

ORDINANCE NO. 33

Series 2020

AN ORDINANCE APPROVING A LEASE WITH NEW CINGULAR WIRELESS PCS, LLC, A DELAWARE LIMITED LIABILITY COMPANY
(Town of Breckenridge Welcome Center; 203 South Main Street)

WHEREAS, the Town of Breckenridge owns the real property commonly known as "Breckenridge Welcome Center," located at 203 South Main Street in Breckenridge, Colorado; and

WHEREAS, New Cingular Wireless PCS, LLC, a Delaware limited liability company, has proposed to lease a portion of the roof of the Town of Breckenridge Welcome Center for use as a location of a small cell wireless facility; and

WHEREAS, a proposed Lease between the Town and New Cingular Wireless PCS, LLC, a Delaware limited liability company, has been prepared, a copy of which is marked **Exhibit "A"**, attached hereto and incorporated herein by reference; and

WHEREAS, the proposed Lease has been reviewed by the Town Attorney and the Town Council; and

WHEREAS, Section 15.4 of the Breckenridge Town Charter provides:

The council may lease, for such time as council shall determine, any real or personal property to or from any person, firm, corporation, public and private, governmental or otherwise.

and;

WHEREAS, Section 1-11-4 of the Breckenridge Town Code requires that any real estate lease entered into by the Town that exceeds one year in length must be approved by ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO:

Section 1. The proposed Lease between the Town and New Cingular Wireless PCS, LLC, a Delaware limited liability company, copy of which is marked **Exhibit "A"**, attached hereto and incorporated herein by reference, is approved, and the Town Manager is authorized, empowered, and directed to execute such Lease for and on behalf of the Town of Breckenridge.

Section 2. The Town Council finds, determines, and declares that it has the power to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.

Section 3. This ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this 25th day of August, 2020.

This ordinance was published in full on the Town of Breckenridge website on August 26, August 27, August 28, August 29 and August 30, 2020.

A public hearing on this ordinance was held on September 8, 2020.

READ, ADOPTED ON SECOND READING AND ORDERED PUBLISHED IN FULL ON THE TOWN'S WEBSITE this 8th day of September, 2020. A copy of this Ordinance is available for inspection in the office of the Town Clerk.

ATTEST:

TOWN OF BRECKENRIDGE




Helen Cospolich, CMC, Town Clerk



Eric S. Mamula, Mayor

APPROVED IN FORM


Town Attorney

9/8/20
Date

This Ordinance was published on the Town of Breckenridge website on September 10, September 11, September 12, September 13 and September 14, 2020. This ordinance shall become effective on October 14, 2020.

**SMALL CELL WIRELESS COMMUNICATIONS FACILITIES
SITE LEASE**

THIS SMALL CELL WIRELESS COMMUNICATIONS FACILITIES SITE LEASE (“**Lease**”), dated as of the latter of the signature dates below (the “**Effective Date**”), is entered into by the TOWN OF BRECKENRIDGE, COLORADO (“**Landlord**”), a Colorado home rule municipality, and NEW CINGULAR WIRELESS PCS, LLC, a Delaware limited liability company (“**Tenant**”) with its principal offices located at 1025 Lenox Park Blvd. NE, 3rd Floor, Atlanta, GA 30319. Landlord and Tenant are sometimes referred to individually in this Lease as a “**Party**,” or collectively as the “**Parties**.”

BACKGROUND

Landlord is the owner of land located at 203 South Main Street, Breckenridge, Colorado 80424 (the “**Property**”), as further described on **Exhibit A**. The Town of Breckenridge “Welcome Center” (“**Town Facility**”) is located on the Property. Tenant is a wireless communications provider and is permitted, licensed, or otherwise authorized by the applicable federal or state governmental authority to operate in some areas of the Town of Breckenridge. Landlord desires to permit use by Tenant and the Tenant desires to use a portion of the roof of the Town Facility as described below in order to enable Tenant to erect, operate, and maintain certain small cell wireless facilities of Tenant in connection with its wireless communications business.

1. LEASE OF LEASED PREMISES.

Landlord leases to Tenant approximately twenty (20) square feet of the rooftop area of the Town Facility for the installation of its small cell wireless facilities as further described on **Exhibit B** (collectively, the “**Leased Premises**”). For the purposes of this Lease, small cell wireless facilities (“**Small Cell Wireless Facilities**”) are defined as wireless communications facilities that meet both of the following qualifications: (1) a wireless communication facility where each antenna is located inside an enclosure of no more than three cubic feet in volume; and (2) primary equipment enclosures are not larger than seventeen cubic feet in volume. The following associated equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, ground-based enclosure, back-up power systems, grounding equipment, power transfer switch and cut-off switch. All associated equipment, even if located outside of the primary equipment enclosure, shall be camouflaged as required by the Development Permit issued by the Town and included within the definition of Small Cell Wireless Facilities.

2. PERMITTED USE.

(a) The Leased Premises may be used by Tenant only for the transmission and reception of communications signals and the installation, construction, maintenance, replacement, repair, upgrade, use, and operation of Small Cell Wireless Facilities. Tenant has the right to install and operate transmission cables from any equipment shelter or cabinet to the

antennas, electric lines from the main feed to the equipment shelter or cabinet, and communication lines from the main entry point to the equipment shelter or cabinet in the locations depicted on Exhibit B-1. Tenant agrees to comply with all applicable governmental laws, rules, statutes and regulations, relating to its use of the Small Cell Wireless Facilities on the Property. Tenant must provide Landlord-approved walk pads and safety rails to all Tenant Small Cell Wireless Facilities located on the rooftop. If a penetration of the roof or parapet of the Town Facility occurs in connection with the installation or maintenance of Tenant's Small Cell Wireless Facilities, such penetration shall be repaired at Tenant's sole cost by a qualified roofing contractor, and such roofing contractor shall warrant its work for a period of at least one (1) year. Without limiting the preceding sentence, Tenant shall be responsible for the cost of any repairs for any damage caused to the Town Facility or any other part of the Property to the extent caused by Tenant during installation, use, maintenance, and removal of Tenant's Small Cell Wireless Facilities; provided, however, in no event shall Tenant be responsible for ordinary wear and tear, damages due to the age or pre-existing condition of the roof of the Town Facility, or any other damage not due directly or solely as a result of Tenant's use, maintenance, or removal.

(b) Prior to any alteration or modification to the Small Cell Wireless Facilities (excluding routine maintenance, repairs, the like-kind replacement of the Small Cell Wireless Facilities, non-substantive modifications, or any modifications to the interior of the equipment cabinet or items housed therein), Tenant shall submit copies of the site plan, floor plans, sections, elevations, structural plans, and specifications to Landlord for prior approval. Within thirty (30) days after submittal, Landlord shall give written approval, which approval shall not be unreasonably withheld, delayed, or conditioned, or provide Tenant with its requirements for changes upon completion of the development permit application review and approval process.

(c) The Leased Premises are a smoke-free environment. Tenant shall not permit any smoking, canvassing, soliciting or peddling on the Leased Premises. Tenant shall not permit dangerous activities on the Leased Premises.

3. TERM.

(a) The initial Term of this Lease shall be ten (10) years commencing upon the Effective Date.

(b) This Lease will automatically renew for one (1) additional five (5) year term (the "**Extension Term**") upon the same terms and conditions of this Lease unless the Tenant notifies Landlord in writing of Tenant's intention not to renew this Lease at least sixty (60) days prior to the expiration of the existing Term or any subsequent Extension Term.

(c) The Initial Term and any Extension Terms are collectively referred to in this Lease as the "**Term.**"

4. RENT.

(a) Tenant shall pay to Landlord without demand an annual rental in the amount of One Thousand Sixty Five and 00/100 (\$1,065.00) ("**Rent**"), at the address set forth below. The

first payment of Rent shall be prorated to the end of the current calendar year, payable to Landlord within ninety (90) days after execution of this Lease. Thereafter, annual Rent payments are due on or before the first (1st) day of January in each subsequent year. Rent shall be payable to Landlord at Town of Breckenridge, P.O. Box 168, Breckenridge, Colorado, Attention: Finance Director.

(b) Tenant shall pay interest to Landlord on any Rent that is thirty (30) days or more past due at the rate of 10% per annum from the date due until the date such Rent is fully paid.

(C) The Rent shall increase one percent (1%) annually beginning on January 1 of the second full calendar year after the Effective Date. For avoidance of doubt, the first increase in the Rent shall occur on January 1, 2022, and on the same date of each succeeding year during the Term of this Lease.

5. APPROVALS.

(a) Landlord agrees that Tenant's ability to use the Leased Premises is contingent upon the suitability of the Leased Premises for Tenant's permitted use and Tenant's ability to obtain and maintain at its sole cost all licenses, permits, approvals, or other permission required of or deemed necessary or appropriate at Tenant's sole discretion for its use of the Leased Premises for their intended purposes, and include, without limitation, applications for zoning/land use approval and construction permits (collectively, the "**Government Approvals**"). Landlord authorizes Tenant to prepare, execute, and file any required applications to obtain Government Approvals for Tenant's permitted use under this Lease and further agrees to cooperate with Tenant, at no cost to Landlord, in making such applications for and with obtaining and maintaining the Government Approvals required for the provision of communication services.

(b) Tenant 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 Tenant's choice, and Tenant shall be responsible for any costs or fees incurred in connection therewith. In the event Tenant determines, in its reasonable discretion, due to the title report results or survey results, that the condition of the Leased Premises will not permit the use granted under this Lease, Tenant will have the right to terminate this Lease upon thirty (30) days' written notice to Landlord.

6. TERMINATION. This Lease may be terminated as follows:

(a) as provided in Sections 5(b), 11(c), 18(b), 19, 23(q), and 23(r).

(b) by either Party upon thirty (30) days' prior written notice if the other Party remains in default under Section 15 after the applicable cure periods;

(c) by Tenant upon thirty (30) days' prior written notice to Landlord if Tenant is unable to obtain, or maintain, any required Government Approval(s) necessary for the construction or operation of the Small Cell Wireless Facilities as now and hereafter intended by

Tenant, or if Tenant determines in its reasonable discretion that the cost of obtaining or retaining the same is commercially unreasonable;

(d) by Tenant upon sixty (60) days' prior written notice to Landlord for any reason;
or

(e) by Landlord upon 365 days' notice if any government body, other than Landlord, passes an ordinance, law, rule, or regulation that would interfere or render impossible performance of this Lease and this Lease cannot be amended to address or resolve the issue presented by the ordinance, law, rule, or regulation.

Upon lawful termination of this Lease under this Section 6 Tenant shall have ninety (90) days after the effective date of such termination to remove its Small Cell Wireless Facilities and appurtenances from and to surrender the Leased Premises and all interests to the Landlord.

7. INSURANCE.

(a) During the Term of this Lease, 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:

(i) Worker's compensation insurance meeting applicable statutory requirements and employer's liability insurance with limits of One Hundred Thousand Dollars (\$100,000.00) for each accident, One Hundred Thousand Dollars (\$100,000.00) each disease policy limit, One Hundred Thousand Dollars (\$100,000.00) each disease each employee.

(ii) Commercial general liability insurance per ISO form CG 00 01 or equivalent with limits of Five Million Dollars (\$5,000,000.00) per occurrence and in the aggregate as the combined single limit for each occurrence of bodily injury, personal injury, and property damage. The policy shall provide contractual liability coverage, 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.

(iii) Automobile liability insurance covering all owned, hired, and non-owned vehicles in use by Tenant and its employees and agents, with bodily injury and property damage coverage to comply with the provisions of state law with minimum limits of One Million Five Hundred Thousand Dollars (\$1,500,000.00) as the combined single limit for each accident for bodily injury and property damage.

(iv) At the start of and during the period of any construction, builders all-risk insurance, together with an installation floater or equivalent property coverage covering cables, materials, machinery, and supplies of any nature whatsoever which are to be used in or incidental to the installation of the Small Cell Wireless Facilities. Upon completion of the installation of the Small Cell Wireless Facilities, Tenant shall substitute for the

foregoing insurance policies of fire, extended coverage, and vandalism and malicious mischief insurance on the Small Cell Wireless Facilities. The amount of insurance at all times shall be representative of the insurable values installed or constructed. Tenant will self-insure these risks under the same terms as required in this Agreement.

(b) All policies other than those for worker's compensation shall be written on an occurrence and not on a claims made basis.

(c) 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 those stated.

(d) All policies, except for worker's compensation policies, shall include Landlord and its officers and employees as additional insureds (herein referred to as the "**Additional Insureds**"). Each policy shall be endorsed to include Additional Insureds hereunder with respect to the operations of the named insured as respects this Agreement.

(e) Certificates of insurance for each insurance policy required to be obtained by Tenant in compliance with this Section 7 shall be filed and maintained with Landlord annually during the Term of the Lease. Tenant shall immediately advise Landlord of any claim or litigation that may result in liability to Landlord.

Tenant shall provide at least thirty (30) days prior written notice to the Town Manager of cancellation or nonrenewal of any required coverage that is not replaced. Such notice shall be addressed to the Town of Breckenridge at P.O. Box 168, Breckenridge, Colorado 80424."

(f) All insurance required by this Section 7 shall be provided under valid and enforceable policies, insured by insurers eligible to do business by the State of Colorado or surplus line carriers on the State of Colorado Insurance Commissioner's approved list of companies eligible to do business in the State of Colorado. All insurance carriers and surplus line carriers shall be rated A- or better by A.M. Best Company.

(g) Tenant agrees to indemnify and hold harmless Landlord from and against the payment of any self-insured retention and from the payment of any premium on any insurance policy required to be furnished by this Lease.

(h) Tenant shall require that each of its contractors and their subcontractors who perform work on the Leased Premises and/or Town Facility carry, in full force and effect, workers' compensation, commercial general liability and automobile liability insurance coverages of the type which Tenant is required to obtain under the terms of this paragraph with appropriate and prudent insurance coverage and limits in accordance with the work to be performed and in line with industry custom and practice.

(i) Once during each Renewal Term, Landlord may review the insurance coverages to be carried by Tenant. If Landlord reasonably determines that higher limits of coverage are necessary to protect the interests of Landlord or the Additional Insureds, Tenant shall provided at

least sixty (60) days prior written notice and shall obtain the additional limits of insurance, at its sole cost and expense.

8. INTERFERENCE.

(a) Throughout the Term of this Lease if there are other radio frequency user(s) on the Property, Tenant may submit a written request Landlord to provide Tenant with a list of all existing radio frequency user(s) on the Property to allow Tenant to evaluate the potential for interference. Upon receipt of such written request, the Landlord (to the best of its abilities) will provide such information to Tenant. Tenant warrants that its use of the Leased Premises will not interfere with existing radio frequency user(s) on the Property so disclosed by Landlord, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations. Tenant further agrees that it will cooperate with Landlord and with any other radio frequency user(s) Landlord permits to be on the Property by sharing the requisite information to determine what potential interference issues may exist and to take all reasonable steps necessary to avoid such interference.

(b) During the Term of this Lease Landlord will not grant a lease, license, or any other right to any third party for use of the Property if such use may in any way adversely affect or interfere with the Small Cell Wireless Facilities, the operations of Tenant, or the rights of Tenant under this Lease.

(c) The Small Cell Wireless Facilities shall be of the type and frequency which will not cause measurable interference, as defined by the Federal Communications Commission, to any currently leased and operating communications equipment of Town, other existing entities on the Property, or adjacent landowners. If the Small Cell Wireless Facilities causes such interference, Tenant shall promptly take all reasonable steps necessary to correct and eliminate the interference.

(d) Prior to commencing operations of its Small Cell Wireless Facilities pursuant to this Lease, Tenant shall provide written assurance, in a format reasonable and customarily accepted by the federal government, ensuring that the Small Cell Wireless Facilities comply with all federal requirements for RF emissions, and that the Small Cell Wireless Facilities will not cause measurable interference with the equipment located on the Property and/or adjacent property.

(e) Tenant understands that no use of the Leased Premises and/or Property pursuant to this Lease will be permitted which exceeds federal RF emissions standards within and at the boundaries of the Leased Premises and/or Property. If the cumulative RF emissions levels ever exceed federal standards, all users of the Leased Premises and/or Property that are not public sector entities, including Tenant, will be required to modify operations on a reasonably comparable level, in order to bring the overall RF emissions into compliance.

(f) Notwithstanding any other provision of this Lease to the contrary, Tenant's activities shall not interfere with the peaceful enjoyment of Landlord's use and operation of the Leased Premises, or endanger the health or safety of Landlord's employees and/or tenants,

lessees or licensees, or the general public users of the Town of Breckenridge Welcome Center located on the Property.

9. INDEMNIFICATION; DISCLAIMER; ALLOCATION OF RISK

(a) Tenant will indemnify and defend Landlord, its officers, employees, insurers, and self-insurance pool from all liability, claims, and demands, on account of injury, loss, or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, arising out of or in any manner connected with this Lease or Tenant's use or possession of the Leased Premises pursuant to this Lease, except to the extent that such liability, claim, or demand arises through the negligence or intentional wrongful act of the Landlord, its officers, employees, or agents, or Landlord's breach of this Lease. If indemnification is required under this Section, Tenant will investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims, or demands at its expense, and bear all other costs and expenses related thereto, including court costs and attorney fees.

(b) **IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS, REVENUE OR SAVINGS, BUSINESS INTERRUPTION, OR ANY SIMILAR CLAIM ARISING FROM EITHER PARTY'S BREACH OF THIS LEASE, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF AN ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.**

(c) As a material part of the consideration to be received by Landlord under this Lease, Tenant assumes all risk of damage to property or injury to persons in or upon the Leased Premises from any cause other than Landlord's negligence or intentional act.

10. WARRANTIES.

Tenant and Landlord 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 Lease.

11. HAZARDOUS SUBSTANCES.

(a) Tenant represents and warrants that its use of the Leased Premises and the Town Facility as authorized herein will not generate any Hazardous Substance, and subject to subsection (d) below, it will not store or dispose on the Leased Premises and/or Town Facility nor transport to or over the Leased Premises and/or Town Facility, any Hazardous Substance. Tenant further represents and warrants that its installation and maintenance of its Small Cell Wireless Facilities will not involve the bringing of any asbestos containing material onto the Property. Tenant further agrees to hold Landlord harmless from and indemnify Landlord against any release of any such Hazardous Substance and any damage, loss, or expense or liability resulting from such release including all attorneys' fees, costs and penalties incurred as a result thereof except any release caused by the negligence or willful misconduct of Landlord, its employees or agents. Landlord shall be responsible for any release of a Hazardous Substance

caused by Landlord, including any damage, loss, or expense or liability resulting from such release. “**Hazardous Substance**” shall be interpreted broadly to mean any substance or material defined or designated, or other similar term by any federal, state or local environmental law, rule, or regulation presently in effect or promulgated in the future, as such laws, rules, and regulations may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease.

(b) The indemnifications of this Section 11 specifically include reasonable costs, expenses and fees incurred in connection with any investigation of conditions of the Property, or any clean-up, remediation, removal or restoration work required by any governmental authority.

(c) In the event Tenant becomes aware of any Hazardous Substance on the Property, or any environmental or industrial hygiene condition or matter relating to the Property that, in Tenant’s reasonable determination, renders the condition of the Leased Premises unsuitable for Tenant’s use, or if the leasing or continued leasing of the Leased Premises would expose Tenant to undue risks of government action, intervention, or third-party liability, Tenant will have the right, in addition to any other rights it may have at law or in equity, to terminate the Lease upon notice to Landlord.

(d) Notwithstanding anything to the contrary herein, Tenant shall have the right to store and use standard quantities of batteries, diesel fuel for backup generators, and any other substances required for the operation of Tenant’s Small Cell Wireless Facilities so long as it does so in full compliance with all applicable laws.

12. ACCESS.

(a) At all times throughout the Term of this Lease, and at no additional charge to Tenant, Tenant and its employees, agents, and contractors, will have reasonable access, including emergency access, twenty-four (24) hour per day, seven (7) day per week pedestrian and vehicular access to and over the Property to the Leased Premises, for the installation, maintenance and operation of the Small Cell Wireless Facilities and any utilities serving the Leased Premises. All work to the maximum extent possible, however, shall be performed by Tenant on a non-holiday week day from 7:00 am to 10:00 pm. Tenant shall immediately call Landlord at (970)453-3386 to report any emergency. If access during an emergency necessitates, in the sole discretion of the Landlord, a need for Landlord’s personnel to access the site to effectuate emergency repairs, Tenant shall be responsible for all costs incurred by the Landlord to facilitate such access. If Landlord makes any such emergency access, Landlord will not be permitted to tamper with any of Tenant’s Facilities, and shall indemnify Tenant from and against any claims for personal injury or property damage that may result out of Landlord’s access. Additionally, upon Landlord’s request, Tenant shall provide Landlord with entry logs with information describing all vendor, contractor, and/or Tenant technician activity on the leased premises of the Town Facility. Entry logs shall include at a minimum, the date and time the technician arrived, the name of technician performing the work, a description of work performed, and the time the technician left the Leased Premises. Landlord grants to Tenant a license for such access and Landlord agrees to provide to Tenant such codes, keys, and other

instruments necessary for such access at no additional cost to Tenant. In the event any public utility is unable to use the access provided to Tenant then the Landlord agrees to work with Tenant to identify and grant additional access in a location acceptable to both Parties either to Tenant or to the public utility, for the benefit of Tenant, at no cost to Tenant.

(b) Tenant acknowledges that it is familiar with the condition of the Leased Premises. The Leased Premises are leased by Landlord to Tenant, and accepted by Tenant, in "AS IS" condition. Tenant's act of taking possession of the Leased Premises pursuant to this Lease is conclusive evidence that Tenant accepted the Leased Premises in then "AS IS" condition, and that the Leased Premises were in satisfactory condition and working order at the time of commencement of Tenant's possession.

(c) Landlord does not represent that the Property, the Town Facility or the Leased Premises are safe from the theft of, or injury or damage to Tenant or Tenant's property. Landlord does not represent that locks or security services or equipment, if any, are provided to protect Tenant's safety, property, or the Leased Premises. Tenant is solely responsible for the security of the Leased Premises and its personal property on the Leased Premises. Tenant shall make good faith efforts to monitor and control the conduct of its staff and agents while on the Leased Premises.

13. REMOVAL/RESTORATION. All portions of the Small Cell Wireless Facilities brought onto the Leased Premises by Tenant will be and will remain Tenant's personal property and, at Tenant's option, may be removed by Tenant at any time during the Term. Landlord covenants and agrees that no part of the Small Cell Wireless Facilities constructed, erected, or placed on the Leased Premises by Tenant will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of the Landlord that all improvements of every kind and nature constructed, erected or placed by Tenant on the Leased Premises will be and remain the property of the Tenant and may be removed by Tenant at any time during the Term. Within ninety (90) days of the expiration or termination of this Lease for any reason, Tenant will remove all of Tenant's improvements and Tenant will restore the Leased Premises to its condition at the commencement of the Lease, reasonable wear and tear and loss by casualty or other causes beyond Tenant's control excepted. Any property not removed within ninety (90) days shall be deemed abandoned and may be disposed of by Landlord in its sole and absolute discretion and without any liability to Tenant.

14. MAINTENANCE/UTILITIES.

(a) Tenant will, at its sole expense, keep and maintain the Leased Premises in as good and sanitary a condition and state of repair as existed at the commencement of the Term.

(b) Landlord will, at its sole expense, maintain and repair the Property and access thereto, in good and tenantable condition, subject to reasonable wear and tear and damage from the elements.

(c) Notwithstanding any other provision to the contrary, Landlord may, at Landlord's sole discretion, inspect and protect the Property and make alterations, renovations, restorations, repairs, and or improvements to the Property.

(d) Tenant's installation of the Small Cell Wireless Facilities shall not interfere with Landlord's maintenance and repairs to Landlord's Town Facility components near or adjacent to Tenant's installation.

(e) Except for emergencies and where practical, Landlord will notify Tenant at least ninety (90) days in advance of the date when the roof of the Town Facility is scheduled for maintenance or repairs. If deemed necessary, prior to a maintenance or repair date, Tenant, at its sole expense, must relocate Tenant's Facilities on the Leased Premises to another location on the Property at the City's cost, provided Tenant's use of the Property is not interrupted or diminished during the relocation. Once the maintenance is finished, the Tenant, at its sole expense, shall then replace the Small Cell Wireless Facilities at the same or comparable location.

(f) Because Xcel Energy will only permit one (1) electric meter to be installed on the Town Facility, the Landlord shall allow Tenant to connect Tenant's equipment to the electricity at the Town Facility; provided, however, that Landlord must approve how the Tenant connects to the electricity at the Town Facility. Within thirty (30) days of the Effective Date of this Lease, Tenant shall, in good faith, estimate the reasonably anticipated power usage for its Small Cell Wireless Facilities at the Town Facility, and provide such estimate to the Landlord. Such estimate shall be used by Landlord to calculate Tenant's fair and equitable share of the total power usage for the Town Facility. Such calculation may be updated by Landlord from time to time throughout the Term of this Lease to more accurately reflect Tenant's actual use of the electricity at the Town Facility. Annually Landlord shall invoice Tenant for Tenant's fair and equitable share of the total power usage for the Town Facility as determined pursuant to this subsection 14(f). Tenant shall pay Landlord's invoice within sixty (60) days of receipt; provided, however, that if the Tenant disputes any portion of the invoice the Tenant shall pay the undisputed portion of the invoice within such sixty (60) day period, and the Parties shall then promptly meet and confer for the purposes of attempting to resolve Tenant's concerns with the invoice. Tenant's share of the electricity at the Town Facility shall be deemed to be additional rent.

15. DEFAULT AND RIGHT TO CURE.

(a) The following will be deemed a default by Tenant and a breach of this Lease: (i) non-payment of Rent if such Rent remains unpaid for more than thirty (30) days after receipt of written notice from Landlord of such failure to pay; (ii) Tenant's failure to perform any other term or condition under this Lease within forty-five (45) days after receipt of written notice from Landlord specifying the failure; or (iii) if Tenant is adjudicated as bankrupt, makes any assignment for the benefit of creditors, or if Tenant becomes insolvent. No such failure, however, except for payment of Rent, will be deemed to exist if Tenant has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. If Tenant remains in default beyond any applicable cure period, Landlord

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 a default by Landlord and a breach of this Lease: (i) Landlord's failure to provide access to Leased Premises within twenty-four (24) hours after written notice of such default; or (ii) Landlord's failure to perform any term, condition, or breach of any warranty or covenant under this Lease within forty-five (45) days after receipt of written notice from Tenant specifying the failure. No such failure, however, will be deemed to exist if Landlord has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. If Landlord remains in default beyond any applicable cure period, Tenant will have the right to exercise any and all rights available to it under law and equity, including the right to cure Landlord's default and to deduct the costs of such cure from any monies due to Landlord by Tenant.

(c) Neither Party shall be liable for its inability to perform its obligations under this Lease if caused by conditions beyond its reasonable control, including, but not limited to, strikes, boycotts, labor dispute, embargoes, shortages of materials, acts of God, acts of the public enemy, terrorism, pandemics, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage, or any other circumstance for which such Party is not responsible or which is not in its power to control. If either Party believes that a reason beyond its control has prevented or delayed its compliance with the terms of this Lease, that Party shall provide documentation as reasonably required by the other Party to substantiate the claim. If the Party has not yet cured the deficiency, it shall also provide the other Party with its proposed plan for remediation, including the timing for such cure. Notwithstanding anything contained herein to the contrary, economic hardship or unavailability of funds shall not constitute a valid reason for invoking this Section 15(c).

16. ASSIGNMENT.

(a) Tenant may not assign, sublet, or otherwise transfer any portion of its interest in this Lease, or to the Small Cell Wireless Facilities, by operation of law or otherwise, without the prior written consent of Landlord, which may be withheld in Landlord's sole and absolute discretion. A violation of this Section 16 is null and void and unenforceable against Landlord. Notwithstanding the immediately preceding sentences, Tenant may assign its interest under this Lease and to the Small Cell Wireless Facilities without Landlord's consent but upon at least thirty (30) days' prior written notice to Landlord to: (a) one or more entities which shall control, be controlled by, or be under common control with, Tenant, or (b) to any entity which acquires all or substantially all of Tenant's stock or assets in the market defined by the Federal Communications Commission in which the Property is located. Upon the assignee's assumption of all of Tenant's obligations under this Lease, Tenant shall be relieved of all obligations and liabilities arising out of the Lease after the date of any such transfer.

(b) Effective immediately upon transfer by Landlord of Landlord's interest in the Town Facility, Landlord shall be released from all obligations and liabilities arising out of this Lease.

(c) The Parties hereby expressly agree and acknowledge that it is the intention of both Parties that in the event that during the Term of this Lease, Tenant shall become a debtor in any voluntary or involuntary bankruptcy proceeding (a Proceeding) under the United States Bankruptcy Code, 11 U.S.C. 101, et seq. (the Code), for the purposes of proceeding under the Code, this Lease shall be treated as an unexpired lease of nonresidential real property under Section 365 of the Code, 11 U.S.C. 365 (as may be amended), and, accordingly, shall be subject to the provisions of subsections (d)(3) and (d)(4) of said Section 365. Any person or entity to which this Lease is assigned pursuant to the provisions of the Code, shall be deemed without further act to have assumed all of the obligations of the Tenant arising under this Lease both before and after the date of such assignment. Any such assignee shall upon demand execute and deliver to the Landlord an instrument confirming such assumption. Any monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid to the Landlord, shall be the exclusive property of the Landlord, and shall not constitute property of the Tenant or of the estate of the Tenant within the meaning of the Code. Any monies or other considerations constituting the Landlord's property under the preceding sentence not paid or delivered to the Landlord shall be held in trust for the benefit of the Landlord and be promptly paid to the Landlord.

17. NOTICES. All notices required or permitted under this Lease must be given by registered or certified mail, return receipt requested, postage prepaid, or by hand or commercial carrier delivery, or by telecopies, directed as follows:

If intended for Landlord to:

Town of Breckenridge
P.O. Box 168
150 Ski Hill Road
Breckenridge, Colorado 80424
Attn: Town Manager
Telecopier number: (970)547-3104
Telephone number: (970)453-2251

If intended for Tenant to:

New Cingular Wireless PCS, LLC; ATTN: TAG-LA; Re: FA#14935579
Site ID: COL06805F_R02 (Colorado)
575 Morosgo Drive NE
Atlanta, Georgia 30324
Telephone number: (800)832-6662

With a copy to:

AT&T Legal Department
New Cingular Wireless PCS, LLC; ATTN: AT&T Legal Department-Network Operations
Re: FA#14935579, Site ID: COL06805F_R02/MRUTH033351 (Colorado)
208 S. Akard Street, Dallas Texas 75202-4206

Telephone number: (303)515-7613

All notices, requests and demands 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. Either Party, by notice given as provided above, may change the address to which future notices may be sent. The provisions of this Section 17 do not apply to any notice or demand that is required to be served in a particular manner by applicable law; and any such notice or demand will be served as required by law notwithstanding the provisions of this Section 17. E-mail is not a valid way to give notice under this Lease; provided, however that e-mail may be used to provide a copy of any notice.

18. CONDEMNATION AND EMINENT DOMAIN.

(a) If Landlord receives notification of any condemnation proceedings affecting the Property, Landlord will provide notice of the proceeding to Tenant within ten (10) days.

(b) If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's reasonable determination, to render the Leased Premises unsuitable for Tenant's use, this Lease will terminate as of the date the title vests in the condemning authority.

(b) Any compensation or damages paid by a condemning authority will be divided between the Landlord and Tenant as follows:

(i) Tenant is entitled to that portion of the compensation or damages that represents the amount of Tenant's moving expenses, business dislocation damages, Tenant's personal property and fixtures, and the unamortized costs of leasehold improvements paid for by Tenant; and

(ii) the balance of such compensation or damages belongs to the Landlord.

19. CASUALTY. Landlord will provide notice to Tenant of any casualty affecting the Property as soon as possible, and in no event later than five (5) days of the casualty if the casualty is not caused by Tenant, its employees, agents or contractors, and if such casualty renders the Leased Premises unsuitable for Tenant's operations. If any part of the Small Cell Wireless Facilities or Property is damaged by fire or other casualty so as to render the Leased Premises unsuitable, in Tenant's reasonable determination, then Tenant may terminate this Lease by providing written notice to the Landlord, which termination will be effective as of the date of such damage or destruction so long as such damage is not caused by Tenant, its employees, agents or independent contractors. Upon such termination, Tenant will be entitled to collect all insurance proceeds payable to Tenant on account thereof and to be reimbursed for any prepaid Rent on a prorata basis. Tenant shall have no other claims against Landlord for any loss by fire, the elements or other cause, except as specifically provided herein. If notice of termination is given, or if Landlord or Tenant undertake to rebuild the Small Cell Wireless Facilities, Landlord agrees to use its reasonable efforts to permit Tenant to place temporary transmission and reception Facilities on the Property at no additional Rent until such time as Tenant is able to

activate a replacement transmission facility at another location or the reconstruction of the Small Cell Wireless Facilities are completed.

20. **WAIVER OF LANDLORD'S LIENS.** Landlord waives all lien rights it may have, statutory or otherwise, concerning the Small Cell Wireless Facilities or any portion thereof. The Small Cell Wireless Facilities shall be deemed personal property for purposes of this Lease, regardless of whether any portion is deemed real or personal property under applicable law, and Landlord consents to Tenant's right to remove all or any portion of the Small Cell Wireless Facilities from time to time in Tenant's sole discretion and without Landlord's consent.

21. **MECHANICS' AND MATERIALMANS' LIENS.** Tenant shall not permit any mechanics' or material's liens to be filed against the Leased Premises, Town Facility, or the Property by reason of work, labor, services, or materials performed or furnished to or for the benefit of Tenant, its transferees, successors, or assigns. If any such lien is filed, Tenant may contest the same in good faith, but notwithstanding contest, Tenant shall, within thirty (30) days after the filing thereof, cause such lien to be released of record by payment, bond, entry of an order of court of competent jurisdiction, or otherwise.

22. **TAXES.**

(a) Pursuant to Section 39-3-105, C.R.S., all real or personal property owned by Landlord is exempt from taxation. However, the Parties acknowledge that Tenant's occupancy and use of the Leased Premises pursuant to this Lease may be deemed to be a "taxable possessory interest" pursuant to Section 39-1-103(17)(a), C.R.S.

(b) Tenant will pay all taxes lawfully assessed arising from its occupancy and use of the Leased Premises pursuant to this Lease, and Tenant will indemnify and defend Landlord from any such taxes. Tenant will pay all taxes in a timely manner. Upon Landlord's written request Tenant will provide to Landlord a copy of the receipt(s) or cancelled check(s) showing payment of the taxes. Tenant may pay any taxes in installments if permitted by law.

(c) If Tenant is liable for the payment of any taxes arising from Tenant's occupancy and use of the Leased Premises pursuant to this Lease, Tenant may, at its sole expense, contest such taxes by the commencement and prosecution, in good faith and with due diligence, of appropriate legal proceedings. Tenant will make timely payment of such taxes if Tenant loses the contest. Tenant will advise Landlord prior to instituting any such contest and will as a condition of exercising such right provide Landlord such reasonable assurance as it may request that such contest will be in compliance with the provisions of this Section 22. Landlord, at Tenant's sole cost and expense, will reasonably cooperate with Tenant in any such contest; may join in the contest; and will execute and deliver such documents and instruments as may be necessary or appropriate for prosecuting an effective contest.

23. **MISCELLANEOUS.**

(a) **Amendment/Waiver.** This Lease cannot be amended, modified or revised unless done in writing and signed by an authorized agent of the Landlord and an authorized agent of the

Tenant. No provision may be waived except in a writing signed by both Parties. Landlord's expressed or implied assent to Tenant's breach of this Lease is not a waiver of any other breach.

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

(c) **Third Party Rights.** This Lease does not create a standard of care for Landlord and does not enlarge Landlord's duties under any applicable law, regulation or ordinance. This Lease is for the sole benefit of and binds the Parties, their successors and assigns. This Lease affords no claim, benefit, or right of action to any third party. Any party besides Landlord or Tenant receiving services or benefits under this Lease is only an incidental beneficiary.

(d) **Entire Lease.** This Lease 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 with respect to the subject matter of this Lease.

(e) **Governing Laws; Venue; Waiver of Jury Trial.** The laws of the State of Colorado (without regard to its conflict of laws principles) will govern the enforcement, interpretation, or construction of this Lease. Any litigation brought to interpret or enforce this Lease must be commenced in the state courts of Summit County, Colorado. **BOTH PARTIES WAIVE THE RIGHT TO A JURY TRIAL IN ANY ACTION TO ENFORCE, INTERPRET, OR CONSTRUE THIS LEASE.**

(f) **Attorneys Fees/Costs.** If any action is brought in a court of law by either Party to this Lease concerning the enforcement, interpretation, or construction of this Lease, the prevailing Party, either at trial or upon appeal, is entitled to reasonable attorney's fees, as well as costs, including expert witness' fees, incurred in the prosecution or defense of such action.

(g) **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, without limitation"; (iii) whenever a Party's consent is required under this Lease, except as otherwise stated in the Lease or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of the Lease and are incorporated by reference into this Lease; (v) use of the terms "termination" or "expiration" are interchangeable; (vi) use of the terms "shall" and "will" are interchangeable; (vii) this Lease shall not be construed against either Party by virtue of such Party having drafted this Lease; and (viii) reference to a default will take into consideration any applicable notice, grace and cure periods.

(h) **Estoppel.** Either Party will, at any time upon twenty (20) business days prior written notice from the other, execute, acknowledge and deliver to the other a statement in writing: (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying this Lease, 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 encumbrancer of the Property.

(i) **W-9.** Landlord agrees to provide Tenant with a completed IRS Form W-9, or its equivalent, upon execution of this Lease and at such other times as may be reasonably requested by Tenant.

(j) **Survival of Indemnity Obligations.** All of the Tenant's indemnity obligations under this Lease shall survive the expiration or termination of this Lease.

(k) **No Waste or Nuisance.** Tenant will not commit or permit to be committed upon the Leased Premises: (i) any waste; or (ii) any public or private nuisance; or (iii) any other act or thing prohibited by law.

(l) **Governmental Immunity.** The Landlord is relying on, and does not waive or intend to waive by any provision of this Lease, the monetary limitations (presently \$387,000 per person and \$1,093,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Article 10 of Title 24, C.R.S., as from time to time amended, or any other limitation, right, immunity or protection otherwise available to Landlord, its officers, or its employees.

(m) **Authority.** The individuals executing this Lease represent and warrant that he or she has all requisite power and authority to bind the Party for whom they have signed to fully perform its obligations under this Lease.

(n) **If Lease Is Recorded.** If this Lease is recorded with the Clerk and Recorder of Summit County, Colorado, Tenant agrees that upon the expiration or termination of this Lease for any reason it will, within thirty (30) days of Landlord's written request, execute and deliver to Landlord written confirmation, in a form suitable for recording, that this Lease has expired or been terminated.

(o) **Time of Essence.** Time is of the essence of this Lease.

(p) **No Partnership.** Landlord is not a partner, associate, or joint venturer of the Tenant in the conduct of Tenant's business at the Leased Premises.

(q) **Annual Appropriation.** Notwithstanding anything herein contained to the contrary, the Landlord's financial obligations under this Lease are subject to an annual appropriation being made by the Town Council of the Town of Breckenridge, Colorado in an amount sufficient to allow Landlord to perform its obligations hereunder. If sufficient funds are not appropriated, this Lease may be terminated by either Party without penalty. The Landlord's obligations hereunder do not constitute a general obligation indebtedness or multiple year direct or indirect debt or other financial obligation whatsoever within the meaning of the Constitution or laws of the State of Colorado.

(r) **Severability.** If any Term or condition of this Lease 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 Lease then the Lease may be terminated by either Party on ten (10) business days prior written notice to the other Party hereto.

(s) **Counterparts.** This Lease may be executed in two (2) or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the Parties. It being understood that all Parties need not sign the same counterpart.


IN WITNESS WHEREOF, the Parties have executed this Lease as of the date of the last signature below.

[SIGNATURE PAGE FOLLOWS]

LANDLORD

Town of Breckenridge, Colorado

DATE: 1/18/2021

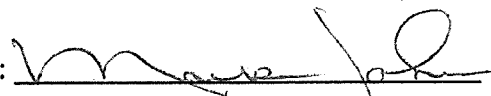
By: 

Name: ~~Rick G. Holman~~ Shannon B. Haynes
Its: ~~Town Manager~~ Asst. Town Manager

TENANT

**New Cingular Wireless PCS, LLC,
a Delaware limited liability company**

DATE: 1/13/21

By: 

Name: MARK JOHNS

Its: AREA MANAGER

EXHIBIT A

DESCRIPTION OF PROPERTY

Property Address: 203 South Main Street, Breckenridge, CO 80424

The Property is described as follows:

A PORTION OF LOT 4, BLOCK 7 OF THE STILES ADDITION TO THE TOWN OF BRECKENRIDGE, ALSO KNOWN AS THE SILVERTHORN PLACER M.S. 5537, SECTION 31, TOWNSHIP 6 SOUTH, RANGE 77 WEST OF THE 6TH PRINCIPAL MERIDIAN, SITUATED IN THE TOWN OF BRECKENRIDGE, COUNTY OF SUMMIT AND STATE OF COLORADO, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT CORNER NO. 7 OF SAID SILVERTHORN PLACER AND RUNNING SOUTH 80 DEGREES 01 MINUTES 00 SECONDS WEST 217.50 FEET;

THENCE NORTH 14 DEGREES 30 MINUTES 00 SECONDS WEST 1009.40 FEET ALONG THE WESTERLY RIGHT OF WAY OF MAIN STREET TO A POINT, WHICH POINT IS, IN FACT, THE TRUE POINT OF BEGINNING,

THENCE SOUTH 75 DEGREES 30 MINUTES 00 SECONDS WEST 149.00 FEET,

THENCE NORTH 14 DEGREES 30 MINUTES 00 SECONDS WEST 25.00 FEET,

THENCE NORTH 75 DEGREES 30 MINUTES 00 SECONDS EAST 149.00 FEET,

THENCE SOUTH 14 DEGREES 30 MINUTES 00 SECONDS EAST 25.00 FEET TO THE TRUE POINT OF BEGINNING.

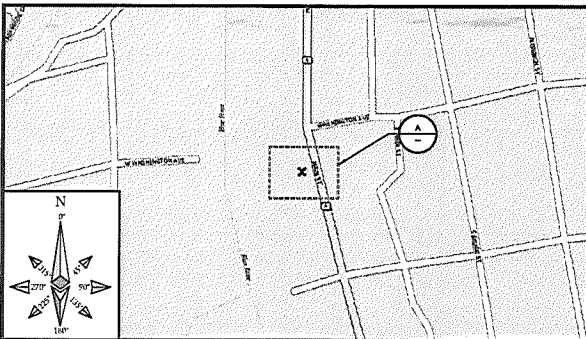
EXHIBIT B

Description Of Leased Premises, With Drawings And Description/Location Of Tenant Small Cell Wireless Facilities And Related Utility Easements

A new wireless installation on the roof of the existing Town of Breckenridge Welcome Center building, the scope of which will include the following:

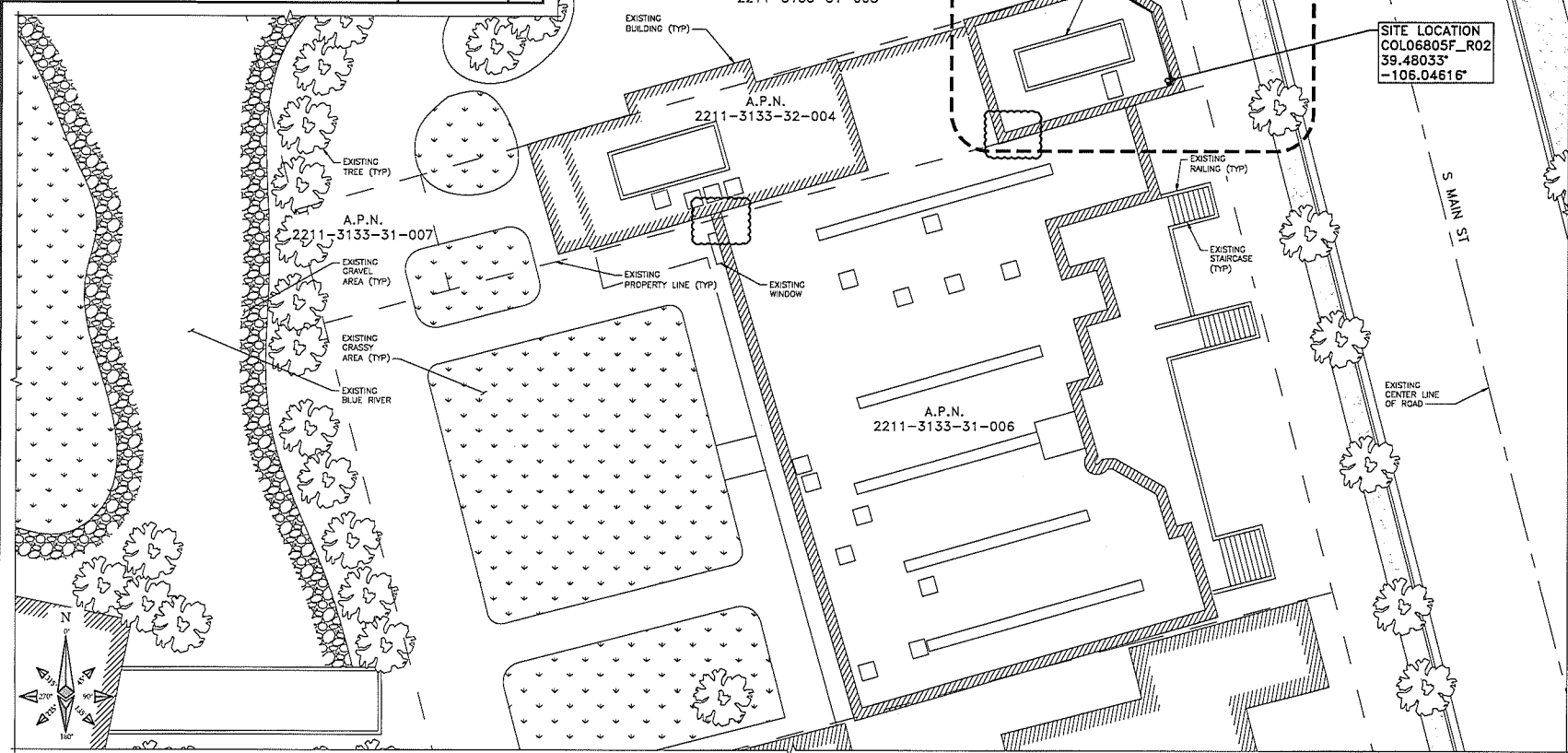
- 1 Wall Mount with Canister Antenna
- 2 Unistruts
- 1 Antenna Mount
- 3 Radio Units
- 2 Combiners
- 1 AC Disconnect/Load center
- 1 Fiber Box

The details of the installation are more fully depicted in the attached site plan that is attached as **Exhibit B-1**. Installation will include power and fiber to be run to the rooftop equipment through new conduit, to be coordinated with Breckenridge Public Works.



SITE PLAN MAP

NO SCALE 1



OVERALL SITE PLAN

THIS DRAWING IS NOT A SITE SURVEY
 THE PURPOSE OF THIS DRAWING IS TO SHOW HOW THE DEVELOPED SITE RELATES TO THE PARENT PARCEL AND ADJACENT PROPERTIES. R.O.W. MEASUREMENTS ARE APPROXIMATIONS.

SITE LOCATION
 COLO6805F_R02
 39.48033°
 -106.04616°



161 INVERNESS DR WEST
 2ND FLOOR
 ENGLEWOOD, CO 80112



BLACK & VEATCH
 4600 SOUTH SYRACUSE STREET
 SUITE 800
 DENVER, COLORADO 80237

PROJECT NO: 129054:8192
 DRAWN BY: AND
 CHECKED BY: BCP

REV	DATE	DESCRIPTION
1	07/01/20	ISSUED FOR CONSTRUCTION
0	02/11/20	ISSUED FOR CONSTRUCTION



IT IS A VIOLATION OF LAW FOR ANY PERSON, UNLESS THEY ARE ACTING UNDER THE DIRECTION OF A LICENSED PROFESSIONAL ENGINEER, TO ALTER THIS DOCUMENT.

COL06805F_R02
 14935579
 203 SOUTH MAIN STREET
 BRECKENRIDGE, CO 80424
 PICO SMALL CELL

SHEET TITLE
OVERALL SITE PLAN

SHEET NUMBER
A-1

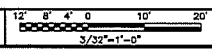


EXHIBIT B-1