NOTICE OF A SPECIAL MEETING OF THE TOWN COUNCIL
OF THE TOWN OF CLARKDALE
THURSDAY, NOVEMBER 10, 2022 AT 3:00 PM

In Person: Clark Memorial Clubhouse, 19 N. Ninth St., Clarkdale AZ
OR
Join Zoom Meeting
https://us02web.zoom.us/j/86217847662?pwd=N0FsdmlpSEJ1OUlGM29yNGRiejhjUT09

Meeting ID: 862 1784 7662
Passcode: 778080
One tap mobile

AMENDED (added Resolution #1684)

Town of Clarkdale Vision

The Town of Clarkdale connects our unique history, proximity to the Verde River, and small-town charm to a future with a vibrant economy.
We cultivate an environment where residents and businesses can thrive; providing services and jobs for our residents and capitalizing upon tourism.
We sustainably enhance our infrastructure, support the arts and education, and develop recreational opportunities to create a bright future for our entire community.

PURSUANT TO A.R.S. §38-431.02, NOTICE IS HEREBY GIVEN to the members of the Common Council of the Town of Clarkdale and to the general public that the Town of Clarkdale Town Council will hold a Special Meeting open to the public on Thursday, November 10, 2022, at 3:00 PM in a hybrid meeting via Zoom Video Conference or in person at 19 N. Ninth Street, Clarkdale, Arizona, Clark Memorial Clubhouse, Men's Lounge. Members of the Clarkdale Common Council will attend either in person or by telephone, video or internet conferencing. Pursuant to A.R.S. §38-431.03, the Council may vote to recess the meeting and move into Executive Session on any item, which will be held immediately after the vote and will not be open to the public. Upon completion of Executive Session, the Council may resume the meeting, open to the public, to address the remaining items on the agenda.
Supporting documentation and staff reports furnished to the Council with this agenda are available for review on the Town website at www.clarkdale.az.gov and the Town Clerk's Office.

ALL ITEMS ON THIS AGENDA ARE SCHEDULED FOR DISCUSSION AND POSSIBLE ACTION, UNLESS OTHERWISE NOTED.

1. CALL TO ORDER

2. **ROLL CALL**

3. **PUBLIC COMMENT**

   The Town Council invites the public to provide comments at this time. Members of the Commission may not discuss items that are not specifically identified on the agenda. Therefore, pursuant to A.R.S. §38-431.01 (G), action taken as a result of public comment will be limited to directing staff to study the matter, responding to any criticism, or scheduling the matter for further consideration and decision at a later date. Persons interested in making comments on a specific agenda item are asked to complete a brief form and submit it to the Commission Liaison during the meeting. Each Speaker is asked to limit their comments to five minutes.

4. **CONSENT**

   A. **Resolution #1684 - Easement Agreement with SBA Towers, IX, LLC.**

      Consider and act upon Resolution #1684, approving an easement agreement with SBA Towers IX, LLC, for the current cell tower site located on a portion of APN 400-06-003A.

5. **NEW BUSINESS**

   A. **Oath of Office**

      Judge Kelley to administer Oath of Office to Council Member Elect Alicia 'Lisa' O'Neill and Laura F. Jones.

6. **FUTURE AGENDA ITEMS**

   Town Council may propose items to be placed on a future agenda. This item is for discussion only.

7. **ADJOURNMENT**

Values

Values are the guiding principles that provide an organization with purpose and direction. The Town of Clarkdale's organizational values are:

COPPER
Customer focused
Open, transparent and equitable
Preserving our history, charm, and environment
Planning for a sustainable future
Economic and social resiliency
Resourceful and innovative

Mission

The Town of Clarkdale serves the community by providing amenities, infrastructure, services, and public safety to enhance quality of life. We are stewards of our history while we sustainably and resiliently plan for the future with an emphasis on community engagement and transparency.

Persons with a disability may request reasonable accommodations by contacting the Town Hall at (928) 639-2400 (TTY: 1-800-367-8939) at least 72 hours in advance of the meeting.

Staff Report

Item Number: 4.A.

Agenda Item: **Resolution #1684 - Easement Agreement with SBA Towers, IX, LLC.** Consider and act upon Resolution #1684, approving an easement agreement with SBA Towers IX, LLC, for the current cell tower site located on a portion of APN 400-06-003A.

Staff Contact: Susan Guthrie, Town Manager

Meeting Date: November 10, 2022

Strategic Goal: This agenda item supports the following:

- Enhance the quality of life for residents, businesses, and visitors to Clarkdale.

Background: On Sept. 23, 2022, the Town of Clarkdale, through its Manager Susan Guthrie and at the direction of the Town Council, entered into an Option Agreement with SBA Towers IX, LLC (SBA), providing for an option for an exclusive, 45-year communications easement with SBA, which incorporates an assignment of that certain Option & Land Lease dated July 18, 2017, as amended by that certain Amendment to Option And Land Lease and Memorandum of Option and Land Lease dated October 23, 2018, by and between the Town and SBA (collectively, the "Lease").

The Mayor and Town Council of the Town of Clarkdale direct the Town Manager to enter into an agreement with SBA for a 45-Exclusive Term Communications Easement over real property owned by the Town of Clarkdale located on a portion of APN 400-06-003A.

Budget Impact: No expense budget impact. Revenues to increase by $360,000.

Recommendation: Staff recommends approval of Resolution #1684, directing the Town Manager to enter into an agreement with SBA Towers IX, LLC, for a 45-year Exclusive Term Communications Easement over real property owned by the Town of Clarkdale, located on a portion of APN 400-06-003A.

RESOLUTION #1684

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CLARKDALE DIRECTING THE TOWN MANAGER TO ENTER INTO AN AGREEMENT WITH SBA TOWERS IX, LLC FOR AN EXCLUSIVE TERM COMMUNICATIONS EASMENT OVER REAL PROPERTY CURRENTLY LEASED BY SBA FROM THE TOWN OF CLARKDALE, TOGETHER WITH AN ASSIGNMENT OF CORRESPONDING GROUND LEASE PURSUANT TO AN AGREEMENT IN RECORDABLE FORM.

WHEREAS, the Town of Clarkdale, an Arizona municipality ("Town"), is desirous of continuing to work with SBA Towers IX, LLC, a Delaware limited liability company ("SBA") for the purpose of continued placement of a cell tower; and

WHEREAS, the SBA has leased said property from the Town since 2017; and

WHEREAS, SBA has proposed to make a lump sum payment of $360,000 for a 45-year lease for a one-acre parcel in the Bitter Creek Industrial Area; and

WHEREAS, the cell tower enhances cellular service to the residents of Clarkdale; and,

WHEREAS, the lump sum payment is equitable to the value of a recently appraised property adjacent to said parcel; and

WHEREAS, on September 23, 2022, the Town of Clarkdale, through its Manager Susan Guthrie and at the direction of the Town Council, entered into an Option Agreement with SBA providing for an option for an exclusive, 45-year communications easement with SBA, which incorporates an assignment of that certain Option & Land Lease dated July 18, 2017, as amended by that certain Amendment to Option And Land Lease and Memorandum of Option and Land Lease dated October 23, 2018, by and between the Town and SBA (collectively, the "Lease").

NOW, THEREFORE, BE IT RESOLVED THAT the Mayor and Town Council of the Town of Clarkdale direct the Town Manager to enter into an agreement with SBA for a 45-Exclusive Term Communications Easement over real property owned by the Town of Clarkdale located on a portion of APN 400-06-003A encompassing the existing cell tower lease site, consistent with the form Easement attached hereto as **Exhibit A** (the "Easement Agreement"). This is an exclusive term communications easement over real property currently leased by SBA from the Town of Clarkdale.

FURTHER RESOLVED, The Town shall be and is hereby authorized and directed to be granted the option to enter into the Easement Agreement, and in connection therewith Susan Guthrie, as Town Manager, is hereby authorized, empowered and directed to execute and deliver for, on behalf of, and in the name of the Town, to enter into the Easement Agreement.

FURTHER RESOLVED, that Susan Guthrie, Town Manager, be and is hereby authorized to execute, in the name and on behalf of the Town, to take or cause to be taken, any and all actions necessary to be granted the option to enter into the Easement Agreement, as conclusive evidence of approval of such form and substance by the Town, that may be required or contemplated under the terms of the previously executed Option Agreement and to do any and all things which in her discretion she may deem to be necessary or appropriate in connection with or in furtherance of the foregoing resolution; and it is

FURTHER RESOLVED, that the signature of Susan Guthrie, Town Manager, on the Easement Agreement executed in connection therewith or pursuant thereto shall be conclusive evidence of her authority to execute and deliver such instruments or documents.

FURTHER RESOLVED, that all actions previously taken by the Town in connection with the Easement Agreement, and the transactions contemplated by the foregoing resolution thereby be, and they hereby are adopted, ratified, confirmed and approved in all respects.

PASSED AND ADOPTED by the Town Council of the Town of Clarkdale this 10th day of November, 2022.

____
Robyn Prudhomme-Bauer, Mayor

ATTEST: APPROVED AS TO FORM:

____________________________ ____________________________
Charity Brooks, Town Clerk Stephen Polk, Attorney

August 30, 2022

VIA E-MAIL: Susan.Guthrie@Clarkdale.Az.gov

Town of Clarkdale
Attn: Susan Guthrie
P.O. Box 308
Clarkdale, AZ 86324
(928) 639-2415

Re: Easement Agreement / Site ID: AZ17727-B Site Name: Clarkdale

Dear Ground Owner:

SBA Towers IX, LLC, a Delaware limited liability company, or an affiliate and/or assigns ("SBA") proposes that it be granted the option to enter into an exclusive, term communications easement with Town of Clarkdale ("Owner") over real property currently leased by SBA from Owner ("Property") together with an assignment of the corresponding ground lease pursuant to an agreement in recordable form provided by SBA ("Easement"). A sample form Easement is attached hereto as Exhibit "A". SBA proposes the following terms applicable to this transaction, in addition to the Easement:

Option Payment:	Within 14 days after full execution of this option agreement ("Agreement"), SBA will pay Owner the sum of One Hundred Dollars ($100.00).
Option Period:	SBA shall have a period of seventy-five (75) days from full execution of this Agreement to inspect the Property and contact governmental authorities regarding the Easement ("Option Period"). If SBA elects not to exercise the option, it will send Owner notice of termination prior to the expiration of the Option Period, in which event the existing Option & Land Lease dated July 11, 2017 shall continue in full force and effect. If notice is not sent prior to the expiration of the Option Period, SBA shall deliver the Easement and other documents necessary for closing ("Closing Documents") within fourteen (14) days of the expiration of the Option Period.
Purchase Price:	One-time payment in the sum of Three Hundred Sixty Thousand and No/100 Dollars ($360,000.00) less any payments made to Owner for ground rent or other rent ("Purchase Price") for any period subsequent to Closing. Upon the payment of the Purchase Price, a communication easement agreement for a forty-five (45) year term will be executed and the rent for the balance of the forty-five (45) year term shall end. Accordingly, no additional consideration shall be due during the term of the Easement. After Closing, independent of the consideration, Grantor shall be entitled to an amount equal to fifteen percent (15%) of the gross sublet

proceeds received from Grantee's broadband subtenants whose equipment is installed on the Premises ("Revenue Share") beginning with the second (2nd) broadband subtenant, of which is to be paid by SBA to Owner within thirty (30) days of actual receipt of a Gross Revenue Payment by Grantee. In the event that there are fewer than two (2) broadband subtenants utilizing Grantee's facilities, no Revenue Share shall be paid.

Closing:	Owner shall execute and deliver to SBA the executed Easement and other Closing Documents, including, but not limited to, an owner's affidavit, closing statement and documents required by SBA's title company to issue an owner's title policy in favor of SBA insuring the Easement within seven (7) days of receipt. SBA will deliver Owner's closing proceeds within two (2) business days following full execution of the Closing Documents by check or wire transfer ("Closing") in accordance with written instructions provided by Owner. The Closing will occur as soon as the conditions set forth on Exhibit "B" hereto are satisfied to SBA's satisfaction. The time for performance by SBA or Owner of any term, provision, or covenant of this Agreement shall be deemed extended by time lost due to delays resulting from acts of God, government action, and any other cause whether similar or dissimilar not within the control of SBA or Owner.
Confidentiality:	Owner is a municipality of the state of Arizona and is subject to public records law, ARS § 39-121 et seq. Owner acknowledges that the terms expressed in this Agreement are confidential to the extent permissible and agrees not to disclose any information regarding this transaction, whether written or oral, to any third party without SBA's written consent. From the date of this Agreement until Closing, Owner agrees not to directly or indirectly solicit, initiate or encourage offers or proposals for the sale of the Property in whole or in part.
Cooperation:	Owner will cooperate with SBA in obtaining any consents or approvals from governmental authorities necessary to effectuate and create the Easement.

By executing this Agreement below, Owner and SBA agree to each of its terms and the terms of Exhibit "A". Owner represents that it is the fee simple owner of the Property, with full authority to enter into this Agreement, the assignment at closing to SBA of the landlord's interest in the existing ground lease, and the Easement. This Agreement will be binding upon, and will inure to the benefit of, Owner, SBA, and their respective successors and assigns. In the event of a breach of this Agreement, in addition to other remedies, the parties are entitled to seek damages including, but not limited to, costs incurred for investigations and inspections done relating to this Agreement. The effective date of this Agreement shall be (and the Option Period shall begin on) the last date this Agreement is executed by the parties. Owner shall deliver the executed Agreement by (1) overnight courier or U.S. mail at the address below, (2) by facsimile to 561-322-2893, or (3) electronic mail to landinfo@sbasite.com. If Owner does not accept the terms of this Agreement within forty (40) days of its date, it shall terminate and shall be of no further force or effect.

We appreciate your cooperation and attention to this matter. If you have any questions, please feel free to call Maryann Manolas at 800-799-4722 x7877.

Sincerely,

SBA Towers IX, LLC

By: ______________________
Martin Aljovin
Vice President, Asset Optimization
Date: 9/23/22

OWNER AGREES TO THE TERMS OF THIS AGREEMENT:

Town of Clarkdale

By: ______________________

Name: Susan Guthrie

Title: Town Manager

Date: Sept. 23, 2022

00592452 - v6

SBA Site ID: AZ17727-B / Clarkdale

EXHIBIT "A"

FORM EASEMENT AGREEMENT

Prepared by and Return to:
SBA Network Services, LLC
Attn: ____________________
8051 Congress Avenue
Boca Raton, FL 33487
561.226-9538

[Recorder's Use Above This Line]

STATE OF ________________

COUNTY OF ______________

Tax ID Number:______________________

EASEMENT AGREEMENT

By and between ____________________ ("Grantor") with an address of ______________________

and

SBA ____________________________________company ("Grantee") with an address of 8051 Congress Avenue, Boca Raton, FL 33487

By initialing below, Grantor does hereby acknowledge that Grantor has received, reviewed, and approved this Easement Agreement in which the Easements described herein are granted from Grantor to Grantee. Grantor initial(s) here: ______________________

EASEMENT AGREEMENT

This Easement Agreement ("Agreement") dated effective ________________, 20___ ("Effective Date"), by and between ____________________, with an address at __________ ______________________ ("Grantor") and SBA ________________, a ______________ _________________, with an address of 8051 Congress Avenue, Boca Raton, FL 33487 ("Grantee").

BACKGROUND

Grantor is the owner of the real property described on **Exhibit 'A'** attached hereto (the "Premises"). Grantor desires to grant to Grantee certain easement rights with respect to the Premises, as more particularly described below, and subject to the terms and conditions of this Agreement. Grantee currently operates and intends to continue operating a cellular communications tower on the Exclusive Easement defined below.

AGREEMENTS

For and in consideration of the covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Grant of Easements. Grantor, for itself and its heirs, personal representatives, successors and assigns, hereby grants and conveys unto Grantee, its tenants, lessees, sublessees, licensees, agents, successors and assigns: (i) an exclusive easement (the "Exclusive Easement") in and to that portion of the Premises more particularly described on **Exhibit 'B'** hereto; and (ii) a non-exclusive easement in and to that portion of the Premises more particularly described on **Exhibit 'C'** hereto (the "Access and Utility Easement") (the Exclusive Easement and the Access and Utility Easement being collectively referred to herein as the "Easements"). The Easements shall be used for the purposes set forth in Section 6 hereof.

2. Private Easement. Nothing in this Agreement shall be deemed to be a dedication of any area for public use. All rights, easements, and interests herein created are private and do not constitute a grant for public use or benefit.

3. Successors Bound. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, personal representatives, lessees, successors, and assigns. It is the intention of the parties hereto that all of the various rights, obligations, restrictions, and easements created in this Agreement shall run with the affected lands and shall inure to the benefit of and be binding upon all future owners and lessees of the affected lands and all persons claiming under them.

4. Duration. The duration of the Easements granted herein shall be forty-five (45) years from the date of this Agreement ("Term") unless Grantee provides written, recordable notice of its intent to terminate this Agreement, in which event this Agreement and all obligations of

Grantee hereunder shall terminate upon Grantee's recordation of any such notice. Grantor may not terminate this Agreement.

5. Easement Consideration. Grantor hereby acknowledges the receipt, contemporaneous with the execution hereof, of all consideration due hereunder. Accordingly, no additional consideration shall be due during the Term of this Agreement. After Closing, independent of the consideration, Grantor shall be entitled to an amount equal to fifteen percent (15%) of the gross sublet proceeds received from Grantee's broadband subtenants whose equipment is installed on the Premises ("Revenue Share") beginning with the second (2nd) broadband subtenant, of which is to be paid by Grantee to Grantor within thirty (30) days of actual receipt of a Gross Revenue Payment by Grantee. In the event that there are fewer than two (2) broadband subtenants utilizing Grantee's facilities, no Revenue Share shall be paid.

6. Use of Easement Areas.

(a) Exclusive Easement. Grantee and its designated customers, lessees, sublessees, licensees, agents, successors and assigns shall have the unrestricted right to use the Exclusive Easement for installing, constructing, maintaining, operating, modifying, repairing and replacing improvements and equipment, which may be located on the Exclusive Easement from time to time, for the facilitation of communications and/or data related uses in connection therewith and other uses as deemed appropriate by Grantee, in its sole discretion. Grantee may make any improvements, alterations, or modifications on or to the Easements as are deemed appropriate by Grantee, in its sole discretion. At all times during the term of this Agreement, Grantee shall have the exclusive right to use, and shall have free access to, the Easements seven (7) days a week, twenty-four (24) hours a day. Grantee shall have the unrestricted and exclusive right to lease, sublease, license, or sublicense any structure or equipment on the Exclusive Easement and shall also have the right to license, lease or sublease to Grantee or third parties any portion of the Exclusive Easement, but no such lease, sublease or license shall relieve or release Grantee from its obligations under this Agreement. Grantor shall not have the right to use the Exclusive Easement for any reason and shall not disturb Grantee's right to use the Exclusive Easement in any manner. Grantor and Grantee acknowledge that Grantee shall have the right to construct a fence around all or part of the Exclusive Easement, and shall have the right to prohibit anyone, including Grantor, from entry into such Exclusive Easement. Grantee shall maintain the Exclusive Easement in good condition, reasonable wear and tear and damage from the elements excepted. Grantee shall permit the Clarkdale Police Department and the Verde Valley Fire District serving the town of Clarkdale to place equipment needed for radio communication signals for public safety dispatch services, without any recurring rental amount due from the Clarkdale Police Department or Verde Valley Fire District serving the Town of Clarkdale; provided, however, notwithstanding the foregoing, Lessor's communications equipment (i.e., the Clarkdale Police Department and Verde Valley Fire District equipment) shall be exclusively used for Lessor's municipal communications system (i.e, emergency management communications and not as a revenue producing activity) and shall be located at one mutually agreeable elevation on the tower on the Exclusive Easement.

(b) Access and Utility Easement. The Access and Utility Easement shall be used by Grantee, its tenants, lessees, sublessees, licensees, agents, successors and assigns for ingress and egress from and to the Exclusive Easement, as well as the construction, installation, operation and maintenance of overhead and underground electric, water, gas, sewer, telephone, data transmission and other utility facilities (including wires, poles, guys, cables, conduits and appurtenant equipment) with the right to construct, reconstruct, improve, add to, enlarge, change and remove such facilities, and to connect the same to utility lines located in a publicly dedicated right of way. Grantor shall not in any manner prevent access to, and use of, the Access and Utility Easement by Grantee or its tenants, lessees, sublessees, licensees, agents, successors and assigns and Grantor shall not utilize the Access and Utility Easement in any manner that interferes with Grantee's or its tenants', lessees', sublessees', licensees', agents', successors', and assigns' use of such area. If the Access and Utility Easement is currently used by Grantor or its tenants, then Grantee shall not in any manner prevent access to, and use of, the Access and Utility Easement by Grantor or its tenants.

7. Equipment and Fixtures. Grantee's equipment, structures, fixtures and other personal property now or in the future on the Easements shall not be deemed to be part of the Premises, but shall remain the property of Grantee or its licensees and customers. At any time during the Term, Grantee or its customers shall have the right to remove their equipment, structures, fixtures and other personal property from the Easements. Grantee, upon termination of this Agreement, shall, within one hundred eighty (180) days, remove all improvements, fixtures, and personal property constructed or installed on the Easements by Grantee and restore the Exclusive Easement to substantially the same condition prior to the construction of the tower, normal wear and tear and casualty excepted. Grantee shall not be required to remove any foundations, driveways, or underground cables or wires to more than two (2) feet below grade. All costs to restore the Exclusive Easement are to be the responsibility of Grantee.

8. Assignment. Grantee may freely assign this Agreement, including the Exclusive Easement and the Access and Utility Easement and the rights granted herein, in whole or in part, to any person or entity (including but not limited to an affiliate of Grantee) at any time without the prior written consent of Grantor. If any such assignee agrees to assume all of the obligations of Grantee under this Agreement, then Grantee will be relieved of all responsibility hereunder.

9. Covenants and Agreements.

(a) Grantor represents and warrants that it is the owner in fee simple of the Premises, free and clear of all liens and encumbrances excluding, however, the Lease, and that it alone has full right to grant the Easements and assign the Lease (as such term is defined in Section 25 hereof). Grantor further represents and warrants that Grantee shall peaceably and quietly hold and enjoy the Easements for the Term.

(b) During the Term, Grantor shall pay when due all real property taxes and all other fees and assessments attributable to the Premises, including the Easements. If Grantor fails to pay when due any such taxes, fees or assessments, Grantee shall have the right but not the obligation to pay the same and demand payment therefor from Grantor, which payment Grantor shall make within ten (10) days of such demand by Grantee. Grantee's right to receive and Grantor's obligation to make such payment set forth in the foregoing sentence shall survive the termination or expiration of this Agreement. However, during the Term of this Agreement only, Grantee will pay any increase in real property taxes levied against the Exclusive Easement which is directly attributable to Grantee's use of the Exclusive Easement, including Grantee's improvements thereon, if Grantor furnishes proof of such increase, including reasonable supporting documentation, to Grantee within one (1) year of the tax payment due date.

(c) Grantor shall not cause the area comprising the Easements to be legally or otherwise subdivided from any master tract of which it is a part in such a way that the remaining tract containing the Easements is substantially the only use of the tract, nor shall Grantor cause the area comprising the Easements to be separately assessed for tax purposes. If it is determined by Grantee that the transfer of the Easements set forth herein requires or shall require the subdivision of the Premises, and if Grantee, in its sole judgment, determines that it desires to seek subdivision approval, then Grantor agrees to cooperate with Grantee, at Grantee's expense, in obtaining all necessary approvals for such subdivision.

(d) Grantor shall not grant, create, or suffer any claim, lien, encumbrance, easement, restriction or other charge or exception to title to the Premises that would adversely affect Grantee's use of the Easements. Grantor has granted no outstanding options to purchase or rights of first refusal with respect to all or any part of the Premises and has entered into no outstanding contracts with others for the sale, mortgage, pledge, hypothecation, assignment, lease or other transfer of all or any part of the Premises and there are no leases, written or oral, affecting the lands underlying the Easements, all except for the Lease.

(e) Grantor has and will comply with all environmental, health, and safety laws with respect to the Premises. Grantee has and will comply with all environmental, health, and safety laws with respect to the Easements.

(f) Grantor has not received notice of condemnation of all or any part of the Premises, notice of any assessment for public improvements, or notices with respect to any zoning ordinance or other law, order, regulation, or requirement relating to the use or ownership of such lands and there exists no violation of any such governmental law, order, regulation or requirement and there is no litigation pending or threatened, which in any manner affects the Easements.

(g) Grantor and Grantee reaffirm and restate the representations contained in the Lease (as defined in Section 25 hereof) as though they were set forth in this Agreement. The representations and warranties made hereunder shall survive the Closing. Grantor agrees to indemnify, defend, and hold harmless Grantee and its officers, directors, shareholders, agents, and attorneys for, from, and against all damages asserted against or incurred by any of them by reason of or resulting from a breach by Grantor of any representation, warranty or covenant of Grantor contained herein, in the Lease, or in any agreement executed in connection herewith. Grantee agrees to indemnify, defend, and hold harmless Grantor and its officers, directors, shareholders, agents, and attorneys for, from, and against all damages asserted against or incurred by any of them by reason of or resulting from a breach by Grantee of any representation, warranty or covenant of Grantee contained herein, in the Lease, or in any agreement executed in connection herewith.

10. Non-Disturbance. During the Term, Grantor will not improve or grant any other easement, ground lease, lease, license, sale or other similar interest in or upon the Premises if such improvement or interest would interfere with Grantee's use of the Easements, nor shall Grantor during the Term enter into any other lease, license, or other agreement for a similar purpose as set forth in this Agreement, on or adjacent to the Premises. Grantor and Grantee recognize that Grantee's use of the easement rights set forth in this Agreement would be frustrated if the telecommunications signals were blocked, if an obstruction were built that would cause interference with such transmission, if access and/or utilities to and from the Exclusive Easement were partially and/or completely inhibited, or if Grantee's use of the Easements was otherwise materially interfered with or prevented. Grantor, for itself, its successors and assigns, hereby agrees to use its best efforts to prevent the occurrence of any of the foregoing, and shall promptly undertake any remedial action necessary to do so. Grantee shall have the express right to seek an injunction to prevent any of the activity prohibited by this Section 10.

11. Access and Utilities. To the extent not otherwise addressed herein, (or to the extent any access and utility easement specifically referenced herein, including but not limited to the Access and Utility Easement or the Exclusive Easement, if applicable, cannot, does not, or will not fully accommodate the access and utility needs of the Exclusive Easement at any time), Grantor hereby grants and conveys unto Grantee, its tenants, lessees, sublessees, licensees, agents, successors and assigns, full, complete, uninterrupted and unconditional access to and from the Exclusive Easement, seven days a week, 24 hours a day, over and across any adjacent property now or hereafter owned by Grantor, for, without limitation, ingress and egress to and from the Exclusive Easement, as well as the construction, installation, location, maintenance, relocation and repair of overhead and/or underground utility connections, including electric, telephone, gas, water, sewer, and any other utility connection, provided that Grantee shall repair any damages to the Premises caused by such access. This easement, and the rights granted herein, shall be assignable by Grantee to any public or private utility company to further effect this provision. If it is reasonably determined by Grantor or Grantee that any utilities that currently serve the Exclusive Easement are not encompassed within the description of the Access and Utility Easement set forth herein, then Grantor and Grantee agree to amend the description of the Access and Utility Easement set forth herein to include the description of such areas. If it becomes necessary to relocate any of the utility lines that serve the Exclusive Easement, Grantor hereby consents to the reasonable relocation for such utility lines upon the Premises for no additional consideration, and hereby agrees to reasonably cooperate with Grantee to create a revised legal description for Access and Utility Easement that will reflect such relocation.

12. Mortgagees' Continuation Rights and Notice and Cure. Grantee may from time-to-time grant to certain lenders selected by Grantee and its affiliates (the "Lender") a lien on and security interest in Grantee's interest in this Agreement and all assets and personal property of Grantee located on the Easements, including, but not limited to, all accounts receivable, inventory, goods, machinery and equipment owned by Grantee ("Personal Property") as collateral security for the repayment of any indebtedness to the Lender. Should Lender exercise any rights of Grantee

under this Agreement, Grantor agrees to accept such exercise of rights by Lender as if same had been exercised by Grantee. If there shall be a monetary default by Grantee under the Agreement, Grantor shall accept the cure thereof by Lender within fifteen (15) days after the expiration of any grace period provided to Grantee under this Agreement to cure such default, prior to terminating this Agreement (if permitted by the terms hereof). If there shall be a non-monetary default by Grantee under this Agreement, Grantor shall accept the cure thereof by Lender within thirty (30) days after the expiration of any grace period provided to Grantee under this Agreement to cure such default, prior to terminating this Agreement (if permitted by the terms hereof). Hereafter, this Agreement may not be amended in any respect which would be reasonably likely to have a material adverse effect on Lender's interest therein or surrendered, terminated, or cancelled, without the prior written consent of Lender. If the Agreement is terminated or is rejected in any bankruptcy proceeding, Grantor will enter into a new easement agreement with Lender or its designee on the same terms as this Agreement within 15 days of Lender's request made within 30 days of notice of such termination or rejection, provided Lender pays all past due amounts under the Agreement, if any. The foregoing is not applicable to normal expirations of this Agreement. Grantor hereby agrees to subordinate any security interest, lien, claim or other similar right, including, without limitation, rights of levy or distraint for rent, Grantor may have in or on the Personal Property, whether arising by agreement or by law, to the liens and/or security interests in favor of the Lender, whether currently existing or arising in the future. Nothing contained herein shall be construed to grant a lien upon or security interest in any of Grantor's assets. Simultaneous with any notice of default given to Grantee under the terms of this Agreement, Grantor shall deliver of copy of such notice to Lender at an address to be provided by Grantee.

13. Notices. All notices required to be given by any of the provisions of this Agreement, unless otherwise stated, shall be in writing and delivered in person or by a national overnight delivery service (and shall be effective when received, when refused or when the same cannot be delivered) to the appropriate party at the address set forth below (or at such other address designated in writing pursuant to the terms hereof):

To Grantor: Town of Clarkdale
Attn: Town Manager
P.O. Box 308
Clarkdale, AZ 86324

And Town of Clarkdale
Attn: Town Manager
39 N. Ninth Street
Clarkdale, AZ 86324

With a copy to:
Stephen W. Polk
Clarkdale Town Attorney
Boyle, Pecharich, Cline, Whittington, & Stallings, PLLC
125 N. Granite Street
Prescott, AZ 86301

To Grantee: SBA ____________________
8051 Congress Avenue
Boca Raton, FL 33487
Attn: Legal Dept.

14. Force Majeure. The time for performance by Grantor or Grantee of any term, provision, or covenant of this Agreement shall be deemed extended by time lost due to delays resulting from strikes, civil riots, floods, labor or supply shortages, material or labor restrictions by governmental authority, litigation, injunctions, and any other cause not within the control of Grantor or Grantee, as the case may be.

15. Recording. This Agreement shall be recorded at either Grantor's or Grantee's option.

16. Miscellaneous. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, and assigns. This Agreement shall be governed by and construed in accordance with the laws of the state or commonwealth where the Premises are located.

17. Captions and Headings. The captions and headings in this Agreement are for convenience and shall not be held or deemed to define, limit, describe, explain, modify, amplify, or add to the interpretation, construction or meaning of any provisions of or the scope or intent of this Agreement.

18. Cumulative Remedies. Except as otherwise expressly provided herein, each and every one of the rights, benefits and remedies provided to Grantor or Grantee by this Agreement, or by any instrument or documents executed pursuant to this Agreement, are cumulative and shall not be exclusive of any other of said rights, remedies and benefits allowed by law or equity to Grantee.

19. Counterparts. This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

20. Severability. If any provision of this Agreement is deemed unenforceable in whole or in part, such provision shall be limited to the extent necessary to render the same valid or shall be excised from this Agreement, as circumstances require, and this Agreement shall be construed as if such provision had been so limited or as if such provision had not been included herein, as the case may be. Additionally, if any laws, rules or regulations promulgated by any state, county or local jurisdiction, including without limitation those concerning zoning, subdivision or land use, or should any court of competent jurisdiction, make the sale of the Easements herein either void or voidable, Grantor agrees that upon the written request of Grantee, the grant of the Easements shall convert to a ground lease between Grantor, as lessor, and Grantee, as lessee, (with the

Exclusive Easement area being the leased premises therein, and the Access and Utility Easement area remaining a non-exclusive easement for access and utility purposes) for uses consistent with those set forth in Section 6 hereof, and containing other terms and conditions acceptable to both parties; provided that Grantee shall not be required to obtain the consent of Grantor to enter into any sublease or license of any portion of the Exclusive Easement or to permit sublessees or licensees to utilize the Access and Utility Easement; nor shall Grantor be entitled to any additional consideration in connection with such subleases and licenses; and provided that the delivery of the consideration paid by Grantee to Grantor for the Easements at the execution of this Agreement shall constitute the prepayment of rent under such ground lease for an extended term of forty-five (45) years.

21. Attorney's Fees. If there is any legal action or proceeding between Grantor or Grantee arising from or based on this Agreement, the unsuccessful party to such action or proceeding shall pay to the prevailing party all costs and expenses, including reasonable attorney's fees and disbursements incurred by such prevailing party in such action or proceeding and in any appeal in connection therewith. If such prevailing party recovers a judgment in any such action, proceeding or appeal, such costs, expenses and attorney's fees and disbursements shall be included in and as a part of such judgment.

22. Entire Understanding and Amendment. This Agreement and the closing documents executed in connection therewith, constitute the entire understanding between the parties with regard to the subject matter hereof and there are no representations, inducements, conditions, or other provisions other than those expressed herein. This Agreement may not be modified, amended, altered, or changed in any respect except by written agreement and signed by each of the parties hereto.

23. Zoning. To the extent any improvements, whether now or in the future existing, upon the Exclusive Easement do not meet zoning or other land-use requirements, or to the extent such improvements may otherwise have to be constructed and/or relocated, Grantor hereby consents to the reasonable construction and/or relocation of such improvements to accommodate such requirements and agrees to reasonably cooperate with Grantee to create a revised legal description for the Exclusive Easement and the Access and Utility Easement. Grantor hereby covenants and agrees that neither Grantor nor an affiliate of Grantor shall at any time file an opposition to a zoning or land use application of Grantee or in any way publicly oppose Grantee at a zoning hearing or other land use proceedings in connection with the Premises and the Easements; and that Grantor shall promptly cooperate with Grantee in making application for obtaining all licenses, permits, and any other necessary approvals that may be required for Grantee's intended use of the Easements. Grantor is a municipality of the state of Arizona and is not obligated to modify its land use laws currently in effect to accommodate future changes in use of the Exclusive Easement by Grantee.

24. Rule Against Perpetuities. If the rule against perpetuities or any other rule of law would invalidate the Easements or any portion or provision hereof or would limit the time during which the Easements or any portion or provision hereof shall be effective due to the potential failure of an interest in property created herein to vest within a particular time, then each such

interest in property shall be effective only from the date hereof until the passing of twenty (20) years after the death of the last survivor of the members of Congress of the United States of America (including the House of Representatives and the Senate) representing the state in which the Premises is located who are serving on the date hereof, but each such interest in property shall be extinguished after such time, and all other interests in property created herein and all other provisions hereof shall remain valid and effective without modification.

25. Assignment of Ground Lease. The parties hereby recognize and agree that the Premises is currently subject to that certain ______, dated ______ originally by and between/among Grantor and ____, a ________ company, as evidenced by that certain ________________, and ultimately assigned to Grantee, as amended and assigned from time to time (collectively, the "Lease"). It is the intention of the parties that the interest created by this Agreement, including the Lease, shall not merge into any other interest now or hereafter held by Grantee and such interests shall remain separate and distinct interests in the underlying real property. Grantor hereby acknowledges that there currently exists no default under the Lease and no conditions that, with the passage of time, would constitute defaults under the Lease. Grantor and Grantee hereby terminate the Right of First Refusal under the Lease. Grantor hereby assigns, transfers, sets over and delivers to Grantee, all of its rights, title and interests under the Lease arising or accruing on or after the date of this Agreement and Grantee hereby accepts, assumes and agrees to be bound by all the terms and conditions which are the responsibility of the landlord under the Lease. Grantor hereby releases and forever discharges Grantee from all claims arising under the Lease. Grantor hereby agrees to indemnify and agrees to hold Grantee harmless with respect to any demands, claims, actions, causes of action, assessments, expenses, costs, damages, losses, and liabilities (including reasonable attorneys' fees and costs) under the Lease which relate to costs or actions first arising on or before the date of this Agreement. Grantee hereby agrees to indemnify and agrees to hold Grantor harmless with respect to any demands, claims, actions, causes of action, assessments, expenses, costs, damages, losses, and liabilities (including reasonable attorneys' fees and costs) under the Lease which relate to costs or actions first arising after the date of this Agreement.

26. Cure Period; Default. No party to this Agreement shall be in default of the terms thereof until thirty (30) days following the date of the defaulting party's receipt of notice of default from the non-defaulting party. In the event such default is not reasonably capable of cure within such thirty (30) day period and such defaulting party promptly and diligently pursues the cure of such default during such cure period, such cure period shall be extended for so long as the defaulting party diligently pursues such cure for a maximum of ninety (90) additional days. In the event of an uncured default, the non-defaulting party shall have all remedies available in law or in equity, including, but not limited to, the right to seek specific performance, an action for damages or an injunction, except that in no event shall Grantor be permitted to terminate this Agreement as a remedy for breach or default thereunder by Grantee. In the event Grantor fails to comply with the terms of this Agreement, Grantee may, in its sole and absolute discretion, cure any such default, and to the extent Grantee incurs any expenses in connection with such cure (including but not limited to the amount of any real property taxes Grantee pays on behalf of Grantor), Grantor agrees to promptly reimburse Grantee for such expenses incurred and hereby grants Grantee a

security interest and lien in the Premises to secure Grantor's obligation to repay such amounts to Grantee.

27. Exclusivity. As part of Grantee's right to the undisturbed use and enjoyment of the Easements, Grantor shall not at any time during the term of this Agreement (i) use or suffer or permit another person to use any portion of the Premises or any adjacent parcel of land now or hereafter owned, leased or managed by Grantor for any of the uses permitted herein or other uses similar thereto, or (ii) grant any interest or an option to acquire any interest in any portion of the Premises that permits (either during the term of this Agreement and/or after the term hereof) any of the uses permitted under this Agreement or other uses similar thereto without the prior written consent of Grantee, in Grantee's sole discretion. The phrase "or other uses similar thereto" as used herein shall include, without limitation, the storage, transmission, reception, or relay of communications signals and/or data by way of small cells, distributed antenna systems, data centers, C-RAN or fiber, or the generation or storage of power or energy. Grantor may not assign any Easement Payment or this Agreement or any rights hereunder, except in connection with conveyance of fee simple title to the Premises, without the prior written consent of Grantee, in Grantee's sole and absolute discretion.

28. Further Acts; Attorney-In-Fact. Grantor shall cooperate with Grantee in executing any documents necessary to protect Grantee's rights under this Agreement or Grantee's use of the Easements and to take such action as Grantee may reasonably require to effect the intent of this Agreement. Grantor hereby irrevocably appoints Grantee as Grantor's attorney-in-fact coupled with an interest to prepare, execute, and deliver land-use and zoning applications, and any other documents that a municipality may require, concerning the tower or the tower facilities, on behalf of Grantor with federal, state, and local governmental authorities, and upon request, will sign a separate power of attorney to such effect.

29. Insurance. Grantee shall maintain commercial general liability insurance with limits of not less than $2,000,000 combined single limit per occurrence, with a certificate of insurance to be furnished to Grantor within 30 days of written request by Grantor. Each party will cause each insurance policy obtained by it to provide that the insurance company waives all rights of recovery against the other party in connection with any damage covered by such policy.

[The remainder of this page is intentionally left blank. Signatures to follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the dates written below.

WITNESSES: **GRANTOR:**

_______________________________ By: _______________________________

Print Name: ______________________

____

Print Name: ______________________

STATE OF

COUNTY OF ______________

____
Notary Public
Print Name: ______________________
My Commission Expires: __________

(NOTARY SEAL)

WITNESSES:

GRANTEE:

SBA ____________

____
Print Name: ____________________________

By: ____________________________________
Martin Aljovin
Vice President, Asset Optimization

____
Print Name: ____________________________

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of [ ] physical presence or [ ] online notarization, this _____ day of ____________________, 20___ by Martin Aljovin, Vice President, Asset Optimization of SBA _________________, on behalf of the company, who is personally known to me and did not take an oath.

____
Notary Public
Print Name: ____________________________
My Commission Expires: ________________

(NOTARY SEAL)

EXHIBIT 'A'

Premises

A 1-acre portion of APN 400-06-003A encompassing the existing cell tower lease site, as depicted on Exhibit A-1.

Legal description to be incorporated upon receipt of final survey.

Staff Report

Item Number: 5.A.

Agenda Item: **Oath of Office**
Judge Kelley to administer Oath of Office to Council Member Elect Alicia 'Lisa' O'Neill and Laura F. Jones.

Staff Contact: Charity Brooks, Town Clerk

Meeting Date: November 10, 2022

Strategic Goal: This agenda item supports the following:

- Enhance the quality of life for residents, businesses and visitors to Clarkdale.

Background: The Primary Election was held on Aug. 2, 2022. According to state law as set forth in A.R.S.§9-821.05.01, a candidate is declared elected to office in the primary if that candidate has a majority of all votes cast. On Aug. 22, 2022, the Council adopted the official results of the Primary Election.

The total number of ballots cast at said Primary Election, as shown by the Yavapai County Election Summary Report, Official Final Results was 1894. The total number of registered voters was 3066.
The votes cast for candidates for Council Member with four-year terms were as follows:

Name	Vote Total
Alicia 'Lisa' O'Neill	976
Laura F. Jones	899

(There were also 19 write in votes)

The calculation of a "majority of votes cast" at the primary election in order for a candidate to win at the primary specifies that the number to win be calculated by adding all of the votes cast for all candidates for the office, dividing by the number of seats to be filled and then dividing the result of the calculation by two and rounding to the highest whole number. That number for Council Members – four-year term is 474.

It is hereby found, determined, and declared of record, that the following candidates did receive a "majority of votes cast" as provided for by A.R.S. § 9-821.01, and are hereby issued certificates of election:
Alicia 'Lisa' O'Neill

Laura F. Jones

Budget Impact: No budget impact.

Recommendation: Staff recommends that Judge Kelley administer the Oath of Office to the new Council Member Elects.

CERTIFICATE OF ELECTION

I, Charity Brooks, Clerk of the Town of Clarkdale, County of Yavapai, State of Arizona
DO HEREBY CERTIFY that at the Primary Election held in and for the Town of Clarkdale, on the 2nd day of August 2022

ALICIA 'LISA' O'NEILL

Was duly elected to the office of Council Member of the Town of Clarkdale, County of Yavapai, State of Arizona, as appears by the official returns approved by the Town Council and on file in my office.

IN WITNESS THEREOF, I have hereunto set my hand and affixed the official seal of the Town of Clarkdale this 22nd day of August 2022

EFFECTIVE DATE IS NOVEMBER 8, 2022 ASSUME OFFICE ON NOVEMBER 10, 2022

Charity Brooks

CHARITY BROOKS,
CLERK OF THE TOWN OF CLARKDALE

CERTIFICATE OF ELECTION

I, Charity Brooks, Clerk of the Town of Clarkdale, County of Yavapai, State of Arizona
DO HEREBY CERTIFY that at the Primary Election held in and for the Town of Clarkdale,
on the 2nd day of August 2022

LAURA F. JONES

Was duly elected to the office of Council Member of the Town of Clarkdale, County of Yavapai, State of Arizona, as appears by the official returns approved by the Town Council and on file in my office.

IN WITNESS THEREOF, I have hereunto set my hand and affixed the official seal of the Town of Clarkdale this 22nd day of August 2022.

EFFECTIVE DATE IS NOVEMBER 8, 2022 ASSUME OFFICE ON NOVEMBER 10, 2022

Charity Brooks

CHARITY BROOKS,
CLERK OF THE TOWN OF CLARKDALE