

## GROUND AND WATER TANK LEASE AGREEMENT

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THIS LEASE AGREEMENT ('Lease') is entered into as of this <<DATE>>, by and between **TOWN OF NAGS HEAD, NORTH CAROLINA** ('Owner') and **FIRST FLIGHT NETWORKS WIRELESS, LLC** ('First Flight Networks').

In consideration of the premises and of the mutual obligations and agreements in this Lease, the parties agree as follows:

### 1. THE PROPERTY

A. Owner is the title holder of that certain real property commonly known as the water tank ('Water Tank'), located at 5401 South Croatan Highway, Town of Nags Head, State of North Carolina ('Owner's Property') which is described on the attached Exhibit 1. The parties agree that the legal description of Owner's Property may be attached as Exhibit 1 after execution of this Lease.

B. First Flight Networks hereby desires to Lease a portion of Owner's Property, and a certain portion of the Water Tank located on Owner's Property, together with obtaining a right of access and a right to install utilities (the 'Property'). The Property which is the subject of this Lease is contained within Owner's Property for the placement of an equipment building and generator, as shown on Exhibit 2, attached hereto and incorporated herein. First Flight Networks shall have the right to run cables and wires under, over and across Owner's Property to connect First Flight Networks equipment on the Water Tank to its equipment in its facility located on the Property. First Flight Networks may park its vehicles on Owner's Property when First Flight Networks is constructing, removing, replacing, and/or servicing its communications facility.

C. Owner and First Flight Networks hereby agree that the Property (including an access right-of-way thereto but excluding the space on the Water Tank) may be surveyed by a licensed surveyor at the sole cost of First Flight Networks, and such survey shall then become Exhibit C and made a part hereof and shall control to describe the Property in the event of any discrepancy between such survey and the description contained in Exhibit 1 or Exhibit 2.

### 2. LEASE AND ACCESS

Owner grants a non-exclusive right to use the Owner's Property to First Flight Networks and grants to First Flight Networks a non-exclusive lease (during the term of this Lease) to use and access the Property (seven [7] days a week, twenty-four [24] hours a day) and to install, remove, replace, and maintain utility cables, conduits and pipes from the Property to the appropriate, in the discretion of First Flight Networks, source of electric, communication and telephone facilities. First Flight Networks will have exclusive use of the Property leased to First Flight Networks; however, nothing shall prevent Owner from leasing other portions of Owner's Property to third parties.

### 3. TERM AND RENT

A. This Lease shall be for a term of five (5) years beginning on October 15th, 2004 ("Commencement Date") and terminating at Midnight on the last day of the month in which the fifth anniversary of the Commencement Date shall have occurred. Thereafter, the lease shall continue automatically for an additional 5 year period, however, First Flight Networks may terminate this Lease at any time after the expiration of the initial term by providing Owner with written notice not less than thirty (30) days prior to the expiration of the then current term. All of the terms and conditions of this Lease shall apply to each of the Renewal Terms, except that the rent for each Renewal Term shall be adjusted as provided in 3.B.

B. First Flight Networks shall pay Owner the sum of \$2,000 per month for the first year, payable in advance on or before the 1st of each month while this contract shall remain in force and effect. For each succeeding year of this agreement the rent shall be increased by three percent (3%) over the next preceding year. It is agreed and understood that said rental shall be prorated for any rental period of less than one (1) month.

### 4. USE OF THE PROPERTY

A. Owner does hereby grant First Flight Networks the right, during the Term (as defined above): (i) to mount antennas on the Water Tank as described on and at the heights shown on the attached Exhibit 2 and upgrade or replace one or more of the antennas described in Exhibit 2 with such other antennas as First Flight Networks determines are necessary; and (ii) to install transmission links and related communications equipment on the Water Tank and at the property as First Flight Networks shall deem reasonably necessary for the purposes of First Flight Networks, including, without limitation, grounding and the installation of telephone lines on the property.

B. First Flight Networks may use the Property to construct, remove, replace, maintain, secure and operate a communications facility, including, without limitation, required First Flight Networks antenna array (as such antenna array may be modified, added to, or substituted from time to time) and antenna support structures, and for any other uses incidental thereto. Each such antenna or antenna support structure may be configured as requested by First Flight Networks from time to time, provided First Flight Networks obtains, pursuant to paragraph 4.C., all permits and approvals required by applicable jurisdictions for such requested configuration. Owner shall have the right to approve plans for any improvements installed by First Flight Networks on the Property, which approval shall not be unreasonably withheld, conditioned or delayed. Improvement of the Property to meet First Flight Networks needs shall be at First Flight Networks sole expense, and First Flight Networks shall maintain such improvements to the Property in a reasonable condition throughout the term.

C. Owner acknowledges that First Flight Networks ability to use the Property for its intended purposes is contingent upon First Flight Networks obtaining and maintaining, both before and after the Commencement Date, all of the certificates, permits, licenses and other approvals (collectively, "Governmental Approvals") that may be required by any federal, state or local authority for the foregoing uses and improvements to the Property desired by First Flight Networks. Owner shall cooperate with First Flight Networks in First Flight Networks efforts to obtain such Governmental Approvals and shall take no action that would adversely affect First Flight Networks obtaining or maintaining such Governmental Approvals.

## 5. TERMINATION

If any of the following occurs, First Flight Networks shall have the right to immediately terminate this Lease by giving written notice to Owner of such termination:

- A. First Flight Networks determines, in its sole discretion, that it will be unable to obtain all necessary Governmental Approvals for First Flight Networks intended use of and improvements to the Property desired by First Flight Networks; or
- B. First Flight Networks application for any Governmental Approvals necessary for First Flight Networks use of the Property and improvements desired by First Flight Networks is denied; or
- C. any Governmental Approvals necessary for First Flight Networks use of the Property and/or improvements to the Property, whether now or hereafter desired by First Flight Networks, are canceled, expired, lapsed or are otherwise withdrawn, terminated or denied so that First Flight Networks, in its reasonable judgment, determines that it will no longer be able to use the Property for First Flight Networks intended use; or
- D. the Federal Communications Commission allocates the frequencies at which First Flight Networks may operate its antennas and equipment and may from time to time change such frequencies and change of this nature in First Flight Networks reasonable judgment, renders its operation of a wireless communications facility at the Property obsolete.

Any termination notice rendered by First Flight Networks pursuant to this Paragraph shall cause this Lease to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Lease and the parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under this Lease.

## 6. ASSIGNMENT

A. Except as otherwise provided herein, First Flight Networks shall not assign this Lease, or allow it to be assigned, in whole or in part, by operation of law or otherwise or mortgage or pledge the same, without the prior written consent of Owner such consent not to be unreasonably withheld or delayed. Owner's consent to an assignment shall be deemed given if Owner does not respond to First Flight Networks request within thirty (30) days after Owner's receipt of such request. Notwithstanding anything contained herein, First Flight Networks may assign this lease without Owner's consent to First Flight Networks principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of First Flight Networks assets in the market defined by the Federal Communications Commission in which the Property is located buy reason of a merger, acquisition or other business reorganization.

B. No consent by Owner to any assignment by First Flight Networks shall relieve First Flight Networks of any obligation to be performed by First Flight Networks under this Lease, whether arising before or after the assignment unless otherwise agreed to by the parties in writing at the time of assignment. The consent by Owner to any assignment shall not relieve First Flight Networks from the obligation to obtain Owner's express written consent to any other assignment.

C. Any sale or other transfer, including by consolidation, merger or reorganization, of a majority of the voting stock of First Flight Networks, if First Flight Networks is a corporation, or any sale or other transfer of a majority in interest (whether of profits, losses, capital or voting power) or a majority of the persons composing the managers of the partnership, if First Flight Networks is a partnership, shall not be assignment for purposes of this Paragraph 7.

## 7. FIRE OR OTHER CASUALTY

A. If the Water Tank or access to it, is damaged or destroyed by a casualty, Owner shall deliver written notice to First Flight Networks, within twenty (20) days after the casualty, of Owner's election (a) not to repair, restore and/or reconstruct the Water Tank and to terminate the Lease or (b) to repair, restore and/or reconstruct the Water Tank. If, as a result of any such casualty, the Property becomes totally or partially unusable by First Flight Networks, rent shall abate during the period of repair in the same proportion to the total rent as the portion of the Property rendered unusable bears to the entire.

B. If Owner (a) undertakes the repair, restoration and/or reconstruction of the Water Tank or of any access thereto but fails to complete such repair, restoration, and/or reconstruction within forty-five (45) days after the casualty, or (b) notifies First Flight Networks of owners' intention not to repair, restore and/or reconstruct the Water Tank, or (c) fails to deliver to First Flight Networks the written notice required under Paragraph 8.A. within twenty (20) days, then First Flight Networks may immediately cancel this Lease by giving written notice of its election to cancel to Owner.

C. Owner agrees that (if reasonably required) during any period of repair, restoration or reconstruction First Flight Networks may use and/or construct upon an alternative portion of Owner's Property which is equally suitable for First Flight Networks temporary facilities, provided such space is available. Owner will solely determine the exact site to which First Flight Networks may locate its facilities within 48 hours of the casualty and it may be upon any portion of Owner's Property or such other property owned or controlled by Owner. The Owner shall have sole authority to determine and approve the aesthetics of First Flight Networks temporary facilities.

D. Owner may terminate this Lease, upon one (1) year's prior written notice, in the event that Owner determines it will discontinue use of and dismantle the Water Tank and remove same from the Property. Should Owner determine that it no longer wishes to maintain and operate the Water Tank, and Owner chooses not to remove the Water Tank, First Flight Networks shall have the right, at First Flight Networks option to remain on the Water Tank and perform the required maintenance at the sole expense of First Flight Networks for so long as First Flight Networks wishes to remain a lessee on the Water Tank within the terms of this lease.

## 8. INDEMNIFICATION AND INSURANCE

A. Subject to Subparagraph 8.E, First Flight Networks hereby agrees to indemnify and hold Owner harmless from and against any and all claims of liability for personal injury or property damage to the extent that they result from or arise out of (i) the acts or omissions of First Flight Networks, its agents and employees in, on or about the Water Tank, including the Property, excepting however, such claims or damages as may be due to or caused by the acts or omissions of Owner, its employees or agents, and/or (ii) First Flight Networks breach of any term or condition of this lease on First Flight Networks part to be observed or performed.

B. Subject to Subparagraph 8.E., Owner hereby agrees to indemnify and hold First Flight Networks harmless from and against any and all claims of liability for personal injury or property damage to the extent that they result from or arise out of (i) the acts or omissions of Owner, its agents and employees in, on or about the water Tank, including the Property, excepting, however, such claims or damages as may be due to or caused by the acts of First Flight Networks, its employees or agents, and/or (ii) Owner's breach of any term or condition of this Lease on Owner's part to be observed or performed.

C. First Flight Networks shall provide Owner with a certificate of insurance, issued by an insurance company licensed to do business in the state in which the Water Tank is located indicating that First Flight Networks carries comprehensive general liability insurance with limits of liability thereunder of not less than \$1 million combined single limit for bodily injury and/or property. Such insurance shall name Owner as an additional insured with respect to the Property. First Flight Networks will provide owner with a renewal certificate with ten (10) business days of owner's request for such certificate. Any insurance required to be provided by First Flight Networks under this Paragraph 9 may be provided by a blanket insurance policy covering the Property and other locations of First Flight Networks, provided such blanket insurance policy complies with all of the other requirements of this Lease with respect to the type and amount of insurance required. First Flight Networks may also fulfill its requirements under this Paragraph 9 through a program of self-insurance. If First Flight Networks elects to self insure, then First Flight Networks shall furnish Owner with a letter stating that there is a self-insurance program in effect that provides for the same, or greater, coverage than required of First Flight Networks herein.

D. Each hazard insurance policy carried by or on behalf of Owner insuring the Water Tank and each hazard insurance policy carried by or on behalf of First Flight Networks insuring First Flight Networks antennas and equipment located on or about the Property shall provide standard extended coverage, including without limitation, coverage against losses caused by fire. Each such policy shall be written so as to provide that the insurance company waives all rights of recovery by way of subrogation it may have against owner or First Flight Networks in connection with any loss or damage covered by such policy. The parties further agree and hereby release each other with respect to any claim (including a claim for negligence) which the other party may have against such party for loss, damage or destruction of, or liability for damages to, the property of the other occurring during the term of this lease, as same may be extended, and normally covered under a fire insurance policy with extended coverage. Notwithstanding anything contained in this Lease to the contrary, the provisions of this Subparagraph 9.E. shall control.

E. Whether the cause of any damage, loss or liability is insurable, insured or not insured, foreseen or unforeseen, neither Party nor its representatives, agents, contractors, subcontractors, invitees or licensees shall in any event be liable to the other Party or its representatives, agents, contractors, subcontractors, invitees or licensees for claims for anticipatory profits, consequential, incidental, exemplary, punitive, or any indirect damages of any nature arising at any time, from any cause whatsoever, whether arising in tort, contract, warranty, strict liability, by operation of law, or otherwise, even if by such Party's, its representatives', agents', contractors', subcontractors', invitees', or licensees' negligence or fault, connected with or resulting from performance or non-performance under this agreement or as a result of the construction, maintenance, operation or use of the Property, the premises, the tower, building, the site or the easement(s) by either Party.

## 9. UTILITIES

First Flight Networks shall be responsible directly to the serving entities for all utilities required by First Flight Networks use of the Property; however, Owner agrees to cooperate with First Flight Networks in its efforts to obtain utilities from any location provided by the Owner or the servicing utility. Should electric power be provided by Owner, First Flight Networks will install an electric meter and First Flight Networks usage shall be read by Owner or, at Owner's option, by First Flight Networks, on an annual basis and the cost of electricity used by First Flight Networks shall be paid by First Flight Networks to Owner annually as a payment separate from rent and shall be computed at the then-current public utility rate.

## 10. RIGHTS TO EQUIPMENT, CONDITION ON SURRENDER

A. First Flight Networks antennas and equipment shall remain personal to and the property of First Flight Networks. At the termination or expiration of this Lease, First Flight Networks shall within forty five (45) days remove its antennas and/or equipment. First Flight Networks shall repair any damage caused by such removal, and shall otherwise surrender the Property at the expiration of the term, as same may have been extended, or earlier termination thereof, in good condition, ordinary wear and tear, damage by fire and other casualty excepted. If such time for removal causes First Flight Networks to remain on the premises after termination of this Agreement, First Flight Networks shall pay rent at the then existing monthly rate or on the existing monthly pro-rata basis based upon a longer payment term, until such time as the removal of the building, antenna structure fixtures and all personal property are completed.

B. Any claims relating to the condition of the Property must be presented by Owner in writing to First Flight Networks with thirty (30) days after the termination or expiration of this lease or Owner shall be deemed to have irrevocably waived any and all such claims.

## 11. FIRST FLIGHT NETWORKS DEFAULTS

A. The occurrence of any one or more of the following events shall constitute an "Event of Default" hereunder by First Flight Networks:

(1) The failure by First Flight Networks to make any payment of rent or any other payment required to be made by First Flight Networks hereunder, as and when due, where such failure shall continue for a period of twenty (20) days after written notice thereof is received by First Flight Networks from Owner.

(2) The failure by First Flight Networks to observe or perform any of the covenants or provisions of this Lease to be observed or performed by First Flight Networks, other than as specified in Paragraph 11.A.(1), where such failure shall continue for a period of thirty (30) days after written notice thereof is received by First Flight Networks from Owner; provided, however, that it shall not be deemed an Event of Default by First Flight Networks if First Flight Networks shall commence to cure such failure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

B. If there occurs an Event of Default by First Flight Networks, in addition to any other remedies available to Owner at law or in equity, Owner shall have the option to terminate this Lease and all rights of First Flight Networks hereunder.

C. If there occurs an Event of Default by First Flight Networks, Owner shall not have the right, prior to the termination of this Lease by a court of competent jurisdiction, to re-enter the Property and/or remove persons or property from the Property.

## 12. NOTICES

All notices hereunder must be in writing and, unless otherwise provided herein, shall be deemed validly given if sent by USPS certified mail receipted for upon posting, return receipt requested, addressed as follows (or to any other mailing address which the party to be notified may designate to the other party by such notice) or as otherwise provided under applicable state law. Should Owner or First Flight Networks have a change of address, the other party shall immediately be notified as provided in this Paragraph of such change. Unless Owner otherwise specifies in writing, rent checks from First Flight Networks shall be sent to the person listed below to whom notices are sent.

### First Flight Networks:

First Flight Networks  
1221 Central Park Blvd.  
Fredericksburg, VA 22401  
Attention: VNH Wireless Project

Telephone Number: (540) 548-8989

Owner: Town of Nags Head  
5401 S. Croatan Highway  
PO Box 99  
Nags Head, NC 27959  
Attention: J. Webb Fuller, Town Manager

Telephone Number: (252) 441-5508

## 13. SALE OR TRANSFER BY OWNER

Should Owner, at any time during the term of this lease, sell, Lease, transfer or otherwise convey all or any part of Owner's Property to any transferee other than First Flight Networks, then such transfer shall be under and subject to this Lease and all of First Flight Networks rights hereunder.

## 14. HAZARDOUS SUBSTANCES

A. Owner warrants and agrees that neither Owner nor, to owner's knowledge, any third party has used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any Hazardous Material (as defined in Paragraph 14.B.) on, under, about or within Owner's Property in violation of any law or regulation. Owner and First Flight Networks each agree that they will not use, generate, store or dispose of any Hazardous Material (as defined in Paragraph 14.B.) on, under, about or within Owner's property in violation of any applicable law or regulation.

B. Owner and First Flight Networks each agree to defend and indemnify the other and the other's partners, affiliates, agents and employees against any and all losses, liabilities, claims and/or costs (including reasonable attorneys' fees and costs) arising from any breach of any warranty or agreement contained in Paragraph 14.A. As used in Paragraph 14.A., "Hazardous Material" shall mean any substance, chemical or waste identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation (including petroleum and asbestos).

## 15. CONDEMNATION

A. In the event the whole of Owners' Property, including without limitation the Property and Water Tank, shall be taken or condemned, either temporarily or permanently, for public purposes, or sold to a condemning authority under threat of condemnation to prevent taking, then this lease shall forthwith automatically cease and terminate.

B. Owner shall receive the entire condemnation award for land, Water Tank and such other improvements as are paid for by Owner, and First Flight Networks hereby expressly assigns to owner any and all right, title and interest of First Flight Networks now or hereafter arising in and to any such award. First Flight Networks shall have the right to recover from such authority, but not from owner, any compensation as may be awarded to First Flight Networks on account of the lease interest, moving and relocation expenses, and depreciation to and removal of the personal property and fixtures of First Flight Networks.

## 16. LIENS

First Flight Networks shall keep the Property free from any liens arising out of any work performed, materials furnished, or obligations incurred by or for First Flight Networks. First Flight Networks shall, within twenty (20) days following the imposition of any such lien, cause the same to be released of record by payment or posting of a proper bond. No work, which Owner permits First Flight Networks to perform on the Property, shall be deemed to be for the use and benefit of Owner so that no mechanics or other lien shall be allowed against the estate of Owner by reason of its consent to such work. Owner shall have the Right to post notices that it is not responsible for payment for any such work.

## 17. TAXES

First Flight Networks shall be liable for and shall pay to the applicable taxing authority if billed directly to First Flight Networks, or to owner if billed Owner, upon thirty (30) days prior, written notice from Owner, any and all taxes and assessments levied against any personal property or trade or other fixtures placed by First Flight Networks in or about the Property. Owner shall notify First Flight Networks of any current taxes, prior to the start of this lease.

First Flight Networks shall pay as additional rent any increases in real property taxes levied against Owner's Property, including the Water Tank, as a result of the improvements constructed by First Flight Networks on the Property. First Flight Networks will not be responsible for any increases in real property taxes that are a result of reassessment of Owner's Property due to any sale or transfer of ownership thereof. First Flight Networks shall have the right, at its sole option and at its sole cost and expense, to appeal, challenge or seek modification of any real estate tax assessment or billing for which First Flight Networks is wholly or partly responsible for payment under this Agreement. Owner shall reasonably cooperate with First Flight Networks in filing, prosecuting and perfecting any appeal or challenge to real estate taxes as set forth in the preceding sentence, including but not limited to, executing any consent to appeal or other similar document.



## 18. QUIET ENJOYMENT AND NON-INTERFERENCE

A. This Agreement is not exclusive. Owner either has or anticipates entering into similar agreements with others thus allowing said third parties to co-locate communications equipment upon the Property. Owner agrees to and is informed that First Flight Networks has complete, total and exclusive use of channels 1-14 of the 802.11 spectrums of channels as stated by the FCC. Subject to this disclosure and Paragraph 18.B. Owner warrants and agrees that First Flight Networks, upon paying the rent and performing the covenants herein provided, shall peaceably and quietly have and enjoy the Property.

B. First Flight Networks covenants that its communications equipment upon the Property, and all installation, operation, modification, relocation and maintenance associated therewith, will not interfere with communications equipment of the Owner or of any existing lessees upon the Property prior to installation or modification of First Flight Networks communication equipment upon the Property. "Interference" shall include physical interference (i.e. lack of reasonable accessibility to equipment for purposes of installation, modification, repair and maintenance) and radio, television, or electronic signal transmission or reception interference. In the event First Flight Networks communications equipment upon the Property, or the operation thereof, causes interference with the communications equipment of the Owner or any existing lessee upon the Property, First Flight Networks, upon notification by Owner or any existing lessee of such interference, shall promptly eliminate, suppress or otherwise remedy such interference at First Flight Networks cost. In the event First Flight Networks is unable to suppress, eliminate or otherwise remedy the interference and such interference does not cease within forty-five (45) days from the date of notice to First Flight Networks then First Flight Networks shall cease its operations and use of its equipment on the Property except to the limited extent necessary for tests designed to identify the cause of the interference or assist in remedying the interference. If First Flight Networks, or any third party employed by First Flight Networks and qualified to evaluate the source of radio, television or electronic signal transmission or reception interference, determines that the source and cause of the interference is the communications equipment of another lessee upon the Property then First Flight Networks shall notify such other lessee and provide such findings and all data in support thereof to said other lessee who shall promptly eliminate, suppress or otherwise remedy the interference at said other lessee's cost. In the event said other lessee is unable to eliminate, suppress or otherwise remedy the interference and such interference does not cease within forty-five (45) days from the date of notice to such other lessee then such other lessee shall cease its operations and use of its equipment on the Property except to the limited extent necessary for tests designed to identify the cause of the interference or assist in remedying the interference. Owner covenants to include the provisions herein set forth in all agreements with others allowing co-location of communications equipment upon the Property and accordingly, lessees upon the Property, including First Flight Networks, are expressly granted the right to enforce the remedies herein provided to resolve interference problems with respect to each other. Owner shall have no obligation to so enforce same. Owner shall encourage First Flight Networks and any other lessees making similar use of the Property to cooperate in resolving any interference problems, but Owner shall have no duty to resolve such problems, nor liability associated therewith. The Property is made available for such use on a first come, first served basis and to the extent that First Flight Networks communication equipment results in interference which cannot be resolved First Flight Networks understands that, subject to the terms herein stated, it is required to cease its operations and use of equipment upon the Property with the sole and limited remedy of terminating this Agreement as herein provided. In that event, Owner shall have no liability or responsibility to First Flight Networks who expressly assumes any and all risk of interference resolution resulting from co-location of similar operations and equipment on the Property. Notwithstanding the above, Owner covenants that current lessees who modify their equipment at the Property shall have an obligation to not interfere with the then existing equipment of First Flight Networks and First Flight Networks will be granted the right to enforce the remedies herein provided to resolve any interference. Where by the owner names current lessees there frequencies and warrants that those named and the frequencies named are the only ones to which First Flight Networks should be subordinate to.

## 19. COORDINATION OF OPERATION

A. As a consequence of the proposed twenty-four (24) hour daily basis of operation by First Flight Networks, Owner acknowledges that any action undertaken or permitted by Owner in making repairs, alterations, additions or improvements to the Water Tank that might interfere with, suspend, cut-off or terminate access to or use by First Flight Networks of the Property or First Flight Networks antennas or equipment could cause inconvenience, expense and economic loss to First Flight Networks. Therefore, Owner agrees (i) to use its best efforts to minimize such inconvenience, possible loss or expense to First Flight Networks by, among other things, not scheduling any of the foregoing actions, and using its best efforts not to cause or permit any interruption or interfere with the operations of First Flight Networks antennas or equipment, during the hours of 4:00 p.m. to 7:00 p.m. on any weekday, and (ii) to give First Flight Networks notice of any repairs, alterations, additions or improvements to be made with respect to the maintenance and operation of the Water Tank and the Property or of any planned shut downs associated with the Water Tank for scheduled or routine maintenance that might adversely affect the operation of First Flight Networks wireless communications facility, antennas or equipment.

B. Owner agrees to give to First Flight Networks reasonable advance written notice (except in the case of emergency where advance written notice cannot reasonably be given, in which event, Owner shall give First Flight Networks telephonic notice at 1-800-852-2671) of repairs, alterations or improvements to be made with respect to the maintenance and operation of the Water Tank and the Property when such repairs, alterations or improvements may interfere with First Flight Networks operations.

## 20. BROKERS

Owner and First Flight Networks represent to each other that they have not negotiated with any real estate broker in connection with this Lease. Owner and First Flight Networks agree that should any claim be made against the other for a real estate broker's commission, finder's fee or the like by reason of the acts of such party, the party upon whose acts such claim is predicted shall indemnify and hold the other party free and harmless from all losses, costs, damages, claims, able and expenses in connection therewith (including, but not limited to, reasonable legal fees) and shall defend such action by legal counsel reasonably acceptable to the indemnified other party.

## 21. ESTOPPEL CERTIFICATES

A. Owner, at the request of First Flight Networks, shall provide First Flight Networks with a certificate stating: (1) whether Owner has any claim against First Flight Networks and if so, stating the nature of such claim; (2) that Owner recognizes First Flight Networks right to First Flight Networks antennas, equipment and other property; (3) that First Flight Networks has the right to remove First Flight Networks equipment and other property from the Property notwithstanding that same may be considered a fixture under local law; and (4) that Owner has no interest in and disclaims any interest to First Flight Networks equipment and other property.

B. First Flight Networks, at the request of Owner, shall provide Owner with a certificate stating: (1) that this Lease is unmodified and in full force and effect (or, if there has been any modification, that the same is in full force and effect as modified and stating the modification); (2) whether or not, to First Flight Networks knowledge, there are then existing any set-offs, or defenses against the enforcement of any of the agreements, terms, covenants or conditions hereof upon the part of First Flight Networks to be performed or complied with (and, if so specifying the same); and (3) the dates, if any, to which the rent has been paid in advance.

## 22. MISCELLANEOUS PROVISIONS

A. Owner warrants and agrees that Owner is seized of good and sufficient title to and interest in the Property and has full authority to enter into and execute this Lease and that there are no undisclosed liens, judgments or impediments of title on Owner's Property that would affect this Lease.

B. This Lease, including attached exhibits, which are hereby incorporated by reference, incorporates all agreements and understandings between Owner and First Flight Networks and no verbal agreements or understandings shall be binding upon either Owner or First Flight Networks, and any addition, variation or modification to this Lease shall be ineffective unless made in writing and signed by the parties.

C. Owner agrees that Owner's Property (including, without limitation, the Water Tank), and all improvements comply and during the term of this Lease shall continue to comply with all building, life/safety, disability and other laws, codes and regulations of any applicable governmental or quasi-governmental authority. All such compliance shall be accomplished at Owner's sole cost and expense. Except for improvements made by First Flight Networks, owner at its sole cost shall maintain in good condition and repair, the Water Tank and other improvements upon which the property is located.

D. This Lease and the performance hereof shall be governed, interpreted, construed and regulated by the laws of the State of North Carolina.

E. This Lease, and each and every covenant and condition herein, is intended to benefit the Property and shall extend to and bind the heirs, personal representatives, successors and assigns of the parties.

F. The parties agree that all of the provisions hereof shall be construed as both covenants and conditions, the same as if the words importing such covenants and conditions had been used in each separate paragraph.

G. The parties acknowledge that each has had an opportunity to review and negotiate this Lease and have executed this Lease only after such review and negotiation. The language of each part of this Lease shall be construed simply and according to its fair meaning, and this Lease shall not be construed more strictly in favor or against either party.

H. At Owner's option, this Lease shall be subordinate to any mortgage by Owner which from time to time may encumber all or any part of the Property, provided that every such mortgagee shall recognize (in writing and in a form acceptable to First Flight Networks counsel) the validity of this Lease in the event of a foreclosure of Owner's interest and also First Flight Networks right to remain in occupancy and have access to the Property as long as First Flight Networks is not in default of this lease. First Flight Networks shall execute whatever instruments may reasonably be required to evidence this subordination. If, as of the date of execution of this Lease, there is any deed of trust, ground Lease or other similar encumbrance affecting Owner's Property, Owner agrees to use its best efforts in cooperating with First Flight Networks to obtain from the holder of such encumbrance an agreement that First Flight Networks shall not be disturbed in its possession, use and enjoyment of the Property.

I. If Owner breaches this Lease in any manner or substantially breaches any material term contained in any mortgage or deed of trust superior to First Flight Networks estate under this Lease (other than any mortgage or deed of trust for which First Flight Networks has obtained a non-disturbance agreement in accordance with Paragraph 22.H.) or contained in any lease under which Owner holds title to any portion of Owner's Property and if Owner fails to commence to cure such breach within thirty (30) days after receiving a written notice from First Flight Networks exactly specifying the violation ( or if Owner fails thereafter to diligently prosecute the cure to completion), then First Flight Networks may enforce each of its rights and remedies under this Lease or provided by law or it may (although it shall not be obligated to do so) cure Owner's breach or perform Owner's obligations (on Owner's behalf and at owner's expense) and require the owner to reimburse (or offset against rent) all reasonable expenses incurred in doing so.

J. If any portion of this Lease is declared by a court of competent jurisdiction to be invalid or unenforceable, then such portion shall be deemed modified to the extent necessary in such court's opinion to render such portion enforceable and, as so modified, such portion and the balance of this Lease shall continue in full force and effect.

K. In addition to the other remedies provided for in this Lease Owner and First Flight Networks shall be entitled to immediate restraint by injunction of any violation of any of the covenants, conditions or provisions of this Lease.

M. The captions of the paragraphs of this Lease are for convenience of reference only and shall not affect the interpretation of this Lease.

L. Concurrently with the execution of this Lease, Owner shall execute before a notary and deliver to First Flight Networks for recording a 'Memorandum of Lease Agreement' in the form of the attached Attachment 'B'. Such Memorandum shall not disclose any financial terms, unless required to do so by the laws of such jurisdiction.

IN TESTIMONY WHEREOF, The Town of Nags Head has caused this instrument to be executed in its name and behalf by its Mayor, attested by the Town Clerk and its seal affixed hereto, all as of the act and deed of its Board of Commissioners, pursuant to a resolution adopted on the 2nd day of June, 2004, and Cellco Partnership has caused this instrument to be executed in its name and on behalf of the Partnership, at the day and year first above written.

TOWN OF NAGS HEAD, NORTH CAROLINA

By: \_\_\_\_\_(SEAL)

Name: Robert Muller  
Its: Mayor  
Tax ID No.: 56-6034273

Attest:

\_\_\_\_\_  
Carolyn F. Morris, Town Clerk

First Flight Networks, LLC  
D/B/A FIRST FLIGHT NETWORKS WIRELESS

By: \_\_\_\_\_(SEAL)

Name: Rickey W. Baker  
Title: President, First Flight Networks, LLC

Date: \_\_\_\_\_

[Seal]

Attest:

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

STATE OF NORTH CAROLINA  
COUNTY OF DARE

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, certify that Carolyn F. Morris personally came before me this day and acknowledged that she is the Town Clerk of the Town of Nags Head, a North Carolina municipal corporation, and that by authority duly given and as act of the Town, the foregoing instrument was signed in its name by its Mayor, sealed with its corporate seal and attested by herself as its Town Clerk. Witness my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

[NOTARY SEAL]

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public for said City/County and State, do hereby certify that, \_\_\_\_\_, personally appeared before me this day and acknowledged that he is President, First Flight Networks, LLC, as First Flight Networks Wireless, and that be authority given and as an act of the partnership, the foregoing instrument was signed in its name by its President.

Witness my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

[NOTARY SEAL]