

## NON-EXCLUSIVE COMMUNICATIONS SITE LEASE

This Lease is entered into and is effective on the 1st day of September 2000, between the City of Ellensburg, a Washington municipal corporation, ("Lessor") and Western Sub-RSA Limited Partnership, a Delaware limited partnership doing business as *U.S. Cellular* ("Lessee").

1. **Background.** Lessor owns certain "Property" in the City of Ellensburg (described in Exhibit A – Legal Description and Exhibit B – Site Plan) upon which it has constructed a water tank ("Improvements"). Lessor hereby leases certain space (the "Premises") on the Property to Lessee for purposes of Lessee constructing and maintaining and operating a cellular phone cell site facility ("Antenna Facility") as depicted in Exhibit C attached hereto and more fully described in Paragraph 5 below. This lease is non-exclusive and in no way prohibits a negotiated lease or other business relationship between Lessor and Lessee's competitors, subject to the provisions of Paragraph 25 below.
2. **Term.** The initial term of this Lease shall commence on November 1, 2000 (the "Commencement Date") and end on October 31, 2005. Lessee shall have the option to renew this lease for up to two additional five (5) year terms upon the terms and conditions contained herein. These options may be exercised by giving Lessor not less than sixty (60) nor more than one hundred twenty (120) days written notice prior to the expiration of the term then present at the time of such notice.
3. **Rent and Initial Payment.** Lessee shall pay Lessor an Initial Payment of \$10,000 and Base Rent for the first year on the Commencement Date, and for each year thereafter on the Anniversary of the Commencement Date. Lessee shall pay to Lessor as annual rent for the Property the sums as shown below (the "Base Rent"):

Years 1 through 5:	\$15,000
Years 6 through 10:	\$18,000
Years 11 through 15:	\$21,600

If Lessor and Lessee mutually desire to extend the lease beyond the end of the 15th year, then rent for the Premises shall be renegotiated between the parties at that time.

Lessee shall pay the Lessor a late payment charge equal to five percent (5%) of any payment not paid when due. Any amounts not paid when due shall bear interest until paid at the lesser of the rate of two percent (2%) per month, or the highest rate permitted by law.

4. **FCC License.** Lessee has been granted a license (the "License") by the Federal Communications Commission ("FCC") to operate a cellular mobile radio telephone system. Lessee shall be authorized to use the Property and Improvements as an antenna site. Lessee warrants that the construction and maintenance of the Antenna Facility shall be at all times in compliance with applicable Federal, State and local laws, rules, regulations, including those of any regulatory agencies.
5. **Use of the Property.** Lessee shall have the right to erect and maintain antennas with approximately 120° spacing on the circumference of the railing atop the water tank in accordance with Exhibit C attached hereto. In addition, the Lessee shall have the right to erect and maintain one equipment shelter contained within a 20'x20' section of ground located adjacent to the water tank. Lessor acknowledges that it has been appraised of the extent of such construction as depicted on Exhibit C attached hereto, and Lessee acknowledges that said construction is subject to the approval of the appropriate building/planning officials of the City of Ellensburg. The Antenna Facility shall remain the property of the Lessee.
6. **Equipment Upgrade.** Lessee may update or replace the antennas from time to time.

7. **Maintenance.** Lessee shall, at its own expense, maintain the Premises and any of its equipment on or attached to the Property in a safe condition, in good repair, and in a manner which will allow Lessor to use the Property and Improvements for their primary municipal purpose and engage in other leasing of the Property by Lessor.
8. **Utilities.** It may be necessary for Lessee to supply the Antenna Facility with new utilities and/or improve the present utility service to the Antenna Facility in connection with its operation thereof. Lessor and Lessee agree to negotiate in good faith to determine the manner in which any such utility services will be supplied to the Antenna Facility.
9. **Access to Property.** Lessee shall have 24-hour/7-day access to the Property at all times to install, operate, repair, and maintain its Antenna Facility during the term of the Lease.
10. **Free from Liens.** Except with respect to activities for which Lessor is responsible, Lessee shall pay as due all claims for work done on, and for services rendered or material furnished to, its Antenna Facility, and shall keep the Antenna Facility free from all liens.
11. **Notification of Activity.** The Lessor shall notify the Lessee at least 48 hours prior to any major activity, construction or changes at the Property to allow for coordination with City operations.
12. **Indemnification/Hold Harmless.** The Antenna Facility shall be erected and maintained at the expense of Lessee and at its sole risk. Lessee shall indemnify Lessor and hold it harmless from any claims, damages, or expenses (including reasonable attorney's fees) arising out of Lessee's use of the Antenna Facility, the conduct of its business on the Property, or any other acts or omissions of Lessee, or its employees, agents, or contractors, relating to the Antenna Facility.
13. **Termination upon Lessee Default.** Lessor shall have the right to terminate this Lease, by written notice to Lessee, upon the occurrence of any of the following events:
  - A. If Lessee defaults in fulfilling any obligation or term of this Lease and fails to correct such default or commence substantial correction of such default within thirty (30) days after written notice from Lessor; or
  - B. If Lessee is deemed insolvent, makes an assignment in bankruptcy, or fails to secure dismissal of an involuntary bankruptcy petition within a reasonable time.
14. **Termination upon Lessor Default.** Lessee shall have the right to terminate this Lease, by written notice to Lessor, upon occurrence of any of the following events:
  - A. If Lessor defaults in fulfilling any obligation or term hereof and fails to correct such default or commence correction of such default within 30 days after written notice from Lessee; or
  - B. If the approval of any agency, board, court or other governmental authority necessary to construction and/or operation of the Antenna Facility cannot be obtained, or if Lessee reasonably determines the cost of obtaining such approval is prohibitive; or
  - C. If Lessee reasonably determines that the Antenna Facility is not appropriate for technological reasons, including, but not limited to, signal interference.
  - D. At any time if the License is revoked or materially amended as to be inconsistent with Lessee's permitted use under this lease.
15. **Upon Termination.** Upon a notice of termination by Lessor or Lessee under Section 13 or 14

above, the Lease shall terminate and be of no further force or effect, except as to provisions relating to termination. Unless otherwise agreed between the parties, upon termination, whether under Section 13 or 14 above or otherwise, Lessee will be entitled and obligated to remove the equipment shelter, microwave dish, antennas and cables placed on the Property and Improvements by Lessee.

If this Lease terminates at a time other than the end of one of the specified rental periods, then the rent shall be prorated as of the date of termination, and in the event of termination for reasons other than default of Lessee, all prepaid rent shall be refunded to Lessee or paid on its account.

16. **State Leasehold Tax.** Lessee shall pay the 12.84% State Leasehold Tax on all Rent paid to Lessor under the terms of this Lease.
17. **Insurance.** Lessee, at its cost, shall maintain public liability insurance, in an amount of One Million Dollars (\$1,000,000) and through a carrier reasonably acceptable to Lessor. Lessee shall provide Lessor with a certificate of insurance evidencing said coverage and naming Lessor as an additional insured. Such certificate shall bear a legend whereby the carrier undertakes to give Lessor at least thirty (30) days prior notice of cancellation of coverage. Except where damage results from the negligence of Lessor or Lessee, neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with an extended coverage endorsement, and in the event of insured loss, neither party's insurance company shall have a subrogated claim against the other.
18. **Acceptance of Premises.** By taking possession of the Premises, Lessee accepts the Premises in the condition existing as of the Commencement Date. Lessor makes no representation or warranty with respect to the condition of the Premises and the Property and Lessor shall not be liable for any latent or patent defect therein.
19. **Damage or Destruction of Site.** If a material portion of the Antenna Facility is destroyed or damaged, Lessee may elect to terminate the Lease effective as of the date of the damage or destruction by notice given to Lessor in writing no more than 45 days following such date. This provision includes the damage or destruction of the Lessor's water tank that Lessor shall not be required to replace. In such event, all rights and obligations of the parties shall cease as of the effective date of termination, provided Lessee shall be obligated to remove its equipment from the Property and Improvements prior to termination being effective. Considerations of public safety and other governmental concerns may mandate removal of damaged property at the earliest possible date.
20. **Condemnation of Facilities.** If a condemning authority takes all of the Antenna Facility or a portion sufficient to render it reasonably unsuitable for the use that Lessee was then making of the Antenna Facility, the Lease shall terminate and be of no further force or effect as of the date the title vests in the condemning authority. Lessor shall be entitled to any and all awards granted by the condemning authority, provided that Lessee shall be entitled to bring a separate action on its own behalf to recover the value of its Antenna Facility and its moving and business dislocation expenses.
21. **Assignment of Lease.** This Lease is not assignable nor may Lessee sublet without Lessor's prior written approval, which approval, Lessor agrees, shall not unreasonably be withheld or delayed. Additionally, Lessee may not encumber its interest in this Lease, without Lessor's approval, except as security to a lender.
22. **Attorney's Fees.** If suit or action is instituted in connection with any controversy arising out of this Lease, the prevailing party shall be entitled to recover, in addition to costs, such sum as the

court may adjudge reasonable as attorney fees, including attorney fees upon appeal of any judgment in ruling.

23. **Notices.** Any notice required or permitted under this Lease shall be deemed received when actually delivered, or 72 hours after it is deposited in the United States mail as certified mail, return receipt requested, addressed to the addresses as specified below or as from time to time changed by either of the parties in writing.

**Lessor:** City of Ellensburg  
420 North Pearl Street  
Ellensburg, WA 98926

**Lessee:** U.S. Cellular  
Attention: Real Estate  
8410 W. Bryn Mawr Avenue  
Suite 700  
Chicago, IL 60631

24. **Binding.** This Lease shall run with the Property described in Exhibit A. This Lease shall be binding upon and inure to the benefit of the parties and their respective lawful successors and assigns.

25. **Signal Interference.**

- a. Non-interference by Lessee. Lessee agrees to install and operate its Antenna Facility in a manner that does not cause RF interference to the operations of any Protected User. "Protected User" shall mean any existing user or lessee of the Property shown on Exhibit B attached hereto. Lessee agrees to immediately cure any such RF interference caused to a protected User by Lessee's equipment or, if such RF interference cannot be immediately be cured, to temporarily reduce power or cease the offending operations, if so demanded by Lessor on the ground of RF interference, until a cure at full power is achieved.
- b. Non-interference by Lessor. Lessor covenants to use Lessor's best efforts to protect Lessee from RF interference caused or potentially caused by subsequent users or lessees of the Property or changes in its use. Except for Protected Users, Lessor, and its successors and assigns, shall not use, allow or permit the Property to be used in a manner which will materially impair the use of the Antenna Facility located upon the premises by Lessee or allow any use in any way as shall cause any destructive or conflicting interference with the radio, telephone, or communications signals to and from facilities or equipment of Lessee. If any harmful RF interference shall result from any such transmitters, equipment, antennae, or dishes permitted on the Property by Lessor, other than the Protected Users, to the facilities or equipment of the Lessee installed on the Premises, then Lessor shall immediately cause such transmitter, equipment, antenna or dish to be discontinued from operation until such interference is eliminated. If Lessor cannot eliminate such RF interference, Lessee may terminate this Lease in accordance with Section 14 herein or obtain injunctive relief requiring such interference to cease.

26. **Choice of Law.** This Lease shall be construed in accordance with the laws of the State of Washington. The venue for any litigation shall be in Kittitas County, WA.

27. **Severability.** If any section, term or provision of this Lease is deemed to be invalid or unenforceable, the remainder of said section, subsection, term or provision of the Lease shall not be affected thereby and each remaining section, subsection, term or provision of this Lease shall

be valid or enforceable to the fullest extent permitted by law.

**28, Headings.** The headings in this Lease are for convenience only, and shall not be considered as part of the Lease for purposes of construction of the terms and conditions hereof.

Deleted: \_\_\_\_\_

In witness whereof, the parties hereto bind themselves to this Lease as of the day and year first above written.

**LESSEE:**  
**WESTERN SUB-RSA LIMITED PARTNERSHIP**  
BY: Washington RSA #5, Inc., a  
Washington corporation, its  
general partner

**LESSOR:**  
**CITY OF ELLENSBURG**

\_\_\_\_\_  
Mayor

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

Attest:

Printed: \_\_\_\_\_

\_\_\_\_\_  
City Clerk

Title: Vice President

Approved as to form:

\_\_\_\_\_  
City Attorney

**EXHIBIT A**  
**CITY OF ELLENSBURG**  
**WATER TOWER PROPERTY LEGAL DESCRIPTION**

“A” That part of Block “H” and “K”, 2<sup>nd</sup> Railroad Addition to the City of Ellensburg, as per plat thereof recorded in Book 1 of Plats, page 63, Records of Kittitas County, Washington, Bounded as follows:

Commencing at the northeast corner of said Block “H”; thence S 88° 33' W along the north line thereof 150.00 feet to the point of beginning; thence S 1° 27' E 165.00 feet; thence S 88° 33' W 132.00 feet; thence N 1° 27' W 165.00 feet; thence N 88° 33' E 132.00 feet to the point of beginning.

“B” That part of Block “H”, 2<sup>nd</sup> Railroad Addition to the City of Ellensburg, as per plat thereof recorded in Book 1 of Plats, page 63, Records of Kittitas County, Washington, Bounded as follows:

Commencing at the northeast corner of said Block “H”; thence S 88° 33' W along the north line thereof 150.00 feet; thence S 1° 27' E 65.00 feet to the point of beginning; thence S 1° 27' E 72.00 feet; thence N 20° 04' 30" E 77.40 feet to a point which is N 88° 33' E 28.40 feet from the point of beginning; thence S 88° 33' W 28.40 feet to the point of beginning.

“C” That part of Block “H”, 2<sup>nd</sup> Railroad Addition to the city of Ellensburg, as per plat thereof recorded in Book 1 of Plats, page 63, Records of Kittitas County, Washington, Bounded as follows:

Commencing at the northeast corner of said Block “H”; thence S 88° 33' W along the north line thereof 150.00 feet; thence S 1° 27' E 165.00 feet to the point of beginning; thence S 16° 53' W 78.50 feet; thence N 79° 47' W 81.65 feet to the easterly right of way line of Craig Avenue as shown on the plat of B.F. Reed Subdivision Block “H” & “E” 2<sup>nd</sup> Railroad Addition to the City of Ellensburg as per plat thereof recorded in Book 3 of Plats, page 28, Records of Kittitas County, Washington; thence N 28° 24' E along said easterly right of way line 66.88 feet to a line bearing S 88° 33' W from the point of beginning; thence N 88° 33' E 71.37 feet to the point of beginning.

**EXHIBIT B**  
**CITY OF ELLENSBURG**  
**SITE DRAWING OF WATER TOWER PROPERTY**

**EXHIBIT C**  
**DESCRIPTION OF ANTENNA FACILITY**