

**COUNTY OF WAKE**

**STATE OF NORTH CAROLINA**

**FIRST AMENDMENT OF GROUND LEASE**

**THIS FIRST AMENDMENT OF GROUND LEASE (“Addendum”)** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2024, by and between **WAKE COUNTY (“Wake County”)**, a body politic and corporate of the State of North Carolina, the **TOWN OF CARY (“Cary”)**, a North Carolina municipal corporation, and the **TOWN OF APEX (“Apex”)**, a North Carolina municipal Corporation. Apex, Cary, and Wake County may collectively be referred to as “**Parties**” hereinafter.

**RECITALS**

**WHEREAS**, Cary and Apex, as lessors, and Wake County, as lessee, entered into that certain Ground Lease dated July 17, 2018 (the “**Ground Lease**”) regarding a portion of that certain tract of land located at 3500 Reclamation Road, Apex, North Carolina, which is the site of a radio communications facility (the “**Facility**”) being more particularly described in the Ground Lease (the “**Premises**”);

**WHEREAS**, subject to the terms and conditions of this Addendum, Wake County is agreeable to allow Apex to co-locate communication equipment (the “**Co-Location Equipment**”) upon the Facility in accordance with the plans and specifications provided by Apex to Wake County, attached hereto as **Exhibit A**;

**WHEREAS**, Wake County has approved the plans and specifications in Exhibit A, determined that the co-location is structurally feasible, and determined that the radio frequency study provided by Apex indicates no interference and is acceptable;

**WHEREAS**, Apex will use the co-located equipment for a public purpose which is permitted by all applicable zoning and permitting regulations;

**WHEREAS**, improving the meter system for utilities with communications equipment in Apex shall result in a direct benefit to the residents of Apex; and

**WHEREAS**, pursuant to N.C.G.S. 160A-274, the Parties are authorized to enter into this Addendum to the Ground Lease upon the terms and conditions contained herein.

**NOW THEREFORE**, for and in consideration of the Recitals and the mutual promises and covenants contained in this Agreement, the Parties agree as follows:

1. Permitted Use. Apex may use the Premises for the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair, replacement, and upgrade of the Co-Location Equipment. Exhibit A shall show the area(s) to be used for Co-Location Equipment and any height and width limitations applicable thereto. Apex has the right to modify, supplement, replace, upgrade, and expand the Co-Location Equipment during the term of the Ground Lease. Apex shall not do anything that compromises Wake County's ability to use the Premises for their intended purpose as set forth in the Ground Lease.

2. Co-Location Equipment Costs. Apex shall be responsible for all costs associated with the Co-Location Equipment, including design, engineering, review and approval of all plans and specifications, radio frequency study, permitting, construction, installation, maintenance, and repair.

3. No Assignment or Licensing of Co-Location Equipment. Apex shall not assign, license, or permit any further co-location on the permitted Co-Location Equipment as shown on Exhibit A. As set forth in the Ground Lease, additional co-locations by either Apex or Cary shall require an addendum to the Ground Lease, and any co-locations by private carriers shall only exist pursuant to a written amendment to the Ground Lease.

4. Access. Cary, as Lessors' Lead Agent under the Ground Lease, shall permit Apex, its designated employees, contractors, and agents reasonable access to the Premises to construct, install, operate, inspect, maintain, and repair the Co-Location Equipment. Access shall be permitted Monday through Friday, during normal business hours (8:00 am to 4:00 pm). In the event of an emergency requiring after-hours or emergency access to the Premises, Apex shall be permitted access and must contact the 24/7 after hours number for WWRWRF (919-535-5640).

5. Electrical Service. Apex shall separately meter the electricity usage of the Co-Located Equipment and shall be responsible for the costs of electrical power associated with the operation of the Co-Location Equipment.

6. All other terms, covenants, and agreements set forth in the Ground Lease shall continue in full force and effect, except as otherwise provided in this Addendum. Any capitalized terms used in this Addendum that are not defined or amended herein shall have the same meaning ascribed to them in the Ground Lease.

7. This Addendum shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

8. This Addendum may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Addendum shall be governed by and construed in accordance with the laws of the State of North Carolina.

**IN ACCORDANCE WITH THE TERMS AGREED UPON IN THE AFOREMENTIONED LEASE**, the following conditions must be met in order for Apex to co-locate communication equipment on the Facility: it shall provide complete engineer stamped plans and specifications to Lessee for approval. Lessee shall permit Cary and/or Apex to co-locate communication equipment at the Facility if 1) the use is for a public purpose permitted by the applicable zoning and permitting regulations; 2) the County determines that the co-location is structurally feasible; 3) a Radio Frequency (RF) study acceptable to County is performed and indicates no interference; 4) the requesting party does not assign, license, or permit further co-location on the permitted communication equipment; 5) the party requesting co-location is responsible for all costs associated with review, RF study, approval, permitting, construction, maintenance, and repair of the co-located equipment; 6) the party requesting co-location enters into an addendum to this Lease setting forth the terms and conditions of co-location.

9. Upon completion of the above-referenced, this Addendum may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Addendum shall be governed by and construed in accordance with the laws of the State of North Carolina.

**1. Notices.** Unless otherwise provided, all notices provided for herein shall be in writing and shall be sent properly addressed by first class mail to the parties at the addresses shown below:

Town of Apex  
PO Box 250  
Apex, North Carolina 27502-0250  
Attention: Randy Vosburg, Town Manager

Email address: [Randy.vosburg@apexnc.org](mailto:Randy.vosburg@apexnc.org)

With a copy to the Director of Water Resources:

Town of Apex  
PO Box 250  
Apex, North Carolina, 27502-0250  
Attention: Michael Deaton, Director of Water Resources

Email address: [Michael.deaton@apexnc.org](mailto:Michael.deaton@apexnc.org)

Town of Cary  
PO Box 8005  
Cary, North Carolina 27512-8005  
Attention: Jamie Revels, Utilities Director

Email address: [Jamie.revels@carync.gov](mailto:Jamie.revels@carync.gov)

Town of Cary  
PO Box 8005  
Cary, North Carolina, 27512-8005  
Attention: Nicole Coughlin, Information Technology Chief Information Officer

Email address: [nicole.coughlin@carync.gov](mailto:nicole.coughlin@carync.gov)

Wake County  
PO Box 550  
Raleigh, North Carolina 27602  
Attention: David Ellis, County Manager

Email address: [David.Ellis@wake.gov](mailto:David.Ellis@wake.gov)

With a copy to the Information Technology Directory/Chief Technology Officer:

Wake County  
PO Box 550  
Raleigh, North Carolina 27602  
Attention: Mike Bass

Email address: [mike.bass@wake.gov](mailto:mike.bass@wake.gov)

With a copy to the Facilities, Design and Construction Director:

Wake County  
PO Box 550  
Raleigh, North Carolina 27602  
Attention: Mark Forestieri

Email address: [Mark.Forestieri@wake.gov](mailto:Mark.Forestieri@wake.gov)

All notices shall be effective three (3) days after having been deposited, properly addressed and postage prepaid, in the US Postal Service. Any party hereto may change the person to whom or the address to which notices should be provided by giving written notice to the other parties of the change.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the Parties, by authority duly given, have executed this Addendum as of the date first above written.

COUNTY OF WAKE,  
a body politic and corporate  
of the State of North Carolina

By: \_\_\_\_\_  
Shinica Thomas  
Chair, Wake County Board of Commissioners

ATTEST:

\_\_\_\_\_  
Yvonne Gilyard  
Clerk to the Board

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, \_\_\_\_\_, a Notary Public for Wake County, North Carolina, do hereby certify that Yvonne Gilyard either being personally known to me or proven by satisfactory evidence, personally came before me this day and acknowledged that she is the Clerk to the Board of Wake County, and that by authority duly given and as the act of the Board of Commissioners of Wake County, the foregoing instrument was voluntarily signed in its name by its Chair, Shinica Thomas, and attested by herself as its Clerk.

Witness my hand and notarial seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

Notary Public  
Printed/Typed Name:

My Commission Expires:

[AFFIX NOTARIAL STAMP OR SEAL]

**TOWN OF APEX,**  
an incorporated municipality in  
Wake County, North Carolina

By: \_\_\_\_\_  
Jacques K. Gilbert  
Mayor, Town of Apex

ATTEST:

\_\_\_\_\_  
Allen L. Coleman, CMC, NCCCC  
Town Clerk

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, \_\_\_\_\_, a Notary Public for Wake County, North Carolina, do hereby certify that Allen Coleman either being personally known to me or proven by satisfactory evidence, personally came before me this day and acknowledged that he is the Town Clerk of the Town of Apex, and that by authority duly given and as the act of the Town Council of the Town of Apex, the foregoing instrument was voluntarily signed in its name by its Mayor, Jacques Gilbert, and attested by himself as its Clerk.

Witness my hand and notarial seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

Notary Public  
Printed/Typed Name:

My Commission Expires:

[AFFIX NOTARIAL STAMP OR SEAL]

**TOWN OF CARY,**  
an incorporated municipality in  
Wake County, North Carolina

By: \_\_\_\_\_  
Harold Weinbrecht, Jr.  
Mayor, Town of Cary

ATTEST:

\_\_\_\_\_  
Virginia Johnson  
Town Clerk

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, \_\_\_\_\_, a Notary Public for Wake County, North Carolina, do hereby certify that Virginia Johnson either being personally known to me or proven by satisfactory evidence, personally came before me this day and acknowledged that she is the Town Clerk of the Town of Cary, and that by authority duly given and as the act of the Town Council of the Town of Cary, the foregoing instrument was voluntarily signed in its name by its Mayor, Harold Weinbrecht, Jr., and attested by herself as its Clerk.

Witness my hand and notarial seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

Notary Public  
Printed/Typed Name:

My Commission Expires:

[AFFIX NOTARIAL STAMP OR SEAL]

**EXHIBIT A**

**(PLANS AND SPECIFICATIONS FOR CO-LOCATED EQUIPMENT)**