

## OPTION AND LEASE AGREEMENT

THIS OPTION AND LEASE AGREEMENT ("**Agreement**"), dated as of the latter of the signature dates below (the "**Effective Date**"), is entered into by SKY HI DOMESTIC WATER IMPROVEMENT DISTRICT ("**Landlord**") having a mailing address of PO Box 974, Lakeside, Arizona 85929 and DW TOWER II, LLC, a Delaware limited liability company ("**Tenant**"), having a mailing address of 1603 Golf Course Road Southeast, Suite A4, Rio Rancho, New Mexico 87124.

### BACKGROUND

Landlord is the fee owner of that land and property, together with all rights and privileges arising in connection therewith, located in the State of Arizona, County of Navajo and commonly referred to as parcel number 113-19-020A and further described on Exhibit 1 (collectively, the "**Property**"). Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord, a portion of the Property measuring approximately 2,500 square feet (with dimensions of 50 feet by 50 feet) (the "**Premises**"), together with non-exclusive easements over, across, under and through the Property for ingress, egress, access, regress and parking and the installation and maintenance of cables, utilities and lines (collectively, the "**Easements**") each being approximately located as shown on Exhibit 2 (the Premises and the Easements are collectively referred to herein as the "**Leased Premises**"), for the purpose of constructing, operating, installing, maintaining, removing, replacing and modifying a communications facility for Tenant's use and the use thereof by Tenant's subtenants, licensees and customers

The parties agree as follows:

#### 1. OPTION TO LEASE.

(a) In consideration of the payment of Nine Hundred Fifty and No/100's Dollars (\$950.00) (the "**Option Fee**") by Tenant to Landlord, Landlord hereby grants to Tenant an exclusive and irrevocable option (the "**Option**") to lease the Premises and use the Easements on the terms and conditions set forth below. The Option shall commence upon the Effective Date and shall continue for an initial term of three (3) years (the "**Initial Option Term**"). Tenant shall have the right to extend the Option for one (1) additional period of three (3) years (the "**Extended Option Term**") upon written notification to Landlord and the payment of Nine Hundred Fifty and No/100's Dollars (\$950.00) ("**Extended Option Fee**") within thirty (30) days following the commencement of the Extended Option Term. The Initial Option Term and any Extended Option Term are collectively referred to as the "**Option Term**."

(b) During the Option Term, and during the term of this Agreement, Tenant and its agents, engineers, surveyors and other representatives will have the right to enter upon the Property to inspect, examine, conduct soil borings, drainage testing, material sampling, radio frequency testing and other geological or engineering tests or studies of the Property (collectively, the "**Tests**"), to apply for and obtain licenses, permits, approvals, or other relief required of or deemed necessary or appropriate at Tenant's sole discretion for its use of the Premises and include, without limitation, applications for zoning variances, zoning ordinance, amendments, special use permits, and construction permits (collectively, the "**Government Approvals**"), initiate the ordering and/or scheduling of necessary utilities, and otherwise to do those things on or off the Property that, in the opinion of Tenant, are necessary in Tenant's sole discretion to determine the physical condition of the Property, the environmental history of the Property, Landlord's title to the Property and the feasibility or suitability of the Property for Tenant's Permitted Use, all at Tenant's expense. Tenant will not be liable to Landlord or any third party on account of any pre-existing defect or condition on or with respect to the Property, whether or not such defect or condition is disclosed by Tenant's inspection. Tenant will restore the Property to its condition as it existed at the commencement of the Option Term, reasonable wear and tear and loss by casualty or other causes beyond Tenant's control excepted.

(c) This Option shall be binding upon the heirs, executors, administrators, successors and assigns of both parties hereto. This Option may be assigned or transferred at any time by Tenant. Landlord



shall not sell, lease, convey, subdivide or separate all or any portion of the Property in a manner that may, in Tenant's reasonable discretion, interfere with or prohibit the use of the Leased Premises by Tenant and without not less than thirty (30) days' notice to Tenant.

(e) If Tenant does not exercise the Option during the Option Term, this Agreement shall automatically terminate as of the last day of the Option Term, and neither party shall have any further obligation to the other. Tenant may exercise the Option at any time during the Option Term by providing written notice to Landlord in the manner set forth in this Agreement, which notice shall be effective on the date set forth in the notice ("**Commencement Date**").

2. **LEASE AND EASEMENT.** Subject to the terms and conditions of this Agreement, upon Tenant's exercise of the Option, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, the Premises and grants to Tenant, its successors, assigns, for its use and the use by Tenant's subtenants, licensees, invitees, and customers, and each of their respective employees, contractors and agents, the use of the Easements for ingress, egress, regress, access and parking (including a 20' x 20' turnaround area) seven (7) days a week, twenty-four (24) hours a day, on foot or motor vehicle, including trucks, cranes and heavy equipment and the installation, construction, modification, operation and maintenance of above and below ground electrical, telephone, fiberoptic and other lines, cables, conduit, pipes, poles, equipment boxes, pull boxes and ancillary improvements.

3. **PERMITTED USE.**

(a) **General Terms.** Tenant, together with its subtenants, licensees, invitees and customers, may use the Premises for, among other things, the construction, modification, operation, maintenance, repair, removal and replacement of a communications tower facility (the "**Tower**") not to exceed eighty (80) feet in height, plus appurtenances (as well as, to the extent applicable, that of its subtenants, licensees and/or customers) radio transmitting and receiving antennae, dishes, temporary generators, communications equipment, and related cables, wires, conduits, air conditioning equipment and other appurtenances, an equipment building (the "**Building**") to include and enclose certain equipment and fencing and any other items necessary, in Tenant's discretion, to the successful and secure use of the Premises by Tenant (the Building, Tower and other equipment installed by Tenant, hereinafter collectively, the "**Communication Facility**"), as well as the right to test, survey and review title on the Property (collectively, the "**Permitted Use**"). Tenant shall be entitled to sublease and/or sublicense all or any part of the Premises or any communications tower(s) thereon at any time without Landlord consent, subject to the terms and provisions of Section 5 hereof. The Communication Facility shall include a monopine style communications antenna support structure together with one, single concrete block building generally as conceptually described on **Exhibit 2**. If **Exhibit 2** includes drawings of the initial installation of the Communication Facility, Landlord's execution of this Agreement will signify Landlord's approval of **Exhibit 2**. **Exhibit 2** also includes a photo simulation of the proposed Communications Facility. In the event Tenant desires to materially and significantly change the design of the Communication Facility, Tenant shall request the approval of Landlord, which approval shall not be unreasonably withheld, delayed or conditioned. In addition, Landlord grants Tenant, its subtenants, licensees and sublicensees, the right to use such portions of Landlord's contiguous, adjoining Property as may reasonably be required during the construction, installation, repair, replacement or modification of the Communication Facility. Tenant has the right to make other improvements, alterations, upgrades, installations or additions appropriate for Tenant's Permitted Use to the Premises and within the Property. Tenant has the right to modify, supplement, replace, upgrade, expand the equipment, increase the number of antennas or relocate the Communication Facility within the Premises at any time during the term of this Agreement. In the event Tenant desires to modify or upgrade the Communication Facility in a manner that requires an additional portion of the Property (the "**Additional Premises**") for such modification or upgrade, Landlord agrees to lease to Tenant the Additional Premises, upon the same terms and conditions set forth herein, except that the Rent shall increase by the amount equivalent to the then-current per square foot rental rate charged by Landlord to Tenant times the square footage of the Additional Premises. Landlord agrees to take such actions and enter into and



deliver to Tenant such documents as Tenant reasonably requests in order to effect and memorialize the lease of the Additional Premises to Tenant.

(b) **Special Terms.** Notwithstanding the foregoing, the Tower shall not be lit with obstruction lighting without the consent of Landlord, which consent shall not be unreasonably withheld, delayed or conditioned. In addition, antennas installed on the Tower shall be camouflaged to look like socks unless otherwise approved by Landlord, which consent shall not be unreasonably withheld, delayed or conditioned. Tenant shall use commercially reasonable efforts to insulate the interior of the Building portion of the Communication Facility for noise, and the Building shall be constructed to match that of the existing structures of Landlord on the Property, including the color, roof type, and architectural design. Tenant shall not keep or install a permanent generator within the Leased Premises, but shall have the right during the term of this Agreement, and from time to time and at any time, to install, keep and operate a temporary generator if deemed necessary by Tenant. Following the completion of the Communication Facility, Tenant shall, at Tenant's cost, obtain and provide to Landlord an Antenna Site FCC RF On Site Measurement Assessment and Report (hereinafter an "**RF Study**") providing for an independent assessment of the compliance of the Communication Facility with the FCC limits of maximum permissible exposure.

#### 4. **TERM.**

(a) The initial term of this Agreement (the "**Initial Term**") shall be five (5) years, beginning on the Commencement Date. Tenant shall have the option to extend this Agreement for eighteen (18) additional terms of five (5) years each (each an "**Extension Term**"). This Agreement shall automatically renew for each successive Extension Term unless Tenant provides written notice to Landlord of its election not to renew this Agreement not less than sixty (60) days prior to the expiration of the Initial Term or any applicable Extension Term. The Initial Term and the Extension Terms shall collectively be referred to as the "**Term**".

(b) Unless (i) Landlord or Tenant notifies the other in writing of its intention to terminate this Agreement at least sixty (60) days prior to the expiration of the final Extension Term, or (ii) the Agreement is terminated as otherwise permitted by this Agreement prior to the end of the final Extension Term, then upon the final Extension Term, this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of one (1) year, and for annual terms thereafter (each an "**Annual Term**") until terminated by either party by giving to the other written notice of its intention to so terminate at least six (6) months prior to the end of any such Annual Term. Monthly rental during such Annual Terms shall be equal to the Rent paid for the last month of the final Extension Term. If Tenant remains in possession of the Premises after the termination of this Agreement, Tenant will be deemed to be occupying the Premises on a month-to-month basis (the "**Holdover Term**"), subject to the terms and conditions of this Agreement.

(c) The Initial Term, any Extension Terms, any Annual Terms and any Holdover Term are collectively referred to as the Term (the "**Term**").

#### 5. **RENT.**

(a) Commencing on the first day of the month following the date that Tenant commences construction of the Communication Facility (the "**Rent Commencement Date**"), Tenant will pay Landlord on or before the fifth (5<sup>th</sup>) day of each calendar month in advance, Nine Hundred Fifty and No/100's Dollars (\$950.00) (the "**Rent**"). In any partial month occurring after the Rent Commencement Date, Rent will be prorated. The initial Rent payment will be forwarded by Tenant to Landlord within forty-five (45) days after the Rent Commencement Date. The Rent shall increase, on the first day of each Extension Term, by an amount equal to ten percent (10%) over the Rent payable for the Initial Term or immediately preceding Extension Term, as the case may be.

(b) In addition to Rent, Tenant shall pay to Landlord a flat, non-escalating amount equal to Two Hundred and No/100's Dollars (\$200.00) per month for the second and each subsequent third party operating a broadband wireless communications system within the Leased Premises with and on the Tower

(the second and each subsequent third party each hereinafter a "Future User" and such amount payable to Landlord hereinafter the "Future User Revenue Share Amount"). Any applicable Future User Revenue Share Amount shall commence upon the first day of the first month following the completion of installation of equipment within the Premises and on the Tenant's Facilities by such Future User, and thereafter continue until the earlier of (i) the expiration of this Agreement or (ii) the cessation of use by such Future User of the Leased Premises as evidenced by a written notice of such termination or cessation by Tenant to Landlord. In furtherance of the foregoing, Landlord and Tenant agree that the initial, first or anchor tenant, subtenant or licensee of Tenant (the "Anchor Tenant") shall not be considered a "Future User" for purposes of this section and, in the event the Anchor Tenant vacates the Premises at any time during the Term hereof, the first Future User, if any, shall be deemed the 'Anchor Tenant' for purposes of calculating any amount of Future User Revenue Share Amount due from Tenant to Landlord.

**6. APPROVALS.**

(a) Landlord agrees that Tenant's ability to use the Premises is contingent upon the suitability of the Premises, Leased Premises and Property for Tenant's Permitted Use and Tenant's ability to obtain and maintain Government Approvals. Landlord authorizes Tenant to prepare, execute and file all required applications to obtain Government Approvals for Tenant's Permitted Use under this Agreement and agrees to reasonably assist Tenant with such applications and with obtaining and maintaining the Government Approvals.

(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 its choice.

(c) Tenant may also perform and obtain, at Tenant's sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports on, over, and under the Property, necessary to determine if Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system, design, operations or Government Approvals.

**7. TERMINATION.** This Agreement may be terminated, without penalty or further liability, as follows:

(a) by either party on thirty (30) days prior written notice, if the other party remains in default under Section 16 of this Agreement after the applicable cure periods;

(b) by Tenant upon written notice to Landlord, if Tenant is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now or hereafter intended by Tenant; or if Tenant determines, in its sole discretion that the cost of or delay in obtaining or retaining the same is commercially unreasonable;

(c) by Tenant, upon written notice to Landlord, if Tenant determines, in its sole discretion, due to the title report results or survey results, that the condition of the Premises is unsatisfactory for its intended uses;

(d) by Tenant upon written notice to Landlord for any reason or no reason, at any time prior to commencement of construction of the Communications Facility by Tenant; or

(e) by Tenant upon sixty (60) days' prior written notice to Landlord for any reason or no reason, so long as Tenant pays Landlord a termination fee equal to three (3) months' Rent, at the then-current rate, provided, however, that no such termination fee will be payable on account of the termination of this Agreement by Tenant under any termination provision contained in any other Section of this Agreement.

**8. INSURANCE.** Tenant shall acquire and maintain during the Term of this Agreement: (i) workers' compensation insurance as required by law; and (ii) commercial general liability (CGL) insurance with respect to its activities on the Property, such insurance to afford protection of up to One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate. Tenant's CGL insurance shall contain list Landlord as an additional insured, as its interest may appear. Such additional



insured coverage (i) shall be limited to bodily injury, property damage or personal and advertising injury caused, in whole or in part, by Tenant, its employees, agents or independent contractors; (ii) shall not extend to claims for punitive or exemplary damages arising out of the acts or omissions of Landlord, its employees, agents or independent contractors or where such coverage is prohibited by law or to claims arising out of the gross negligence of Landlord, its employees, agents or independent contractors; and (iii) shall not exceed Tenant's indemnification obligation under this Agreement, if any.

**9. INTERFERENCE.**

(a) Prior to or concurrent with the execution of this Agreement, Landlord has provided or will provide Tenant with a list of radio frequency user(s) and frequencies used on the Property as of the Effective Date. Tenant warrants that its use of the Premises will not interfere with those existing radio frequency uses on the Property, as long as those existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations.

(b) Landlord shall not use, nor shall Landlord permit its tenants, licensees, employees, invitees or agents to use any portion of the Property in any way that interferes with Tenant's Permitted Use of the Leased Premises. Such interference will be deemed a material breach of this Agreement by Landlord and Landlord shall have the responsibility to terminate said interference immediately upon written notice from Tenant. Anything to the contrary in this Agreement notwithstanding, if any such interference does not cease or is not rectified as soon as possible, but in no event longer than 24 hours after Tenant's written notice to Landlord, Landlord acknowledges that continuing interference will cause irreparable injury to Tenant, as well as Tenant's subtenants and licensees, and Tenant shall have the right, in addition to any other rights that it may have at law or in equity, to bring action to enjoin such interference or to terminate this Agreement immediately upon notice to Landlord. Landlord represents and warrants that it has not sold, leased, licensed or otherwise granted rights in the Property that in any way interfere or could reasonably be likely to interfere with Tenant's rights to the Leased Premises as set forth in this Agreement.

**10. INDEMNIFICATION.**

(a) Tenant agrees to indemnify, defend and hold Landlord harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly from the installation, use, maintenance, repair or removal of the Communication Facility or Tenant's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Landlord, its employees, agents or independent contractors.

(b) Landlord agrees to indemnify, defend and hold Tenant harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly from the actions or failure to act of Landlord, its employees or agents, or Landlord's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Tenant, its employees, agents or independent contractors.

(c) The indemnified party: (i) shall promptly provide the indemnifying party with written notice of any claim, demand, lawsuit, or the like for which it seeks indemnification pursuant to this Section and provide the indemnifying party with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of the indemnifying party; and (iii) shall fully cooperate with the indemnifying party in the defense of the claim, demand, lawsuit, or the like. A delay in notice shall not relieve the indemnifying party of its indemnity obligation, except (1) to the extent the indemnifying party can show it was prejudiced by the delay; and (2) the indemnifying party shall not be liable for any settlement or litigation expenses incurred before the time when notice is given.

## **11. WARRANTIES AND COVENANTS.**

(a) 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 Agreement and bind itself hereto through the party set forth as signatory for the party below.

(b) Landlord represents, warrants and agrees that: (i) Landlord solely owns the Property as a legal lot in fee simple; (ii) the Property is not and will not be encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect Tenant's Permitted Use and enjoyment of the Leased Premises under this Agreement; (iii) as long as Tenant is not in default of this Agreement beyond any applicable cure period, Landlord grants to Tenant sole, actual, quiet and peaceful use, enjoyment and possession of the Premises and the non-exclusive use of the Easements without hindrance or ejection by any persons lawfully claiming under Landlord; (iv) Landlord's execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on Landlord; and (v) if the Property is or becomes encumbered by a deed to secure a debt, mortgage or other security interest, Landlord will provide promptly to Tenant a mutually agreeable subordination, non-disturbance and attornment agreement executed by Landlord and the holder of such security interest.

(c) Landlord agrees, from time to time, upon not less than ten (10) days prior written notice from Tenant, to execute and deliver to Tenant a written estoppel certificate certifying that as of the date of the certification: (i) this Agreement is a valid enforceable agreement, presently in full force and effect; (ii) whether Landlord has any knowledge of any default or breach by Tenant under any of the terms, conditions, or covenants of this Agreement; (iii) the Term (its commencement and termination dates) and the term of any option or renewal periods granted to the Tenant to extend the Term; (iv) the amount of the then-current Rent payable under the Agreement; (v) attached to the certification is a true and correct copy of the Agreement and all amendments thereto, (vi) and such other facts as Tenant or its prospective mortgagee or purchaser may request.

## **12. ENVIRONMENTAL.**

(a) Landlord represents and warrants that, except as may be identified on Schedule A attached to this Agreement, (i) the Property, as of the date of this Agreement, is free of hazardous substances, including asbestos-containing materials and lead paint, and (ii) the Property has never been subject to any contamination or hazardous conditions resulting in any environmental investigation, inquiry or remediation. Landlord and Tenant agree that each will be responsible for compliance with any and all applicable governmental laws, rules, statutes, regulations, codes, ordinances, or principles of common law regulating or imposing standards of liability or standards of conduct with regard to protection of the environment or worker health and safety, as may now or at any time hereafter be in effect, to the extent such apply to that party's activity conducted in or on the Property

(b) Landlord and Tenant agree to hold harmless and indemnify the other from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of the indemnifying party for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding ("**Claims**"), to the extent arising from that party's breach of its obligations or representations under Section 12(a). Landlord agrees to hold harmless and indemnify Tenant from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of Landlord for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from subsurface or other contamination of the Property with hazardous substances prior to the Effective Date of this Agreement or from such contamination caused by the acts or omissions of Landlord during the Term. Tenant agrees to hold harmless and indemnify Landlord from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of Tenant for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from hazardous substances brought onto the Property by Tenant.

(c) The indemnifications of this Section 12 specifically include reasonable costs, expenses and fees incurred in connection with any investigation of Property conditions or any clean-up, remediation,



removal or restoration work required by any governmental authority. The provisions of this Section 12 will survive the expiration or termination of this Agreement.

(d) In the event Tenant becomes aware of any hazardous substances on the Property, or any environmental, health or safety condition or matter relating to the Property, that, in Tenant's sole determination, renders the condition of the Premises or Property unsuitable for Tenant's use, or if Tenant believes that the leasing or continued leasing of the Premises would expose Tenant to undue risks of liability to a government agency or other third party, Tenant will have the right, in addition to any other rights it may have at law or in equity, to terminate this Agreement upon written notice to Landlord.

**13. ACCESS.** At all times throughout the Term of this Agreement, and at no additional charge to Tenant, Tenant, its customers, sublessees, and invitees, together with each of their respective employees, agents, and subcontractors, shall have twenty-four (24) hour per day, seven (7) day per week pedestrian and vehicular access ("**Access**") to and over the Property, from an open and improved public road to the Premises, and the unrestricted right to install, maintain, operate, repair or replace any utilities serving the Premises. As may be described more fully in **Exhibit 2**, Landlord grants to Tenant an easement 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. Upon Tenant's request, Landlord will execute a separate recordable easement evidencing this right. Landlord acknowledges that in the event Tenant cannot obtain Access to the Premises, Tenant shall incur significant damage. If Landlord fails to provide the Access granted by this Section 13, such failure shall be a default under this Agreement. In connection with such default, in addition to any other rights or remedies available to Tenant under this Agreement or at law or equity, Landlord shall pay Tenant, as liquidated damages and not as a penalty, \$500.00 per day in consideration of Tenant's damages until Landlord cures such default. Landlord and Tenant agree that Tenant's damages in the event of a denial of Access are difficult, if not impossible, to ascertain, and the liquidated damages set forth above are a reasonable approximation of such damages.

**14. REMOVAL/RESTORATION.** All portions of the Communication Facility brought onto the Property by Tenant will be and remain Tenant's personal property and, at Tenant's option, may be removed by Tenant at any time during or after the Term. Landlord covenants and agrees that no part of the Communication Facility constructed, erected or placed on the Premises by Tenant will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of Landlord that all improvements of every kind and nature constructed, erected or placed by Tenant on the Premises will be and remain the property of Tenant and may be removed by Tenant at any time during or after the Term. Tenant shall be required to remove the above ground portions of the Communication Facility, and those below ground portions to a depth of three (3) feet below grade, at the end of the Term or upon other termination hereunder. Tenant will repair any damage to the Property resulting from Tenant's removal activities. Notwithstanding the foregoing, Tenant will not be responsible for the replacement of any trees, shrubs or other vegetation.

**15. MAINTENANCE/UTILITIES.**

(a) Tenant will keep and maintain the Premises in good condition, reasonable wear and tear and damage from the elements excepted. Landlord will maintain and repair the Property and access thereto and all areas of the Leased Premises where Tenant does not have exclusive control, in good and tenantable condition, subject to reasonable wear and tear and damage from the elements.

(b) Tenant will be responsible for paying on a monthly or quarterly basis all utilities charges for electricity, telephone service or any other utility used or consumed by Tenant on the Premises. Landlord acknowledges that Tenant provides a communication service which requires electrical power to operate and must operate twenty-four (24) hours per day, seven (7) days per week. If the interruption is for an extended period of time, in Tenant's reasonable determination, Landlord agrees to allow Tenant the right to bring in a temporary source of power for the duration of the interruption. Landlord will not be responsible for

interference with, interruption of or failure, beyond the reasonable control of Landlord, of such services to be furnished or supplied by Landlord.

(c) Landlord hereby grants to Tenant, its subtenants, licensees, invitees and customers, together with any electric, telephone or fiberoptic company providing electric, telephone or fiberoptic service to the Premises a non-exclusive easement over the Property to and from open and improved public road to the Premises for the purpose of constructing, operating and maintaining such lines, wires, circuits, and conduits, associated equipment cabinets and such appurtenances thereto, as Tenant or such companies may from time to time require. Upon Tenant's or the service company's request, Landlord will execute a separate recordable easement evidencing this grant, at no cost to Tenant or the service company.

#### **16. DEFAULT AND RIGHT TO CURE.**

(a) The following will be deemed a default by Tenant and a breach of this Agreement: (i) non-payment of Rent if such Rent remains unpaid for more than thirty (30) days after written notice from Landlord of such failure to pay; or (ii) Tenant's failure to perform any other term or condition under this Agreement within forty-five (45) days after written notice from Landlord specifying the failure. No such failure, however, 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. Delay in curing a default will be excused if due to causes beyond the reasonable control of Tenant. 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. In the event Landlord elects to terminate this Agreement due to a default by Tenant, it shall continue to honor all leasehold and or license commitments made by Tenant through the expiration of the Term of any such commitment, it being intended hereby that each such commitment shall survive the early termination of this Agreement.

(b) The following will be deemed a default by Landlord and a breach of this Agreement: (i) Landlord's failure to provide Access to the Premises as required by Section 13 of this Agreement within twenty-four (24) hours after written notice of such failure; (ii) Landlord's failure to cure an interference problem as required by Section 9 of this Agreement within twenty-four (24) hours after written notice of such failure; or (iii) Landlord's failure to perform any term, condition or breach of any warranty or covenant under this Agreement within forty-five (45) days after 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. Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord. If Landlord remains in default beyond any applicable cure period, Tenant will have: (i) the right to cure Landlord's default and to deduct the costs of such cure from any monies due to Landlord from Tenant, and (ii) any and all other rights available to it under law and equity.

**17. ASSIGNMENT/SUBLEASE.** Tenant may assign or transfer its interest in this Agreement and the Leased Premises without the consent of Landlord, provided that such assignee agrees in writing to assume the obligations of Tenant hereunder. Upon such assignment, Tenant shall be released of all obligations under this Agreement. Tenant may sublease all or any portion of the Leased Premises to any other party or multiple parties, without the consent of Landlord, provided that no such sublease shall relieve Tenant of its obligations under this Agreement. Additionally, Tenant may mortgage or grant a security interest in this Agreement and the Communications Facility, and may assign this Agreement and the Communication Facilities to any such mortgagees or holders of security interests including their successors and assigns (hereinafter collectively referred to as "**Secured Parties**"). If requested by Tenant, Landlord shall execute such consent to such financing as may reasonably be required by Secured Parties. In addition, if requested by Tenant, Landlord agrees to notify Tenant and Tenant's Secured Parties simultaneously of any default by Tenant and to give Secured Parties the same right to cure any default as Tenant. If a termination, disaffirmance or rejection of the Agreement by Tenant pursuant to any laws (including any bankruptcy or insolvency laws) occurs, or if Landlord shall terminate this Agreement for any reason, Landlord will give to Secured Parties prompt notice thereof and Secured Parties shall have the right to enter



Market: Arizona  
Site Number:  
Site Name: Sky Hi

upon the Premises during a thirty (30) day period commencing upon Secured Parties' receipt of such notice for the purpose of removing any Communications Facilities. Landlord acknowledges that Secured Parties are third-party beneficiaries of this Agreement.

**18. NOTICES.** 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. Formal notices will be addressed to the parties as follows:

If to Tenant: DW TOWER II, LLC  
Attn: Dale Wilson  
Re: Site # \_\_\_\_\_; Site Name: Sky Hi  
1603 Golf Course Road Southeast  
Suite A4  
Rio Rancho, New Mexico 87124

If to Landlord: SKY HI DOMESTIC WATER IMPROVEMENT DISTRICT  
PO Box 974  
Lakeside, Arizona 85929  
Landlord: Phone: \_\_\_\_\_ / Email: \_\_\_\_\_

Either party hereto may change the place for the giving of notice to it by thirty (30) days' prior written notice to the other as provided herein.

**19. CONDEMNATION.** In the event Landlord receives notification of any condemnation proceedings affecting the Property, Landlord will provide notice of the proceeding to Tenant within forty-eight (48) hours. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's sole determination, to render the Premises unsuitable for Tenant, this Agreement will terminate as of the date the title vests in the condemning authority. The parties will each be entitled to pursue their own separate awards in the condemnation proceeds, which for Tenant will include, where applicable, the value of its Communication Facility, moving expenses, prepaid Rent, and business dislocation expenses. Tenant will be entitled to reimbursement for any prepaid Rent on a prorated basis.

**20. CASUALTY.** Landlord will provide notice to Tenant of any casualty or other harm affecting the Property within forty-eight (48) hours of the casualty or other harm. If any part of the Communication Facility or Property is damaged by casualty or other harm as to render the Premises unsuitable, in Tenant's sole determination, then Tenant may terminate this Agreement by providing written notice to Landlord, which termination will be effective as of the date of such casualty or other harm. 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 prorated basis. Landlord agrees to permit Tenant to place temporary transmission and reception facilities on the Property, but only until such time as Tenant is able to activate a replacement transmission facility at another location; notwithstanding the termination of this Agreement, such temporary facilities will be governed by all of the terms and conditions of this Agreement, including Rent. If Landlord or Tenant undertakes to rebuild or restore the Premises and/or the Communication Facility, as applicable, Landlord agrees to permit Tenant to place temporary transmission and reception facilities on the Property at no additional Rent until the reconstruction of the Premises and/or the Communication Facility is completed. If Landlord determines not to rebuild or restore the Property, Landlord will notify Tenant of such determination within thirty (30) days after the casualty or other harm. If Landlord does not so notify Tenant and Tenant decides not to terminate under this Section, then Landlord will promptly rebuild or restore any portion of the Property interfering with or required for Tenant's

Permitted Use of the Premises to substantially the same condition as existed before the casualty or other harm. Landlord agrees that the Rent shall be abated until the Property and/or the Premises are rebuilt or restored, unless Tenant places temporary transmission and reception facilities on the Property.

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

**22. TAXES.**

(a) Tenant shall pay all personal property taxes separately levied or assessed against Tenant's Facilities on the Leased Premises. Landlord shall pay when due all real property taxes and all other fees and assessments attributable to the Property and the Leased Premises, provided that Tenant shall reimburse Landlord for the increase in any such real property taxes that is directly attributable to the Tenant Facilities, and Landlord agrees to provide such documentation to Tenant within thirty (30) days following the receipt of such assessment by Landlord. If Landlord fails to pay when due any taxes affecting the Property or the Leased Premises, Tenant shall have the right, but not the obligation, to pay such taxes and (i) deduct the full amount of the taxes paid by Tenant on Landlord's behalf from future installments of Rent, or (ii) collect such taxes by any lawful means. Nothing herein shall require Tenant to pay any inheritance, franchise, income, payroll, excise, privilege, rent, capital stock, stamp, documentary, estate or profit tax, or any tax of similar nature, that is or may be imposed upon Landlord.

(b) For any tax amount for which Tenant is responsible under this Agreement, Tenant shall have the right to contest, in good faith, the validity or the amount thereof using such administrative, appellate or other proceedings as may be appropriate in the jurisdiction, and may defer payment of such obligations, pay same under protest, or take such other steps as Tenant may deem appropriate. This right shall include the ability to institute any legal, regulatory or informal action in the name of Landlord, Tenant, or both, with respect to the valuation of the Premises. Landlord shall cooperate with respect to the commencement and prosecution of any such proceedings and will execute any documents required therefor. The expense of any such proceedings shall be borne by Tenant and any refunds or rebates secured as a result of Tenant's action shall belong to Tenant, to the extent the amounts were originally paid by Tenant. In the event Tenant notifies Landlord by the due date for assessment of Tenant's intent to contest the assessment, Landlord shall not pay the assessment pending conclusion of the contest, unless required by applicable law.

(c) Landlord shall not split or cause the tax parcel on which the Premises are located to be split, bifurcated, separated or divided without the prior written consent of Tenant.

**23. SALE OF PROPERTY.**

(a) Landlord shall promptly notify Tenant in writing of any sale, conveyance, rezoning, subdivision or other transfer of the Property and such rezoning, sale, subdivision or transfer shall be subject to this Agreement and Tenant's rights hereunder. In the event of a change in ownership of the Property, Landlord shall provide to Tenant the documents set forth below within ten (10) days of such any such transfer. Until Tenant receives all such documents, Tenant shall not be responsible for any failure to make payments under this Agreement and reserves the right to hold payments due under this Agreement.

- i. Old deed to Property
- ii. New deed to Property
- iii. Bill of Sale or Transfer
- iv. Copy of current Tax Bill
- v. New IRS Form W-9
- vi. Completed and Signed TND Payment Direction Form



vii. Full contact information for new Landlord including phone number(s)

(b) Landlord agrees that, during the Term, Tenant will have the exclusive right to lease the Property or any portion thereof from the Landlord for communications uses or the use and operation of antenna, transmitter or telecommunications facilities providing transmission and/or receiving facilities. Landlord shall not, at any time during the Term of this Agreement, use or suffer or permit another person to use any portion of the Property or any adjacent parcel of land now or hereafter owned, leased or managed by Landlord for any of the Permitted Use or uses similar thereto, including the construction, development, use or operation of communications tower facilities, data transmission facilities, or other systems for the transmission, reception or relay of communications signals, including small cells, distributed antenna systems, data centers, C-RAN or fiber.

**24. RIGHT OF FIRST REFUSAL / RENTAL STREAM OFFER.**

(a) From and after the Effective Date, Landlord hereby grants Tenant a right of first refusal in connection with all requests, proposals or offers from any Offeror (as defined below) other than the Tenant to acquire, lease or obtain an easement (or other right of way) under all or any portion of the Leased Premises. Landlord shall provide Tenant written notice (the "**ROFR Notice**") of its receipt of such a request, proposal or offer which Landlord desires to accept. Such ROFR Notice shall describe all material terms of such request, proposal or offer and include a copy of such request, proposal or offer. Tenant shall have thirty (30) days to evaluate such request, proposal or offer and notify Landlord in writing (the "**Acceptance Notice**") if it intends to exercise its right to consummate such acquisition, lease or obtaining of easement (or other right of way) pursuant to the terms and conditions set forth in such request, proposal or offer. If Tenant fails to provide Landlord with an Acceptance Notice or within such thirty (30) day period, then Landlord may proceed with such sale, lease or grant of easement (or other right of way) to such third party as set forth in the ROFR Notice, provided that if the acquisition, lease or obtaining of easement (or other right of way) set forth in the ROFR Notice is not completed within one hundred eighty (180) days of when Tenant notifies Landlord it does not intend to provide an Acceptance Notice (or, if no such notice is given, one hundred eighty (180) days after the expiration of the aforementioned thirty (30) day period), then Landlord shall not complete such transaction(s) without first providing Tenant an additional ROFR Notice pursuant to the terms of this Section 24, whereupon the provisions of this Section 24 shall again apply. An "**Offeror**" is any person or entity that, directly or indirectly, owns or operates towers or communications facilities, or is in the business of acquiring, in whole or in part, fee title, tenancy rights, licensing rights, easement rights, contract rights, economic rights or any other type of right or interest in real property and/or leases in, under or around towers or communications facilities.

(b) If at any time after the date of this Agreement, Landlord receives a bona fide written offer from an Offeror seeking an assignment or transfer of Rent payments associated with this Agreement ("**Rental Stream Offer**") which Landlord desires to accept, Landlord will furnish Tenant with a copy of the Rental Stream Offer. Tenant shall have the right within thirty (30) days after it receives such copy to match the Rental Stream Offer and agree in writing to match the terms of the Rental Stream Offer. Such writing shall be in the form of a contract substantially similar to the Rental Stream Offer. If Tenant chooses not to exercise this right or fails to provide written notice to Landlord within such thirty (30) day period, Landlord may assign the right to receive the Rent payments pursuant to the Rental Stream Offer, subject to the terms of this Agreement. If Landlord attempts to assign or transfer Rent payments without complying with this section, the assignment or transfer shall be void. Tenant shall not be responsible for any failure to make payments under this Agreement and reserves the right to hold payments due under this Agreement until Landlord complies with this Section 24(b).

**25. MISCELLANEOUS.**

(a) **Amendment/Waiver.** This Agreement cannot be amended, modified or revised unless done in writing and signed by Landlord and Tenant. No provision may be waived except in a writing signed



by both parties. The failure by a party to enforce any provision of this Agreement or to require performance by the other party will not be construed to be a waiver, or in any way affect the right of either party to enforce such provision thereafter.

(b) **Memorandum/Short Form Lease.** Contemporaneously with the execution of this Agreement, the parties will execute a recordable Memorandum or Short Form of Lease substantially in the form attached as **Exhibit 24b**. Either party may record this Memorandum or Short Form of Lease at any time during the Term, in its absolute discretion. Thereafter during the Term of this Agreement, either party will, at any time upon fifteen (15) business days' prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum or Short Form of Lease.

(c) **Limitation of Liability.** Except for the indemnity obligations set forth in this Agreement, and otherwise notwithstanding anything to the contrary in this Agreement, Tenant and Landlord each waives any claims that each may have against the other with respect to consequential, incidental or special damages, however caused, based on any theory of liability.

(d) **Compliance with Law.** Tenant agrees to comply with all federal, state and local laws, orders, rules and regulations ("**Laws**") applicable to Tenant's use of the Communication Facility on the Property. Landlord agrees to comply with all Laws relating to Landlord's ownership and use of the Property and any improvements on the Property.

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

(f) **Entire Agreement.** This Agreement 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 Agreement. Exhibits are numbered to correspond to the Section wherein they are first referenced. Except as otherwise stated in this Agreement, each party shall bear its own fees and expenses (including the fees and expenses of its agents, brokers, representatives, attorneys, and accountants) incurred in connection with the negotiation, drafting, execution and performance of this Agreement and the transactions it contemplates.

(g) **Governing Law.** This Agreement will be governed by the laws of the state in which the Premises are located, without regard to conflicts of law.

(h) **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 but not limited to"; (iii) whenever a party's consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of this Agreement and are incorporated by reference into this Agreement; (v) use of the terms "termination" or "expiration" are interchangeable; (vi) reference to a default will take into consideration any applicable notice, grace and cure periods; (vii) to the extent there is any issue with respect to any alleged, perceived or actual ambiguity in this Agreement, the ambiguity shall not be resolved on the basis of who drafted the Agreement; (viii) the singular use of words includes the plural where appropriate and (ix) if any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force if the overall purpose of the Agreement is not rendered impossible and the original purpose, intent or consideration is not materially impaired.

(i) **Affiliates.** All references to "Tenant" shall be deemed to include any Affiliate of DW TOWER II, LLC using the Premises for any Permitted Use or otherwise exercising the rights of Tenant pursuant to this Agreement. "Affiliate" means with respect to a party to this Agreement, any person or entity that (directly or indirectly) controls, is controlled by, or under common control with, that party. "Control" of a person or entity means the power (directly or indirectly) to direct the management or policies of that person or entity, whether through the ownership of voting securities, by contract, by agency or otherwise.



(j) **Survival.** Any provisions of this Agreement relating to indemnification shall survive the termination or expiration hereof. In addition, any terms and conditions contained in this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall so survive.

(k) **W-9.** As a condition precedent to payment of Rent or any other amount required to be paid herein, Landlord agrees to provide Tenant with a completed IRS Form W-9, or its equivalent. Landlord shall provide a completed IRS Form W-9, or its equivalent upon execution of this Agreement and at such other times as may be reasonably requested by Tenant, including any change in Landlord's name or address.

(l) **Execution/No Option.** The submission of this Agreement to any party for examination or consideration does not constitute an offer, reservation of or option for the Premises based on the terms set forth herein. This Agreement will become effective as a binding Agreement only upon the handwritten legal execution, acknowledgment and delivery hereof by Landlord and Tenant. This Agreement 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. All parties need not sign the same counterpart.

(m) **Attorneys' Fees.** In the event that any dispute between the parties related to this Agreement should result in litigation, the prevailing party in such litigation shall be entitled to recover from the other party all reasonable fees and expenses of enforcing any right of the prevailing party, including without limitation, reasonable attorneys' fees and expenses. Prevailing party means the party determined by the court to have most nearly prevailed even if such party did not prevail in all matters. This provision will not be construed to entitle any party other than Landlord, Tenant and their respective Affiliates to recover their fees and expenses.

(n) **WAIVER OF JURY TRIAL.** EACH PARTY, TO THE EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING UNDER ANY THEORY OF LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE TRANSACTIONS IT CONTEMPLATES.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK  
SIGNATURE PAGES FOLLOW**

Market: Arizona  
Site Number:  
Site Name: Sky Hi

IN WITNESS WHEREOF, the parties have caused this Agreement to be effective as of the last date written below.

WITNESS:

[Signature]  
Print Name: TJ Luzadder  
[Signature]  
Print Name: Scott Perry

LANDLORD: SKY HI DOMESTIC WATER  
IMPROVEMENT DISTRICT

By: [Signature]  
Name: William J. Lucas  
Its: Chairman Sky-Hi DWID

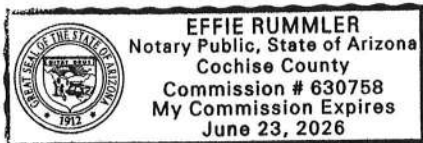
STATE OF ARIZONA  
COUNTY OF NAVAJO

On the 5 day of March 2024, 2024, before me, the undersigned Notary Public, duly commissioned and qualified, personally appeared in the State and County aforesaid the above named William Lucas, who declared that he/she/they knew the contents of the foregoing instrument, and acknowledged it to be his/her/their voluntary act and deed, in their name and in the capacity set forth above. Such person is:

- ☐ personally known to me or;  
☒ has produced Arizona Driver's License as identification.

[Signature]  
Official Signature of Notary  
Notary's printed or typed name: Effie Rummeler  
My Commission Number: 630758

OFFICIAL SEAL





Market: Arizona  
Site Number:  
Site Name: Sky Hi

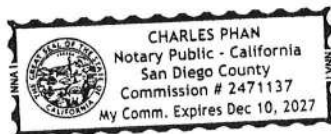
TENANT: DW TOWER II, LLC, a Delaware  
limited liability company

By: *Dale Wilson*  
Name: Dale Wilson  
Its: Managing Member

STATE OF California  
COUNTY OF San Diego

On the 11 day of March, 2024, before me, the undersigned Notary Public,  
duly commissioned and qualified, this day personally appeared in the State and County aforesaid the above-  
named Dale Wilson, who declared that he knew the contents of the foregoing instrument, and acknowledged  
it to be his voluntary act and deed, for and on behalf of the company. Such person is:

- ☒ personally known to me or;  
☒ has produced Driver's License as identification.



OFFICIAL SEAL

*Charles Phan*  
Official Signature of Notary  
Notary's printed or typed name: Charles Phan  
My Commission Number: 2471137

Market: Arizona  
Site Number:  
Site Name: Sky Hi

**EXHIBIT 1**  
**DESCRIPTION OF PROPERTY**

The Property is legally described as follows:

SKY-HI-RETREAT #1:LOT 22  
ALSO LOT 20 & 21 SKY-HI-RETREAT #1

Parcel 31119020A

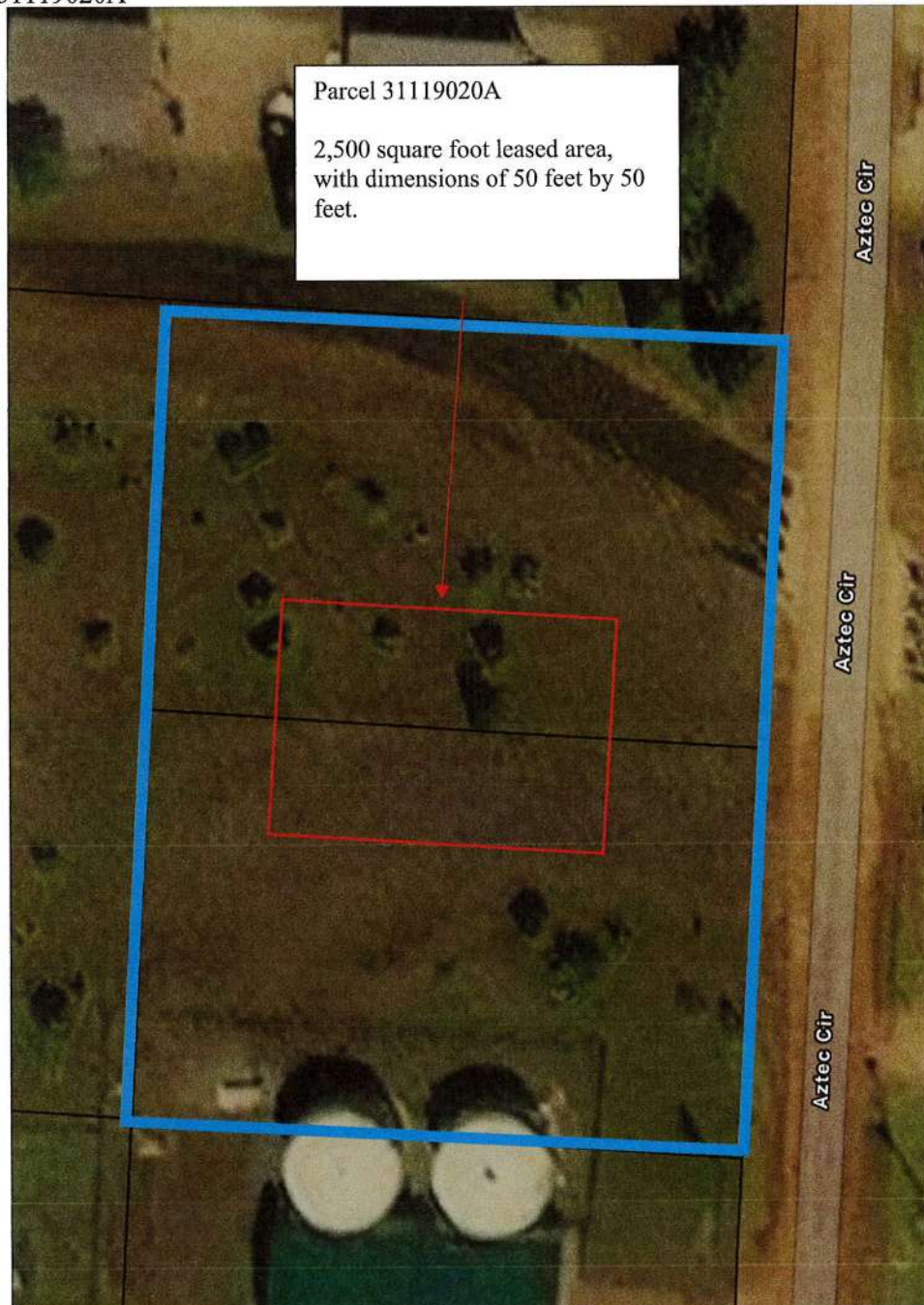


Market: Arizona  
Site Number:  
Site Name: Sky Hi

## EXHIBIT 2 DESCRIPTION OF PREMISES AND EASEMENTS

The Premises and Easements are described and/or depicted as follows:

Parcel 31119020A



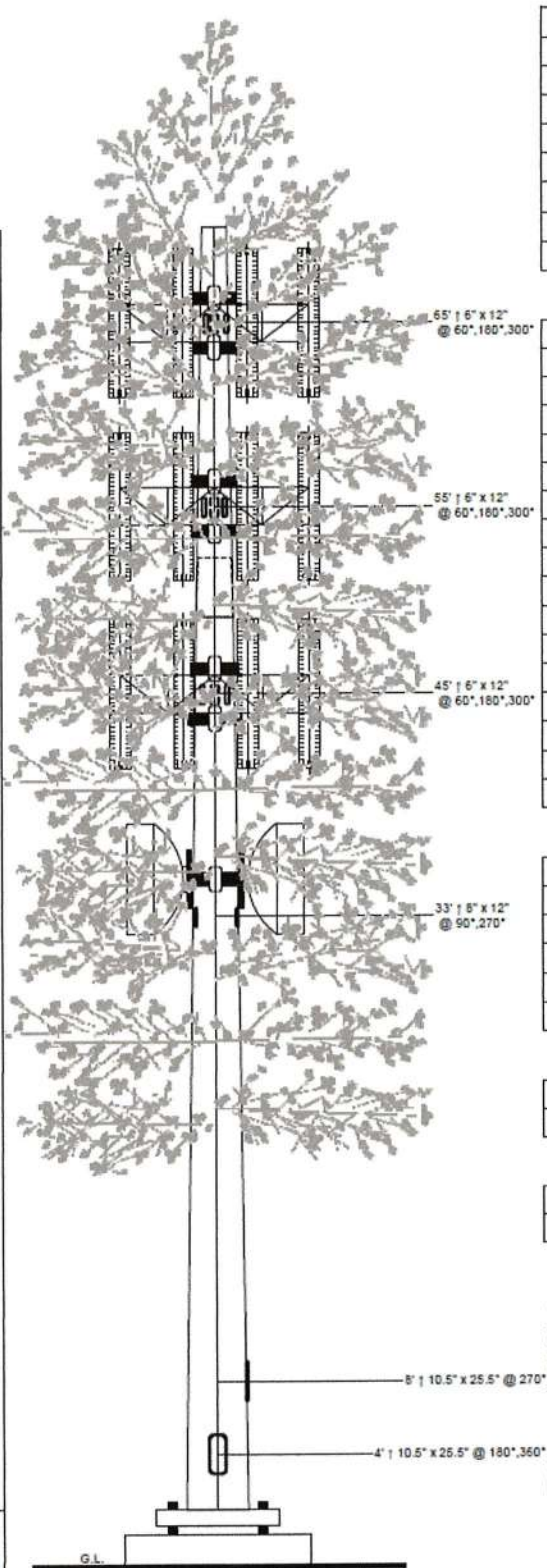
**Notes:**

1. THIS EXHIBIT MAY BE REPLACED BY A LAND SURVEY AND/OR CONSTRUCTION DRAWINGS OF THE PREMISES ONCE RECEIVED BY TENANT.
2. ANY SETBACK OF THE PREMISES FROM THE PROPERTY'S BOUNDARIES SHALL BE THE DISTANCE REQUIRED BY THE APPLICABLE GOVERNMENTAL AUTHORITIES.
3. WIDTH OF ACCESS ROAD SHALL BE THE WIDTH REQUIRED BY THE APPLICABLE GOVERNMENTAL AUTHORITIES, INCLUDING POLICE AND FIRE DEPARTMENTS.

Market: Arizona  
 Site Number:  
 Site Name: Sky Hi

## EXHIBIT 2 DESCRIPTION OF PREMISES AND EASEMENTS

	5'1'-3"	18	21'-0"
Sides			
n)	5'10"	1/4"	
f)		3'-3"	
ar (n)	21.91"	16"	
meter (n)	40.41"	23.58"	
		0.361	
		A572-65	
	6919		1341
# Height (ft)	69		





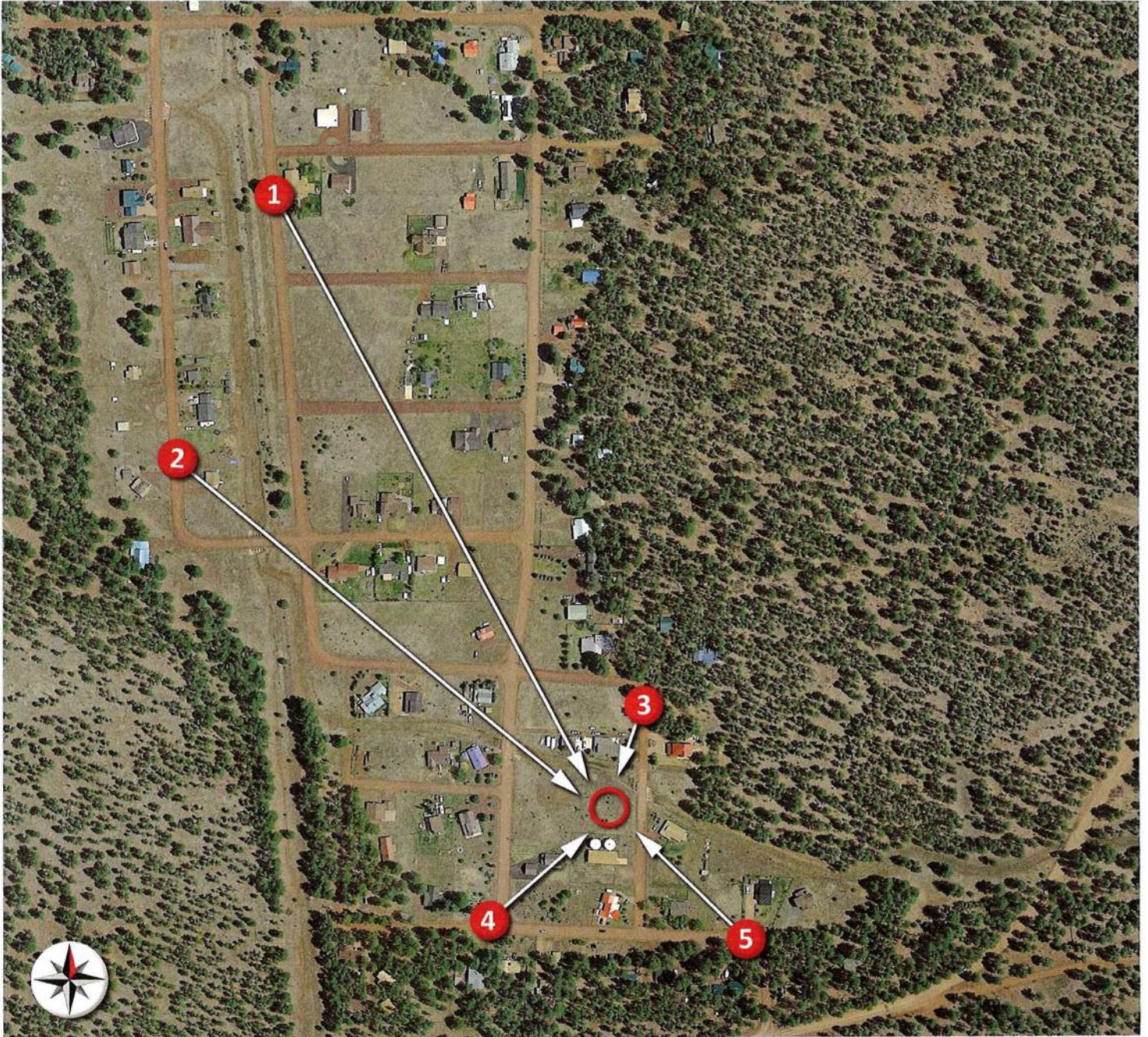
Market: Arizona  
Site Number:  
Site Name: Sky Hi

## **EXHIBIT 2**

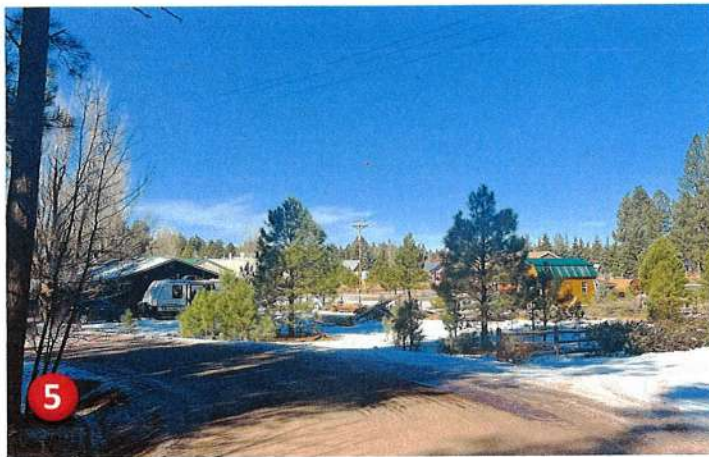
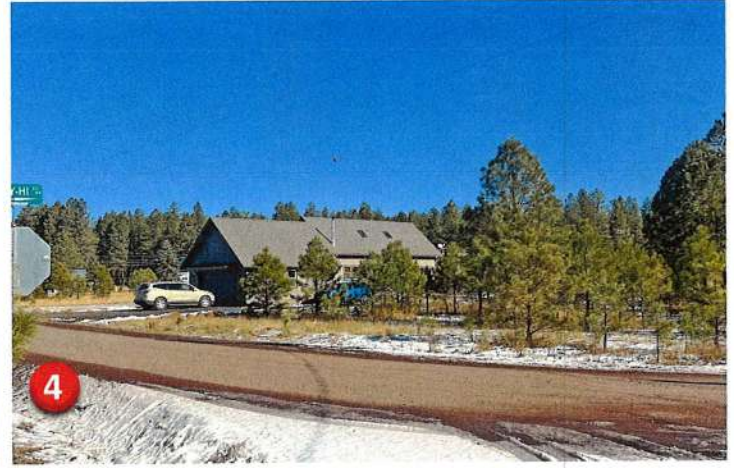
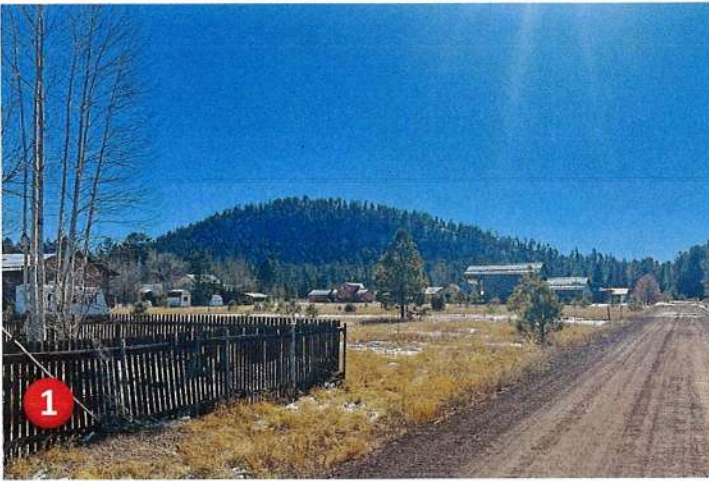
### **DESCRIPTION OF PREMISES AND EASEMENTS**

**Photo simulation of Communications Facility**

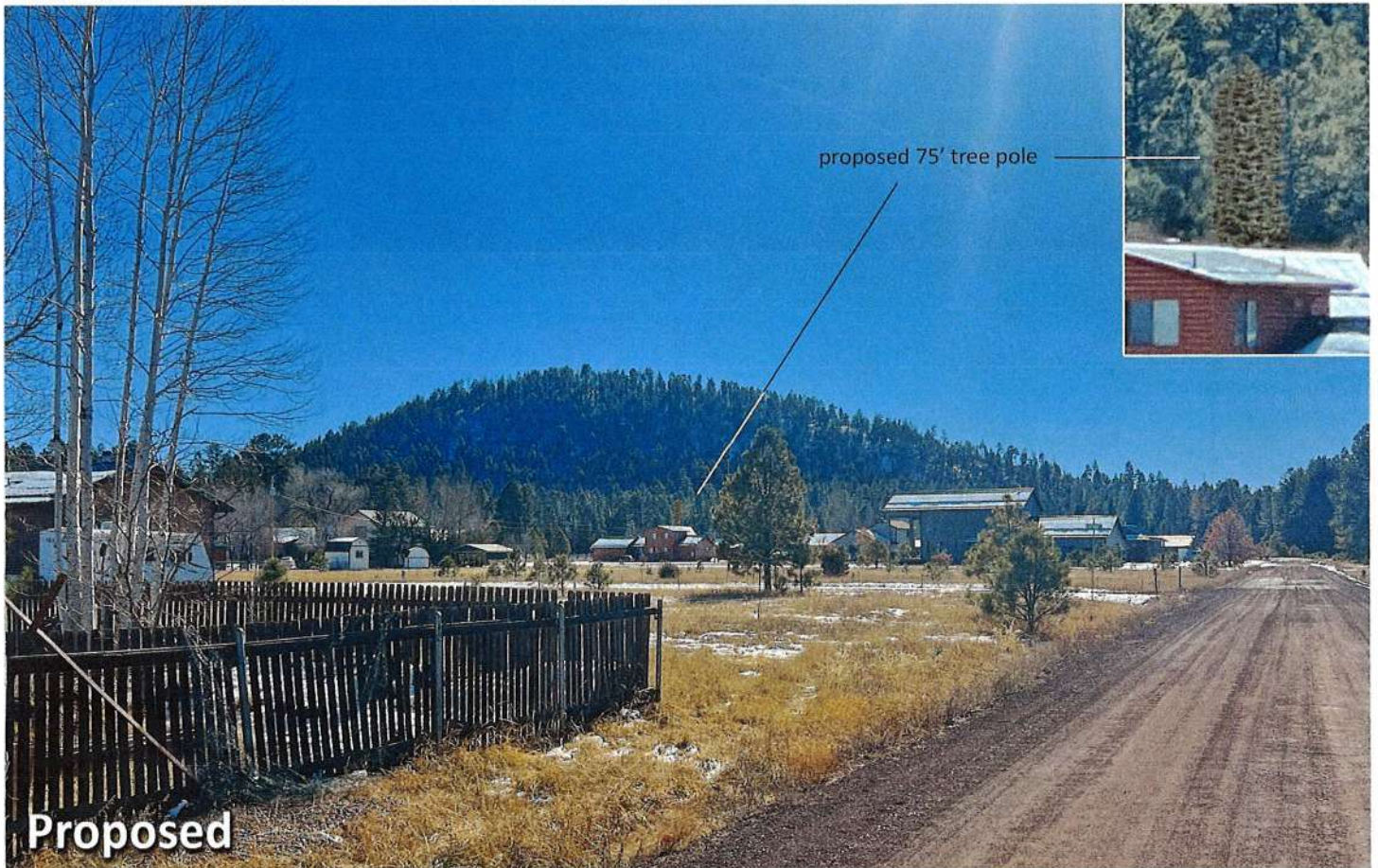
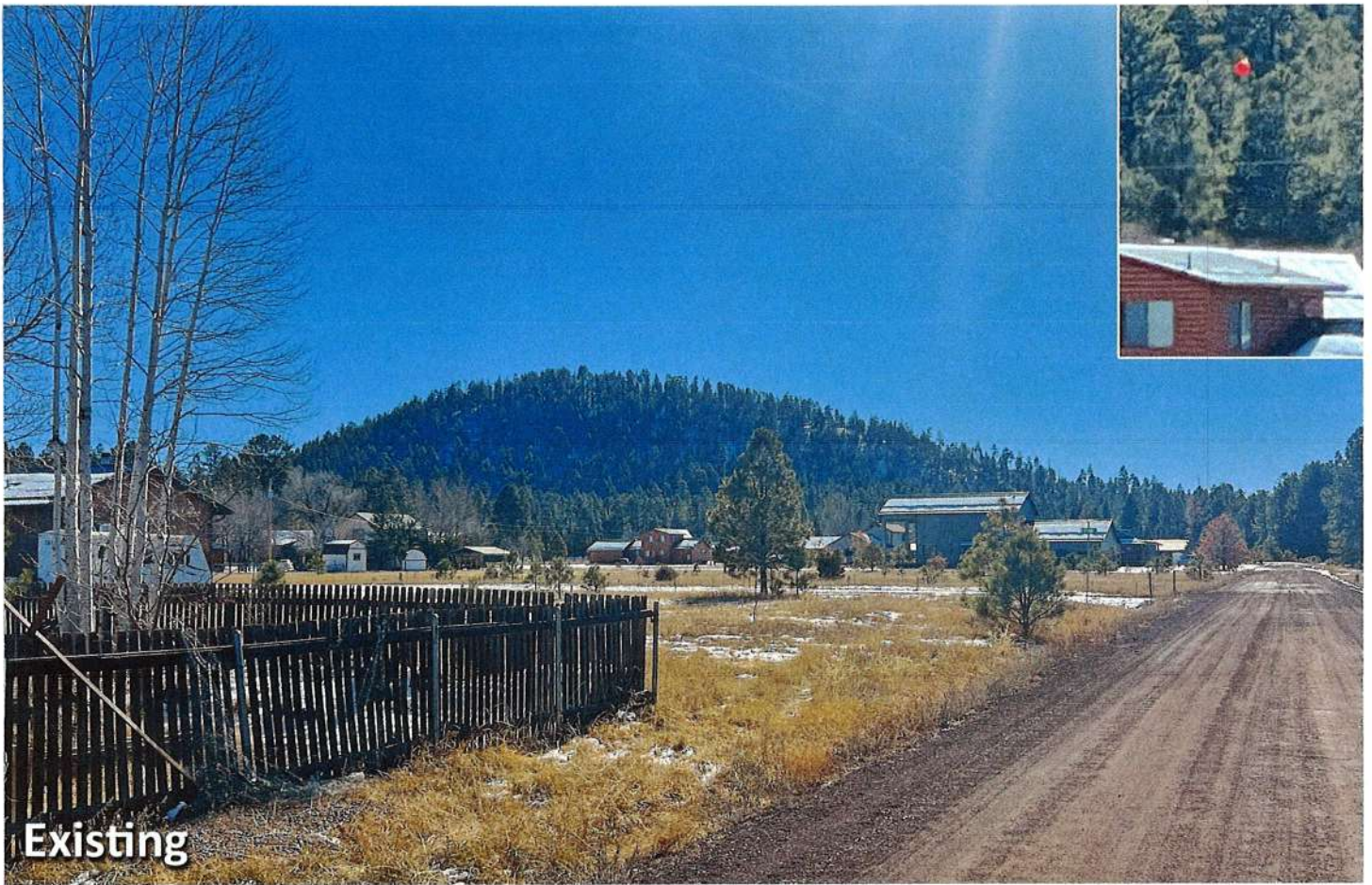




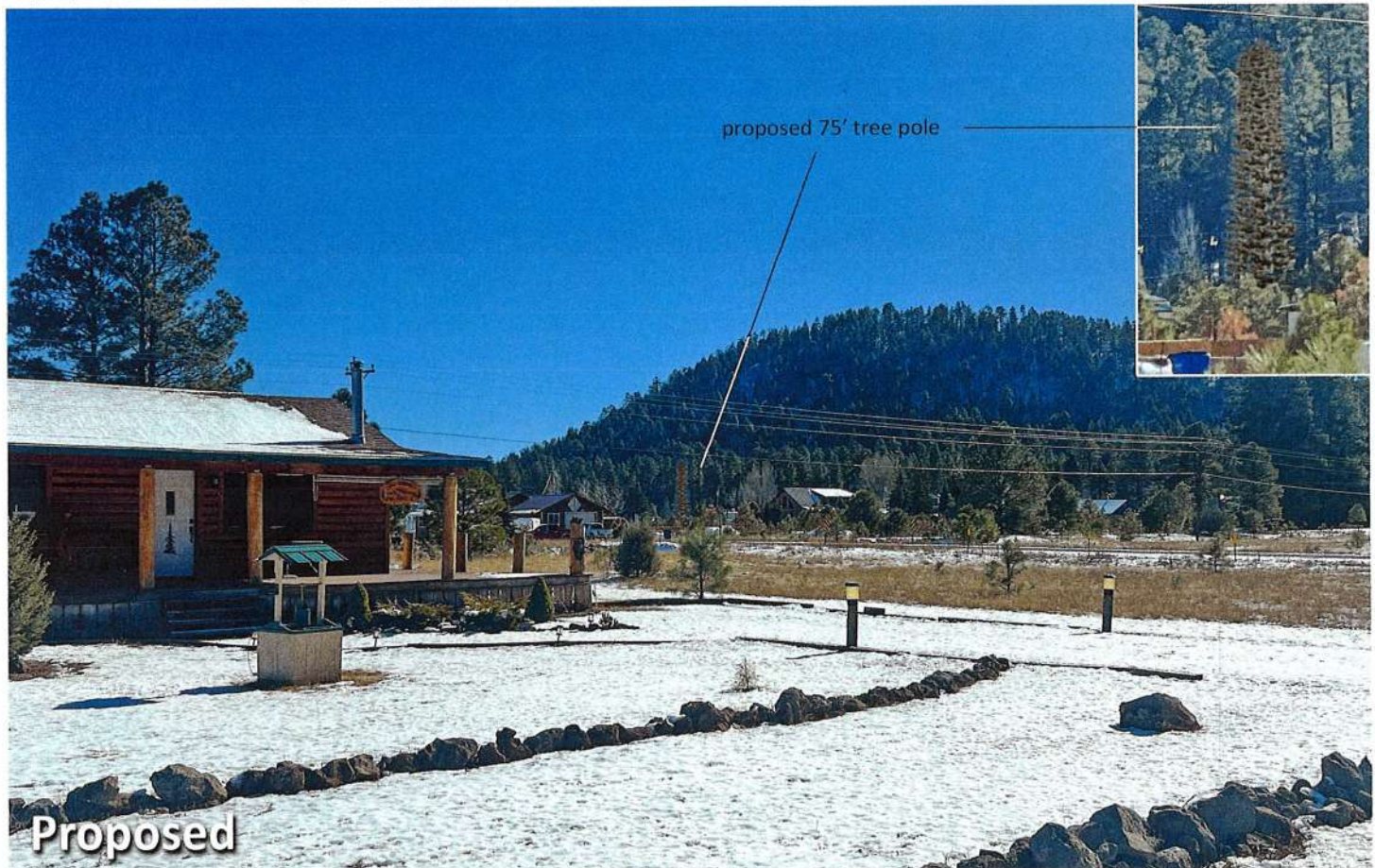




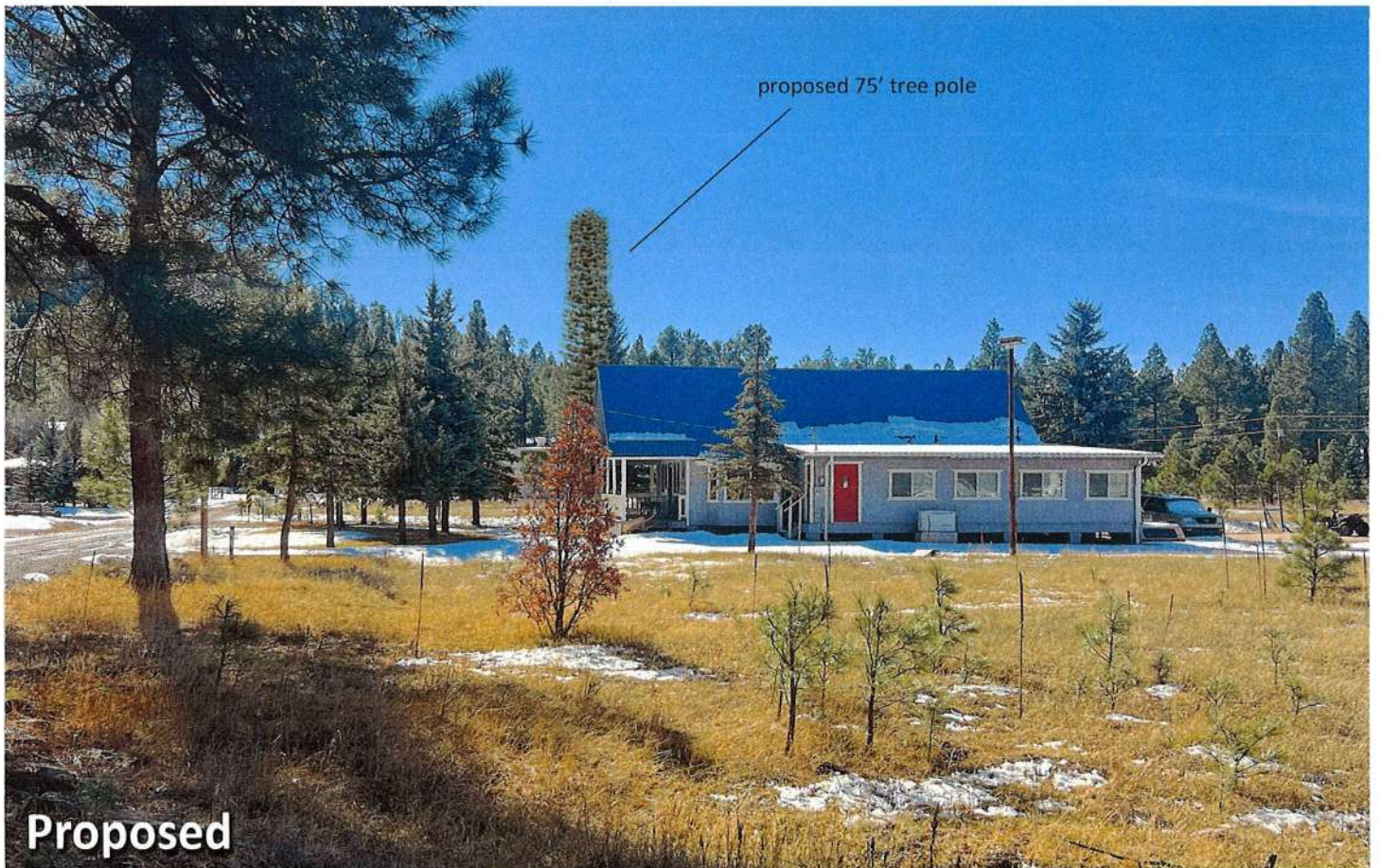




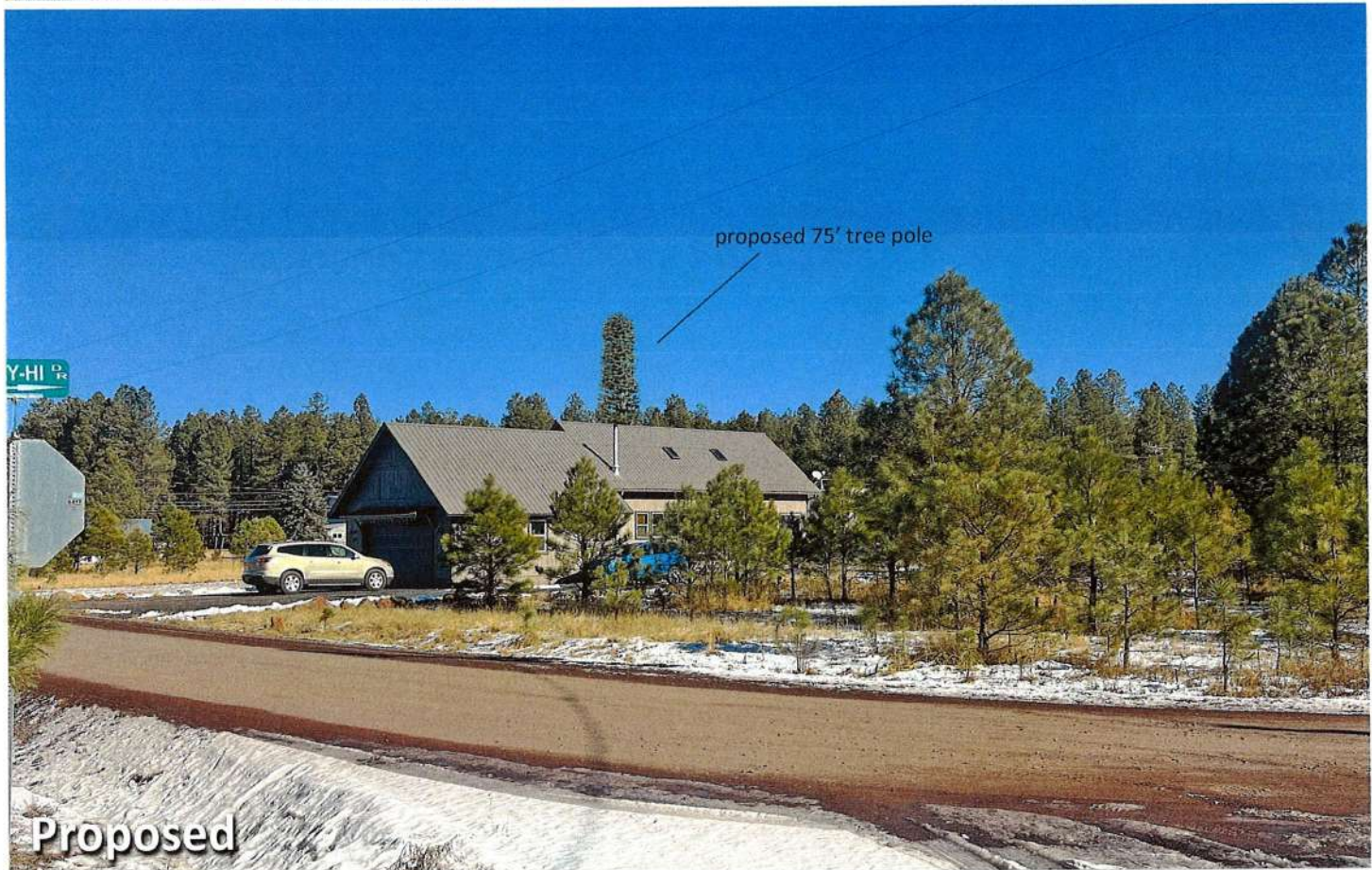
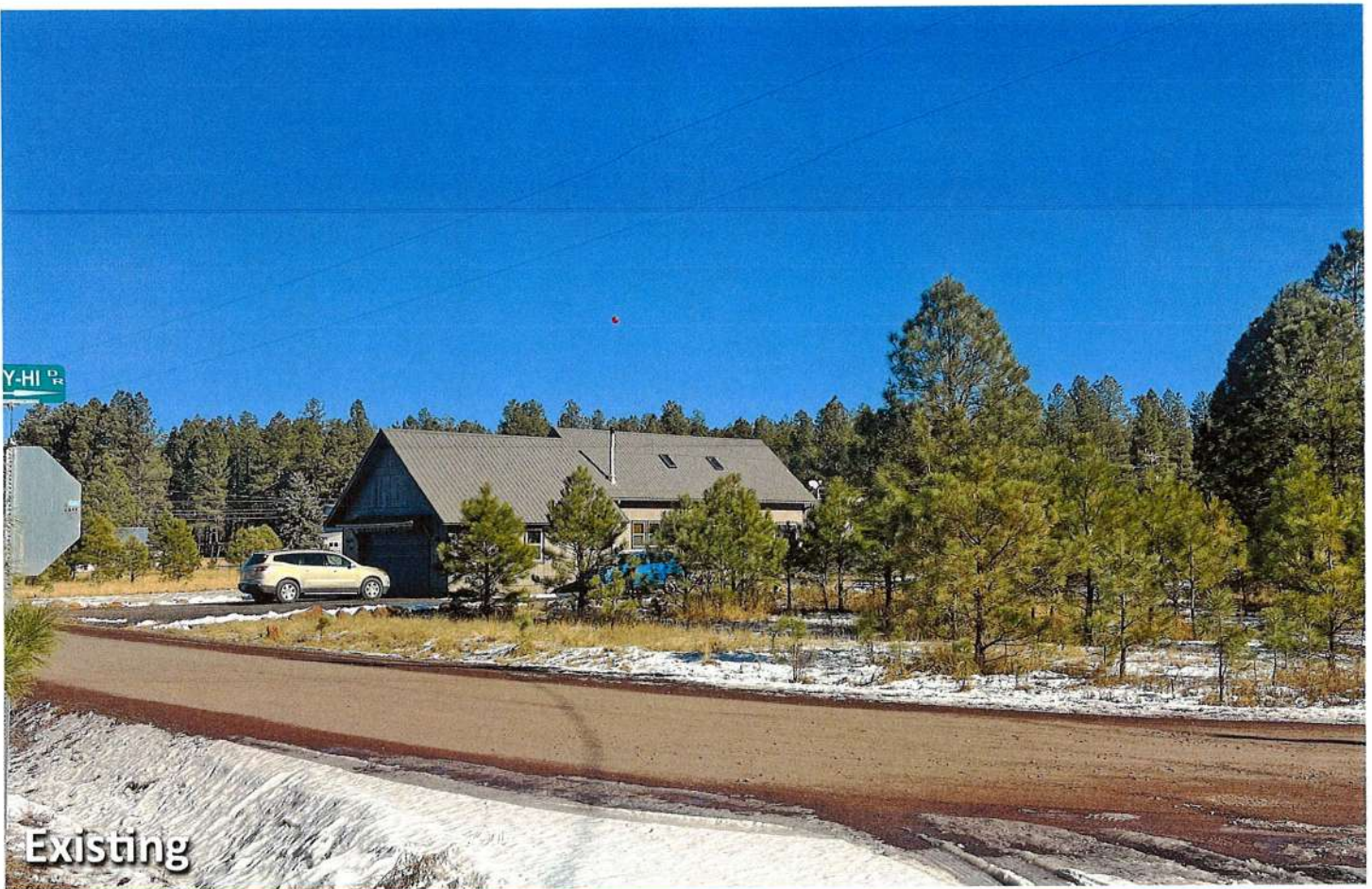




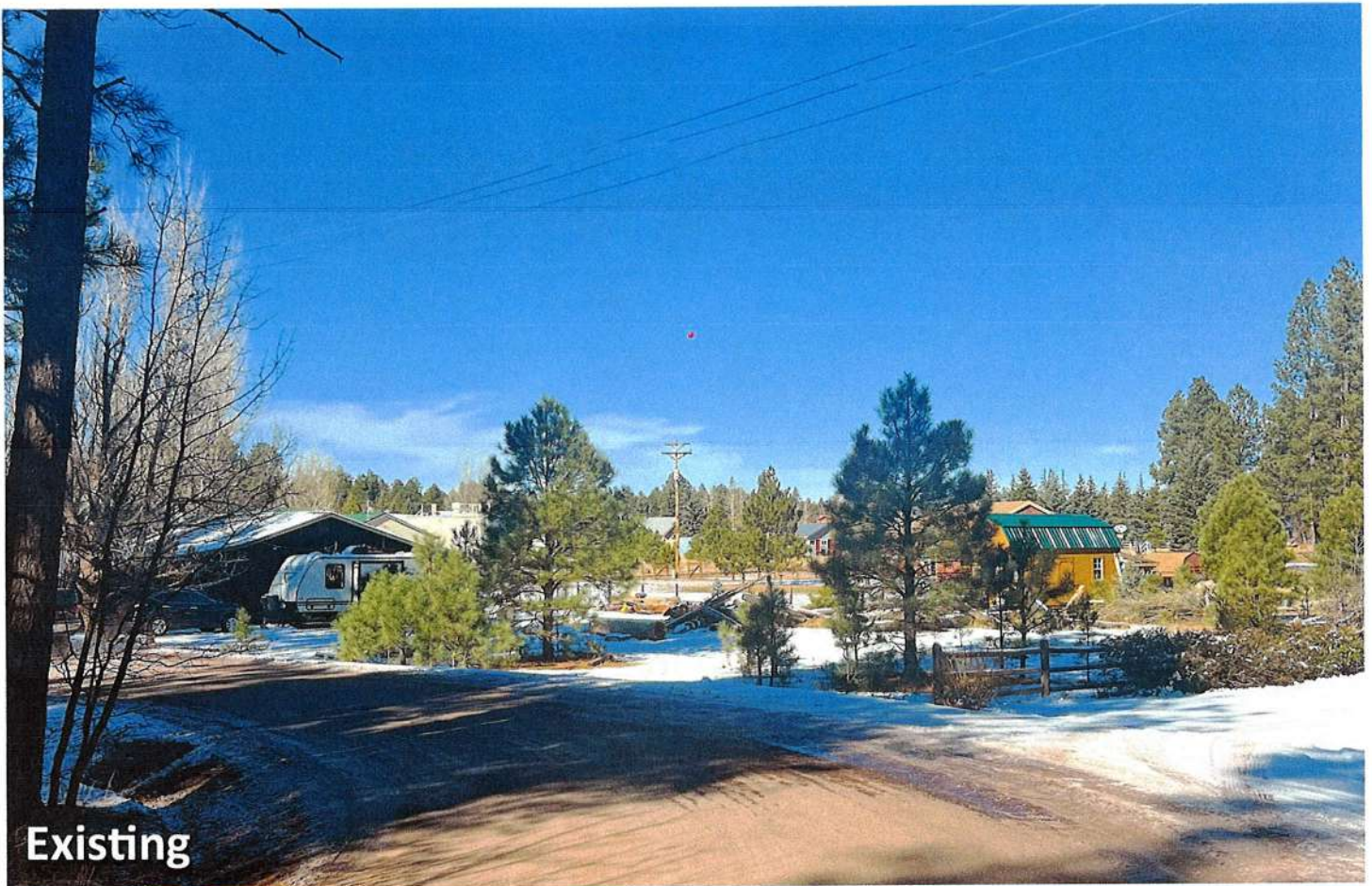




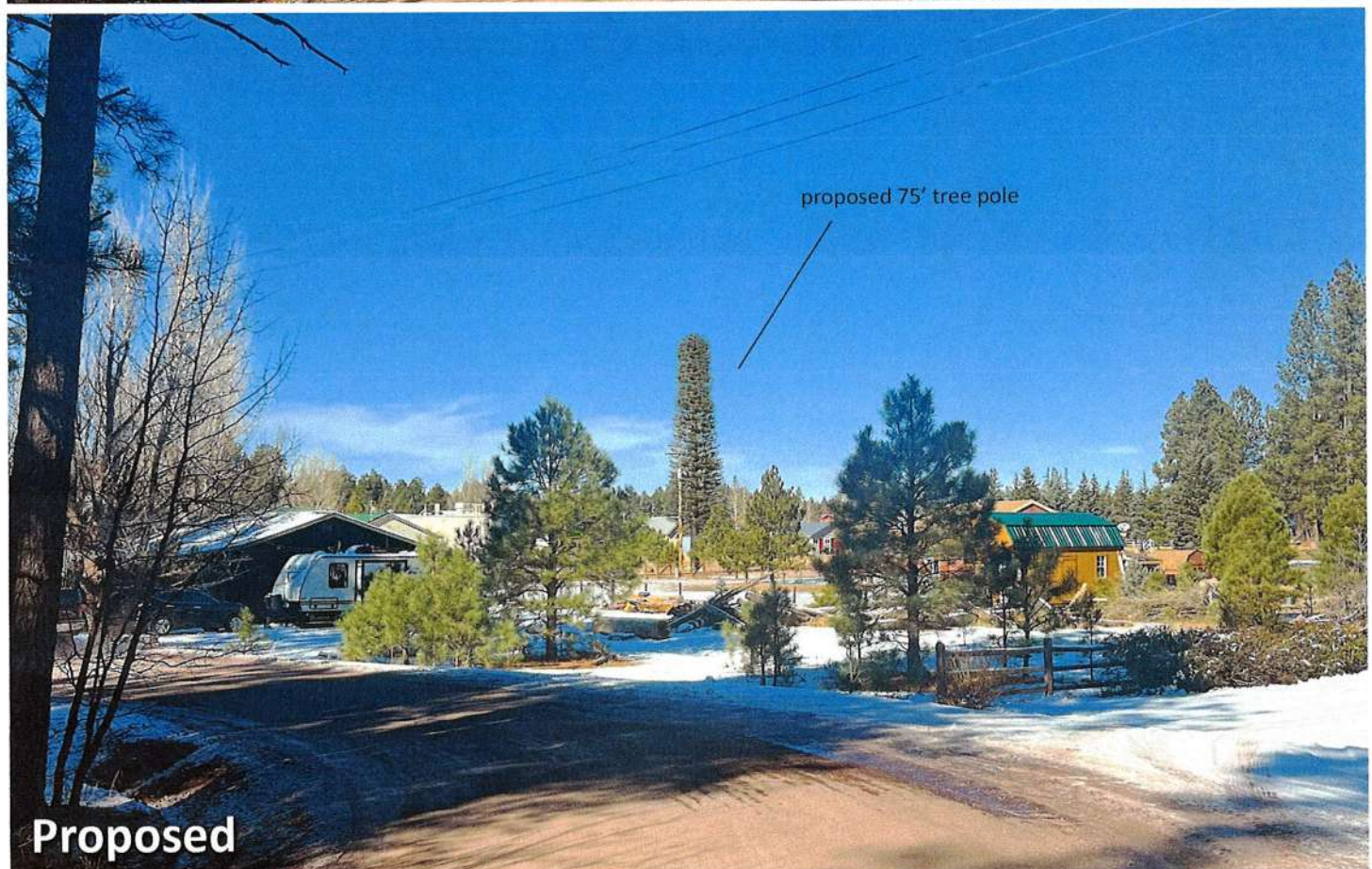








**Existing**



**Proposed**



Market: Arizona  
Site Number:  
Site Name: Sky Hi

**SCHEDULE A**  
**ENVIRONMENTAL DISCLOSURE**

Landlord represents and warrants that the Property, as of the date of this Agreement, is free of hazardous substances except as follows:

1. NONE.

Market: Arizona  
Site Number:  
Site Name: Sky Hi

**EXHIBIT 24b**  
**MEMORANDUM OF LEASE**

**[FOLLOWS ON NEXT PAGE]**



## MEMORANDUM OF OPTION AND LEASE AGREEMENT

**Prepared and Return to:**

DW TOWER II, LLC  
1603 Golf Course Road Southeast  
Suite A4  
Rio Rancho, New Mexico 87124

Re: Cell Site Name/Number:  
Site Address:  
State:  
County:  
Parcel No.: 113-19-020A  
Book/Page:

---

## MEMORANDUM OF OPTION AND LEASE AGREEMENT

THIS MEMORANDUM OF OPTION AND LEASE AGREEMENT (this "**Memorandum**") is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2024 ("**Effective Date**") by and between SKY HI DOMESTIC WATER IMPROVEMENT DISTRICT ("**Landlord**") having a mailing address of PO Box 974, Lakeside, Arizona 85929 and DW TOWER II, LLC, a Delaware limited liability company ("**Tenant**"), having a mailing address of 1603 Golf Course Road Southeast, Suite A4, Rio Rancho, New Mexico 87124.

1. Landlord is the fee simple owner of the land and property set forth on the attached Exhibit 1 ("**Property**").

2. Landlord and Tenant entered into a certain Option and Lease Agreement dated \_\_\_\_\_, 2024, ("**Agreement**"), granting to Tenant an option to lease (the "**Option**") and, if exercised, a leasehold interest in a portion of the Property (the "**Premises**") more particularly set forth on the attached Exhibit 2, together with easements and rights of way for ingress, egress, regress and access thereto, as well as of the installation, operation, repair, maintenance, and replacement of above and below ground lines, cables, conduit, poles, pipes, boxes, installations, telephone, electrical and fiberoptic equipment for the use thereof by Tenant and its successors, assigns, customers, sublessees, licensees and invitees (the "**Easements**") and collectively with the Premises, the "**Leased Premises**"), all as more particularly set forth in the Agreement.

3. **Option.** The Option commenced as of the Effective Date and continues for an initial term of three (3) years (the "**Initial Option Term**"). Tenant has the right to extend the Option for one (1) additional period of three (3) years (the "**Extended Option Term**").

4. **Term.** If exercised by Tenant, the initial term of the Agreement is five (5) years (the "**Initial Term**") beginning on the date of written notice of the exercise of the Option by Tenant to Landlord (the "**Commencement Date**"). Tenant has the right to extend the Agreement for eighteen (18) additional terms of five (5) years each (each an "**Extension Term**"). The Agreement shall automatically renew for each successive Extension Term unless Tenant provides written notice to Landlord of its election not to renew this Agreement not less than sixty (60) days prior to the expiration of the Initial Term or any applicable Extension Term.

5. **Subletting; Licensing.** Tenant has the right to sublet or license all or any portion of the Premises or permit any portion of the Premises or Easements to be occupied or used by any other party or multiple parties, including subtenants, licensees or customers (including agents, contractors and subcontractors thereof) in connection with the provision of wireless communications services.

6. **Right of First Refusal; Rental Stream Offer.** The Agreement grants to Tenant a right of first refusal in connection with any and all requests, proposals or offers from certain third parties to acquire, lease or obtain an easement (or other right of way) under all or any portion of the Premises, all as more particularly set forth in the Agreement. Further, from and after the Effective Date, the Agreement grants to Tenant a right of first refusal and the right to acquire the rental stream associated with the Agreement in connection with any request, offer, proposal, agreement, promise or related right or document seeking an assignment or transfer of rent payments associated with the Agreement, all in accordance with the terms of the Agreement. A full and complete copy of the provisions referenced herein is on file with the Tenant.

7. This Memorandum of Lease is not intended to amend or modify and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Agreement, all of which are hereby ratified and affirmed and incorporated herein by reference. In the event of a conflict between the provisions of this Memorandum of Lease and the provisions of the Agreement, the provisions of the Agreement shall control. The Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Agreement.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK  
SIGNATURE PAGES FOLLOW**



**IN WITNESS WHEREOF**, the parties have executed this Memorandum of Lease as of the day and year first above written.

**WITNESS:**

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

**LANDLORD:** SKY HI DOMESTIC WATER  
IMPROVEMENT DISTRICT, an Arizona  
corporation

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

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

Its: Authorized Signor

STATE OF ARIZONA  
COUNTY OF NAVAJO

On the \_\_\_\_ day of \_\_\_\_\_, 2024, before me, the undersigned Notary Public,  
duly commissioned and qualified, personally appeared in the State and County aforesaid the above named  
\_\_\_\_\_, who declared that he/she/they knew the contents of the  
foregoing instrument, and acknowledged it to be his/her/their voluntary act and deed, in their name and in the  
capacity set forth above. Such person is:

☐ personally known to me or;

☐ has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Official Signature of Notary

Notary's printed or typed name: \_\_\_\_\_

My Commission Number: \_\_\_\_\_

OFFICIAL SEAL

**WITNESS:**

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

**TENANT:** DW TOWER II, LLC, a Delaware  
limited liability company

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

Name: Dale Wilson

Its: Managing Member

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On the \_\_\_\_ day of \_\_\_\_\_, 2024, before me, the undersigned Notary Public, duly  
commissioned and qualified, this day personally appeared in the State and County aforesaid the above-named  
Dale Wilson, who declared that he knew the contents of the foregoing instrument, and acknowledged it to be his  
voluntary act and deed, for and on behalf of the company. Such person is:

- ☒ personally known to me or;  
☐ has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Official Signature of Notary

Notary's printed or typed name: \_\_\_\_\_

My Commission Number: \_\_\_\_\_

OFFICIAL SEAL



**EXHIBIT 1**  
**DESCRIPTION OF PROPERTY**

The Property is legally described as follows:

SKY-HI-RETREAT #1: LOT 22  
ALSO LOT 20 & 21 SKY-HI-RETREAT #1

Parcel 31119020A

## EXHIBIT 2

### DESCRIPTION OF PREMISES AND EASEMENTS

The Premises and Easements are described and/or depicted as follows:

Parcel 31119020A



Parcel 31119020A

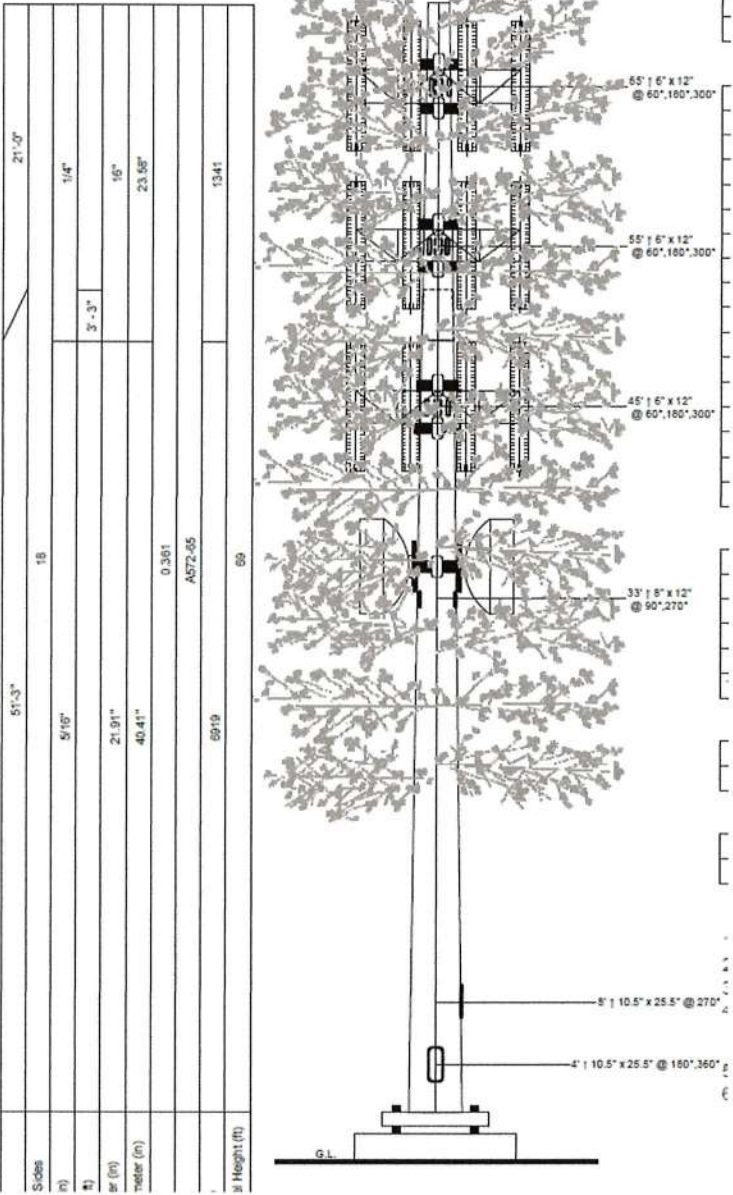
2,500 square foot leased area,  
with dimensions of 50 feet by 50  
feet.

#### Notes:

1. THIS EXHIBIT MAY BE REPLACED BY A LAND SURVEY AND/OR CONSTRUCTION DRAWINGS OF THE PREMISES ONCE RECEIVED BY TENANT.
2. ANY SETBACK OF THE PREMISES FROM THE PROPERTY'S BOUNDARIES SHALL BE THE DISTANCE REQUIRED BY THE APPLICABLE GOVERNMENTAL AUTHORITIES.
3. WIDTH OF ACCESS ROAD SHALL BE THE WIDTH REQUIRED BY THE APPLICABLE GOVERNMENTAL AUTHORITIES, INCLUDING POLICE AND FIRE DEPARTMENTS.



# **EXHIBIT 2** **DESCRIPTION OF PREMISES AND EASEMENTS**



**Notes:**

1. THIS EXHIBIT MAY BE REPLACED BY A LAND SURVEY AND/OR CONSTRUCTION DRAWINGS OF THE PREMISES ONCE RECEIVED BY TENANT.
2. ANY SETBACK OF THE PREMISES FROM THE PROPERTY'S BOUNDARIES SHALL BE THE DISTANCE REQUIRED BY THE APPLICABLE GOVERNMENTAL AUTHORITIES.
3. WIDTH OF ACCESS ROAD SHALL BE THE WIDTH REQUIRED BY THE APPLICABLE GOVERNMENTAL AUTHORITIES, INCLUDING POLICE AND FIRE DEPARTMENTS.