

## **TOWER LEASE**

THIS TOWER LEASE ("Lease") is by and between the **Village of Orland Park**, an Illinois home rule municipal corporation ("Landlord") and **ClearWireless, LLC**, a Nevada limited liability company ("Tenant").

### **1. Lease of Premises and Use**

In consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, Landlord hereby leases to Tenant a portion of the real property described in the attached Exhibit A (the "Property"), together with the right to use the tower located thereon ("Tower") on the terms and conditions set forth herein. Landlord agrees to cooperate with Tenant in obtaining, at Tenant's expense, all licenses and permits or authorizations required for Tenant's use of the Premises (as hereinafter defined) from all applicable government and/or regulatory entities.

Subject to the following terms and conditions, Landlord hereby leases to Tenant the use of that portion of the Tower and Property, together with easements for access and utilities, generally described and depicted in the attached Exhibit B (collectively referred to hereinafter as the "Premises"). The Premises, located at 17801 Wolf Road Water Tower, Orland Park, Illinois, comprises approximately 49 square feet. Tenant's location on the Tower shall be at 163 feet above ground level.

**2. Term.** This Agreement shall be effective as of the date of full execution hereof (the "Effective date"). The initial term of the Lease shall be five (5) years commencing on the earlier of the date tenant starts construction of the premises or sixty (60) days following the Effective Date (the "Commencement Date"), and terminating at midnight on the last day of the initial term (the "Initial Term").

3. Permitted Use. The Premises may be used by Tenant only for the transmission and reception of radio communication signals and for the construction, installation, operation, maintenance, repair, removal or replacement of related facilities, tower and base, antennas, microwave dishes, equipment shelters and/or cabinets and related activities.

4. Rent. For the first year (12 months) of the Initial Term of this Lease, Tenant shall pay Landlord, as rent, the sum of THIRTY-SIX THOUSAND AND 00/100 (\$36,000.00) DOLLARS in twelve (12) monthly installments of THREE THOUSAND AND 00/100 (\$3,000.00) DOLLARS per month ("Rent"). For each of the remaining four (4) years of the Initial Term of this Lease, the said Rent shall be increased by three percent (3%) of the Rent paid for the preceding year. Rent shall be payable in advance beginning on the Commencement Date prorated for the remainder of the month in which the Commencement Date falls and thereafter Rent will be payable monthly in advance by the fifth day of each month to the Village of Orland Park at Landlord's address specified in Section 12 below. If this Lease is terminated at a time other than on the last day of a month, Rent shall be prorated as of the date of termination for any reason other than a default by Tenant, and all prepaid Rent shall be immediately refunded to Tenant.

5. Renewal. Tenant shall have the right to extend this Lease for three (3) additional, five-year terms ("Renewal Term"). Each Renewal Term shall be on the same terms and conditions as set forth herein, except that Rent for each year of a Renewal Term shall be increased by three percent (3%) of the Rent paid for the preceding year.

6. Interference. Tenant shall not use the Premises in any way, which interferes with the use of the Premises by Landlord, or lessees or licensees of Landlord, with rights in the Premises prior in time to Tenant's (subject to Tenant's rights under this Lease, including without limitation,

non-interference). Tenant's radio communication activities on the Premises shall not in any way interfere with Landlord's (or that of the Orland Fire Protection District) public services and public safety radio transmissions and communications. Similarly, except for necessary (in Landlord's sole discretion) repairs, maintenance and improvements to be performed by Landlord, Landlord shall not use, nor shall Landlord permit its lessees, licensees, employees, invitees or agents to use, any portion of the Property in any way which interferes with the operations of Tenant. Such interference by either party shall be deemed a material breach by the interfering party, who shall, upon written notice from the other, be responsible for terminating said interference. In the event any such interference does not cease promptly, the parties acknowledge that continuing interference may cause irreparable injury and, therefore, the injured party shall have the right, in addition to any other rights that it may have at law or in equity, to bring a court action to enjoin such interference or to terminate this Lease immediately upon written notice. Any of Landlord's equipment located at the top of the Tower, temporarily moved by Tenant during installation of Tenant's equipment, must be re-installed by Tenant above Tenant's equipment.

#### 7. Improvements; Utilities; Access.

- (a) Upon prior review and written approval of Landlord,
  - (i) Tenant shall have the right, at its expense, to erect and maintain on the Premises improvements, personal property and facilities necessary to operate its communications system, including, without limitation, radio transmitting and receiving antennas, microwave dishes, tower and base, equipment shelters and/or cabinets and related cables and utility lines (collectively the "Antenna Facilities"). Tenant shall have the right to replace or enhance the Antenna Facilities at any time during the term of this Lease. Tenant shall cause all construction to occur lien-free and in compliance with all applicable laws and ordinances. The Antenna Facilities shall remain the exclusive property of Tenant. Tenant shall have the right to remove the Antenna Facilities at any time during and upon termination of this Lease, subject to any of Landlord's lien rights. All

fabrication and penetrations to the Tower should be completed during initial installation to avoid recutting when later improvements are made.

(ii) Tenant, at its expense, may use any and all appropriate means of restricting access to the Antenna Facilities, provided all Village of Orland Park Codes are complied with and the Landlord has given prior approval.

(iii) Any contractors performing work for Tenant on the Premises shall be licensed and bonded and shall apply for and obtain all required building permits.

(b) Tenant shall, at Tenant's expense, keep and maintain the Antenna Facilities now or hereafter located on the Property in commercially reasonable condition and repair during the term of this Lease, normal wear and tear and casualty excepted. Upon termination or expiration of this Lease, the Premises shall be returned to Landlord in substantially the same condition as it was upon commencement of this Lease, reasonable wear and tear excepted. Landlord represents that it has the right and responsibility to repair and maintain the Tower. If the Tower is damaged for any reason, other than a negligent or wrongful act or omission of Tenant or its contractors, so as to render it substantially unusable for Tenant's intended use, Base Rent shall abate for such period until Landlord, at Landlord's expense, restores the Tower to its condition prior to such damage; provided, however, in the event Landlord fails to repair the Tower within thirty (30) days following the date of such damage, Tenant may install a cell-on-wheels ("COW") on the Site (provided the COW complies with all applicable codes and ordinances of the Landlord) until such time as Landlord completes repair of the Tower and Tenant's equipment is reinstalled on the Tower. In the alternative, Tenant shall have the right to terminate this Lease by giving Landlord written notice thereof, provided Tenant is not operating a COW on the Site. Tenant agrees to pay any additional reasonable incremental cost incurred by Landlord for normal maintenance interval painting of the Tower that is caused by the presence of Tenant's Equipment

on the Tower over and above what the estimated cost of painting the Tower would be without Tenant's Equipment.

(c) Tenant shall have the right to install utilities, at such location(s) approved in advance by Landlord, at Tenant's expense, and to improve the present utilities on the Property. Individual utilities routed across the Property must not penetrate radius established by containment curtain perimeter more than once. Landlord agrees to use reasonable efforts in assisting Tenant to acquire necessary utility service. Tenant shall install separate meters for utilities used on the Property.

(d) If deemed by Landlord to be necessary and appropriate, as partial consideration for Rent paid under this Lease, Landlord shall grant Tenant an easement in, under and across the Property for ingress, egress, utilities and access (including access for the purposes described in Section 1) to the Premises adequate to install and maintain utilities, which include, but are not limited to, the installation of power and telephone service cable, and to service the Premises and the Antenna Facilities at all times during the Initial Term of this Lease or any Renewal (collectively, "Easement"). Any Easement provided hereunder shall have the same term as this Lease.

(e) Tenant shall have 24-hours-a-day, 7-days-a-week access to the Premises during the Initial Term of this Lease and any Renewal Term. However, Tenant must obtain a key for entrance from the Landlord's Police Department or Public Works Department during the hours of \_\_\_\_\_ or the Landlord's Police Department all other times. The key should be returned as soon as reasonably possible to the location from which it was obtained. When picking up the key, proper identification to the Public Works Department (708-403-6350) must be received from the Tenant. Upon completion of work or when leaving a site, all doors and

hatches must be secured. If the Premises are accessed after normal business hours for emergency or other purposes, Tenant must notify Landlord's Public Works Department by the next business day, by contacting the Landlord's Police Department's non-emergency telephone number, i.e. (708) 349-4111.

(f) Tenant shall provide 24 hours a day, 7 days a week contact information in the event of any need by the Landlord to communicate regarding the Site. The phone number of the responsible Tenant employee/officer is \_\_\_\_\_.

(g) In addition, Tenant shall comply with the following requirements:

- (i) Screening Requirement. Ground equipment cabinet enclosures shall be screened using a 100% solid opaque fence of either masonry or non-white vinyl fence. The ground equipment enclosure shall be further screened by native landscaping that is low cost, low-maintenance. The Tenant shall be responsible for landscaping maintenance.
- (ii) Tree Mitigation Bank. Where screening by native landscaping cannot be accommodated, the Tenant shall pay TWO THOUSAND FIVE HUNDRED AND NO/100 (\$2,500.00) DOLLARS to the Landlord's Tree Mitigation Bank in lieu of the required landscaping. The funds shall be used by the Landlord to plant or maintain trees in Landlord's parkways, parks, open lands, and other public lands and facilities in the same impact fee districts established by the Landlord as the Premises.
- (iii) Ground Equipment Shelter. Special use permits which may be issued by the Landlord for ground equipment shelters or buildings shall require a masonry building designed similar to existing Landlord-owned utility substations or pump housing facilities. The shelter shall be screened by native landscaping;
- (iv) Multi-Tenancy. The Tenant must provide an assessment for multiple tenants or co-locations and determine if other carriers or providers can fit/co-locate on the Premises following their installation in accordance with Section 6-311 of the Landlord's Land Development Code. If more co-locations can fit, Tenant must build the ground equipment enclosure or shelter to accommodate at least one future additional tenant;
- (v) Maintenance Fee and Site Access. The Tenant must pay one-time site maintenance or impact fee of TWO THOUSAND AND NO/100 (\$2,000.00) DOLLARS for impacts to utilities, roads, towers, screening and other infrastructure and services on public property. Site access to masonry shelters or

ground equipment enclosure shall be controlled by the Landlord's Department having jurisdiction (Building Maintenance or Public Works). No new road access to the Premises shall be allowed. In addition, any new paths or sidewalks for Premises access shall be subject to the Landlord's Department having jurisdiction (Building Maintenance or Public Works);

- (vi) **Cable Installation.** The installation by Tenant of underground coaxial and other cables must be at least five (5') from water mains, sanitary sewers or storm sewer lines onsite;
- (vii) **Structure Locations.** The construction by Tenant of buildings/shelters or cabinet equipment cannot be sited in areas needed for overflow management (water tower "overflow fields" and overflow valves) or site maintenance. Buildings/shelters or cabinet equipment must be appropriately sited outside of the water tower drip line but near acceptable base penetration areas, which are areas along the base perimeter that are clear of internal existing water tower infrastructure;
- (viii) **Safety.** Landlord's Public Works Department must determine that wireless communication cable conditions in each water tower are safe for crews and maintain a comfortable access-way to the bulb and top of the water tower. Cable lines that impede safe crew access shall not be permitted.

8. **Termination.** Except as otherwise provided herein, this Lease may be terminated, (except that Tenant shall remain liable to Landlord for Tenant's obligations under Sections 4, 5, 6, 9, 10, 11 and 16) as follows:

- (a) upon ten (10) days written notice by Landlord if Tenant fails to cure a default for payment of amounts due under this Lease within that ten (10) day period;
- (b) upon thirty (30) days written notice by either party if the other party commits a non-monetary default and fails to cure or commence curing such default within that thirty (30)-day period, or such longer period as may be required to diligently complete a cure commenced within that thirty (30)-day period;
- (c) immediately if Tenant notifies Landlord of unacceptable results of any title report prior to Tenant's installation of the Antenna Facilities on the Premises, or if Tenant is unable to obtain, maintain, or otherwise forfeits or cancels any license (including, without limitation, an

FCC license), permit or Governmental Approval necessary to the installation and/or operation of the Antenna Facilities or Tenant's business;

(d) upon ninety (90) days written notice by Tenant if the Property, Tower or the Antenna Facilities are or become unacceptable under Tenant's design or engineering specifications for its Antenna Facilities or the communications system to which the Antenna Facilities belong. Should Tenant terminate this Lease pursuant to the provisions of this subparagraph 8(d), Tenant shall pay Landlord a termination penalty equal to two (2) months of the then current Rent;

(e) immediately upon written notice by Tenant if the Premises or the Antenna Facilities are destroyed or damaged so as in Tenant's reasonable judgment to substantially and adversely affect the effective use of the Antenna Facilities. In such event, all rights and obligations of the parties shall cease as of the date of the damage or destruction, and Tenant shall be entitled to the reimbursement of any Rent prepaid by Tenant. If Tenant elects to continue this Lease, then there shall be no abatement of Rent while the Premises and/or Antenna Facilities are restored to the condition existing immediately prior to such damage or destruction, unless the Tower is damaged or destroyed through no fault of the Tenant in which case Rent will abate while the Tower is restored. The decision whether or not to restore the Premises, or any part thereof, shall be solely that of Landlord in its discretion.

9. Taxes. Tenant shall pay any and all personal property taxes assessed on, or any portion of such taxes directly attributable to, the Antenna Facilities, and likewise Tenant shall pay any and all real property taxes or other fees and assessments attributable to the Property. In the event that Tenant fails to pay any such personal or real property taxes or other fees and assessments, Landlord shall have the right, but not the obligation, to pay such owed amounts and add such owed amounts paid by the Landlord to the Rent amounts due under this Lease.

**10. Insurance and Subrogation.**

(a) Tenant will provide Commercial General Liability Insurance in an aggregate amount of not less than Two Million and no/100 Dollars (\$2,000,000.00). Tenant may satisfy this requirement by obtaining the appropriate endorsement to any master policy of liability insurance Tenant may maintain. Such policy or policies of insurance shall be with a company or companies acceptable to the Landlord and shall provide primary coverage in the event of any claim or loss. Copies of all such endorsements and policies shall be provided to Landlord for examination and approval.

(b) To the extent permitted by the insurance carriers affected, Landlord and Tenant hereby mutually release each other (and their successors or assigns) from liability and waive all right of recovery against the other for any loss or damage covered by their respective first party property insurance policies for all perils insured thereunder. In the event of such insured loss, neither party's insurance company shall have a subrogated claim against the other.

**11. Hold Harmless.** Tenant agrees to indemnify and hold Landlord, its President, Trustees, officers, employees and agents, harmless from claims (including attorneys' fees) arising from Tenant's (including its agents, employees, contractors, licensees or other lessees) installation, use, maintenance, repair or removal of the Antenna Facilities, or any activities on or around the Property by Tenant, its agents, employees, contractors, licensees or other lessees.

**12. Notices.** All notices, requests; demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by for next-business-day delivery by a nationally recognized overnight carrier to the following addresses:

Copy to Tenant:

Clearwire US LLC  
Attn: Site Leasing  
4400 Carillon Point  
Kirkland, WA 98033  
Telephone: 425-216-7600  
Fax: 425-216-7900  
Email: Siteleasing@clearwire.com

With a copy to:

Clearwire US LLC  
Attention: Legal Department  
4400 Carillon Point  
Kirkland, WA 98033  
Telephone: 425-216-7600  
Fax: 425-216-7900

Copy to Landlord:

Paul Grimes, Village Manager  
Village of Orland Park  
14700 South Ravinia Avenue  
Orland Park, Illinois 60462  
Telephone: 708-403-6159  
Fax: 708-349-4859

With a copy to Village Attorney:

E. Kenneth Friker, Esq.  
Klein, Thorpe & Jenkins, Ltd.  
15010 S. Ravinia Avenue, Suite 10  
Orland Park, Illinois 60462  
Telephone: 708-349-3888  
Fax: 312-984-6444

or such other addresses that any party hereto may designate in writing to the other parties pursuant to the provisions of this Section.

13. Quiet Enjoyment, Title and Authority. Landlord covenants and warrants to Tenant that (i) Landlord has full right, power and authority to execute this Lease; (ii) it has good and unencumbered title to the Property and the Tower free and clear of any liens or mortgages, except those disclosed to Tenant and which will not interfere with Tenant's rights to or use of the Premises; and (iii) execution and performance of this Lease will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreement binding on Landlord. Landlord covenants that at all times during the term of this Lease, Tenant's quiet enjoyment of the Premises or any part thereof shall not be disturbed as long as Tenant is not in default beyond any applicable grace or cure period.

14. Assignment and Subleasing. Tenant shall have the right to assign or otherwise transfer this Lease and the Easement to any person or business entity which is authorized pursuant to an FCC licensed to, operate a wireless communications business, is a parent, subsidiary or affiliate of Tenant, is merged or consolidated with Tenant or purchases more than fifty (50) percent of either an ownership interest in Tenant or the assets of Tenant in the "Metropolitan Trading Area" or "Basic Trading Area" (as those terms are defined by the FCC) in which the Property is located. Tenant may otherwise assign this Lease upon written approval of Landlord, which approval shall not be unreasonably delayed, withheld, conditioned or denied.

Additionally, Tenant may, upon notice to Landlord, mortgage or grant a security interest in this Lease and the Antenna Facilities, and may assign this Lease and the Antenna Facilities to any mortgagees or holders of security interests, including their successors or assigns (collectively "Mortgagees"), provided such Mortgagees agree to be bound by the terms and provisions of this Lease. In such event, Landlord shall execute such consent to leasehold financing as may reasonably be required by Mortgagees. Landlord agrees to notify Tenant and Tenant's Mortgagees simultaneously of any default by Tenant and to give Mortgagees the same right to cure any default as Tenant or to remove any property of Tenant or Mortgagees located on the Premises. All such notices to Mortgagees shall be sent to Mortgagees at the address specified by Tenant. Failure by Landlord to give Mortgagees such notice shall not diminish Landlord's rights against Tenant, but shall preserve all rights of Mortgagees to cure any default and to remove any property of Tenant or Mortgagees located on the Property, subject to Landlord's lien rights therein.

**15. Successors and Assigns.** This Lease and the Easement granted herein shall run with the land, and shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and authorized assigns.

**16. Miscellaneous.**

(a) The substantially prevailing party in any litigation arising hereunder shall be entitled to its reasonable attorneys' fees and court costs, including appeals, if any.

(b) Each party agrees to furnish to the other, within twenty (20) days after request, such truthful estoppel information as the other may reasonably request.

(c) This Lease constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations and other agreements, with respect to the subject matter and property covered by this Lease.

(d) Each party agrees to cooperate with the other in executing any documents (including a Memorandum of Lease in substantially the form attached as Exhibit C) necessary to protect its rights or use of the Premises. The Memorandum of Lease may be recorded in place of this Lease, by either party. Tenant, at its sole expense, may obtain title insurance on its interest in the Premises. Landlord agrees to execute such documents as the title company may require in connection therewith.

(e) This Lease shall be construed in accordance with the laws of the State of Illinois, and in the event of any litigation between the parties hereto, venue shall lie in the Circuit Court of Cook County, Illinois.

(f) If any term of this Lease is found to be void or invalid, such finding shall not affect the remaining terms of this Lease, to the extent that the purpose of this Lease is not frustrated, which shall continue in full force and effect. The parties agree that if any provisions are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable. Any questions of particular interpretation shall not be interpreted against the draftsman, but rather in accordance with the fair meaning thereof.

(g) The persons who have executed this Lease represent and warrant that they are duly authorized to execute this Lease in their individual or representative capacity as indicated.

(h) This Lease may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

(i) All Exhibits referred herein and any Addenda are incorporated herein for all purposes.

The parties understand and acknowledge that Exhibit A (the legal description of the Property) and Exhibit B (the Premises location within the Property), may be attached to this Lease and the Memorandum of Lease, in preliminary form. Accordingly, the parties agree that upon the preparation of final, more complete exhibits, Exhibits A, and/or B, as the case may be, which may have been attached hereto in preliminary form, may be replaced by Tenant with such final, more complete exhibit(s). The terms of all Exhibits are incorporated herein for all purposes.

(j) If Tenant is represented by any broker or any other leasing agent, Tenant is responsible for all commission fee or other payment to such agent, and agrees to indemnify and hold Landlord harmless from all claims by such broker or anyone claiming through such broker.

(k) Tenant agrees that Tenant is and shall remain subject to all applicable provisions of state and federal laws and local ordinances now in force or enacted during the term of this Agreement and all Renewal Terms.

(l) Should Tenant remain in possession after the expiration or other termination of the Lease, such occupancy shall be subject to all the terms, covenants and conditions of this Lease, expressly including the right of termination, but the Rent amount shall be doubled, based on the Rent to be paid by Tenant for the month immediately preceding the Lease expiration or termination.

The effective date of this Lease is the date of execution by the last party to sign ("Effective Date").

**LANDLORD:**

**Village of Orland Park, an Illinois home rule municipal corporation**

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

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

**Title:** \_\_\_\_\_

**Taxpayer I.D.:** \_\_\_\_\_

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

**TENANT:**

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

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

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

**Title:** \_\_\_\_\_

**Taxpayer I.D.:** \_\_\_\_\_

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