

COMMERCIAL GROUND LEASE
FOR USE AS A COMMUNICATIONS EQUIPMENT SITE

THIS LEASE AGREEMENT, made and entered into this 23 day of Feb, 1998

by and between the following:

CITY OF BILLINGS, MONTANA, hereinafter
designated "Lessor"

and

3 RIVERS PCS Inc.
a Montana Corporation; Fairfield, Montana,
hereinafter designated "Lessee"

WITNESSETH

RECITALS

- 1) Lessor owns and operates STEWART PARK situated in the City of Billings, Montana, and
- 2) Lessor deems it advantageous to itself and the operation of the City to lease to the Lessee a certain parcel of land hereinafter described together with certain privileges, rights, uses and interests, and
- 3) Lessee a firm wishing to engage in certain commercial activities, proposes to lease on a net basis from Lessor said parcel of land and to avail itself of the same privileges, rights, uses and interests contemplated herein and,
- 4) Lessee has indicated a willingness and ability to properly keep, maintain and improve said land in accordance with standards established by Lessor.

NOW THEREFORE, the Parties hereto covenant and agree as follows:

ARTICLE I

PREMISES AND PRIVILEGES

A. Description of the Premises Lessor hereby leases to Lessee and Lessee hereby hires and takes from Lessor that certain parcel of real property, together with improvements (hereinafter called the premises), for its exclusive use, specifically described in "Exhibit A," attached hereto and incorporated herein by reference as if fully set out.

B. Construction of Improvements. Lessee may construct a single tower a building for housing communications equipment and necessary vehicle parking on the parcel of land described above pursuant to the Plans hereto attached, marked "Exhibit B," and by reference specifically made a part of the Lease. Lessee shall not deviate from the plans in any way without the prior written consent of Lessor. The plan shall include a building plan which must be approved by the City Building Division of the Public Works Department and shall show where vehicle parking will occur. The construction of the facility shown on "Exhibit B" building plans will be completed within twelve (12) months of the signing of this Lease. Failure to complete the structures during said period shall constitute a default. If this default occurs, the Lease is canceled immediately and control of the premises reverts to the Lessor.

The Lessor shall review and approve all building materials, exterior finishes, colors, foundation plans and location of improvements on the premises. Lessor's approval will in part be contingent upon plan approval by the City of Billings Building Department. Lessor hereby consents to the construction contemplated in Exhibit B hereto. Additionally:

- 1) Building structures shall be constructed of cinder block of concrete and have a finished exterior appearance.
- 2) All antenna structures shall be free standing and use no guy wires for support.
- 3) The Lessee's leased area must be fenced with chain link fencing of height and

location approved by the City. The City may require that the Lessee install decorative slatting in the chain link fence to shield the site from other areas.

4) Lessee shall complete and submit to the Federal Aviation Administration (FAA), FAA Form 7460-1 Notice of Proposed Construction or Alteration. FAA approval must be received prior to the beginning of any site or facility construction. Lessee must be in full compliance of the FAA rules and regulations regarding painting and lighting.

5) Lessee's Equipment. Article VII, Paragraph A, controls the disposition of Lessee's equipment and property upon expiration or other termination of this Lease. Except as otherwise noted in Article VII, Paragraph A, Lessor acknowledges and agrees that all personal property, equipment, apparatus, fittings, building, fixtures and trade fixtures installed or stored on the Premises constitute personal property, not real property, and shall continue to be the personal and exclusive property of Lessee, including, without limitation, all telecommunication equipment, towers, switches, cables, wiring and associated equipment or personal property (collectively, the "Equipment"). The Equipment shall remain at all time the personal property of Lessee, and neither Lessor nor any person claiming by, through or under Lessor shall have any right, title or interest (including without limitation a security interest) in the Equipment. Lessee, and Lessee's successors in interest, shall have the right to remove the Equipment at any time during the Term of this Lease or its earlier termination. Removal of equipment shall not damage, deface, or destroy Lessor's property in any way. With respect to the holder of any mortgage, deed of trust or other lien affecting Lessor's interest in the Premises, whether existing as of the date hereof or arising hereafter, Lessor and Lessee hereby agree, acknowledge and declare that the Equipment is now and shall at all times hereafter remain the personal and exclusive property of Lessee. The parties further acknowledge and agree that Lessor shall have no right or authority to grant a lien upon or security interest in any of the Equipment.

C. General Privileges, Uses and Rights. Lessor hereby grants to Lessee the following general privileges, uses, rights, all of which shall be subject to the terms, conditions and covenants herein set forth.

1) The general unrestricted use of all public facilities and improvements which are now or may hereafter be connected with or appurtenant to said facility, except as hereinafter provided, to be used by Lessee and its sublessees for commercial activities as herein defined. For the purpose of this Lease, public facilities shall include all automobile parking areas, roadways, sidewalks, or other public facilities appurtenant to said property. Said use shall be subject to Federal and State laws, rules, regulations and City Ordinances as now or may hereafter have application to the property.

2) The right of ingress to and egress from the premises over and across public roadways serving the area for Lessee, his agents and servants, patrons, and invitees, suppliers of service and furnishers of material. Said right shall be subject to such ordinances, rules and regulations as now or may hereafter have application at the property.

D. Specific Privileges, Uses and Rights In addition to the general privileges, uses and rights described above and without limiting the generality thereof, Lessor hereby grants to Lessee and sublessees the right to engage in commercial activities on the premises as defined in sub-paragraphs 1 through 2 below, subject to the conditions and covenants hereafter set out:

1) The construction of tower structure and support building and operation repair, replacement and maintenance of communications equipment with antennas on the premises described in "Exhibit A" necessary for the conduct of business. Antenna systems must be placed in accordance with this Agreement, and all operating equipment must be

located within the Lessee's area as shown on "Exhibit B".

2) The parking of vehicles conducting site maintenance in the designated parking area on the leasehold.

E. Reservation of Right-of-Way. Lessor hereby reserves a right-of-way easement for access purposes over the above described leasehold. Said reserved rights-of-way may be used by Lessor and all of Lessor's tenants, agents, employees of said tenants, and persons or entities serving said tenants.

F. Access/Inspections by Lessor. The Lessor or any person designated by the Lessor shall at all times have reasonable access to the premises, and in the event of any emergency, the Lessor or its representatives shall have the right to take such action at the premises as they deem necessary for the protection of persons or property.

G. Subleasing and Transferring. The Lessee shall have the right to sell, sublease, assign or transfer all or any part of the premises for the same purpose established in Article I, Paragraph D, provided written approval of the Lessor is obtained. Any sublessee shall be subject to the same conditions, obligations and terms as set forth herein, and Lessee shall be liable to Lessor for the performance on the part of sublessee of all of the terms and conditions in the Lease agreement on the part of Lessee to be kept and performed.

H. Renting Antenna and Building Space. The Lessee is authorized to rent space to others on the Lessee's tower, building space and ground space for additional communication buildings for the same purpose established in Article I, Paragraph D, under the same terms and conditions of this Lease agreement at a reasonable rate without discrimination for the occupancy provided the following requirements are met:

- 1) Prior written approval of the Lessor is obtained.
- 2) Lessee provides the Lessor, in writing, the name, address and frequencies that will be operated.

- 3) Provide documentation that the new antenna/equipment will not interfere with the existing frequencies currently in use.
- 4) Lessee agrees to collect and submit to the Lessor the Use Fee for all new installations as established in Article III, Paragraphs B and C.

ARTICLE II

TERM OF LEASE

A. Term. The term of this Lease shall be for a period of fifteen (15) years, commencing on the 23 day of Feb, 1998, and terminating on the 23 day of Feb, 2013

B. First Right of Refusal. Provided Lessee is not then in default of this Lease and has kept and performed all of its obligations and duties, at the end of the term hereof the Lessee shall have the first right to accept a new lease of the premises at the same rates and charges that the premises may be offered to any other person or entity, subject to City Council approval. Provided, that the Lessor shall have the sole discretion as to the use of said premises and whether or not it will be relet at the end of said term. Provided further, that 60 days prior to the end of the term Lessee shall give notice in writing to Lessor of intent to exercise the first right of refusal. Lessor upon election to relet said premises, shall give Lessee notice in writing of its decision and the proposed terms. Lessee shall have 30 days in which to give Lessor notice in writing of acceptance.

ARTICLE III

RENTAL AND FEES

A. Ground Rental. For the land described in Article I, Paragraph A, Lessee shall pay to Lessor an annual rental of \$2,500.00 per annum for all ground included in this Lease.

Said rental shall be payable annually in advance without billing on the 1st day of each new contract year in an amount equal to the total annual rental.

B. Use Fee. Lessee shall pay to Lessor an annual use fee of \$2,500.00 per year for the Lessee's antenna system and operating equipment. In addition, each sublessee or tenant shall pay to Lessor an additional \$2,500.00 use fee per year for each antenna system placed on Lessee's tower or each separate set of operating equipment placed in Lessee's building or on the Lessee's leased property by other tenants or users. Said use fees shall be payable annually in advance without billing on the 1st day of each new contract year in an amount equal to the total annual rent. Lessee shall be liable for and shall pay to Lessor all use fees whether the fees are incurred by the Lessee or its sublessee/tenant.

C. Additional Compensation. In addition to the ground rental and use fee the Lessor shall be permitted to install up to two antennas on Lessee's antenna structure at no cost to the Lessor, provided Lessor's equipment does not interfere with Lessee's equipment.

D. Annual Readjustment of Ground Rental and Use Fee During the term of the Agreement the ground rental and use fee will be adjusted annually on the anniversary of the Agreement using the Consumer Price Index for the previous 12 month period. In no case shall the rates be less than the previous year.

ARTICLE IV

OBLIGATIONS OF LESSOR

A. Lessor Warranties Lessor warrants all things have happened and have been done to make its granting of said Lease effective and that Lessee shall have peaceful possession and quiet enjoyment of the leased premises during the term hereof, upon performance of

Lessee's covenants herein.

B. Operation of Stewart Park Lessor will continue to operate Stewart Park as a public park and that all those uses are to remain unrestricted outside the area of the fenced compound (50' x 40') by any provision of the lease agreement, intended or implied.

C. Condition and Maintenance of Premises. Lessor shall assume no responsibility for the condition of the demised premises after delivery of premises to said Lessee. Lessor shall remove snow from the access road as Lessor's resources permit. Snow removal on Lessee's premises will be the responsibility of the Lessee.

ARTICLE V

OBLIGATIONS OF LESSEE

A. Condition of Premises. It shall be the sole responsibility of the Lessee to develop, keep, maintain and operate the entirety of the premises and all improvements and facilities placed thereon at Lessee's sole cost and expense. This Lease in every sense shall be without cost or expense to the Lessor. Lessee accepts the premises in its present condition and will repair and maintain any installations thereon except as provided in Article III, Paragraph C, and Article IV, Paragraph B.

B. Improvements. Lessee shall have the right to and shall provide for the siting, construction, erection, maintenance of its own improvements, in any lawful manner, upon or in the premises, for the purpose of carrying out any of the activities provided for herein, but all such activities shall require the prior review and written approval of Lessor.

C. Maintenance. Lessee shall, at its sole cost and expense, maintain the premises and the buildings, improvements and appurtenances thereto in a presentable condition free of refuse and debris consistent with good business practice.

If the FAA requires obstruction lighting, the Lessee shall undertake a preventative maintenance plan to prevent an inoperable obstruction light. Should the obstruction light fail to operate for any reason, the Lessee shall repair the light within forty-eight (48) hours after notification by the City.

D. Utilities. Lessee shall assume and pay for all costs or charges for utility services furnished to Lessee during the term thereof, provided, however, that Lessee shall have the right to connect to any available electrical outlets at its own cost and expense; and Lessee shall pay for any and all service charges incurred therefore.

E. Trash, Garbage, Etc. Lessee shall provide a complete and proper arrangement for the adequate sanitary handling and disposal of all trash, garbage and other refuse occurring as a result of the operation of its business. Lessee shall provide and use lessor-approved receptacles for all garbage, trash and other refuse and shall place them on the premises in a location acceptable to the Department of Solid Waste for their removal. Piling of boxes, cartons, barrels, or other similar items in an unsightly or unsafe manner, or open storage of materials, personal property, salvage, junk or refuse on or about the premises, is forbidden. Department of Solid Waste costs will be paid by the Lessee.

F. Signs. Lessee shall not maintain on the premises any billboards or advertising signs; provided, however, that Lessee may maintain on the outside of its buildings its name(s) or signs, the size, location and design of which shall be subject to prior written approval of Lessor.

G. Federal, State and Local Regulations Lessee acknowledges that the right to use said facilities in common with others authorized to do so shall be exercised subject to and in accordance with the laws of the United States of America, the State of Montana and the City of Billings. Lessee shall comply with all Federal, local and State laws, rules, regulations and ordinances, and all Rules and Regulations of Lessor now in force or hereafter prescribed or

promulgated by authority or by law shall be closely observed during the full term of this Lease.

H. Hazardous Substances. Lessee assumes full responsibility for the proper and legal use, handling, storage and disposal of any hazardous substances used or consumed in the conduct of its business. "Hazardous substance" shall be interpreted broadly to mean any substance or toxic material, hazardous or toxic or radioactive substance, or other similar term by any Federal, State or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules 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. Lessee will hold Lessor harmless from and indemnify Lessor against and from any damage, loss, expense or liability resulting from any breach of this representations and warranty including all attorneys' fees and costs incurred as a result thereof.

I. FCC Authorization. Prior to activating any communications equipment the Lessee must possess a valid Federal Communications Commission (FCC) authorization, and insure that the operation of the equipment will be conducted in strict compliance with applicable FAA requirements. A copy of each applicable license must be maintained by the Lessee for each transmitter being operated by Lessee or sublessee. The Lessee must provide the City, when requested, with a current copy of each license for equipment in or on facilities covered by this Lease Agreement. When requested by the City the Lessee shall provide technical information concerning the equipment operated by the Lessee under the terms of this Agreement.

J. Interference with Existing Signals. The Lessee must insure that all equipment is operated in a manner which will not cause interference with the operation of existing communication equipment at the Billings Logan International Airport. If the RF Engineer at the Billings Logan International Airport determines that the Lessee's equipment is interfering with existing equipment located at the Billings Logan International Airport, the Lessee will have

fifteen (15) days to eliminate the interference to the satisfaction of the City and the FAA. If the interference is not corrected in fifteen (15) days the Lessee's equipment shall be shut down until the problem can be corrected.

K. Encumbrances, Mortgages and Liens Lessee shall not encumber in any way any part of the real property of the leasehold estate by assignment, hypothecation, security interest, mortgage, pledge, deed of trust or any other instrument given to or for the benefit of any bank, financing institution or to or for the benefit of any contractor or other third party. Further, Lessee shall keep the real property of the leasehold estate free and clear of all liens arising out of any work performed, material furnished, or obligations incurred by Lessee or any sublessee.

ARTICLE VI

INSURANCE AND INDEMNIFICATION

A. Indemnification. Lessor shall stand indemnified by Lessee as herein provided. It is expressly understood and agreed that Lessee is and shall be deemed to be an independent Lessor shall in no way be responsible therefore. It is further agreed that in the use of the property in the erection or construction of any improvements thereon, and in the exercise or enjoyment of the privileges herein granted, Lessee shall indemnify and save harmless the Lessor from any and all losses that may result to the Lessor because of any negligence, act or omission on the part of the Lessee, and shall indemnify Lessor against any and all mechanic's and materialmen's liens or any other types of liens imposed upon the premises.

B. Insurance. Lessee shall within ten working days after the execution of this Lease, procure at its expense and deliver to Lessor a certificate of public liability insurance in a minimum amount of One Million Dollars (\$1,000,000.00) per occurrence for bodily injury, property damage, personal injury and or death growing out of any one accident or other cause. The City of Billings

shall be named as co-insured. The policy of insurance shall contain a provision requiring the issuer to notify Lessor, by at least twenty (20) days written notice, of any reduction in the face amount of the policy, cancellation or other adverse amendments to the risk covered.

Lessee shall maintain said insurance with insurance underwriters authorized to do business in the State of Montana satisfactory to Lessor. All policies shall name Lessor, its officers, servants and agents and employees as additional insureds as their interests shall appear. Lessee shall furnish Lessor with a certificate from the insurance carrier showing such insurance to be in full force and effect during the entire term of this Lease, or shall deposit with Lessor copies of said policies immediately up on execution of this Agreement. Failure to obtain and maintain said policy of insurance shall be considered a material breach of this agreement.

ARTICLE VII

TERMINATION OF LEASE, CANCELLATION & TRANSFER

A. Termination. This Lease shall terminate at the end of the full term hereof without any notice by either party. A holding over by the Lessee, its assigns or sublessees beyond the expiration of the term shall not be permitted without the written consent of the Director of Parks and Recreation, and then only on a month-to-month basis.

Upon expiration or other termination Lessee shall have the right to remove from the leasehold premises all moveable fixtures, machinery, equipment, apparatus, fittings, fixtures and trade fixtures, all telecommunication equipment, towers, switches, cables, wiring and associated equipment, other personal property, and all buildings and other structures owned or installed by Lessee on the premises. All expenses connected with such removal shall be borne by the Lessee. Said property shall be removed within thirty (30) days after expiration or other termination of the apparatus, fittings, fixtures and trade fixtures, telecommunication equipment, towers, switches, cables, wiring and associated equipment, other personal property, buildings,

structures or other property installed or located on the premises within thirty (30) days after expiration or other termination of the Lease, then Lessor shall acquire sole possession, right and title to said property.

Lessor shall then have the right to remove or otherwise dispose of said property and charge to Lessee the actual cost of removal and restoration of the leasehold premises.

Lessee shall restore the premises to its original condition or to the satisfaction of the Lessor.

B. Cancellation by Lessee. This Lease shall be subject to cancellation by Lessee after the happening of the following events:

1) The default by Lessor in the performance of any covenant or agreement herein required to be performed by Lessor and the failure of Lessor to remedy such default for a period of ninety (90) days after receipt from Lessee or written notice to remedy same.

2) The lawful assumption of the City of Billings or any other authorized agency thereof, of the operation, control or use of the City facilities, or any substantial part or parts thereof, in such a manner that substantially restricts Lessee for at least thirty (30) days from operating in a normal manner.

Lessee may exercise such right of termination by written notice to Lessor at any time after the lapse of the above applicable periods of time and this Lease shall terminate as of that date. Rental due hereunder shall be payable only to the date of the happening of the event which results in said termination. Upon termination under the provisions of this paragraph, Lessee shall have the same rights as described in the second paragraph of Article VII, Paragraph A herein.

C. Cancellation by Lessor.

- 1) This Lease shall be subject to cancellation by Lessor in the event Lessee shall:
- a) Be in arrears in the payment of the whole or any part of the amounts agreed upon hereunder for a period of ten (10) days after payment is due.
 - b) File a voluntary petition of bankruptcy.
 - c) Make a general assignment for the benefit of creditors.
 - d) Default in the performance of any of the covenants and conditions required herein (except rental payments) to be kept and performed by Lessee, and such default continues for a period of thirty (30) days after written notice from Lessor of said default.
 - e) Abandon its conduct of business on the leased premises.

2) In the event of termination because of the happening of any of the aforesaid events, Lessor may take immediate possession of the premises and remove Lessee's effects, forcibly if necessary, without being deemed guilty of trespassing. Upon said entry, this Lease shall terminate.

3) It is agreed that failure of Lessor to declare this Lease terminated or to re-enter and take possession upon the default of Lessee for any of the reasons set out shall not operate to bar or destroy the right of Lessor to declare this Lease null and void by reason of any subsequent violation of the terms of this Lease.

ARTICLE VIII

GENERAL PROVISIONS

A. Attorney's Fees. Should either party employ an attorney or attorneys or utilize the services of in-house attorneys to enforce any of the provisions hereof or to protect its interest

in any manner arising under this Agreement, the non-prevailing party in any action pursued in a court of competent jurisdiction agrees to pay to the prevailing party all reasonable costs, damages, expenses, and attorney's fees, including fees for in-house attorneys, expended or incurred in connection therewith.

B. Taxes. Lessee shall pay any taxes or assessments which may be lawfully levied against Lessee's occupancy or use of the premises or any improvements placed thereon as a result of Lessee's occupancy, but Lessee as independent contractor reserves the right to contest the levy of any tax or assessment which it feels is unjust.

C. Subordination of Lease.

1) Notwithstanding any other prohibition or limitation of Lessee's right to sublease or assign its interest under this Lease, Lessor acknowledges and agrees that Lessee shall have the right to grant a security interest in its rights and interest under this Lease. Lessor further agrees that any person foreclosing or other wise realizing upon such a security interest granted by Lessee shall succeed to, and shall have the benefits of, all Lessee's rights, title and Interest in, to and under this Lease. Lessor in no event shall be liable for the payment of the sum secured by such mortgage or trust indenture, nor for any expenses in connection with the same. Furthermore, such mortgage or trust indenture shall expressly provide that the mortgagor or beneficiary will seek no money judgment against Lessor. The mortgage or trust indenture shall also contain provisions requiring the holder of the indebtedness secured by such mortgage or trust indenture to mail to Lessor by certified mail a copy of each notice of breach of covenant, default or foreclosure given by the holder or the trustee under such mortgage or deed of trust.

D. Non-Discrimination. Lessee, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree: (a) that no person, on the grounds of race, color, creed, political ideas, sex, age, or

physical or mental handicap, shall be excluded from participation, denied the benefits of, or otherwise subjected to discrimination in the use of facilities, or the exercise of its rights and privileges under this Agreement (b) that, in the construction of any improvements on behalf of Lessee and the furnishing of services, no person shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination on the grounds of race, color, creed, political ideas, sex, age, or physical or mental handicap: (c) that Lessee shall use the facilities in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, Effectuation of Title VI of the Civil Rights Acts of 1964, and as said Regulations may be amended.

E. Paragraph Headings. The paragraph headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provisions of this Lease or the particular paragraphs.

F. Notices. Notices to Lessor provided for herein shall be sufficient if sent by certified mail, postage prepaid, address to:

Parks and Recreation Director
City Hall
Billings, MT 59103

and notices to Lessee, of sent by certified mail, postage prepaid, address to:

3 Rivers PCS, Inc.
PO Box 3387
Great Falls, MT 59403

or to such other addresses as the parties may designate to each other in writing from time to time.

G. Successors and Assigns. All of the terms, covenants and agreements herein contained shall be binding upon and shall inure to the benefit of successors, assignees and sublessees of the respective parties hereto.

IN WITNESS WHEREOF, the parties have hereunto set their hands this

23 day of Feb, 1998.

ATTEST:

BY Marita Herold
CITY CLERK



CITY OF BILLINGS

BY Michael A. Hanson
MAYOR Deputy Mayor in the absence of the Mayor

ATTEST:

BY _____
SECRETARY

3 RIVERS PCS, INC.

BY Ernest P. Pote
MANAGER

COUNTY OF Lewis & Clark)

)SS

STATE OF Montana)

On this Second day of February, 1998, before the undersigned Notary Public for the State of Montana , personally appeared Earnest J. Peterson known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year in this certificate first above written.

(NOTARY SEAL)

W Robert Kozick

Notary Public for the State of Montana

Residing at Helena

My Commission Expires Sept. 7, 1999

STATE OF Montana)

ss.

COUNTY OF Yellowstone)

On this 23 day of February, 1998, before the undersigned Notary Public for the State of Montana, personally appeared Michael A Larson known to me to be the Deputy Mayor of the City of Billings that (s)he(y) executed the within instrument, acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year in this certificate first above written.

(NOTARY SEAL)

Marita Herold

Notary Public for the State of Montana

Residing at Billings, MT

My Commission Expires 7-24-2000