

**THIRD AMENDMENT TO
LEASE AGREEMENT**

THIS THIRD AMENDMENT TO LEASE AGREEMENT (the “Third Amendment”) is made effective this ____ day of _____, 2022 (“Effective Date”), by and between CITY OF MERCED, a California Charter Municipal Corporation (hereinafter referred to as “Lessor”) and NCWP/CS MPL 26 - YEAR SITES TOWER HOLDINGS LLC, a Delaware limited liability company, by and through its Attorney In Fact, CCA/TT LLC, a Delaware limited liability company (hereinafter referred to as “Lessee”).

RECITALS

WHEREAS, the former Redevelopment Agency of the City of Merced (“Redevelopment Agency”) and Cellular 2000, a Michigan Partnership, d/b/a Cellular One entered into a Lease Agreement dated November 4, 1996 (the “Original Lease”) whereby the Original Lessee leased certain real property, together with access and utility easements, located in Merced County, California from Lessor (the “Premises”), all located within certain real property owned by the Redevelopment Agency (“Lessor’s Property”); and

WHEREAS, the Redevelopment Agency subsequently transferred the property to the City of Merced and the City of Merced became the Lessor for purposes of the Lease Agreement; and

WHEREAS, the Original Lease was amended by that certain First Amendment to Lease Agreement dated June 17, 2013 (“First Amendment”), and by that certain Second Amendment to Lease Agreement dated January 6, 2020 (“Second Amendment”) (hereinafter the Original Lease and all subsequent amendments are collectively referred to as the “Lease”); and

WHEREAS, NCWP/CS MPL 26 - Year Sites Tower Holdings LLC is currently the Lessee under the Lease as successor in interest to the Original Lessee; and

WHEREAS, the Premises may be used for the purpose of constructing, maintaining and operating a communications facility, including tower structures, equipment shelters, cabinets, meter boards, utilities, antennas, equipment, any related improvements and structures and uses incidental thereto; and

WHEREAS, the Lease had an initial term that commenced on November 1, 1996 and expired on October 31, 2006. The Original Lease provided for a one (1) extension of ten (10) years, which was exercised by Lessee. The First Amendment provides for three (3) extensions of five (5) years each, two (2) of which were exercised by Lessee, followed by one (1) extension of two (2) years. According to the Lease, the final extension expires on October 31, 2033; and

WHEREAS, Lessor and Lessee desire to amend the Lease on the terms and conditions contained herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, Lessor and Lessee agree as follows:

1. Recitals; Defined Terms. The parties acknowledge the accuracy of the foregoing recitals. Any capitalized terms not defined herein shall have the meanings ascribed to them in the Lease.

2. First Additional Lease Area. The existing Premises is hereby expanded in size to include additional space, which consists of a ten (10)' x sixteen (16)' or one hundred sixty (160) square foot parcel of real property adjacent to the existing Premises at a location more particularly described and shown on the Site Plan attached hereto as Exhibit B (the "First Additional Lease Area"). Notwithstanding anything to the contrary in this Third Amendment, Lessee is not relinquishing any rights to any lease area, access easements, and/or utility easements that it possesses prior to the date of this Third Amendment. In the event the location of any of Lessee's or its sublessees' existing improvements, utilities, and/or access routes are not depicted or described on the Site Plan and/or legal descriptions, Lessee's leasehold rights and access and utility easement rights over such areas shall remain in full force and effect and the Premises shall be deemed to include such areas.

3. First Additional Rent. In consideration of the lease of the First Additional Lease Area, Lessee shall pay to Lessor the amount of One Hundred Fifty and 00/100 Dollars (\$150.00) per month ("First Additional Rent"), beginning upon the commencement of installation of improvements within the First Additional Lease Area and continuing thereafter until the earlier of (i) the expiration of the Lease Term; or (ii) the "Return of the First Additional Lease Area" as set forth below. The First Additional Rent shall be due and payable concurrently with and shall escalate upon the same terms and at the same time as the monthly Rent set forth in the Lease, as amended, for so long as such First Additional Rent is payable to Lessor as set forth herein.

4. Right to Return the First Additional Lease Area. Lessee shall have the option, upon thirty (30) days prior written notice to Lessor, in its sole and absolute discretion, to return the First Additional Lease Area to the Lessor and to terminate the lease of the same by removing all improvements from the First Additional Lease Area and returning same to its condition as of the Effective Date, ordinary wear and tear excepted (the "Return of the First Additional Lease Area"). Effective upon removal of all improvements from the First Additional Lease Area, the First Additional Rent shall cease and will no longer be due or payable.

5. Representations, Warranties and Covenants of Lessor. Lessor represents, warrants and covenants to Lessee as follows:

a) Lessor is duly authorized to and has the full power and authority to enter into this Third Amendment and to perform all of Lessor's obligations under the Lease as amended hereby.

b) Lessee is not currently in default under the Lease, and to Lessor's knowledge, no event or condition has occurred or presently exists which, with notice or the passage of time or both, would constitute a default by Lessee under the Lease.

c) Lessor agrees to provide such further assurances as may be requested to carry out and evidence the full intent of the parties under the Lease as amended hereby, and ensure Lessee's continuous and uninterrupted use, possession and quiet enjoyment of the Premises under the Lease as amended hereby.

d) Lessor acknowledges that the Premises, as defined, shall include any portion of Lessor's Property on which communications facilities or other Lessee improvements exist on the date of this Third Amendment.

6. IRS Form W-9. Lessor agrees to provide Lessee with a completed IRS Form W-9, or its equivalent, upon execution of this Third Amendment and at such other times as may be reasonably requested by Lessee. In the event the Lessor's Property is transferred, the succeeding Lessor shall have a duty at the time of such transfer to provide Lessee with a completed IRS Form W-9, or its equivalent, and other related paper work to effect a transfer in the rent to the new Lessor. Lessor's failure to provide the IRS Form W-9 within thirty (30) days after Lessee's request shall be considered a default and Lessee may take any reasonable action necessary to comply with IRS regulations including, but not limited to, withholding applicable taxes from rent payments.

7. Counterparts. This Third Amendment may be executed in separate and multiple counterparts, each of which shall be deemed an original but all of which taken together shall be deemed to constitute one and the same instrument.

8. Remainder of Lease Unaffected. In all other respects, the remainder of the Lease shall remain in full force and effect. Any portion of the Lease that is inconsistent with this Third Amendment is hereby amended to be consistent.

9. Recordation. Lessee, at its cost and expense, shall have the right to record a memorandum of this Third Amendment in the Official Records at any time following the execution of this Third Amendment by all parties hereto. In addition, Lessee shall have the right in its discretion, to record a notice of lease, affidavit or other form to be determined by Lessee without Lessor's signature in form and content substantially similar to the memorandum, to provide record notice of the terms of this Third Amendment.

10. Survey. LICENSEE reserves the right, at its discretion and at its sole cost, to obtain a survey (the "Survey") specifically describing the Property and any access and utility easements associated therewith. LICENSEE shall be permitted to attach the Survey as an exhibit to this Amendment and any related memorandum for recording, which Survey shall update and replace the existing description of the Property, at any time prior to or after closing the complete execution of this Amendment.

Lessor and Lessee have caused this Third Amendment to be duly executed on the day and year first written above. Lessor affirms that this Third Amendment was approved at a duly noticed public meeting held on _____ 2022.


CITY OF MERCED
A California Charter Municipal
Corporation

BY: _____
City Manager

ATTEST:
STEPHANIE R. DIETZ, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY:  _____
City Attorney Date 6/6/2022

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

[Lessee Execution Page Follows]

This Third Amendment is executed by Lessee as of the date first written above.

LESSEE:

NCWPCCS MPL 26 - YEAR SITES TOWER
HOLDINGS LLC, a Delaware limited
liability company

By: CCATT LLC, a Delaware limited
liability company
Its: Attorney In Fact

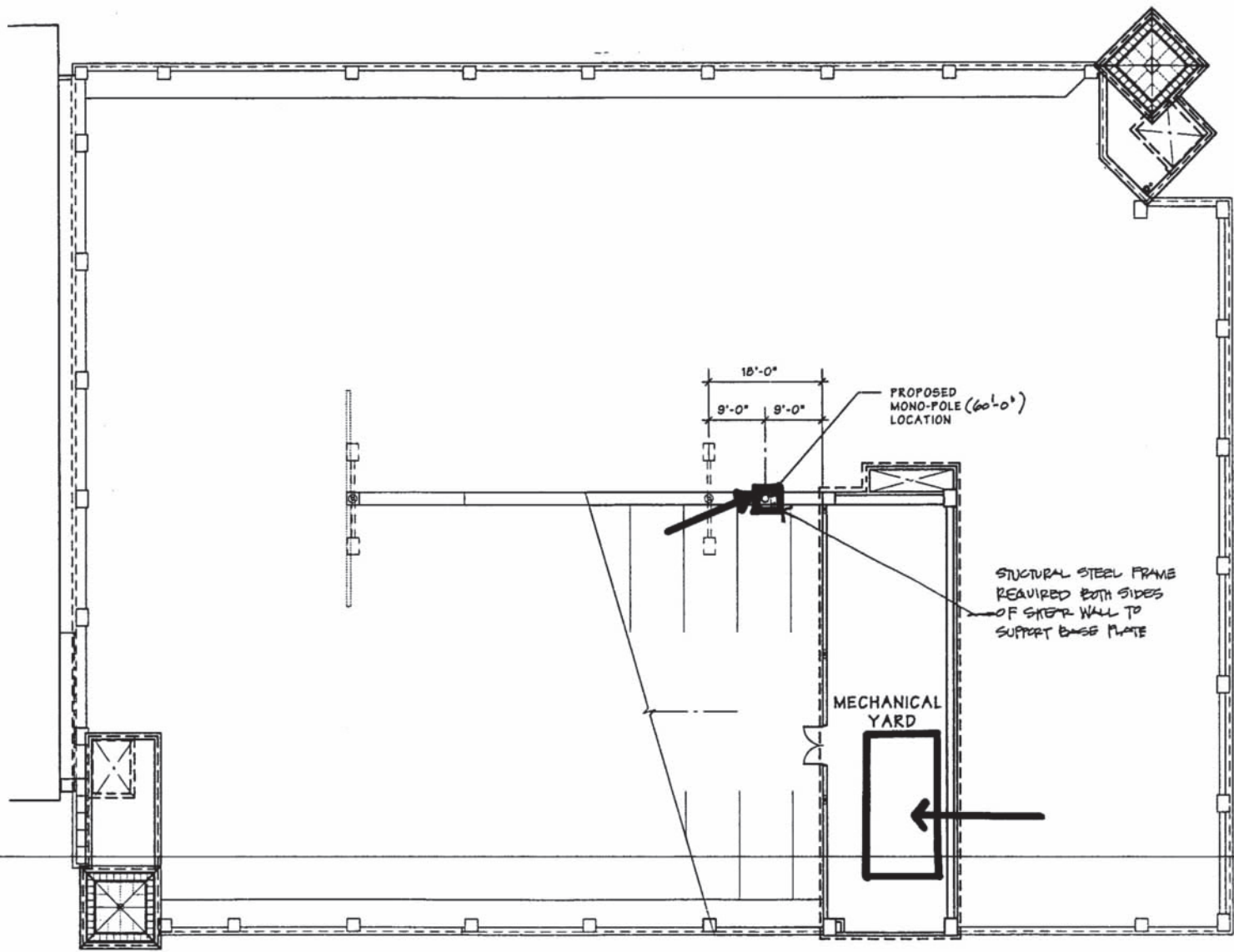
By: _____

Print Name: _____

Title: _____

**Exhibit B
(Site Plan)**

Site Name: Parcade
Business Unit #: 845857



use beams holding chain links

EXISTING ROOF PLAN

SCALE: 1/16" = 1'-0"

MONO-POLE FOR
CELLULAR ONE
 OLD TOWN CENTER PARCADE
 18TH AND M STREETS
 MERCED CALIFORNIA

**DuPertuis
 Scott**



ARCHITECTS
 HENRY DUPERTUIS
 CRAIG SCOTT
 JULIA FIRETINE

635 West 19th Street
 Merced, CA 95340
 TEL (209) 722-8848
 FAX (209) 722-8348

DATE: 27 AUG 1996
 DRAWN: LAS
 SCALE: 1/16"=1'-0"
 JOB NO: 9627-450

EXISTING
 ROOF PLAN

SHEET NO:
1

EXHIBIT A