Situate in King County  
Washington

Together with the North 162 feet of the East 330 of the South half of  
the South half of the Southwest quarter of the Southwest quarter  
Section 2, Township 21 North, Range 4 East, Willamette Meridian,  
Situate in King County Washington

Tax Parcel No. 022104 9159 and 022104 9227

**EXHIBIT B**  
**SITE PLAN OF LESSEE COMMUNICATION FACILITIES**



**EXHIBIT C**

**OPERATING CONDITIONS**

1. Lessee shall notify the District at least 24-hours in advance to arrange for site access. The District will either provide an escort through locked points of entry or provide an alternate method acceptable to the District at the District's discretion. Representatives of the Lessee arriving on site must have valid company identification badges.

i) **Contact information:**

**The current District contacts are:**

**1<sup>st</sup>. Water Quality Engineer at (253) 946-5410.**

**2<sup>nd</sup>. Water Manager at (253) 946-5401.**

**The current District EMERGENCY (or off-hour) contacts are:**

**1<sup>st</sup>. Water On-call (253) 405-6667**

**2<sup>nd</sup>. \_\_\_\_\_**

**The current Lessee contacts are:**

**1<sup>st</sup>. Matt Royal 425-216-7895 Property Mgr**

**2<sup>nd</sup>. Clearwire LLC 425-216-7600**

**The current Lessee EMERGENCY (or off-hour) contacts are:**

**1<sup>st</sup>. Network Operations Center 1-866-316-7575**

**2<sup>nd</sup>. \_\_\_\_\_**

ii) **Access for construction, routine maintenance and repair and other non-emergency visits shall only be during business hours (currently defined as Monday through Friday, 7:00 a.m. to 4:30 p.m.) with twenty-four (24) hours advance notice to Lakehaven Utility District to arrange for an escort.**

iii) **In the event of an emergency, as described by Lessee, Lessee may access the Site twenty-four (24) hours per day, seven (7) days per week, escorted by Lakehaven Utility District as arranged using the emergency phone number(s). The Lessee shall reimburse the District for all costs associated with opening the facility outside of the business hours and the cost of providing staff after normal business hours.**

iv) **Access to the Site may be by foot or motor vehicle.**

v) **Access to the Site shall be subject to such additional conditions as may be imposed by Lakehaven Utility District from time to time which shall be in effect after twenty (20) days notice to Lessee.**

- vi) **Access to the Site is secondary to emergency power and water system operations and maintenance at the site. In the event of a water system emergency, Lessee's access may be delayed.**
3. **Fencing of facilities/improvements within the fenced portions of District property is acceptable only as authorized by the District.**
4. **Lessee shall not store any hazardous materials on site. This site is within a Wellhead Protection Area. If a substance is deemed non-hazardous and used or stored on site, the Lessee shall inform the District of the type of substance(s) and provide the appropriate Material Safety Data Sheet(s).**

**RECORDING REQUESTED BY, AND  
WHEN RECORDED, RETURN TO:**

Clearwire LLC  
5808 Lake Washington Blvd., Suite 300  
Kirkland, WA 98033  
Attn: Property Manager

**MEMORANDUM OF AGREEMENT**

Grantor: Lakehaven Utility District, formerly Federal Way Water and Sewer District, a municipal corporation, as successor in interest to Water District No. 124, a Washington municipal corporation

Grantee: **Clearwire LLC, a Nevada limited liability company**

Legal Description: Official legal description attached as Exhibit A

Assessor's Tax Parcel ID No.: 022104 9159 and 022104 9227

Site Number & Name: 305th Street Tank

This Memorandum of Agreement is made by and between **Clearwire LLC, a Nevada limited liability company**, whose address is 5808 Lake Washington Blvd NE, Suite 300, Kirkland, WA 98033 (hereinafter referred to as "Lessee"), and Lakehaven Utility District, formerly Federal Way Water and Sewer District, a municipal corporation, as successor in interest to Water District No. 124, a Washington municipal corporation, whose address is PO Box 4249, Federal Way, Washington, 98063-4249 (hereinafter referred to as "Lessor").

**RECITALS**

**WHEREAS**, Lessor and Lessee have executed that certain Communication Site Lease Agreement ("Agreement") dated as of February 15, 2008, covering certain premises ("Premises") situated on certain real property located in the County of King, State of Washington, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference; and

**WHEREAS**, Lessor and Lessee desire to record notice of the Agreement in the county's official records;

**NOW, THEREFORE**, in consideration of the foregoing, Lessor and Lessee hereby declare as follows:

1. **Demise**. Lessor has leased Premises to Lessee (together with access rights), and Lessee has hired the Premises from Lessor, subject to the terms, covenants and conditions contained in the Agreement for the purpose of

installing, operating and maintaining a radio communications facility and other improvements. All of the foregoing are set forth in the Agreement.

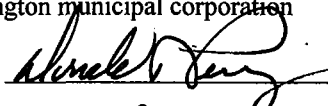
2. **Expiration Date.** The term of the Agreement is scheduled to commence with the commencement of construction by Lessee, and shall expire five (5) years thereafter, subject to Lessee's option to extend the term for four (4) additional terms of five (5) successive years each.

3. **Agreement Controlling.** This Memorandum is solely for the purpose of giving constructive notice of the Agreement. In the event of conflict between the terms of the Agreement and this Memorandum, the terms of the Agreement shall control.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement as of the day and year first above written.

**LESSOR:**

Lakehaven Utility District, formerly Federal Way Water and Sewer District, a municipal corporation, as successor in interest to Water District No. 124, a Washington municipal corporation

By: 

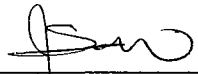
Donald T. Perry (print name)

Its: General Manager

Date: 2/15/06

**LESSEE:**

Clearwire LLC, a Nevada limited liability company

By: 

John Saw (print name)

Its: VP

Date: 2/17/06

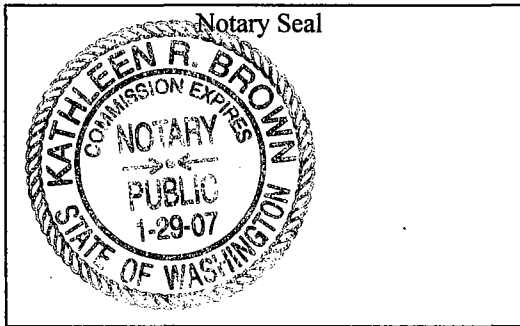


**LESSOR - REPRESENTATIVE CAPACITY:**

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that DONALD T. PERRY is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the GENERAL MANAGER OF LAKEHAVEN UTILITY DISTRICT to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 2/15/2006



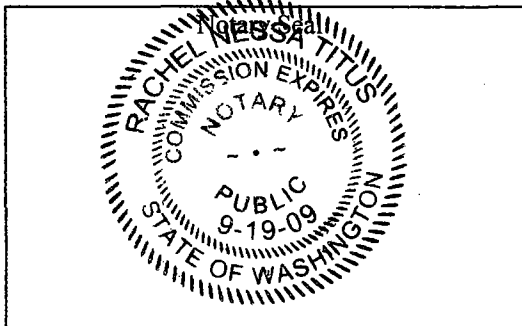
Kathleen R Brown  
(Signature of Notary)  
KATHLEEN R BROWN  
(Legibly Print or Stamp Name of Notary)  
Notary Public in and for the State of Washington  
My appointment expires: 1/29/2007

**CLEARWIRE LLC ACKNOWLEDGMENT:**

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

I certify that I know or have satisfactory evidence that John Sam is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the VP of Clearwire LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 2/17/06



Rachel Nessa Titus  
(Signature of Notary)  
RACHEL NESSA TITUS  
(Legibly Print or Stamp Name of Notary)  
Notary Public in and for the State of Washington  
My appointment expires: 9/19/09

**EXHIBIT A OF MEMORANDUM OF AGREEMENT  
LEGAL DESCRIPTION**

**Site Number: WA876-01**

**Site Name: 305<sup>TH</sup> Street Tank**

Lessor's Property, situated in the County of King, State of Washington, of which the Premises are a part, is legally described as follows:

**Legal Description:**

305<sup>th</sup> Street Tank Site: South 302<sup>nd</sup> Street/56<sup>th</sup> Avenue South.

The East 330 feet of the North half of the South half of the Southwest quarter of the Southwest quarter Section 2, Township 21 North, Range 4 East, Willamette Meridian, Situate in King County Washington

Together with the North 162 feet of the East 330 of the South half of the South half of the Southwest quarter of the Southwest quarter Section 2, Township 21 North, Range 4 East, Willamette Meridian, Situate in King County Washington

Tax Parcel No. 022104 9159 and 022104 9227