ITEM NO. 7

STAFF REPORT

CITY OF OCEANSIDE

DATE: September 8, 2010

TO: Honorable Mayor and City Councilmembers

FROM: Economic & Community Development Department

SUBJECT: **AMENDMENT 2 TO THE PROPERTY LEASE AGREEMENT WITH CROWN CASTLE GT COMPANY, LLC, FOR TELECOMUNICATION FACILITIES ON CITY OWNED PROPERTY AT HENIE HILLS RESERVOIR**

SYNOPSIS

Staff recommends that the City Council approve Amendment 2 to the Property Lease Agreement with Crown Castle GT Company, LLC, for telecommunications facilities on City-owned property at Henie Hills Reservoir, to allow Crown Castle to sublease a portion of the premises to Clear Wireless, LLC, for telecommunication purposes, with the City receiving 30 percent of all revenue received by Crown Castle from Clear Wireless; and providing for four successive five year options to renew with Council approval; and authorization for the City Manager to execute the amendment.

BACKGROUND

U.S.West Cellular, predecessor in interest to Crown Castle GT Company LLC ("Crown Castle"), originally entered into a Property Lease Agreement ("Lease") with the City of Oceanside for use of real property at Henie Hills Reservoir for telecommunications purposes. The original term expired on February 28, 1996, and was extended to February 28, 2011. Pursuant to Amendment 1 to the Lease, the Lease was extended to February 28, 2016, and Crown Castle was given two additional five-year renewal options.

Due to the extensive need to increase cellular telecommunication capabilities, Crown Castle approached the City about subletting the leased premises to provide for co-location of other telecommunication facilities to their existing telecommunication facilities, the additional rent associated therewith, and the other terms and conditions required to accommodate Crown Castle's request. Additionally, Crown Castle was interested in increasing the number of renewal options remaining under the Lease as amended by Amendment 1.

ANALYSIS

The proposed Amendment 2 to the Lease gives Crown Castle permission to sublet a portion of the premises to allow Clear Wireless, LLC and other sublessees to co-locate

telecommunication facilities on their telecommunication facilities at the premises. In consideration for the City's approval, Crown Castle will pay the City 30 percent of all revenue received by Crown Castle from Clear Wireless, LLC.

Additionally, Crown Castle and/or Clear Wireless, LLC, will be required to contact the City and have a City employee accompany either party should either party need to access City-owned property in order to access the premises. The City will be reimbursed for the cost associated therewith. The proposed Amendment 2 also sets forth an additional rent payment schedule in the event the City, in its discretion, approves an additional sublease or subleases in the future.

The other significant change to the Lease is the granting of a total of four successive five-year options to renew for the continued use of the premises by Crown Castle as a cellular communication facility. Potentially, the term of the Lease can be extended to February 28, 2036 in five-year increments. However, Crown Castle will be required to request the extension of the term every five years, which approval shall be at the discretion of the City Council.

The use of the premises by Crown Castle together with the ability to sublet a portion of the premises to Clear Wireless, LLC does not interfere with the City's use of the Henie Hills Reservoir both as a water reservoir site and as a City telecommunication facility. At this time, the City does not anticipate needing the premises at the Henie Hills Reservoir through the term of the Lease as extended by at least the first two extension options. The continued use of the premises by Crown Castle and its sublessees will provide additional revenue to the City.

FISCAL IMPACT

The Lease requires a current annual rent payment of $30,561 payable in installments of $2,546 a month. On March 1 of each year the annual payment is adjusted subject to increases, if any, in the Consumer Price Index ("CPI"). Thereafter, the annual rent payment is renegotiated for any subsequent renewal period. It is anticipated that the additional rent payment for the Clear Wireless, LLC, sublease alone will generate between $6,000 and $12,000 annually to the City.

The additional rent payments could increase in the event additional co-locations are approved by the City. An approved third co-location pays an additional rent payment of 30 percent of all revenue generated from said co-location, whereas an approved fourth co-location pays an additional rent payment of 40 percent of all revenue generated, and a fifth approved co-location pays an additional rent payment of 50 percent of all revenue generated.

COMMISSION OR COMMITTEE REPORT

Does not apply.

INSURANCE REQUIREMENTS

Lessee will be required to maintain the City's standard insurance requirements over the term of the Lease.

CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff recommends that the City Council approve Amendment 2 to the Property Lease Agreement with Crown Castle GT Company, LLC, for telecommunications facilities on City-owned property at Henie Hills Reservoir, to allow Crown Castle to sublease a portion of the premises to Clear Wireless, LLC, for telecommunication purposes, with the City receiving 30 percent of all revenue received by Crown Castle from Clear Wireless; and providing for four successive five year options to renew with Council approval; and authorization for the City Manager to execute the amendment.

PREPARED BY:

Douglas Eddow
Real Estate Manager

SUBMITTED BY:

Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs-Lawrence, Deputy City Manager

Jane McVey, Economic & Community Development Director

Cari Dale, Water Utilities Director

Teri Ferro, Financial Services Director

Michael Sherwood, Chief Information Officer

SECOND AMENDMENT TO PROPERTY LEASE AGREEMENT

This Second Amendment to Property Lease Agreement (the "Second Amendment") dated, September 8, 2010, by and between the City of Oceanside, a municipal corporation (the "City") and Crown Castle GT Company LLC (the "Lessee").

R E C I T A L S

WHEREAS, the City and Lessee's predecessor in interest, U.S. West Cellular entered into that certain Property Lease Agreement, dated as June 30, 1990 ("Agreement"), for the lease of city-owned property known as Henie Hills Reservoir, Oceanside, CA hereinafter referred to as the "Property";

WHEREAS, Crown Castle GT Company LLC is currently the Lessee under the Agreement as more fully set forth in the Assignment and Assumption Agreement recorded on April 16, 2004 as Instrument No. 2004-0332640 in the Office of the San Diego County Recorder, California;

WHEREAS, the original term of the Agreement would have expired February 28, 1996, but Lessee exercised three (3) consecutive five (5)-year options to renew the Agreement, extending the term to February 28, 2011;

WHEREAS, the Agreement was amended by that certain First Amendment to Property Lease Agreement dated January 16, 2008 ("First Amendment") and provides for an additional five (5) years to expire on February 28, 2016 and two (2) additional five-year options to renew the Agreement with each renewal requiring City approval; and

WHEREAS, the City and Lessee desire to further amend the Agreement on the terms and conditions contained herein.

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

A G R E E M E N T

1. **Subsection 1.01 <u>Premises.</u>** Shall be amended by adding the following Subsection 1.01a:

   "Except in an emergency situation, any such ingress or egress over City-owned property to access the premises shall be accompanied by a City employee after Lessee has provided telephonic and/or e-mail notice to the City of the need to access the premises. City agrees to respond to Lessee's request within twenty-four (24) hours or as soon as is reasonably possible given the date and time of the telephonic and/or e-mail notice."

2. **SECTION 2: Subsection 2.05 <u>Renewal Options.</u>** Shall be deleted in its entirety and replaced with the following:

"Lessee shall have four (4) successive five (5)-year options to renew this Agreement. These options may be exercised by providing written notice to the City at least one hundred and eighty (180) days prior to the expiration of the term or renewal period of this Agreement as applicable. If Lessee exercises its renewal options above, such extension shall not be valid unless approved by the Oceanside City Council. Provided, however, in the event Lessee does not sublease to Second Co-Locator, as hereinafter described, Lessee shall have only two (2) successive five (5)-year options to renew this Agreement."

3. **SECTION 4 ASSIGNMENT, Subsection 4.02 <u>Assignment and Subletting.</u>** shall be deleted in its entirety and replaced with the following:

"Except to Lessee's affiliates and subsidiaries, Lessee shall not assign this Agreement, or any interest therein, and shall not sublet the premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents and guests of Lessee, to use or occupy the premises or any part thereof, without the prior written consent of the City Manager in each instance, in his or her sole and absolute discretion. Provided, however, Lessee shall be permitted to sublease as set forth in Subsection 4.02a-c below. Consent to any assignment, subletting, occupation or use by another person shall not be deemed to be consent to any subsequent assignment, subletting, occupation or use by another person. Any such assignment or subletting without such consent shall be void, and shall, at the option of City, terminate this Agreement.

"Assignment", for the purposes of this clause shall include any transfer of any ownership interest in this Agreement by Lessee or by any partners, principals, or stockholders, as the case may be, from the original Lessee, its general partners or principals.

Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions and provisions of this Agreement which are applicable to the rights acquired.

a. Permitted Sublease. The City hereby consents to a sublease of a portion of the premises to Clearwire US LLC, a Nevada limited liability company (the "Second Co-Locator") and the Approved Third, Fourth and Fifth Co-Locators described in Subsection 4.02c below, subject to a use of said portion of the premises similar to Lessee, provided said Co-Locators are licensed by the Federal Communications Commission. In the event the Third, Fourth or Fifth Co-Locator is not a telecommunication service provider similar to Lessee and Second Co-Locator, such approval shall also extend to a provider whose use benefits the overall general public (e.g., a hospital).

b. Permitted Sublease Rent. In consideration for City's consent to Lessee's sublease to the Second Co-Locator, Lessee agrees to pay City **thirty percent (30%)** of all revenue actually received by Lessee from the Second Co-Locator for the use of a portion of the premises, within thirty (30) days after receipt of such payment by Lessee. Lessee shall have no obligation for payment to the City of such rent if not actually received by Lessee.

Non-payment of such rent by the Second Co-Locator shall not be a default under this Agreement unless the Second Co-Locator continues to use a portion of the premises. Lessee, subject to the terms and conditions of this Agreement, shall have the sole discretion as to whether, and on what terms, to sublease, license or otherwise allow occupancy of the premises to the Second Co-Locator, and there shall be no express or implied obligation of Lessee to do so.

c. Additional Sublease Rent. If Lessee subleases, licenses or grants a similar right of use or occupancy in the premises to an unaffiliated third party pursuant to Subsection 4.02a above, Lessee agrees to pay to City a percentage of all revenues actually received by Lessee in accordance with the following additional sublease rent schedule and subject to the same terms as set forth in Subsection 4.02b above:

1.	Approved Third Co-Locator:	**Thirty Percent (30%)**
2.	Approved Fourth Co-Locator:	**Forty Percent (40%)**
3.	Approved Fifth Co-Locator:	**Fifty Percent (50%)"**

4. **SECTION 7 GENERAL PROVISIONS, Subsection 7.01 <u>Notices.</u>** Shall be amended as follows:

"Lessee's Primary Contact: Crown Castle GT Company, LLC
c/o Crown Castle USA Inc.
E. Blake Hawk, General Counsel
Attn: Real Estate Department
2000 Corporate Drive
Canonsburg, PA 15317

City: City of Oceanside
Property Management Division
Attn: Real Estate Manager
300 North Coast Highway
Oceanside, CA 92054"

5. **Second Amendment Commencement Date.** The parties agree and acknowledge that the commencement date of the Second Amendment ("Commencement Date") shall be the earlier of (a) January 1, 2011, or (b) the date construction commences for the installation of equipment at the premises for the Second Co-Locator. The parties further agree and acknowledge that the Lessee's obligation to pay sublease rent shall become effective as of the Commencement Date and that Lessee shall have no obligation to pay sublease rent in the event the zoning application for the Second Co-Locator is denied or the Second Co-Locator otherwise determines not to install its equipment at the premises.

6. **Ratification.** The City and Lessee agree that: (a) Lessee is the current lessee under the Agreement; the Agreement is in full force and effect, as it may have been previously amended and as amended herein; and the Agreement contains the entire agreement between the City and Lessee with respect to the premises; and (b) the City and Lessee agree that any and all known

actions or inactions that have occurred or should have occurred prior to the date of this Second Amendment are approved and ratified by the parties, and the parties agree that no breaches or defaults exist as of the date of this Second Amendment.

7. **Internal Revenue Service Form W-9**. The City agrees to use reasonable efforts to provide Lessee with a completed Internal Revenue Service Form W-9, or its equivalent, upon execution of this Second Amendment or as or as reasonably practical thereafter, and at such other times as reasonably requested by Lessee.

8. **Remainder of Lease Unaffected.** Except as expressly modified by this Second Amendment, the Agreement and all of its terms and conditions, shall remain in full force and effect. In the event of any conflicts or inconsistency between the terms of this Second Amendment and the Agreement, the terms of this Second Agreement shall control. Unless otherwise expressly defined herein, the terms in this Second Amendment shall have the same meanings assigned to such terms in the Agreement. This Second Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

9. **Memorandum**. Upon execution of this Second Amendment, the parties shall promptly execute a memorandum of the Agreement, as amended herein, in the form and substance of attached Exhibit "A", which instrument may be placed of record.

IN WITNESS WHEREOF, the parties hereto agree to all of the covenants and conditions as set forth herein as of the date first written above.

"City"

City of Oceanside
a municipal corporation

By:_____
City Manager

Approved as to form:

By: Barbara Hamilton ASST.
City Attorney

"Lessee"

Crown Castle GT Company LLC
a Delaware limited liability company

By: Dawn Krein

Name: Dawn Krein
~~Property Manager~~

Its: _____

NOTARY ACKNOWLEDGEMENT OF LESSEE'S SIGNATURE MUST BE ATTACHED

STATE OF Arizona

COUNTY OF Maricopa

On August 27, 2010, before me, Stephanie Lentz, Notary Public, personally appeared Dawn Krein, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Stephanie K. Lentz
NOTARY PUBLIC - ARIZONA
MARICOPA COUNTY
My Commission Expires
February 02, 2012

Stephanie K Lentz

Notary Public

[Seal]

EXHIBIT "A"

Recording Requested by:
When Recorded Return to:

CITY CLERK, CITY OF OCEANSIDE
300 North Coast Highway
Oceanside, CA 92054

(For Recorder's Use)

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("Memorandum") is made as of September 8, 2010, by and between THE CITY OF OCEANSIDE, a municipal corporation ("Landlord") and CROWN CASTLE GT COMPANY LLC, a Delaware limited liability company ("Tenant").

Landlord and Tenant have entered into that certain Property Lease Agreement dated June 13, 1990, amended by the First Amendment to Property Lease Agreement dated January 16, 2008, further amended by the Second Amendment to Property Lease Agreement dated September 8, 2010 (collectively the "Lease"), pursuant to which Landlord has leased to Tenant, and Tenant has leased from Landlord, that certain property located in the City of Oceanside, County of San Diego, State of California and more particularly described in Exhibit "A-1", which is attached and incorporated by this reference, all subject to the terms and covenants set forth in the Lease. The purpose of this Memorandum is to give notice of the existence of the Lease and the provisions thereof, including without limitation provisions providing for the expiration of the Lease term on February 28, 2016, and providing for four (4) successive five (5) years options to request renewal. To the extent that any provision of this Memorandum conflicts with any provision of the Lease, the Lease shall control.

This Memorandum may be executed in counterparts, each of which shall be an original, but all of which, together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the date first written above.

"LANDLORD"

THE CITY OF OCEANSIDE,
a municipal corporation

By: _____

Name: _____

Title: _____

"TENANT"

CROWN CASTLE GT COMPANY, LLC
a Delaware limited liability company

By: Dawn Krein

Name: _____

Its: Dawn Krein
Property Manager

Title: _____

FIRST AMENDMENT TO PROPERTY LEASE AGREEMENT

This First Amendment to Property Lease Agreement ("Amendment") dated, January 16, 2008 by and between the City of Oceanside, a municipal corporation ("CITY") and Crown Castle GT Company LLC ("LESSEE") a subsidiary of Crown Castle USA.

R E C I T A L S

WHEREAS, the CITY and LESSEE'S predecessor in interest, U.S. West Cellular entered into that certain Property Lease Agreement, dated as June 30, 1990 ("Agreement"), for the lease of city-owned property known as Henie Hills Reservoir, Oceanside, CA, hereinafter referred to as the "Property",

WHEREAS, the original term of the Agreement expired February 28, 1996 and Lessee has exercised its three (3) consecutive five (5) year options to renew the Agreement, extending the term of the Agreement to February 28, 2011

WHEREAS, LESSEE is now desirous of further extending the term of the Agreement an additional five (5) years to expire on February 28, 2016, adjusting the rent and being given two (2) additional five (5) year options to renew the Agreement with each renewal requiring City approval.

A G R E E M E N T

NOW THEREFORE, in consideration of the covenants and conditions contained herein, the parties hereto agree to amend the Agreement as follows:

1. **SECTION 2: TERM, Subsection 2.01 Commencement.** First paragraph shall be deleted in its entirety and replaced with the following:

> **2.01 Term.** The original commencement date of this Agreement is March 1, 1991 and term of this Agreement shall expire on February 28, 2016.

2. **SECTION 2: Subsection 2.05 Renewal Options**. Shall be deleted in its entirety and replaced with the following:

> "LESSEE shall have two (2) successive five (5) year options to renew this Agreement. These options may be exercised by providing written notice to the CITY at least one hundred and eighty (180) days prior to the expiration of the term or renewal period of this Agreement as applicable. If Lessee exercises its renewal options above, such extension shall not be valid unless approved by the City Council."

3. **SECTION 3: RENT, Subsection 3.02 Rent. A. Rent Amount.** Shall be deleted in its entirety and replaced with the following:

> "Commencing on March 1, 2007, the annual rent shall be Twenty-Six Thousand Four Hundred and No/100 Dollars ($26,400.00), payable monthly in advance at the rate of Two Thousand Two Hundred and No/100 Dollars ($2,200.00) on or before the first day of each new month. Beginning March 1, 2008 and annually thereafter, said rent is subject to adjustments based on increases, if any, in the Consumer Price Index ("CPI") and/or as renegotiated for any subsequent renewal period as more particularly hereinafter provided."

4. Except as expressly modified by this Amendment, the Agreement and all of its terms and conditions, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto agree to all of the covenants and conditions as set forth herein as of the date first written above.

"CITY"

City of Oceanside
a municipal corporation

By: _____
City Manager

Approved as to form:

By: _____, ASST.
City Attorney

"PERMITTEE"

Crown Castle GT Company, LLC

By: _____

R.Christopher Mooney
Director - Land Acquisition Operations

Name: _____

Title: _____

ALL PURPOSE ACKNOWLEDGMENT

STATE OF Texas }
}
COUNTY OF Harris }

On this 14 day of April, 2008 before me Brenda C. Featherston, Notary Public personally appeared R. Christopher Mooney, the Director of CROWN CASTLE GT COMPANY LLC, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Brenda C. Featherston
Notary Public
STATE OF TEXAS
My Comm. Exp. Aug. 13, 2011

(NOTARY SEAL)

ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to another document.

THIS CERTIFICATE **MUST** BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW.

Title of Document Type: First Amendment to Property Lease Agreement
Number of Pages _____ Date of Document _____
Signer(s) Other Than Named Above _____

Do(ent No. D90-124
6/ 90 (14)

ORIGINAL

PROPERTY LEASE AGREEMENT

BY AND BETWEEN

THE CITY OF OCEANSIDE

AND

U. S. WEST CELULAR

FOR THE LEASE OF CITY OWNED REAL PROPERTY

LOCATED AT

HENIE HILLS RESERVOIR

DATED

JUNE 13, 1990

CITY OF OCEANSIDE
PROPERTY LEASE AGREEMENT
WITH U. S. WEST CELLULAR
FOR PROPERTY AT HENIE HILLS RESERVOIR

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CITY OF OCEANSIDE
PROPERTY LEASE AGREEMENT
WITH U. S. WEST CELLULAR
FOR PROPERTY AT HENIE HILLS RESERVOIR

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CITY OF OCEANSIDE
PROPERTY LEASE AGREEMENT
WITH U. S. WEST CELLULAR
FOR PROPERTY AT HENIE HILLS RESERVOIR

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CITY OF OCEANSIDE
PROPERTY LEASE AGREEMENT
WITH U. S. WEST CELLULAR
FOR PROPERTY AT HENIE HILLS RESERVOIR

THIS LEASE AGREEMENT is executed between the **CITY OF OCEANSIDE**, a municipal corporation, hereinafter called "CITY", and **U. S. WEST CELLULAR**, hereinafter called "LESSEE".

1.01 Premises.

CITY hereby leases to LESSEE and LESSEE leases from CITY all of that certain real property situated in the City of Oceanside, County of San Diego, State of California, generally known as **HENIE HILLS RESERVOIR**, described in Exhibit "A" attached hereto and by this reference made part of this agreement. Said real property is hereinafter called the "premises" or "leased premises."

CITY further grants to LESSEE the non-exclusive right for ingress and egress, seven (7) days a week, twenty-four (24) hours a day, on foot or motor vehicle, including trucks, and for the installation and maintenance of utility wires, cables, conduits, and pipes over, under, or along a twenty (20) foot wide right-of-way and easement extending from the nearest public right-of-way, to the leased premises, CITY agrees to execute any such easement documents as may be required by any and all utility companies in connection with LESSEE's use of the leased premises. The leased premises, right-of-way and easement for ingress, egress and utilities are described herein in Exhibit "A", and its subparts, attached hereto and made apart hereof by this reference. CITY also hereby grants to LESSEE the right to obtain metes and bounds legal description and/or a survey of said Property, and said metes and bounds legal description and/or survey shall then become Exhibit "B" which shall be attached hereto and made a part hereof, and shall control in the event of discrepancies between it and Exhibit "A", and its subparts. Cost of such work shall be paid by LESSEE.

1.02 Uses.

It is expressly agreed that the premises, consisting of **approximately 1500 square feet of land**, is leased to

INITIALS

LESSEE solely and exclusively for the purpose of constructing, installing, maintaining and operating **cellular communications facilities**, consisting of an approximate ~~50~~ 15 foot tower and an approximate 12 x 36 foot modular building, and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever, provided that such consent shall not be unreasonably withheld.

After the necessary approvals, permits and licenses have been obtained, LESSEE covenants and agrees to use the premises for the above specified purposes and to diligently pursue said purposes throughout the term hereof. Failure to continuously use the premises for said purposes, or the use thereof for purposes not expressly authorized herein, shall be grounds for termination by CITY.

1.03 Related Council Actions.

By the granting of this lease, neither CITY nor the Council of CITY is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the premises. Discretionary action includes, but is not limited to rezoning, variances, conditional use permits, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the leased premises.

1.04 Quiet Possession.

LESSEE, paying the rent and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold and enjoy the premises. If CITY for any reason cannot deliver possession of the premises to LESSEE at the commencement of the term, or if during the lease term LESSEE is temporarily dispossessed through action or claim of a title superior to CITY'S, then and in either of such events, this lease

shall not be voidable nor shall CITY be liable to LESSEE for any loss or damage resulting therefrom, but there shall be determined and stated in writing by the City Manager of the CITY a proportionate reduction of the minimum or flat rate rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the premises.

1.05 Easements and Reservations.

a. **Subsurface Rights.** CITY hereby reserves all rights, title and interest in any and all subsurface natural gas, oil, minerals and water on or within the premises.

b. **Easements.** CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along and across the leased premises for utilities, thoroughfares, or access as it deems advisable for the public good.

c. **Right to Enter.** CITY has the right to enter the premises for the purpose of making repairs to or developing municipal resources and services.

However, CITY shall not unreasonably or substantially interfere with LESSEE'S use of the premises. CITY will not reimburse LESSEE for damages, if any, to the permanent improvements, located on the leased premises resulting from CITY exercising the rights reserved in this agreement. CITY will pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights. CITY's use of the premises is paramount to that of LESSEE's use, provided that at all times CITY shall use its best efforts not to interfere with LESSEE's use of the leased premises.

SECTION 2: TERM

2.01 Commencement.

Regardless of the date of execution by the City Manager, the term of this agreement shall be five (5) years commencing on the date of building permit issuance by the City of Oceanside, but in no event shall the commencement date be beyond six (6) months after the execution date of this agreement.

It is understood and agreed that LESSEE's ability to use the Property is contingent upon its obtaining, after the execution date of this Agreement, all the certificates, permits, and other approvals that may be required by any federal, state, or local authorities. In the event that any of such applications should be finally rejected or any certificate, permit, license, or approval issued to LESSEE is cancelled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority so that LESSEE will be unable to use that Property for its intended purposes, LESSEE shall have the right to terminate this Agreement. Notice of the LESSEE's exercise of its right to terminate shall be given to CITY in writing by certified mail, return receipt requested, and shall be effective upon receipt of such notice by the CITY as evidenced by the return receipt. All rentals paid for the lease of the Property to said termination date shall be retained by CITY.

2.02 <u>Holdover.</u>

Any holding over by LESSEE after expiration or termination shall not be considered as a renewal or extension of this lease. The occupancy of the premises after the expiration or termination of this agreement constitutes a month-to-month tenancy, and all other terms and conditions of this agreement shall continue in full force and effect; provided, however, CITY shall have the right to apply a reasonable increase in rent to bring the rent to fair market value and to terminate the holdover tenancy at will.

2.03 <u>Quitclaim of LESSEE'S Interest.</u>

On termination of this lease for any reason, LESSEE shall

deliver to CITY a quitclaim deed in recordable form quitclaiming all its rights in and to the premises. LESSEE or its successor in interest shall deliver the same within five (5) days after receiving written demand therefor. CITY may record such deed only on the expiration or earlier termination of this lease. If LESSEE fails or refuses to deliver the required deed, the CITY may prepare and record a notice reciting LESSEE's failure to execute this lease provision and the notice will be conclusive evidence of the termination of this lease and all LESSEE's rights to the premises.

2.04 Surrender of Premises.

At the expiration or earlier termination of this lease, LESSEE shall surrender the premises to CITY free and clear of all liens and encumbrances, except those liens and encumbrances which existed on the date of execution hereof, and in a decent, safe and sanitary condition. In the case of termination of this lease by CITY prior to the end of the specified lease term, any liens and encumbrances must be approved in writing by the City Manager.

2.05 Renewal Options.

At the end of the initial term of this agreement, the LESSEE has the option to renew this agreement for three additional and successive five year periods. These options may be exercised by providing written notice to the City one hundred and eighty (180) days prior to the expiration of the term or renewal period of this agreement.

2.06 Termination.

This lease may be terminated by the City in the event the Lessee fails to provide the intended improvements to the property as described in this agreement within two years of the execution date of this agreement.

CITY OF OCEANSIDE
PROPERTY LEASE AGREEMENT
WITH U. S. WEST CELLULAR
FOR PROPERTY AT HENIE HILLS RESERVOIR

SECTION 3: RENT

3.01 Time and Place of Payment.

Rent is due monthly in advance on or before the first day of each new month. Checks should be made payable to the City of Oceanside and mailed to the City of Oceanside, Engineering Department, Real Property Division, 300 North Hill Street, Oceanside, CA. 92054. The place and time of payment may be changed at any time by CITY upon thirty (30) days' written notice to LESSEE. Mailed rental payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the City Property Department. LESSEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

3.02 Rent.

A. **Rent Amount.** The initial, non-refundable deposit amount due upon the execution of this agreement is **THREE THOUSAND ($3,000.00)**. Upon the commencement date of the term of this Agreement as outlined in Section 2.01, the annual initial rent established is **NINE THOUSAND DOLLARS ($9,000.00)** which shall be payable monthly in advance at the rate of **SEVEN HUNDRED AND FIFTY ($750.00)** on or before the first day of each new month. Said rent shall commence no later than six (6) months after the execution date of this agreement. Said rent is subject to adjustments based on increases, if any, in the Consumer Price Index (CPI) and in the renegotiated rent as hereinafter provided.

B. **CPI Index Adjustments.** At the end of the first year following the effective date of the lease and at the end of every year thereafter during the lease term, the rent shall be adjusted to reflect increases in the Consumer Price Index (CPI).

The index used will be the CPI for "All Urban Consumers"

for Los Angeles/Long Beach/Anaheim, California. If this index is no longer published, the index for adjustment will be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the aforesaid index. If a rental adjustment is calculated using an index from a different base year than 1967, which equaled a base figure of 100 for the CPI, the base figure used will first be converted under a formula supplied by the Bureau of Labor Statistics or its successor.

If the Department of Labor indices are no longer published, another index generally recognized as authoritative will be substituted by agreement of CITY and LESSEE. If the parties cannot agree within sixty (60) days after demand by either party, a substitute index will be selected by the Chief Officer of the Regional Office of the Bureau of Labor Statistics or its successor, notwithstanding continued reference herein to "CPI" in any event.

Regardless of the index publication dates, the effective date of the rent adjustment is as specified in this Subsection B, CPI Index Adjustments. Until the rent adjustment can be reasonably determined by the index method, LESSEE shall continue to make payments at the existing rental-rate. When the adjustment is determined, the balance of rents due at the adjusted rate will be paid to CITY within thirty (30) days. In no event shall the adjusted rent as established by the Consumer Price Index be less than the rent in existence immediately prior to the adjustment date.

C. **Index Adjustment Computation.** The rent for each rental period following the adjustment, until the next adjustment or other rental determination as provided herein, shall be determined prior to the date of adjustment by multiplying the rent which is effective immediately prior to said adjustment by the "adjustment figure" established by the method outlined in the following paragraphs; provided, however, increases in the rent shall not less than five percent (5%) nor exceed ten percent (10%) per year nonaccumulative.

The "adjustment figure" shall be established by dividing

the "current index" by the "base figure", both as defined herein:

The "base figure" for the first such adjustment shall be a three-month average of index figures published by said CPI using the fourth, fifth and sixth full months preceding the effective date of this agreement.

To illustrate, if the lease began in May, the CPI figures for November (sixth month), December (fifth month) and January (fourth month) preceding May would be averaged to establish the base figure (Example 1).

The "current index" shall be a three-month average of index figures published by said CPI. The three months to be used to establish said average shall be the fourth, fifth and sixth full months preceding the adjustment date.

The "base figure" for each successive adjustment shall be the "current index" figure used in the last preceding adjustment period (Example 2).

Example 1

Current Index 121 = 1.10 (Adjustment Figure)
Base Figure 110

Effective Rent x 1.10 = Adjusted Rent

Example 2

Current Index 138 1.14 (Adjustment Figure)
Base Figure 121

Effective Rent x 1.14 = Adjusted Rent

The adjustment figure is then multiplied by the monthly rent from the preceding adjustment period to determine the new rent, Using the foregoing examples, if the rent is now $1,000 per month, after the first adjustment it will be $1,100 per month ($1,000 x 1.10). In the second adjustment it will be $1,254 per month ($1,100 x 1.14).

D. **Renewal Rent.** The renewal rent for each option period will be renegotiated. The renewal rent will be based on an average of two MAI appraisals of the property value. The cost of these appraisals shall be shared equally by the CITY and the LESSEE. The rent shall not be, however, less than the rent in effect in the last effective year of the term or option period.

E. **Arbitration.** In the event the parties cannot agree to the rent for a rental period, the controversy as to rent for said period shall be determined by three arbitrators. After notice by either party to the other requesting arbitration, one arbitrator shall be appointed by each party. Notice of the appointment shall be given by each party to the other when made. The two arbitrators shall immediately chose a third arbitrator to act with them. If they fail to select a third arbitrator, on application by either party, the third arbitrator shall be promptly appointed by the then presiding judge of the Superior Court of the State of California, County of San Diego, acting in his individual capacity. The party making the application shall give the other party notice of his application. All of the arbitrators shall be qualified real estate appraisers. Each party shall bear the expenses of its own appointed arbitrator and shall bear other expenses pursuant to Section 1284.2 of the Code of Civil Procedure of California. Hearings shall be held In the City of San Diego, California. The award shall be the decision of not less than two of the arbitrators. Said derive from award shall be the rent which Lessor could derive from Lessor's property if it were vacant and made available on the open market for new leasing purposes at the commencement of the rental period under arbitration. For the purpose of this arbitration procedure, the arbitrators shall assume that the Lessor has a fee simple absolute estate. In determining what rent Lessor could derive from said property if it were made available on the open market for new leasing purposes, the arbitrators shall use and analyze only that rental data that is found in the open market place, such as is demanded and received by other Lessors for the same or similar uses. In all cases the award shall be based on recognized real estate appraisal principles and methods. The award determined by the arbitrators shall be effective and

retroactive to the first day of the rental period under arbitration. The award shall be in writing in the form of a report that is ln accordance with law. The arbitrators shall make copies of their report available to any ethical practice committee of any recognized professional real estate organization. The arbitration shall be conducted under and subject to Section 1280 through 1294.2 of the Code Civil Procedure of California."

3.03 Inspection of Records.

Not Applicable.

3.04 Delinquent Rent.

If LESSEE fails to pay the rent when due, LESSEE will pay in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days, LESSEE shall pay an additional five percent (5%) being a total of ten percent (10%) which is hereby mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account.

SECTION 4: ASSIGNMENT

4.01 Time is of Essence; Provisions Binding on Successors.

Time is of the essence of all of the terms, covenants and conditions of this lease and, except as otherwise provided herein, all of the terms, covenants and conditions of this lease shall apply to, benefit and bind the successors and assigns of the respective parties, jointly and individually.

4.02 Assignment and Subletting.

Except to Lessee's affiliates and subsidiaries, LESSEE shall not assign this lease, or any interest therein, and shall not sublet the premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents and guests of LESSEE, to use or occupy the premises or any part thereof, without the prior written consent of the City Manager in each instance. Such consent by the City Manager shall not be unreasonably withheld. A consent to assignment, subletting, occupation or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. Any such assignment or subletting without such consent shall be void, and shall, at the option of CITY, terminate this lease.

"Assignment," for the purposes of this clause shall include any transfer of any ownership interest in this lease by LESSEE or by any partners, principals, or stockholders, as the case may be, from the original LESSEE, its general partners or principals.

Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions and provisions of this agreement which are applicable to the rights acquired.

4.03 Encumbrance.

Subject to prior consent by CITY, which shall not be unreasonably withheld, LESSEE may encumber this lease, its leasehold estate and its improvements thereon by deed of trust, mortgage, chattel mortgage or other security instrument to assure the payment of a promissory note or notes of LESSEE, upon the express condition that the net proceeds of such loan or loans be devoted exclusively to the purpose of developing and/or improving the leased premises. However, a reasonable portion of the loan proceeds may be disbursed for payment of incidental costs

of construction, including but not limited to the following: off-site improvements for service of the premises; on-site improvements; escrow charges; premiums for hazard insurance, or other insurance or bonds required by CITY; title insurance premiums; reasonable loan costs such as discounts, interest and commissions; and architectural , engineering and attorney ' s fees and such other normal expenses incidental to such construction.

Any subsequent encumbrances on the premises or on any permanent improvements thereon, must first have the approval in writing of City Manager. Such subsequent encumbrances shall also be for the exclusive purpose of development of the premises. Provided, however, after the premises are fully developed in accordance with said Development Plan to the satisfaction of the City Manager, proceeds from refinancing or from such subsequent encumbrances may be used to reduce LESSEE'S equity so long as there is also substantial benefit to the CITY therefrom. LESSEE understands and specifically agrees that the City Manager shall have the sole and absolute discretion to approve or disapprove any such proposed subsequent encumbrance including, but not limited to, amending the lease to provide then current rents and provisions.

In the event any such approved deed of trust or mortgage or other security-type instrument should at any time be in default and be foreclosed, or transferred in lieu of foreclosure, the CITY will accept the approved mortgagee or beneficiary thereof; as its new tenant under this lease with all the rights, privileges and duties granted and imposed in this lease.

Any default, foreclosure or sale pursuant to said deed of trust, mortgage or other security instrument, shall be invalid with respect to this lease without prior notice thereof to CITY. Upon prior written approval by CITY, said mortgagee or beneficiary may assign this lease to its nominee, if nominee is a reputable, qualified and financially responsible person in the opinion of CITY. Any deed of trust, mortgage or other security instrument shall be subject to all of the terms, covenants and

conditions of this lease and shall not be deemed to amend or alter any of the terms, covenants or conditions hereof.

4.04 Defaults and Remedies.

a. Default. In the event that:

(1) LESSEE shall default in the performance of any covenant or condition required by this lease to be performed by LESSEE and shall fail to cure said default within thirty (30) days following written notice thereof from CITY; or if any such default is not curable within thirty (30) days, shall fail to commence to cure the default(s) within said thirty day period and diligently pursue such cure to completion; or

(2) LESSEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or

(3) LESSEE shall be adjudicated a bankrupt; or

(4) LESSEE shall make a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice or demand upon LESSEE or upon any person claiming rights through LESSEE, immediately terminate this lease and all rights of LESSEE and of all persons claiming rights through LESSEE to the premises or to possession thereof; and CITY may enter and take possession of the premises. Provided, however, in the event that any default described in Section 4.04 a(1), Default and Remedies, hereof, is not curable within thirty (30) days after notice to LESSEE, CITY shall not terminate this lease pursuant to the default if LESSEE immediately commences to cure the default and diligently pursues such cure to completion.

In the event that there is a deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of the default(s)

complained of, and the same mortgagee or beneficiary shall have thirty (30) days from such notice to cure the default(s) or, if any such default is not curable within thirty (30) days, to commence to cure the default(s) and diligently pursue such cure to completion. The thirty-day period may be extended during such time as mortgagee or beneficiary pursues said cure with reasonable diligence.

b. Remedies. If the mortgagee or beneficiary shall be required to exercise its right to cure said default(s) through litigation or through foreclosure, the CITY shall have the option of the following courses of action in order that the default(s) may be expeditiously corrected:

(1) CITY may correct said default(s) and charge the costs thereof to the account of LESSEE, which charge shall be due and payable on the date that the rent is next due after presentation by CITY to LESSEE and mortgagee or beneficiary of a statement of said costs.

(2) CITY may correct said default(s) and may pay the costs thereof from the proceeds of any insurance fund held by CITY, CITY and LESSEE or by CITY and mortgagee or beneficiary; or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default(s) or to pay the costs of correction performed by or at the direction of CITY.

(3) CITY may terminate this lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE agrees to assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition for early payoff of the related obligations by CITY. CITY may, as an alternative, substitute for the terminated LESSEE a new LESSEE reasonably satisfactory to the mortgagee or beneficiary. Any reasonable costs incurred by CITY in releasing to a new tenant shall be the responsibility of the terminated LESSEE, and LESSEE hereby agrees to reimburse CITY for any such

costs.

Should the default(s) be not curable by LESSEE, then any lender holding a beneficial interest in the leasehold, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this lease. If such mortgagee or beneficiary shall give notice in writing of its election to so substitute itself within the thirty-day period after receiving written notice by CITY of the default, and the default, if curable, is cured by such mortgagee or beneficiary, then this lease shall not terminate pursuant to the default. In that event, CITY expressly consents to the substitution and authorizes the mortgagee or beneficiary to perform under this lease with all the rights, privileges, and obligations of LESSEE, subject to cure of the default, if possible, by mortgagee or beneficiary. LESSEE expressly agrees to assign all its interest in and to its leasehold estate to mortgagee or beneficiary in that event.

c. **Abandonment by LESSEE.** Even though LESSEE has breached the lease and abandoned the property, this lease shall continue in effect for so long as CITY does not terminate this lease, and CITY may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.

d. **Waiver.** Any CITY waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. CITY delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. CITY'S acceptance of any rents is not a waiver of any default preceding the rent payment. CITY and LESSEE specifically agree that the property constituting the premises is CITY-owned and held in trust for the benefit of the citizens of the City

of Oceanside and that any failure by the City Manager or CITY staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY shall at all times, subject to applicable statute of limitations, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

4.05 <u>Eminent Domain.</u>

If all or part of the premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) will be as follows:

a. **Total Taking.** In the event the entire premises are taken, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

b. **Partial Taking.** In the event of a partial taking, if, in the mutual opinion of CITY and LESSEE the remaining part of the premises is unsuitable for the lease operation, this lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

In the event of a partial taking, if, in the mutual opinion of CITY and LESSEE the remainder of the premises is suitable for continued lease operation, this lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The minimum rent shall be equitably reduced to reflect the portion of the premises taken.

c. **Award.** All monies awarded in any such taking shall belong to CITY, whether such taking results in diminution in value of the leasehold or the fee or both; provided, however, LESSEE shall be entitled to any award attributable to the taking of or damages to LESSEE'S then remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.

d. **Transfer.** CITY has the right to transfer CITY'S interests in the premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the premises in accordance with this lease.

e. **No Inverse Condemnation.** The exercise of any CITY right under this lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation so long as such rights do not unreasonably or substantially interfere with LESSEE'S operations.

SECTION 5: INSURANCE RISKS/SECURITY

5.01 Indemnity.

CITY and LESSEE, and all parties claiming under them, hereby mutually release and discharge each other from all claims, liabilities and rights of action arising from or caused by any hazard covered by insurance on the leased premises or covered by insurance in connection with property on, or activities conducted on, the leased premises, regardless of the cause of the damage or loss.

LESSEE shall at all times relieve, indemnify, protect, and save CITY and any and all of its boards, officers, agents, and employees harmless from any and all claims and demands, actions, proceedings, losses, liens, costs,

judgments, civil fines, and penalties of any nature whatsoever in regard to or resulting from the use of the premises, including but not limited to expenses incurred in legal actions, death, injury, or damage that may be caused directly or indirectly by:

a. **Condition.** Any unsafe or defective condition in or on the premises of any nature whatsoever which may exist by reason of any act, omission, neglect, or any use or occupation of the premises by LESSEE;

b. **Operation.** Any operation, use, or occupation conducted on the premises by LESSEE;

c. **Negligence.** Any act, omission, or negligence on the part of LESSEE, its employees, agents, sublessees, invitees, licensees; or

d. **Compliance.** Any failure by LESSEE to comply or secure compliance with any of the lease terms or conditions.

5.02 <u>Insurance.</u>

LESSEE shall take out and maintain at all times during the term of this lease the following insurance at its sole expense:

a. **Liability.** Public liability and property damage insurance in the amount of not less than ONE MILLION DOLLARS ($1,000,000) Combined Single Limit Liability with an occurrence claims form, if available. This policy shall cover all injury or damage, including death, suffered by any party or parties from acts or failures to act by LESSEE or by authorized representatives of LESSEE on or in connection with the LESSEE's use or operation of the premises.

b. **Fire.** Fire, extended coverage, and vandalism insurance policy on all LESSEE's insurable property on the premises in an amount to cover 100 percent of the replacement cost.

c. **Conditions.** All insurance policies will list CITY as an additional insured, protect CITY as its interests may appear, against reasonable legal costs legal costs in defending claims, and will not terminate without sixty (60) days prior written notice to CITY. All insurance companies must be satisfactory to CITY and licensed to do business in California. All policies will be in effect on or before the first day of the lease, except "course of construction fire insurance" shall be in force on commencement of all authorized construction on the premises, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. A copy of the insurance certificate will remain on file with CITY during the entire term of the lease. At least thirty (30) days prior to the expiration of each certificate, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this lease.

d. **Modification.** CITY, at its discretion, may require the revision of amounts and coverage at any time during the term by giving LESSEE sixty (60) days prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the premises. LESSEE also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this lease.

e. **Accident Reports.** LESSEE shall report to CITY any accident causing more than TEN THOUSAND DOLLARS ($10,000) worth of property damage or any serious injury to persons on the premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.

f. **Failure to Comply.** If LESSEE fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall

reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s) and rate of interest. Said reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this Subsection f., if LESSEE fails or refuses to take out or maintain insurance as required in this lease, or fails to provide the proof of insurance, CITY has the right to declare this lease in default without further notice to LESSEE and CITY shall be entitled to exercise all legal remedies in the event of such default.

5.03 Waste, Damage, or Destruction.

LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the leased premises within ten (10) days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY.

SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS

6.01 Acceptance of Premises.

CITY hereby grants to LESSEE the right to access property prior to commencement of lease to perform appropriate inspections, tests, investigations and observations. By signing this lease, LESSEE represents and warrants that it has independently inspected the premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the premises. LESSEE agrees it is relying solely on such independent inspection, tests, investigations, and observations in making

this lease. LESSEE further acknowledges that the premises are in the condition called for by this lease, that CITY has performed all work with respect to the premises, and that LESSEE does not hold CITY responsible for any defects in the premises.

6.02 Entry and Inspection.

CITY reserves and shall always have the right to enter said premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the premises, or to inspect the operations conducted thereon. In the event that such entry or inspection by CITY discloses that said premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, after ten (10) days written notice to LESSEE, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done, in order to keep said premises in a decent, safe, healthy, and sanitary condition. Further, if at any time CITY determines that said premises are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this lease imposed on CITY.

In addition to the above, CITY or any contractor or subcontractor representing CITY shall have the right to enter the premises for the purpose of conducting any maintenance operations. All such maintenance work shall be in accordance with plans and specifications approved by CITY and shall be accomplished in a manner so as to minimize interference with LESSEE'S operation of the leasehold.

6.03 Maintenance.

LESSEE agrees to assume full responsibility and cost for the operation and maintenance of the premises throughout the term. LESSEE will make all repairs and replacements necessary to maintain and preserve the premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with all applicable laws. Appropriate codes and standards of City, state and federal agencies shall be observed in all maintenance, repairs and replacements on the premises.

6.04 Improvements/Alterations.

No improvements, structures, or installations shall be constructed on the premises, and the premises may not be altered by LESSEE without prior written approval by the City Manager. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the premises without prior written approval by the City Manager and that such approval shall not be unreasonably withheld. This provision shall not relieve LESSEE of any obligation under this lease to maintain the premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this lease to make or assume any expense for any improvements or alterations.

6.05 Utilities.

LESSEE agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the development and operation of the leased premises.

6.06 Liens.

LESSEE shall at all times save CITY free and harmless and indemnify CITY against all claims for labor and materials

in connection with operations, improvements, alterations, or repairs on or to the premises and the costs of defending against such claims, including reasonable attorney's fees.

If improvements, alterations, or repairs are made to the premises by LESSEE or by any party other than CITY, and a lien or notice of lien is filed, LESSEE shall within five (5) days of such filing either:

a. take all actions necessary to record a valid release of lien, or

b. file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.

6.07 Taxes.

LESSEE agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the leased premises, including any licenses or permits. LESSEE recognizes and agrees that this lease may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on such interest, and that LESSEE shall pay all such possessory interest taxes. LESSEE further agrees that payment for such taxes, fees and assessments will not reduce any rent due CITY.

6.08 Signs.

LESSEE agrees not to erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of CITY. If any such unauthorized item is found on the premises, LESSEE agrees to remove

the item at its expense within 24 hours notice thereof by CITY, or CITY may thereupon remove the item at LESSEE'S cost.

6.09 Ownership of Improvements and Personal Property.

a. LESSEE, upon termination of this Lease Agreement, shall, within a reasonable period, remove its personal property and fixtures and restore the leased premises to its original condition, reasonable wear and tear excepted. If such time for removal causes LESSEE to remain on the leased premises after termination of this Lease Agreement, LESSEE shall pay rent at the existing monthly rate until such time as the removal of personal property and fixtures is completed.

b. LESSEE shall remove all such improvements, structures and installations as directed by CITY at LESSEE'S sole cost on or before lease expiration or termination. If LESSEE fails to remove any improvements, structures, and installations as directed, LESSEE agrees to pay CITY the full cost of any removal.

c. LESSEE owned machines, appliances, equipment (other than trade fixtures), and other items of personal property shall be removed by LESSEE by the date of the expiration or termination of this lease. Any said items which LESSEE fails to remove will be considered abandoned and become CITY'S property free of all claims and liens, or CITY may, at its option, remove said items at LESSEE'S expense.

d. If any removal of such personal property by LESSEE results in damage to the remaining improvements on the premises, LESSEE agrees to repair all such damage.

e. Any necessary removal by either CITY or LESSEE which takes place beyond said expiration or termination hereof shall require LESSEE to pay rent to CITY at the rate in effect immediately prior to said

expiration or termination.

SECTION 7: GENERAL PROVISIONS

7.01 Notices

a. Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to LESSEE as follows:

U. S. WEST Cellular of California, Inc.
3350 161st Avenue S.E.
P.O. Box 7329
Bellevue, WA 98008-1329
Attn: Real Estate Department

and to CITY as follows:

City of Oceanside
Engineering Department
Real Property Division
300 North Hill Street
Oceanside, CA 92054

or to any mortgagee, trustee, or beneficiary as applicable, at such appropriate address designated in writing by the respective party.

b. Any party entitled or required to receive notice under this lease may by like notice designate a different address to which notices shall be sent.

7.02 Compliance with Law.

LESSEE shall at all times in the construction, maintenance, occupancy, and operation of the premises comply with all applicable laws, statutes, ordinances, and regulations of CITY, County, State, and Federal Governments, at LESSEE'S sole cost and expense. In

addition, LESSEE shall comply with any and all notices issued by the City Manager or his authorized representative under the authority of any such law, statute, ordinance, or regulation,

7.03 CITY Approval.

The approval or consent of CITY, wherever required in this lease, shall mean the written approval or consent of the City Manager unless otherwise specified, without need for further resolution by the City Council.

7.04 Nondiscrimination.

LESSEE agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, religious creed, color, ancestry, national origin, age, or physical handicap in LESSEE'S use of the premises, including, but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

7.05 Equal Opportunity.

LESSEE agrees to abide by CITY'S Equal Opportunity Policy as it exists or is amended to the extent that the program is applicable to this lease. A copy of the program effective as of the date of this lease is on file in the City Clerk's Office and by this reference is part hereof.

7.06 Partial Invalidity.

If any term, covenant, condition, or provision of this lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.

7.07 Legal Fees.

In the event of any litigation regarding this lease, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorney's fees.

7.08 Number and Gender.

Words of any gender used in this lease shall include any other gender, and words in the singular number shall include the plural, when the tense requires.

7.09 Captions.

The lease outline, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this lease. The numbers of the paragraphs and pages of this lease may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this lease.

7.10 Entire Understanding.

This lease contains the entire understanding of the parties. LESSEE, by signing this agreement, agrees that there is no other written or oral understanding between the parties with respect to the leased premises. Each party has relied on its own examination of the premises, advice from its own attorneys, and the warranties, representations, and covenants of the lease itself. Each of the parties in this lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this lease.

The failure or refusal of any party to read the lease or other documents, inspect the premises, and obtain legal or other advice relevant to this transaction constitutes

a waiver of any objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this lease will be valid unless it is in writing and signed by all parties.

SECTION 8: SPECIAL PROVISIONS

Not Applicable

CITY OF OCEANSIDE
PROPERTY LEASE AGREEMENT
WITH U. S. WEST CELLULAR
FOR PROPERTY AT HENIE HILLS RESERVOIR

SECTION 9: SIGNATURES

9.01 <u>Signature Page.</u>

IN WITNESS WHEREOF, this Lease Agreement is executed by CITY, acting by and through its City Manager, and by LESSEE, acting by and through its lawfully authorized officers.

THE CITY OF OCEANSIDE

Date 9/10/90 By _____
City Manager

Date 9/10/90 By _____
City Clerk of Oceanside

Date 7-10-90 By _____
Lessee

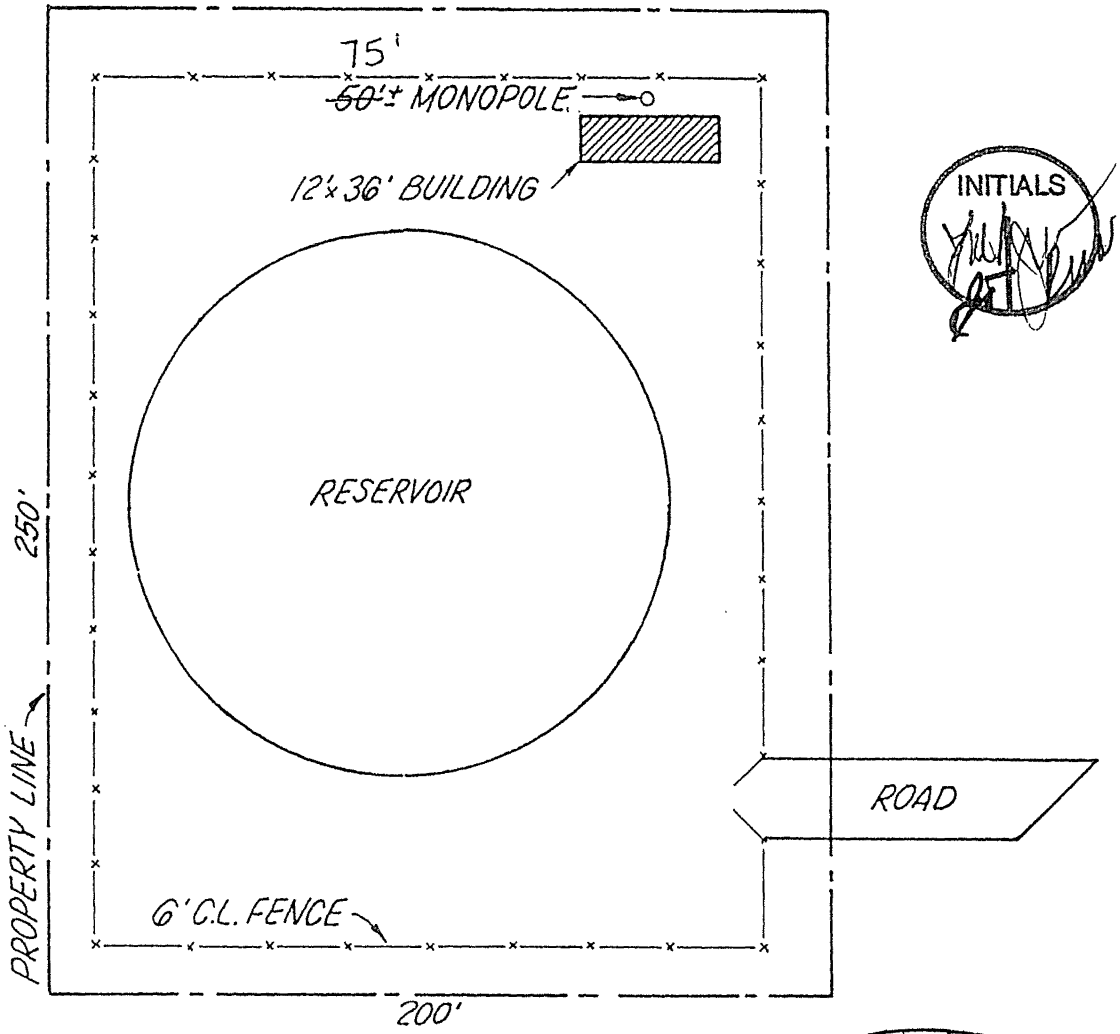
Date _____ By _____
Lessee

Approved as to Form this ____ day _____ 199__

By _____
Asst. City Attorney

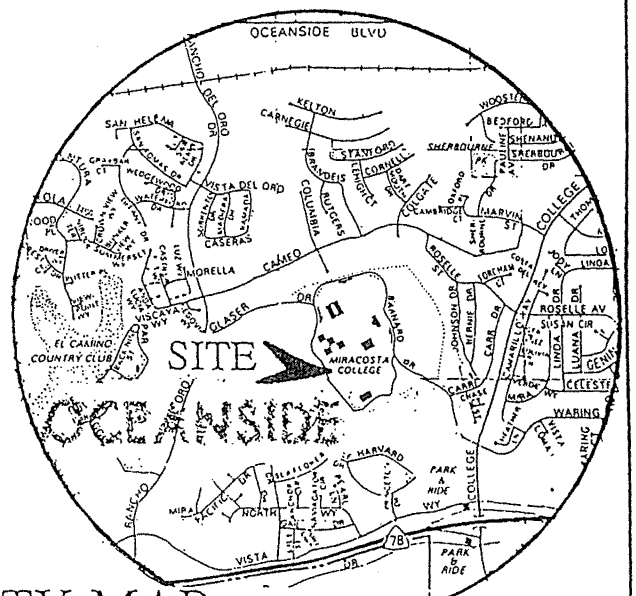
CITY OF OCEANSIDE
PROPERTY LEASE AGREEMENT
WITH U. S. WEST CELLULAR
FOR PROPERTY AT HENIE HILLS RESERVOIR

SECTION 10: EXHIBITS



INITIALS

PLOT PLAN
SCALE 1" = 50'



DENOTES LEASE SITE

VICINITY MAP NO SCALE

Revision	By	Approved	Date	CITY OF OCEANSIDE	EXHIBIT "A"
				U.S. WEST HENIE HILLS LEASE	CITY ENGINEER Date
					SUPPLEMENTAL DRAWING NO.

EXHIBIT "B"

ALL THAT PORTION OF SECTION 28, TOWNSHIP 11 SOUTH, RANGE 4 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO U.S. GOVERNMENT SURVEY APPROVED DECEMBER 27, 1870, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28; THENCE SOUTH 72 DEGREES 10′ 21" WEST (SOUTH 71 DEGREES 56′ 35" WEST) 85.74 FEET TO A POINT ON THE CENTER LINE AT ENGINEER'S STATION 204 PLUS 18.06, STATE HIGHWAY XI-SD-196-OCN; THENCE NORTH 3 DEGREES 51′ 04" WEST 522.06 FEET (NORTH 3 DEGREES 55′ 50" WEST 522.72 FEET) TO A POINT LYING 5 FEET NORTHEASTERLY AT RIGHT ANGLES FROM THAT CERTAIN 150 FOOT RIGHT-OF-WAY AS CONDEMNED BY ORDER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SAN DIEGO IN CIVIL CASE NO. 100773, AS RECORDED NOVEMBER 28, 1941 IN BOOK 1279, PAGE 211 OF OFFICIAL RECORDS; THENCE NORTH 57 DEGREES 09′ 06" WEST (NORTH 57 DEGREES 04′ 20" WEST) 1399.32 FEET PARALLEL TO SAID 150 FOOT RIGHT-OF-WAY; THENCE LEAVING SAID 150 FOOT RIGHT OF WAY NORTH 19 DEGREES 52′ 39" EAST (NORTH 19 DEGREES 48′ 25" EAST) 569.92 FEET THENCE NORTH 67 DEGREES 30′ 36" WEST (NORTH 67 DEGREES 34′ 50" WEST) 714.67 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 58 DEGREES 43′ 09" EAST (NORTH 58 DEGREES 38′ 15" EAST) 155.11 FEET; THENCE NORTH 31 DEGREES 16′ 51" WEST (NORTH 31 DEGREES 21′ 05" WEST) 200 FEET; THENCE SOUTH 58 DEGREES 43′ 09" WEST (SOUTH 58′ 38" 55" WEST) 250.00 FEET; THENCE SOUTH 31 DEGREES 16′ 51" EAST (SOUTH 31 DEGREES 21′ 05" EAST) 200 FEET; THENCE NORTH 58 DEGREES 43′ 09" EAST (NORTH 58 DEGREES 38′ 55" EAST) 94.89 FEET TO THE TRUE POINT OF BEGINNING.