

## LEASE AGREEMENT

505 Birch Street NW  
Olympia, Washington 98502

This Lease Agreement (“Lease”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012 by and between the City of Olympia, Lessor, (“Olympia” or “Lessor”), and CTI Towers, Inc., a Delaware corporation (“Lessee”).

WHEREAS, Lessor and Lessee’s predecessor in interest, TCI Cablevision of Washington, Inc. entered into an Antenna Lease Agreement dated July 15, 2002 (the “Original Lease”) whereby Lessor granted Lessee the right to construct, maintain, repair and operate a support building and a one hundred forty (140) foot self-supporting tower and associated facilities located on property known as 505 Birch Street NW, Olympia, Washington (the “Premises”); and

WHEREAS, the Original Lease expired by its terms, Lessee has remained in possession of the Premises as a year to year tenant and Lessee has continued to pay and Lessor has accepted annual rent for Lessee’s continued use of the Premises; and

WHEREAS, Lessee and Lessor desire, in their mutual interest, for Lessee to remain in possession of the Premises.

NOW THEREFORE, IT IS HEREBY MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. Property, Premises, and Tower

Olympia hereby grants a nonexclusive lease to Lessee for property located on the following described property situated in Thurston County, State of Washington, to wit: Lots 1 and 2 in Block 7 of Hale Western Addition to Olympia as recorded in Volume 2 of Plats, Page 3; TOGETHER with vacated street adjoining said lot 2 on the south side and the west half of the vacated portion of street adjoining said property on the east, which shall hereafter be called “the Property.” Provided, however, that Lessee’s use shall be limited of the operation, maintenance and replacement of the existing 140 foot self-supporting tower and associated ground space depicted in the attached Exhibit A.

Lease Agreement/ Olympia– Birch Street Reservoir/CTI Tower

## 2. Permitted Use

a. The use of the Premises shall be limited to the construction, maintenance, repair, operation and replacement of Premises including the existing 140 foot self-supporting tower and associated ground space including equipment buildings on the Property, wireless antennas, attachments, and cables (collectively the "Facilities") together with the nonexclusive easement over adjacent areas of the Property for 24 hour ingress and egress, access for construction and maintenance and the right to install and maintain utilities. Any other use of said Premises shall cancel this Lease.

b. This Lease does not grant to Lessee any zoning or land use approvals for the uses mentioned herein. Lessee shall obtain any and all land use and zoning approvals as are necessary for its operations, including but not limited to, permits for buildings, structures, towers, and antennas. Olympia agrees, at no cost to Olympia, to cooperate (by signing as property owner for all applications and/or permits that are required by governmental agencies) with Lessee in making application for and obtaining all licenses, permits, and any and all necessary approvals that may be required for Lessee's intended use of the Premises as provided in this Lease. Olympia grants Lessee reasonable access through the Property to the Premises twenty-four (24) hours a day, seven (7) days a week and for utilities necessary to operate the Facilities.

## 3. Compensation.

Lessee shall pay rent ("Rent") to Olympia in the sum of Fourteen Thousand One Hundred Forty-eight and 41/100 Dollars (\$14,148.41) annually, or Eleven Hundred Seventy-nine and 03/100 Dollars (\$1,179.03) per month ("Annual Rent") during calendar year 2012 commencing on the Commencement Date (as defined below), and the first monthly installment of Rent is due upon execution of this Lease. Partial months in 2012 shall be prorated. During the remaining term of this Lease, Rent shall be due and payable monthly in advance on or before the first day of each month. The monthly Rent shall be increased beginning January 1, 2013, and on January 1<sup>st</sup> of each year thereafter by an amount of four percent (4%). Payment shall be made to the

Director of Finance and Budget at Olympia City Hall, Olympia, Washington. Any Rent payments received by Olympia after the 10<sup>th</sup> of the applicable month shall include a late payment penalty of two percent (2%) of such Rent for each day or part thereof past the 10<sup>th</sup> of the applicable month. In addition to such Annual Rent, Lessee shall also pay to Olympia, to the Director of Finance and Budget as set forth above, leasehold excise taxes assessed pursuant to RCW 82.29A and OMC 3.36 within thirty (30) days of receipt of such leasehold excise tax bills from Lessor. Lessee shall pay Olympia a late payment charge equal to ten percent (10%) of the late payment for any payment or applicable leasehold excise taxes not paid when due. Lessee shall pay all personal property taxes, leasehold taxes, other taxes and assessments, if any, assessed on, or any portion of, the Facilities or Lessee's use of the Premises.

4. Disclaimer of Liability and Indemnity.

a. Olympia shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of Lessee's construction, maintenance, repair, use, operation, condition or dismantling of the Premises or its Facilities, except to the extent that any such injury or damage is due to the negligence or intentional acts of Olympia, its employees, agents or independent contractors.

b. Lessee shall defend, indemnify, and hold harmless Olympia, its officers, agents, employees, from any and all claims, costs, lawsuits (including but not limited to reasonable attorneys fees), damages, actions, or liability whatsoever which may directly arise from Lessee's use of the Premises and Facilities. The foregoing promise shall include, but not be limited to, claims of radio, television, or microwave interference, antitrust violations and anticompetitive acts, liability due to falling objects such as antennas, attachments of Facilities and lines on the Property. This obligation shall survive expiration or termination of this Lease.

c. Lessee shall not be responsible for the solely negligent acts or omissions or willful misconduct of Olympia's agents, officers and employees.

d. In the event any action or proceeding shall be brought against a party by reason of any matter for which it is indemnified hereunder, the indemnifying party shall, upon notice from the indemnitee, at the indemnifying party's sole cost and expense, defend the same with legal

counsel reasonably selected by the indemnitee; provided however, that the indemnifying party shall not admit liability for, nor enter into any compromise or settlement of, any such matter on behalf of the indemnitee without the indemnitee's prior written consent.

e. Each party shall give each other prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by this Section. Nothing herein shall be deemed to prevent Olympia from cooperating with Lessee and participating in the defense of any litigation by Olympia's own counsel.

f. Except for indemnification pursuant to this Paragraph 4 and Paragraph 12, neither party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

g. Nothing in the proceeding paragraphs of Section 4 shall be construed to create any additional liability to any third party. Rather the proceeding provisions are solely for the purpose of allocating risk and liability between the parties to this agreement.

#### 5. Insurance.

While this Lease is in effect or while the Facilities are located on the Property, Lessee shall maintain in effect and pay for a policy of comprehensive general liability insurance covering bodily injury and property damage with coverage of Two Million Dollars (\$2,000,000) combined limit. Olympia, its officers, agents, and employees shall be named as additional insured on such policy. Lessee shall deliver to Olympia a certificate evidencing such insurance coverage upon execution of this Lease, and that the coverage shall not be terminated without thirty (30) days prior written notice to Olympia.

#### 6. Term and Renewal.

The term of this Lease shall commence January 1, 2012 (the "Commencement Date") and shall expire on December 31, 2016, unless sooner terminated as provided herein. This Lease

shall automatically be extended for two (2) additional five (5) year terms or shall expire no later than December 31, 2026, unless Lessee terminates its at the end of the then current term by giving Olympia written notice of the intent to terminate at least six (6) months prior to the end of the then current term. In the event Lessee wishes to renew this Lease at the end of the second (2<sup>nd</sup>) five (5) year extension term, it shall give notice to Olympia at least one hundred eighty (180) days before its expiration. Notwithstanding anything stated herein to the contrary, Lessee may not renew this Lease, unless it is in full compliance with all terms and conditions contained herein. Unless Lessee wishes to renew this same Lease, it shall comply with the terms of Olympia Municipal Code 11.08.020.

7. Breach.

a. In the event Lessee shall violate any term or condition of this Lease, Olympia may give notice in writing to Lessee to cease the violation and comply with the terms of this Lease. If Lessee fails to cease the violation and comply within thirty (30) days of receipt of such written notice, unless such compliance cannot be accomplished within thirty (30) days, Olympia may terminate this Lease and reenter the Property upon prior written notice to Lessee. Upon termination of this Lease, Lessee shall return the Property to Olympia in good, useable condition, normal wear and tear excepted. Lessee shall be liable to Olympia for any accrued, unpaid annual Rent as of the date of termination of the Agreement. Olympia's failure to use remedies provided herein shall not constitute a waiver by Olympia. Olympia may not maintain any action or effect any remedies for default against Lessee unless and until Lessee has failed to cure the breach within the time periods provided in this Paragraph.

b. In the event there is a breach by Olympia with respect to any of the provisions of this Agreement or its obligations under it, Lessee shall give Olympia written notice of such breach. After receipt of such notice, Olympia shall have thirty (30) days in which to cure any such breach. If Olympia fails to cure such breach within thirty (30) days of receipt of such written notice, unless such compliance cannot be accomplished within thirty (30) days, Lessee may terminate this Lease and shall have no further obligation under this Lease including but not limited to the payment of Rent. Lessee shall further be entitled to reimbursement of any prepaid Lease Agreement/ Olympia– Birch Street Reservoir/CTI Tower

rent. Lessee's failure to use remedies provided herein shall not constitute a waiver by Lessee. Lessee may not maintain any action or effect any remedies for default against Olympia unless and until Olympia has failed to cure the breach within the time periods provided in this Paragraph.

8. Notice.

Any notice required to be given under this Lease shall be deemed given three (3) days subsequent to deposit of such notice(s), properly addressed, in the United States mail, postage prepaid, sent by registered or certified mail, return receipt requested, or by a nationally recognized courier service.

TO LESSORS:           City of Olympia  
                               ATTN: Public Works Department  
                               P.O. Box 1967  
                               Olympia, WA 98507-1967

TO LESSEE: CTI Towers, Inc.  
 Attn: General Counsel  
 38 Pond Street, Suite 305  
 Franklin, MA 02038

9. Alteration.

Lessee shall not make any alterations, additions, or improvements in the Premises, which are not within the usual and customary method of installation of its Facilities, without first obtaining the consent of Olympia in writing, which consent shall not be unreasonably withheld, conditioned or delayed. All alterations, additions, and improvements shall be at the sole cost and expense of Lessee and shall remain the personal property of Lessee or its permitted sublessees. Olympia will cooperate with Lessee's efforts to obtain utilities, electrical power, and telephone services necessary to operate Lessee's Facilities. If Lessee shall perform work on the Premises with the consent of Olympia, Lessee agrees to comply with all applicable laws, ordinances, rules, and regulations of the City of Olympia and any other authorized applicable authority. Lessee shall be liable to Olympia for any damage or loss caused by its Lessee's agents, employees, or

representatives to the Premises. Lessee shall have the right to alter, replace, enhance and upgrade the Facilities at the Premises at any time during the term of this Lease with equipment that is of similar or smaller size in share or number, upon prior written notice to Olympia; provided, however that such changes shall not cause measureable interference with existing facilities or operations at the Premises. For other alterations, including but not limited to an increase in the height of the Facilities, increase in the use of ground space on the Premises, or the substitution of substantially larger equipment, Olympia must approve such alterations, with such approval not to be unreasonably withheld, conditioned or delayed.

#### 10. Ownership and Removal of Improvements.

The Facilities and all improvements made by Lessee at the Premises shall remain the property of Lessee and/or its permitted sublessees. At the expiration or early termination of this Lease, Lessee shall remove its Facilities from the Premises and such removal shall be accomplished at the sole expense of Lessee and completed within ninety (90) days of such expiration or early termination. In the event is the Facilities are left upon the Premises after ninety (90) days from the expiration or early termination, then the Facilities shall become the property of Olympia. Lessee shall pay rent at the then existing monthly rate or on the existing monthly prorate basis, until such time as the removal of the Facilities and all personal property are completed.

#### 11. Interference with Other Users.

a. The Facilities that Lessee or its sublessees installs shall be of the type and frequency which will not cause measurable interference, as defined by the Federal Communications Commission (the "FCC"), to any currently licensed and operating communications equipment of Olympia , other existing tenants on the tower, or at the Premises. In the event Lessee's Facilities causes such interference, Lessee shall take all reasonable steps necessary to correct and eliminate the interference.

b. Lessee understands that no use of the Premises will be permitted which exceeds federal RF emissions standards at the boundaries of the Premises. If the cumulative RF emissions levels ever exceed applicable federal standards, all users of the Premises, including

Lessee and all sublessees, will be required to modify operations on a reasonably comparable level, in order to bring the overall RF emissions into compliance.

c. Lessee's installation, operation, and maintenance of its Facilities shall not damage or materially interfere in any way with Olympia's facility operations or related repair and maintenance activities at the Property or with such activities of other existing tenants at the Property. Lessee agrees to cease all such actions which materially interfere with Olympia's use of the Premises within ten (10) days upon receipt of written notice of such interference, provided however, in such case, Lessee shall have the right to terminate the Lease.

d. Olympia does not guarantee to Lessee subsequent noninterference with Lessee's Facilities operation, provided, however, that in the event any other party except a governmental unit, office or agency requests a lease and/or permission to place any type of additional antenna or transmission facility on the Premises, the procedures of this section shall govern to determine whether such antenna or transmission facility will interfere with Lessee's Facilities operation. If Olympia receive any such request, Olympia shall submit a proposal complete with all technical specifications reasonably requested by prospective tenant to Lessee for review for noninterference; however, Olympia shall not be required to provide Lessee with any specifications or information claimed to be of a proprietary nature by the third party. The third party shall be responsible for the reasonable cost of preparing the technical specifications for its proposed transmission facility. Lessee shall have thirty (30) days following receipt of said proposal to make any objections thereto, and failure to make any objections within said thirty (30) day period shall be deemed consent by Lessee to the installation of antennas or transmission facilities pursuant to said proposal. If Lessee gives notice of objection due to interference during such 30 day period and Lessee's objections are verified by Olympia to be valid, then Olympia shall not proceed with such proposal unless Olympia modifies the proposal in a manner determined, in Olympia's reasonable judgment, to adequately reduce the interference. In that case, Olympia may proceed with and be allowed to place antennas or other communications facilities on the Property regardless of potential or actual interference with Lessee's use, provided however, if Lessee's use of the Premises is materially affected in Lessee's sole discretion, Lessee may terminate the Lease.



12. Hazardous Substances.

Olympia represent that it has no knowledge of any substance, chemical, or waste (hereafter called "Hazardous Substance") on the Premises that is identified as hazardous, toxic, or dangerous in any applicable federal, state, or local law or regulation. Lessee shall not introduce any such Hazardous Substance on the Premises in violation of any applicable law. Lessee represents warrants and agrees that its use of the Premises and the Premises shall be in compliance with all applicable state and federal environmental laws. Lessee will be solely responsible for and shall defend, indemnify, and hold Olympia, its agents and employees harmless from and against any and all direct claims, costs, and liabilities, including reasonable attorneys' fees and costs arising out of or in connection with the cleanup or restoration of the Property associated with the introduction by Lessee to the Property of such Hazardous Substance(s). Olympia will be solely responsible for and will defend, indemnify, and hold Lessee, its agents and employees harmless from and against any and all direct claims, costs, and liabilities, including reasonable attorneys' fees and costs, arising out of or in connection with the removal, cleanup, or restoration of the Premises with respect to Hazardous Substances from any and all sources other than those Hazardous Substances introduced to the Premises by Lessee. The obligations of this Section 12 shall survive the expiration or other termination of this Lease.

13. Assignment; Sublease.

Lessee shall not assign or transfer this Lease or sublet all or any portion of the Premises either in whole or in part, either by involuntary sale or by voluntary sale, merger, consolidation; nor shall title thereto, either legal or equitable, or any right, interest property therein pass to or vest in any entity without the prior written consent of Olympia, which shall not be unreasonably withheld, conditioned or delayed; Lessee shall promptly notify Olympia of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Lessee. Any such assignment, transfer, or sublet shall make this Lease subject to cancellation unless, and until Olympia shall have consented thereto. Notwithstanding the foregoing, this Lease shall not be assigned or sublet if Lessee is in violation of any provision thereof. Notwithstanding anything contained herein to the contrary, this Lease Agreement may be sold, assigned or transferred by the Lessee without any approval or consent of Olympia to the Lessee's principal, affiliates,

subsidiaries of its principal or to any entity which acquires all or substantially all of Lessee's assets in the market defined by the Federal Communications Commission in which the Premises is located by reason of a merger, acquisition or other business reorganization. No change of stock ownership, partnership interest or control of Lessee or transfer upon partnership or corporate dissolution of Lessee shall constitute an assignment hereunder.

14. Venue.

In the event of suit to enforce the terms and conditions of this Lease, venue shall be in the Superior Court in Thurston County, Washington, Washington law shall apply, and the prevailing party shall be awarded costs and reasonable attorney's fees.

15. Binding of Successors.

This Lease applies to and binds the heirs, successors, executors, administrators, and assigns of the parties to this Lease.

16. Liens.

Lessee shall not cause or allow any lien to attach to the Property.

17. Termination.

In addition to termination under Section 7 herein, Lessor may terminate this Lease Agreement after written notice to Lessee of its intent to do so given at least one hundred eighty (180) days prior to such termination in the event of a bona fide threat of public health and safety hazard to the public and documentation of the same shall be provided to Lessee. Lessee may terminate this Lease for any reason upon one hundred eighty (180) days written notice. Lessee shall also be permitted to terminate this Lease with sixty (60) days written notice in the event that Lessee or any of its sublessees cannot receive and transmit 360 degrees from the Premises as defined in Section 1 for reasons beyond Lessee's control. In this event, Lessee shall be entitled to a pro rata refund of Annual Rent less any damages it caused to the Property.

18. Right of Entry.

Olympia's agents, officers, and employees, may enter the Premises (excluding the interior of the equipment shelter, unless accompanied by a representative of the Lessee) upon twenty-four (24) hours prior written notice to Lessee for the purpose of conducting inspection for compliance with this Lease or to conduct other business; provided, however, that in no event will Olympia modify, remove, relocate or otherwise tamper with the Facilities. In the event of an emergency, Olympia's agents, officers, and employees may enter the Premises without notice to Lessee. Olympia shall be liable for any damage to the Facilities caused by Olympia or their duly authorized agents, officers and employees

19. Whole Agreement.

This Lease contains the whole and entire agreement between the parties as to the transaction contained herein. All parties have read this Lease, understand its contents, and have opportunity to consult with their respective attorneys regarding it.

20. Maintenance and Security.

Olympia has no responsibility for maintenance or for security for the improvements placed upon the Premises by Lessee. Lessee shall have the right to install utilities, at Lessee's expense, and to improve the present utilities on the Property (including, but not limited to, the installation of emergency power generators). Lessee shall install separate meters for utilities used on the Premises.

Lessee shall, at its own expense, maintain the Premises and its Facilities in a safe condition, in good repair and in a manner suitable to Olympia. Additionally, Lessee shall keep the Premises free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard, or any undue vibration, heat or noise. Lessee shall have the responsibility for the maintenance, repair and security of its Facilities and leasehold improvements. Any tree pruning or cutting that is required for installation and/or maintenance of the Premises and Facilities shall require Lessee to obtain permission from Olympia, and shall follow best management practices in accordance with City Code.

In the event that Olympia desires to make water tank repairs, or conduct maintenance or painting of the Property, Olympia shall provide thirty (30) days written notice to Lessee. Lessee shall accommodate Olympia by taking whatever action is necessary to secure the Facilities of Lessee, or to remove them temporarily, if necessary, in order for Olympia to make repairs and do the maintenance. Olympia will provide Lessee with space on the Premises for the relocation of Lessee's Facilities during any such repairs or maintenance and hereby gives Lessee the right to operate a temporary facility on the Premises provided such operation does not interfere with Olympia's repairs, maintenance or other use of the Premises. Olympia will use its best efforts to speedily take care of any work which requires Lessee to remove or otherwise disable its Facilities.

21. Destruction of Lessee's Property.

Except as otherwise provided herein, this Lease may be terminated by Lessee, without any penalty or further liability immediately upon written notice if the Premises or the Facilities are destroyed or damaged by natural causes so as in the reasonable judgment of Lessee to substantially and adversely affect the effective use of the Facilities. In such event, all rights and obligations of the parties shall cease as of the date of the damage or destruction, Olympia shall be entitled to any Rent, damages reimbursement and/or fees that may be due, if any, and Lessee shall be entitled to the reimbursement of any Rent prepaid by Lessee, if any. If Lessee elects to continue this Lease, then all Rent shall abate until the Property is restored to the condition existing immediately prior to such damage or destruction.

22. Warranty of Title and Quiet Enjoyment.

Olympia warrants that: (i) Olympia owns the Premises in fee simple and has rights of access thereto and the Premises is free and clear of all liens, encumbrances, and restrictions affecting Lessee's use; (ii) Olympia has full right to make and perform this Lease; and (iii) Olympia covenants and agrees with Lessee that upon Lessee paying the Rent and observing and performing all the terms, covenants, and conditions on Lessee's part to be observed and performed, Lessee may peacefully and quietly enjoy the Premises subject to this Lease. If Olympia sells or transfers all or any portion of the Premises affecting Premises, any such sale,

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hypothecation, or transfer of all or any portion of the Property shall be made subject to the terms, provisions, and conditions of this Lease.

23. Holding Over.

Any holding over after the expiration of the term hereof, with the consent of Olympia, shall be construed to be a tenancy from month to month and shall pay rent of one hundred twenty five percent (125%) of the Rent paid in the last month prior to such expiration (prorated on a monthly basis) and shall otherwise be for the term and on the conditions herein specified, so far as applicable.

24. Acceptance of Premises.

By taking possession of the Premises, Lessee accepts the Premises in the condition existing as of the Commencement Date. Olympia makes no representation or warranty with respect to the condition of the Premises. Lessee shall, upon not less than forty-five (45) days prior request by Olympia, deliver to Olympia an estoppel statement in writing certifying that (a) the Lease is unmodified and in full force (or if there have been modifications, that the Lease is in full force as modified and identifying the modifications); (b) the dates to which rent and other charges have been paid; (c) so far as the person making the certificate knows, Olympia is not in default under any provisions of the Lease; and (d) such other factual matters as Olympia may reasonably request.

25. Successors and Assigns.

This Lease shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

26. Non-Waiver.

Failure of either party to insist on strict performance of any of the conditions, covenants, terms or provisions of this Lease or to exercise any of their respective rights hereunder shall not waive such rights, but such party shall have the rights to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity. The receipt of any sum paid by Lessee to Olympia after a breach of this Lease shall not be deemed a waiver of Lease Agreement/ Olympia- Birch Street Reservoir/CTI Tower

such breach unless expressly set forth in writing.

27. Miscellaneous.

a. Olympia and Lessee represent that each, respectively, has full right, power and authority to execute this Lease.

b. If any term of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

**Approved as to form:**



\_\_\_\_\_  
Darren Nienaber, Deputy City Attorney







Exhibit A

Property Description

Lots 1 and 2 in Block 7 of Hale Western Addition to Olympia as recorded in Volume 2 of Plats, Page 3; TOGETHER with vacated street adjoining said lot 2 on the south side and the west half of the vacated portion of street adjoining said property on the east, which shall hereafter be called "the Property."

Exhibit B  
Antenna Facilities

