

BK: 2019 PG: 2891
Recorded: 9/13/2019 at 10:28:11.0 AM
Pages 10
County Recording Fee: \$52.00
Iowa E-Filing Fee: \$3.00
Combined Fee: \$55.00
Revenue Tax:
LISA SMITH RECORDER
Madison County, Iowa

PREPARED BY AND
WHEN RECORDED MAIL TO:

David C. Bruening, Esq.
EIP Communications I, LLC
c/o Everest Infrastructure Partners
Two Allegheny Center
Nova Tower 2, Suite 703
Pittsburgh, PA 15212

_____ SPACE ABOVE THIS LINE FOR RECORDER'S USE _____

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT ("Agreement") is made as of the 10th day of September, 2019 ("Effective Date") by and between **KENNETH A. BELLAMY and DORIS BELLAMY**, husband and wife (individually and collectively "Grantor") and **EIP COMMUNICATIONS I, LLC**, a Delaware limited liability company ("Grantee"). Grantor and Grantee are at times collectively referred to hereinafter as the "Parties" or individually as a "Party".

RECITALS:

WHEREAS, Grantor is the owner of that certain real property located at or about 2159 Norwood Avenue, Winterset, IA 50273 ("Property"), which Property is more particularly described on Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, Grantor and Grantee have entered into that certain Letter Agreement last executed the 6th day of June, 2019 ("Letter Agreement"), in which Grantor has agreed to grant to Grantee certain rights to the Property in accordance with the terms herein.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby

acknowledged, and intending to be legally bound, Grantor and Grantee hereby agree and covenant to and with each other the following:

1. **Recitals; Letter Agreement.** The recitals and definitions set forth above and the Letter Agreement are incorporated herein by reference and made a part of this Agreement.

2. **Grant of Easement.** In accordance with the terms set forth herein, Grantor grants and conveys to Grantee:

(a) an easement ("Site Easement") in, to, under and over the portions of the Property leased and/or otherwise utilized pursuant to the leases or other agreements listed on Exhibit "B" ("Current Agreements"), for the transmission and reception of any and all wireless communication signals and the construction, maintenance, repair, replacement, improvement, operation and removal of towers, antennas, cabinets, buildings, ice bridges, fences, gates and all related facilities (collectively "Facilities"), and any and all activities and uses of the Site Easement related to the operation of a wireless communications site, which Site Easement shall be exclusive except for any contrasting rights granted prior to the Effective Date via the Current Agreements and exclusive upon the expiration or earlier termination of the Current Agreements; and

(b) non-exclusive easements ("Access and Utility Easements") in, to, under and over the portions of the Property leased and/or otherwise utilized pursuant to the Current Agreements for ingress and egress to and from the Site Easement and a publicly dedicated roadway, and for the construction, installation, maintenance, repair, replacement, improvement, operation and removal of utilities providing service to and from the Site Easement and the Facilities, and any related activities and uses (the Site Easement and Access and Utility Easements are collectively referred to herein as the "Easement").

3. **Current Agreements.** Grantor shall not transfer or assign to Grantee all or any portion of its rights, obligations, title and interest in, to and under the Current Agreements. During the term of the Current Agreements, maintenance of the Easement is the responsibility of any tenants under the Current Agreements, and Grantee shall not be responsible for any default thereof by any tenants under the Current Agreements nor obligated to cure or seek remedy for such default. Grantor shall not extend or revise the Current Agreements without Grantee's prior written consent, which consent may be denied in Grantee's sole discretion. Grantor hereby irrevocably constitutes and appoints Grantee as Grantor's true and lawful attorney-in-fact to deliver notices and effectuate on behalf of Grantor (i) termination of any Current Agreements and (ii) waiver of any removal of improvements and/or site restoration obligations under the Current Agreements.

4. **Use of Easement.** Subject to the remaining term of the Current Agreements, Grantor shall provide to Grantee the quiet enjoyment and use of the Easement. Grantee shall have the exclusive, unrestricted right to lease, sublease, license, transfer, assign or encumber, in whole or in part, or grant the use of the Easement and/or Grantee's rights under this Agreement to any parties, including but not limited to (i) any lessee, sublessee or licensee under the Current Agreements, (ii) communication service providers or tower owners or operators, (iii) the affiliates, subsidiaries, parents and successors of Grantee, and (iv) holders of security interests (collectively, including successors and assigns, "Customers"). Grantee and its Customers shall have the right to enter and access the Easement at any time, twenty-four (24) hours a day, seven (7) days a week.

5. **Term.** This Agreement and the terms herein shall commence on the Effective Date and extend until terminated in accordance with the terms herein. Notwithstanding the foregoing, the grant of the Easement herein and Grantee's right to possess the Easement, and all use terms herein which

inherently require Grantee's possession of the Easement to be effective, shall commence on the expiration or earlier termination of the Current Agreements, and extend until terminated in accordance with the terms herein.

6. **Termination.** In the event Grantee and its Customers cease all use of all portions of the Easement for a period of more than five (5) consecutive years (for reasons other than casualty or force majeure) subsequent to the expiration of the Current Agreements, the Easement shall be deemed abandoned and this Agreement shall be terminated. Limited or partial use of the Easement by Grantee or any Customers shall not be deemed a surrender or abandonment of the Easement or any unused portion thereof, nor prevent Grantee from benefiting from the full use and enjoyment of the entirety of the Easement. Grantee may terminate this Agreement upon written notice to Grantor. Notwithstanding same, the minimum payment subsequent to the expiration or termination of the Current Agreements referenced in the Letter Agreement shall continue until such time as Grantee sends written notice of termination of the Easement to Grantor, including during the abandonment period set forth herein, with any partial year prorated. This Agreement may not be terminated by Grantor. If this Agreement survives the expiration of the Current Agreements, then upon termination of this Agreement, Grantee shall, within sixty (60) days, remove the above ground Facilities down to three (3) feet below natural grade on the Site Easement and restore the surface of the Site Easement to a reasonable unimproved condition. Any and all costs to restore the Site Easement are to be the sole responsibility of Grantee. Upon termination Grantee and Grantor shall cooperate in the execution and recordation of any document reasonably required to evidence such termination.

7. **Improvements.** Grantee and its Customers may construct improvements in, to, under and over the Easement, all of which shall be deemed part of the Facilities. The Facilities shall remain the personal property of Grantee and its Customers, as applicable, and Grantor shall possess no right, title or interest therein.

8. **Taxes.** Upon the expiration of the Current Agreements, Grantee shall thereafter pay as a site expense all taxes directly attributable to the Facilities as evidenced by an applicable tax bill. Grantor shall pay all other taxes that are not directly attributable to the Facilities.

9. **Exclusive Use; Interference.** Except for Grantee's use or the use of any Customers or third parties with Grantee's permission or as otherwise permitted by the Current Agreements, no portion of the Property, or any other property owned by Grantor or any reasonably related party and located within a one (1) mile radius of the Property, shall be used in any manner for communications towers, facilities and/or transmissions without the prior written consent of Grantee, which consent may be withheld in Grantee's sole discretion. Grantor shall not install or permit to be installed any structure or equipment which causes measurable interference to the equipment of Grantee or its Customers, or otherwise permit any portion of the Property to be used in a manner which materially interferes with the operations of Grantee or its Customers. Grantor and Grantee acknowledge that there will not be an adequate remedy at law for non-compliance with the provisions of this paragraph and therefore, Grantee shall have the right to specifically enforce the provisions herein in a court of competent jurisdiction.

10. **Environmental Covenants and Indemnity.** Neither Grantor nor Grantee will introduce or use any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation ("Hazardous Materials") on, under or about the Property or the Easement in violation of any applicable law or regulation. Grantor and Grantee shall each indemnify, defend and hold the other Party harmless from and against any and all losses, costs, claims, enforcement actions and expenses, including reasonable attorneys' fees, arising out of the presence of Hazardous Materials upon or affecting the Property or the Easement and caused by the indemnifying Party. The foregoing indemnity shall survive any termination of this Agreement.

11. **General Indemnity.** Grantor and Grantee shall each indemnify, defend and hold the other Party harmless from and against any and all losses, costs, claims and expenses, including reasonable attorneys' fees, arising out of (i) the breach of any representation, warranty or covenant of such indemnifying Party set forth herein, or (ii) the use and/or occupancy of the Property or the Easement by the indemnifying Party, except to the extent arising from the negligence or intentional misconduct of the indemnified Party. The foregoing indemnity shall survive any termination of this Agreement.

12. **Transfer of the Property; Assignment.** The provisions and covenants contained in this Agreement shall run with the land and shall bind and inure to the benefit of the Parties and their respective successors and assigns. Should Grantor sell or otherwise convey all or any part of the Property, such sale or conveyance shall be under and subject to the terms contained in this Agreement and Grantee's rights hereunder. Notwithstanding the foregoing, this Agreement and the Easement are for the benefit of Grantee and its successors and assigns, rather than for the benefit of any other tract of land, and may be assigned freely, in whole or in part, by Grantee and its successors and assigns.

13. **Estoppel Certificate.** Each Party shall, within ten (10) days after request by the other Party, execute and deliver to the requesting Party a statement certifying (i) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, stating the modifications and that the modified Agreement is in full force and effect); (ii) whether, to the responding Party's knowledge, either Party is in default in performance of any of its obligations under this Agreement, and, if so, specifying each default; and (iii) any other information reasonably requested concerning this Agreement or the Property.

14. **Condemnation.** In the event of any condemnation of the Easement in whole or in part, Grantee shall be entitled to file claims against the condemning authority for, and to receive, the value of the portion of the Property so taken on which the Easement is located, business dislocation expenses and any other award or compensation to which Grantee may be legally entitled.

15. **Notices.** All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given one (1) day after posting with a nationally recognized overnight courier service, or the earlier of receipt or ten (10) days after posting by registered or certified mail, return receipt requested, to the addresses of Grantor and Grantee as set forth on the signature pages. Either Party may change its notice address by providing notice as set forth herein.

16. **Miscellaneous.**

- (a) This Agreement, including all exhibits attached hereto and the Letter Agreement, constitutes the entire agreement and understanding of both Parties with respect to the subject matter of this Agreement, and supersedes all offers, negotiations and any other written or verbal agreements, and any amendments to this Agreement must be in writing and executed by both Parties;
- (b) this Agreement is governed by the laws of the state in which the Property is located;
- (c) in the event that either Party fails to pay when due any taxes, loans, judgments or payments attributable to or encumbering the Property, Easement or this Agreement, the other Party shall have the right, but not the obligation, to pay such sums on behalf of the non-paying Party, and the non-paying Party shall thereafter reimburse the paying Party for the full amount of such sums paid within five (5) business days of the non-paying Party's receipt of an invoice from

the paying Party, or at the paying Party's option the paying Party may offset such amount, plus reasonable interest thereon, against any sums due from the paying Party to the non-paying Party;

- (d) if any term of this Agreement is found to be void, invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed modified to the minimum extent necessary to be operative, valid and enforceable to most closely reflect the intent of the Parties as expressed herein, or if such modification is not practicable, such provision shall be deemed deleted from this Agreement, and the other provisions of this Agreement shall remain in full force and effect;
- (e) the Parties shall perform, execute and/or deliver promptly any and all such further acts and documents as may be reasonably required to consummate and continue to effectuate the transaction contemplated in this Agreement, including recordation of this Agreement and acquisition of title insurance on the Easement;
- (f) the section headings of this Agreement have been inserted for convenience of reference only, and shall in no way modify or restrict the terms of this Agreement;
- (g) this Agreement has been negotiated at arm's-length, and in the event of any ambiguity in any of the terms and provisions, this Agreement shall be interpreted in accordance with the intent of the Parties and shall not be interpreted against or in favor of either Grantor or Grantee;
- (h) each Party acknowledges that neither Party has provided any legal or tax advice to the other regarding the transaction contemplated in this Agreement or in connection with the execution of this Agreement or any ancillary documents, and each Party has had the full opportunity to avail itself of legal and financial representation;
- (i) if any Party files an action for the enforcement or breach of this Agreement, the substantially prevailing Party shall be entitled to recover its reasonable attorneys' fees and court costs;
- (j) any Party, at its own expense, may record this Agreement upon the full execution hereof; and
- (k) this Agreement may be executed in any number of counterparts, each of which shall, when executed, be deemed to be an original and all of which shall be deemed to be one and the same instrument.

[Signatures to immediately follow.]

IN WITNESS WHEREOF, and intending to be legally bound, Grantor and Grantee have executed this Agreement.

GRANTOR:

Kenneth A. Bellamy and Doris Bellamy

KENNETH BELLAMY

Printed Name: Kenneth A. Bellamy

Kenneth A. Bellamy
75246 Road 409

Farnam, NE 69029

STATE OF NEBRASKA

COUNTY OF

Dawson

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)
) SS:

On this 19 day of June, 2019, before me, a Notary Public, the undersigned officer, personally appeared Kenneth A. Bellamy, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as his free act and deed for the purposes and consideration therein expressed.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

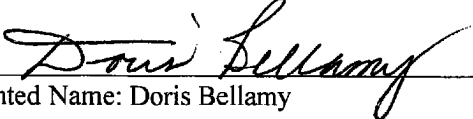
Ginger A. Craig
Notary Public

My Commission Expires:

State of Nebraska - General Notary
GINGER A. CRAIG
My Commission Expires
October 15, 2021

GRANTOR:

Kenneth A. Bellamy and Doris Bellamy


Printed Name: Doris Bellamy

75246 Road 409
Farnam, NE 69029

STATE OF NEBRASKA

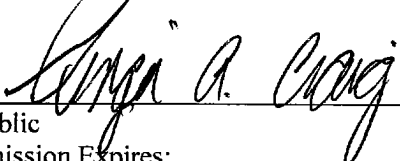
COUNTY OF Dawson

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SS:

On this 19 day of June, 2019, before me, a Notary Public; the undersigned officer, personally appeared Doris Bellamy, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same as her free act and deed for the purposes and consideration therein expressed.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.


Notary Public
My Commission Expires:

State of Nebraska -- General Notary
GINGER A. CRAIG
My Commission Expires
October 15, 2021

**EIP Communications I, LLC,
a Delaware limited liability company**

Two Allegheny Center
Nova Tower 2, Suite 703
Pittsburgh, PA 15212

On this 10th day of September, 2019, before me, a Notary Public, the undersigned officer, personally appeared John P. Lemmon, who acknowledged himself to be the EVP and General Counsel of EIP Communications I, LLC, a Delaware limited liability company, and that he, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing his name on behalf of said limited liability company by himself as such officer.

Notary Public
My Commission Expires:



Exhibit "A"

Property

In the County of Madison, Iowa

Legal Description:

A tract of land located in the Northeast Quarter (1/4) of the Southwest Quarter (1/4) of Section Thirty-two (32), Township Seventy-six (76) North, Range Twenty-seven (27) West of the 5th P.M., Madison County, Iowa.

Including the following parcel:

Beginning at a point 6.90 feet South and 50.00 feet West of the center of said Section Thirty-two (32); thence N 90 degrees 00'00" W a distance of 75.00 feet; thence S 00 degrees 00'00" W a distance of 75.00 feet; thence S 90 degrees 00'00" E a distance of 75.00 feet; thence N 00 degrees 00'00" E along the road right of way line to the point of beginning, containing 0.13 acres more or less.

Parcel/Tax Number: 400073262010000

Exhibit "B"

Current Agreements

1. That certain Lease initially entered into by and between Kenneth A. Bellamy and Doris Bellamy as Landlord and USCOC of Greater Iowa, LLC, a Delaware limited liability company, as successor-in-interest to U.S.C.O.C. of Iowa RSA #1, Inc., an Iowa corporation, doing business as U.S. Cellular, as Tenant, dated February 20, 2001, including any amendments thereto.
2. Any other leases, licenses or agreements respecting the Easement to which Grantor is a party.