



## BOARD OF SUPERVISORS AGENDA ITEM REPORT AWARDS / CONTRACTS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: December 7, 2021

\* = Mandatory, information must be provided

or Procurement Director Award: ☐

**\*Contractor/Vendor Name/Grantor (DBA):**

Sun State Towers IV, LLC, a Delaware limited liability company ("Buyer")

**\*Project Title/Description:**

Purchase and Sale of Telecom Easement Agreement (File: Sale-0088)

**\*Purpose:**

On September 7, 2021, the Board of Supervisors approved the consent to auction for sale seven existing cellular tower Leases between Pima County as lessor and various cellular tower tenants. The auction was held and completed on October 13, 2021 and the high bidder was Sun State Towers IV, LLC. The high bid was in the amount of \$4,520,000. Staff has completed the necessary Agreements to complete the transaction as attached.

**\*Procurement Method:**

Exempt pursuant to Pima County Code 11.04-020

**\*Program Goals/Predicted Outcomes:**

To sell a communications easement with a 50 year term for each of the seven cell tower Leases at a total purchase price amount of \$4,520,000.

**\*Public Benefit:**

The sale of the 50 year communications easement will provide revenue to Pima County and there will be an uninterrupted continuation of the telecommunication's company providing cellular service to the public.

**\*Metrics Available to Measure Performance:**

Public virtual auction of seven cell Leases sold at the price of \$4,520,000. The appraised value was \$3,340,000.

**\*Retroactive:**

No

To: COB 11-24-21 (1)  
Vers: 1  
Pgs: 26

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THE APPLICABLE SECTION(S) BELOW MUST BE COMPLETED

Click or tap the boxes to enter text. If not applicable, indicate "N/A". Make sure to complete mandatory (\*) fields

**Contract / Award Information**

Document Type: CTN Department Code: RPS Contract Number (i.e., 15-123): 22\*0074  
Commencement Date: 12/7/2021 Termination Date: 12/6/2071 Prior Contract Number (Synergen/CMS): \_\_\_\_\_  
☐ Expense Amount \$ \_\_\_\_\_ \* ☒ Revenue Amount: \$ 4,520,000.00

\*Funding Source(s) required: \_\_\_\_\_

Funding from General Fund? ☐ Yes ☒ No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_

Contract is fully or partially funded with Federal Funds? ☐ Yes ☒ No

If Yes, is the Contract to a vendor or subrecipient? \_\_\_\_\_

Were insurance or indemnity clauses modified? ☐ Yes ☒ No

If Yes, attach Risk's approval.

Vendor is using a Social Security Number? ☐ Yes ☒ No

If Yes, attach the required form per Administrative Procedure 22-10.

**Amendment / Revised Award Information**

Document Type: \_\_\_\_\_ Department Code: \_\_\_\_\_ Contract Number (i.e., 15-123): \_\_\_\_\_

Amendment No.: \_\_\_\_\_ AMS Version No.: \_\_\_\_\_

Commencement Date: \_\_\_\_\_ New Termination Date: \_\_\_\_\_

Prior Contract No. (Synergen/CMS): \_\_\_\_\_

☐ Expense ☐ Revenue ☐ Increase ☐ Decrease

Amount This Amendment: \$ \_\_\_\_\_

Is there revenue included? ☐ Yes ☐ No If Yes \$ \_\_\_\_\_

\*Funding Source(s) required: \_\_\_\_\_

Funding from General Fund? ☐ Yes ☐ No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_

**Grant/Amendment Information** (for grants acceptance and awards)

☐ Award ☐ Amendment

Document Type: \_\_\_\_\_ Department Code: \_\_\_\_\_ Grant Number (i.e., 15-123): \_\_\_\_\_

Commencement Date: \_\_\_\_\_ Termination Date: \_\_\_\_\_ Amendment Number: \_\_\_\_\_

☐ Match Amount: \$ \_\_\_\_\_ ☐ Revenue Amount: \$ \_\_\_\_\_

\*All Funding Source(s) required: \_\_\_\_\_

\*Match funding from General Fund? ☐ Yes ☐ No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_

\*Match funding from other sources? ☐ Yes ☐ No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_

\*Funding Source: \_\_\_\_\_

\*If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)?

Contact: Tim Murphy

Department: Real Property Services

Telephone: 724-6379

Department Director Signature: \_\_\_\_\_ Date: 11/22/2021

Deputy County Administrator Signature: \_\_\_\_\_ Date: 11/23/2021

County Administrator Signature: \_\_\_\_\_ Date: 11/23/2021

**PURCHASE AND SALE AGREEMENT  
(PIMA COUNTY, AZ)**

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made as of December 7, 2021 (the "Effective Date") between Pima County, a political subdivision of the State of Arizona ("Seller"), having an address at 201 N. Stone Ave., 6th Floor, Tucson, Arizona 85701, and Sun State Towers IV, LLC, a Delaware limited liability company ("Buyer"), having an address at 57 East Washington Street, Chagrin Falls, Ohio 44022.

**RECITALS**

A. Seller owns real property located in Pima County, Arizona ("Seller's Property"), portions of which are used by owners of communications towers and/or operators of communications equipment (collectively, "Tenants"), pursuant to Leases (defined below) for the placement of the respective Tenants' communications equipment (collectively, the "Tenant Equipment").

B. Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the following: (i) easements on Seller's Property under the Tenant Equipment and any necessary access and utilities rights; and (ii) Seller's interest as landlord under the Leases.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1. Sale and Purchase of Assets.**

1.1 Transferred Assets. Seller will, on the Closing Date (defined in Section 6.1), for a purchase price of \$4,520,000.00 (the "Purchase Price"), transfer to Buyer all of Seller's interest in the following assets (the "Transferred Assets"), free and clear of any liens, claims or encumbrances not accepted by Buyer:

(a) Leases. All right, title and interest of Seller in the leases identified on the Rent Roll marked as Schedule 1.1(a) (the "Leases"), including without limitation, all rents and other monies due Seller under the Leases.

(b) Exclusive Telecommunication Rights. The exclusive right to all space in, on, under and over Seller's Property necessary for the placement and maintenance of the existing Tenant Equipment. For Seller's Property located at 7300 N. Shannon Road (Nanini Government Center) (the "Nanini Site"), Seller will convey to Buyer the exclusive right to the ground and tower space leased by Spectrum Realty Company, LLC ("Sprint") pursuant to Sprint's Lease. The legal description for the Easement for the Nanini Site will define such ground and tower space.

1.2 Conveyance Instrument. Seller will convey the Transferred Assets to Buyer pursuant to a Communications Facility Easement Agreement and Assignment of Tower-Related Ground Lease, the form of which is attached as Schedule 1.2, for each Lease (collectively, the "Easements"). Each Easement will exist for a period of fifty (50) years and will cover (a) the land granted to the applicable Tenant in the applicable Lease, and (b) the access and utility easements granted under the applicable Lease to be further described in each Easement.

2. Representations and Warranties and Covenants of Seller. Seller represents, warrants and agrees with Buyer as follows:

2.1 Organization; Standing; Power. Seller is duly organized, validly existing and in good standing under the laws of the State of Arizona and has full power to own the Transferred Assets and carry on its business as now conducted.

2.2 Authorization. The Pima County Board of Supervisors has approved the execution, delivery and performance of this Agreement. Seller has full power, authority and legal right to execute and deliver this Agreement and the other instruments referenced herein and to perform its obligations under this Agreement and the other instruments.

2.3 Leases. Seller represents and warrants to Buyer that (a) the Rent Roll marked as Schedule 1.1(a) accurately describes the Leases; (b) as of the Closing Date, no rents or additional payments due under, or other interest in, the Leases will have been assigned to any party other than Buyer or pledged or encumbered in any way; and (c) neither Seller nor, to Seller's knowledge, the applicable Tenants are in default under the Leases.

2.4 Seller's Property. Seller has, or will have at the time of Closing, good, marketable, and fee simple title to Seller's Property, free and clear of all title defects, liens, charges, and encumbrances except for (a) the Leases; (b) taxes and assessments, both general and special, that are a lien but not yet due and payable; and (c) any matter that is disclosed in any title examination or survey prepared by Buyer (collectively, the "Permitted Encumbrances").

2.5 Seller's Conduct Prior to the Closing Date. Seller covenants and agrees with Buyer that between the Effective Date and the Closing Date, Seller:

(a) will promptly advise Buyer of the occurrence of any event or condition that has or could materially and adversely affect the Transferred Assets; and

(b) will not sell, transfer, lease, mortgage, pledge, or subject the Leases to a lien, claim, or encumbrance.

3. Representations and Warranties and Covenants of Buyer. Buyer represents, warrants and agrees with Seller as follows:

3.1 Organization; Standing; Power. Buyer is a limited liability company duly organized and validly existing in good standing under the laws of the State of Delaware and has full power to carry on its business as now conducted.

3.2 No Legal Violations. Neither the execution and delivery of this Agreement by Buyer, nor the performance by Buyer of its obligations under this Agreement, will (a) result in a violation of any laws applicable to Buyer; (b) conflict with Buyer's certificate of formation or limited liability company agreement; or (c) result in the breach of, or constitute a default under, any agreement or instrument to which Buyer is a party or by which it is bound.

4. Conditions to Obligations of Buyer. The obligations of Buyer under this Agreement are subject to the satisfaction on or prior to the Closing Date of the following conditions, unless waived in writing by Buyer:

4.1 Representations and Warranties True on Closing Date. Seller's representations and warranties made in this Agreement and/or in the Easements are true in all material respects as of the Closing Date.

4.2 Compliance with Agreement. Seller has performed and complied in all material respects with all of its obligations under this Agreement that are to be performed or complied with by it prior to or on the Closing Date.

4.3 No Litigation; No Material Adverse Change. No litigation, proceeding, investigation, or inquiry is pending or, to Seller's knowledge, threatened which, if sustained, would enjoin or prevent the consummation of the transactions described in this Agreement (the "Transactions") or would materially and adversely affect Buyer's right to continue the operation of the Transferred Assets as presently conducted.

4.4 Non-Disturbance Agreements. Seller will have provided to Buyer a Non-Disturbance Agreement from any lender having a mortgage on Seller's Property, in a form reasonably acceptable to Buyer.

4.5 Title Policies. Buyer will have received an ALTA policy of title insurance (the "Title Policy"), in a form reasonably acceptable to Buyer, insuring the interest created by each Easement, subject only to the Permitted Encumbrances.

4.6 Due Diligence. Buyer will be reasonably satisfied with the results of its due diligence investigation.

4.7 Easements. Seller will have executed the Easements, which will be in the form attached as Schedule 1.2.

5. Conditions to Obligations of Seller. The obligations of Seller under this Agreement are subject to the satisfaction on or prior to the Closing Date of the following conditions, unless waived in writing by Seller:

5.1 Representations and Warranties True on Closing Date. Buyer's representations and warranties made in this Agreement or in the Easements are true in all material respects as of the Closing Date.

5.2 Compliance with Agreement. Buyer has performed and complied in all material respects with all of its obligations under this Agreement that are to be performed or complied with by it prior to or on the Closing Date.

5.3 Easements. Buyer will have executed the Easements, which will be in the form attached as Schedule 1.2.

6. Closing; Closing Date.

6.1 Date and Time. The closing of the Transactions (the "Closing") will take place in escrow with Buyer's title company on a mutually satisfactory date and time no later than fourteen (14) days following the satisfaction of the conditions of Sections 4 and 5 (the "Closing Date"). If Closing has not occurred within seventy-five (75) days of the Effective Date, either party may terminate this Agreement in accordance with Section 10.1 of this Agreement.

6.2 Seller's Closing Deliveries. If all of the conditions specified in Sections 4 and 5 have been fulfilled or are waived in writing by Buyer or Seller, as the case may be, on or by the Closing Date, then, on the Closing Date Seller will execute and/or deliver to Buyer the following:

(a) the Easements; and

(b) such documents as the Title Company may reasonably request including, without limitation, owner's affidavits relating to title, an affidavit to the effect that Seller is not a "foreign person"

within the meaning of Section 1445(b)(2) of the Internal Revenue Code of 1986 (as amended) and organizational documents related to Seller's trust.

6.3 Buyer's Closing Deliveries. If all of the conditions specified in Sections 4 and 5 have been fulfilled or are waived in writing by Buyer or Seller, as the case may be, on or by the Closing Date, then, on the Closing Date, Buyer will deliver to Seller the signed Easements and the Purchase Price, adjusted in accordance with Sections 8.1 and 8.2.

7. Further Assurances. Seller will, from time to time after the Closing, upon the reasonable request of Buyer, execute and deliver all such further assignments and assurances as may be reasonably required to transfer to and to vest in Buyer all interest of Seller in and to the Transferred Assets.

8. Taxes; Closing Costs; Other Charges; Pro-rations.

8.1 Taxes; Closing Costs; Other Charges. Buyer and Seller shall split equally all recording fees, transfer taxes and other closing/escrow costs. Other than the foregoing, Buyer shall pay all fees for its own due diligence examinations, including the Title Policies. Whether or not the Transactions are consummated, each of Buyer and Seller will pay, except as otherwise provided herein, its respective expenses, income and other taxes, and costs (including, without limitation, the fees, disbursements, and expenses of its attorneys, accountants, and consultants) incurred by it in negotiating and carrying out the Transactions.

8.2 Prorations. Rents and other payments due under the Leases will be prorated as of the Closing Date with Seller being responsible for and receiving the benefit of such items to the extent that they relate to the period ending prior to the Closing Date and Buyer being responsible for and receiving the benefits of such items to the extent that they relate to periods from and after the Closing Date. Seller and Buyer will come to an agreement on the allocation of any of the foregoing items, and Seller will reimburse Buyer or Buyer will reimburse Seller, as the case may be, the net amount owed through escrow on the Closing Date. Notwithstanding the foregoing and without changing the first sentence of this Section 8.2, Seller and Buyer agree that at Closing, Seller will credit Buyer for two (2) full months' rent under the Leases plus rent for the partial month in which Closing occurs and Seller will retain the checks attributable for those months when received. To the extent that Seller receives payment under the Leases after the Closing Date, for periods starting with the third month after the Closing Date, it will deposit any checks made payable to Seller into its bank account and send a check for the amount of the entire payment to Buyer within five (5) business days of receipt. For further clarification, if Buyer is paid directly for any of the rent covered by the two (2)-month proration such that Buyer is paid twice or Buyer otherwise is paid rent for the period prior to the Closing Date, Buyer will remit such payment to Seller or its designee within five (5) business days of receipt.

8.3 Allocation. Buyer and Seller agree that the Purchase Price will be allocated among the Transferred Assets in the manner required by Section 1060 of the Internal Revenue Code of 1986, as amended, within 120 days after the Closing Date. In making such allocation, the allocation set forth on the Allocation Statement marked as Schedule 8.3 will apply, which will be agreed upon and delivered by the parties on the Closing Date.

9. Intentionally Omitted.

10. Termination.

10.1 Permitted Termination. Anything herein to the contrary notwithstanding, this Agreement may be terminated and the Transactions abandoned at any time on or prior to the Closing Date under the following circumstances:

(a) By the written consent of Buyer and Seller;

(b) By Buyer if (i) any of the conditions set forth in Section 4 of this Agreement have become incapable of fulfillment within seventy-five (75) days of the Effective Date, (ii) Buyer has given Seller ten (10) days' notice of such matter, (iii) Seller has failed to cure such matter within the ten (10) days and (iv) Buyer is not otherwise in material default; and

(c) By Seller if (i) any of the conditions set forth in Section 5 of this Agreement have become incapable of fulfillment within seventy-five (75) days of the Effective Date, (ii) Seller has given Buyer ten (10) days' notice of such matter, (iii) Buyer has failed to cure such matter within the ten (10) days and (iv) Seller is not otherwise in material default.

10.2 Effect of Termination. If this Agreement is terminated in a manner permitted by subsections (a)-(c) of Section 10.1, this Agreement will become void and of no further force and effect, and neither of the parties will have any liability to the other party in respect of such termination of this Agreement; provided, however, that nothing in this Section 10.2 will relieve any party from liability it may have hereunder for a breach of this Agreement prior to such termination.

10.3 Destruction or Condemnation of Transferred Assets. In the event of loss or damage to the Transferred Assets that is not remedied by the Closing Date or condemnation of any of the Seller's Property or termination of one or more of the Leases, Buyer may, at its option elect to (a) consummate the Transactions in accordance with this Agreement or (b) terminate this Agreement.

11. Notices. Notices will be effective if and when sent by registered or certified U.S. mail or reputable same-day or overnight courier, postage prepaid or otherwise accounted for by sender, and sent to the addresses set forth in the preamble above. Any party may change the address to which notices are to be addressed by giving the other party notice in the manner set forth in this Section 11.

12. Governing Law; Jurisdiction. The validity, interpretation, and performance of this Agreement will be determined in accordance with the laws of the State of Arizona.

13. Miscellaneous. This Agreement including the schedules attached hereto and made a part hereof, contains the entire agreement among the parties with respect to its subject matter and supersedes all negotiations, prior discussions, agreements, letters of intent, and understandings, written or oral, relating to the subject matter of this Agreement. Neither this Agreement nor any term hereof may be amended, modified, supplemented, waived, discharged or terminated other than by a written instrument signed by Seller and Buyer.

14. Successors and Assigns. This Agreement will be binding upon Seller and Buyer and their respective successors and assigns. Notwithstanding the immediately preceding sentence, Seller may assign its rights and delegate its duties under this Agreement only upon the prior written consent of Buyer. Buyer may assign its rights and delegate its duties under this Agreement to any of its affiliates or capital sources provided that Buyer remains liable for its obligations hereunder.

15. Counterparts; Electronic Delivery. This Agreement may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument. The execution of this Agreement by facsimile or other electronic form (e.g., PDF) of signature shall be binding and enforceable as an original; provided, that any party delivering a facsimile or electronic document shall, upon the request of the other party, thereafter execute and deliver to the other party an identical original instrument, as soon as reasonably possible thereafter.

Executed by the parties' duly authorized representatives as of the Effective Date.

SELLER:

Pima County, a political subdivision of the State of  
Arizona

By: \_\_\_\_\_  
Chair, Board of Supervisors

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

ATTEST:

\_\_\_\_\_  
Clerk of the Board

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

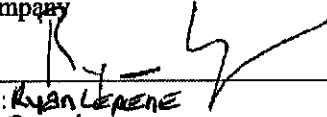
APPROVED AS TO FORM:

  
Deputy County Attorney

Date: November 19, 2021

BUYER:

Sun State Towers IV, LLC, a Delaware limited  
liability company

By:  \_\_\_\_\_  
Name: RYAN LERENE  
Title: Director



## **LIST OF SCHEDULES**

Schedule 1.1(a):	Rent Roll
Schedule 1.2:	Form of Easement
Schedule 8.3:	Allocation

## SCHEDULE 1.1(a)

### Rent Roll: Leases

1. Communications Site Lease dated October 3, 2017 between Pima County, a political subdivision of the State of Arizona ("Pima County"), as landlord, and Sun State Towers III, LLC ("Sun State III"), as tenant, as evidenced by Memorandum of Communications Site Lease dated October 3, 2017 and recorded October 9, 2017 as Document 20172820265 of the Pima County, Arizona Recorder.

A.	Name/Location:	Old Tucson Studios/201 S. Kinney Road, Tucson, AZ 85735
B.	Tenant:	Sun State III
C.	Current Term Commencement:	March 1, 2018
D.	Current Term Expiration:	February 28, 2023
E.	Number/Length of Renewal Terms:	6 five-year
F.	Monthly Rent; other Payments Due:	\$2,185.45; 50% collocation fee (currently \$1,391.89)
G.	Rent Increase:	3% per year

2. Communications Site Lease dated October 3, 2017 between Pima County, as landlord, and Sun State Towers III, LLC as tenant, as evidenced by Memorandum of Communications Site Lease dated October 3, 2017 and recorded October 9, 2017 as Document 20172820266 of the Pima County, Arizona Recorder.

A.	Name/Location:	Green Valley Wastewater Facility/18900 S. Old Nogales Highway, Pima County, AZ
B.	Tenant:	Sun State III
C.	Current Term Commencement:	November 1, 2018
D.	Current Term Expiration:	October 31, 2023
E.	Number/Length of Renewal Terms:	6 five-year
F.	Monthly Rent; other Payments Due:	\$2,121.80; 50% collocation fee (currently none)
F.	Rent Increase:	3% per year

3. Communications Site Lease dated May 5, 2020 between Pima County, as landlord, and New Cingular Wireless PCS, LLC ("New Cingular"), as tenant.

A.	Name/Location:	Thomas Jay Park/5596 E. Littleton Road, Tucson, AZ
B.	Tenant:	New Cingular
C.	Current Term Commencement:	6/1/2021
D.	Current Term Expiration:	5/31/2026
E.	Number/Length of Renewal Terms:	6 five-year
F.	Monthly Rent; other Payments Due:	\$2,400; 50% collocation fee (currently none)
F.	Rent Increase:	3% per year

4. Communications Site Lease dated January 5, 2016 between Pima County, as landlord, and Verizon Wireless (VAW) LLC, d/b/a Verizon Wireless ("Verizon"), as tenant.

A.	Name/Location:	Denny Dunn Park/4400 West Massingale Rd., Tucson, AZ
B.	Tenant:	Verizon
C.	Current Term Commencement:	2/1/2016
D.	Current Term Expiration:	1/31/2026
E.	Number/Length of Renewal Terms:	2 five-year remaining
F.	Monthly Rent; other Payments Due:	\$2,318.55
F.	Rent Increase:	3% per year

5. Communications Site Lease dated October 18, 2016 between Pima County, as landlord, and Verizon Wireless (VAW) LLC, d/b/a Verizon Wireless ("Verizon"), as tenant, as amended by First Amendment to Communications Site Lease dated October 3, 2017.

A.	Name/Location:	Pima County Fairgrounds/11300 S. Houghton Rd., Tucson, AZ
B.	Tenant:	Verizon
C.	Current Term Commencement:	11/1/2017
D.	Current Term Expiration:	10/31/2022
E.	Number/Length of Renewal Terms:	4 five-year
F.	Monthly Rent; other Payments Due:	\$2,251.02
F.	Rent Increase:	3% per year

6. Communications Site Lease dated March 2, 2021 between Pima County, as landlord, and New Cingular Wireless, PCS, LLC, as tenant.

A.	Name/Location:	Pima County Fairgrounds/11300 S. Houghton Rd., Tucson, AZ
B.	Tenant:	New Cingular
C.	Current Term Commencement:	8/1/2021
D.	Current Term Expiration:	7/31/2026
E.	Number/Length of Renewal Terms:	6 five-year
F.	Monthly Rent; other Payments Due:	\$2,400; 50% collocation fee
F.	Rent Increase:	3% per year

7. Tower License for Wireless Communications Facilities dated April 15, 2017 between Pima County, as landlord, and Sprint Spectrum Realty Company, LLC ("Sprint"), as tenant, as amended by First Amendment to Tower License for Wireless Communications Facilities dated January 2, 2018, as further amended by Second Amendment to Tower License for Wireless Communications Facilities dated April 9, 2021.

A.	Name/Location:	Nanini Government Center/7300 N. Shannon Rd., Tucson, AZ
B.	Tenant:	Sprint
C.	Current Term Commencement:	4/15/2017
D.	Current Term Expiration:	4/14/2027
E.	Number/Length of Renewal Terms:	1 ten-year
F.	Monthly Rent; other Payments Due:	\$1,922.93
F.	Rent Increase:	5% per year

**SCHEDULE 1.2**

**Communications Facility Easement Agreement  
and Assignment of Tower-Related Ground Lease**

(see attached)

SCHEDULE 1.2

This document was prepared by:  
Sun State Towers IV, LLC  
57 East Washington Street  
Chagrin Falls, Ohio 44022

After recording, return document to:  
Sun State Towers IV, LLC  
57 East Washington Street  
Chagrin Falls, Ohio 44022

COMMUNICATIONS FACILITY EASEMENT AGREEMENT  
AND ASSIGNMENT OF TOWER-RELATED GROUND LEASE  
(PIMA COUNTY, AZ – OLD TUCSON STUDIOS)

[This is the draft easement for Old Tucson Studios; the other six easements will be prepared, using this form, in anticipation of closing]

THIS COMMUNICATIONS FACILITY EASEMENT AGREEMENT AND ASSIGNMENT OF TOWER-RELATED GROUND LEASE (this "Easement") is made as of \_\_\_\_\_, 2021 (the "Effective Date") by and between Pima County, a political subdivision of the State of Arizona, as grantor ("Grantor"), having an address at 201 N. Stone Ave., 6th Floor, Tucson, Arizona 85701, and Sun State Towers IV, LLC, a Delaware limited liability company, as grantee ("Grantee"), having an address at 57 East Washington Street, Chagrin Falls, Ohio 44022.

A. Grantor owns real property located in Pima County, Arizona at 201 S. Kinney Road, Tucson, Arizona 85735, as more particularly described on Exhibit A attached hereto ("Grantor's Property"), portions of which are used by Sun State Towers III, LLC, a Delaware limited liability company ("Sun State"), as the tenant pursuant to the occupancy agreement identified on Exhibit B attached hereto (the "Tower-Related Ground Lease") for the placement of the Communications Equipment (defined below).

B. Pursuant to a Purchase and Sale Agreement dated \_\_\_\_\_, 2021, Grantor has agreed to grant to Grantee, among other things, (i) an easement on all space in, on, over and under Grantor's Property used by Sun State for its Communications Equipment as such space may be further described in the Tower-Related Ground Lease and more particularly described on Exhibit C attached hereto (the "Existing Ground Space"), (ii) the access and utilities easements granted under the Tower-Related Ground Lease and more particularly described on Exhibit C attached hereto and (iii) Grantor's interest as landlord in the Tower-Related Ground Lease and all rental payments associated with the Tower-Related Ground Lease.

NOW, THEREFORE, on the terms and subject to the conditions set forth in this Easement, the payments described in Section 5 and other good and valuable consideration, the parties agree as follows:

1. Grant of Easement. Upon the terms and conditions set forth herein, Grantor hereby grants, bargains and conveys to Grantee an easement in, on, under and over the Existing Ground Space described

on Exhibit C (the "Easement Premises"). Grantee's right to an easement in, on and over all portions of the Easement Premises for the purposes stated in the recitals to this Easement and the Tower-Related Ground Lease are exclusive as described in Section 11.1.

2. Access and Utility Easements.

2.1 Access Easement. Grantor hereby grants to Grantee, its tenants and licensees, and their successors and assigns, the access easement granted under the Tower-Related Ground Lease as more particularly described on Exhibit C attached hereto (the "Access Easement"). Grantee will use commercially reasonable efforts to only use the Access Easement during traditional working hours, except in the event of emergencies.

2.2 Utility Easement. Grantor hereby grants to Grantee, its tenants and licensees, and their successors and assigns, or to such utility company which Grantee shall designate, the utility easement granted under the Tower-Related Ground Lease as more particularly described on Exhibit C attached hereto (the "Utility Easement"). Grantee will (i) use commercially reasonable efforts to only service the Utility Easement during traditional working hours, except in the event of emergencies, and (ii) notify Grantor in advance of its need to install, maintain or repair its cables, wires, related fixtures and Communications Equipment located in the Easement Premises; EXCEPT HOWEVER, in the case of an emergency whereupon notification shall follow. Upon prior notice to Grantor, Grantee and its tenants and licensees may have electrical current meters installed on the Easement Premises. The cost of such meter and the installation, maintenance and repairs thereof shall be paid by Grantee or its tenants and licensees.

3. Assignment of Tower-Related Ground Lease. Grantor hereby transfers and assigns to Grantee as of the Effective Date all of its right, title and interest in, to and under the Tower-Related Ground Lease identified on Exhibit B and any amendments thereto, including without limitation, all rents and other monies due to Grantor. Grantor and Grantee intend that this Easement serve as an absolute assignment and transfer to Grantee of the Tower-Related Ground Lease and all rents and other monies due Grantor pursuant to the Tower-Related Ground Lease. Grantor designates Grantee as the lessor under the Tower-Related Ground Lease and Grantee assumes the obligations and liabilities of Grantor under the Tower-Related Ground Lease but only to the extent that such obligations and liabilities (a) are not the responsibility of Grantor pursuant to the terms of this Easement and (b) accrue on or after the Effective Date.

4. Term. Commencing upon the Effective Date, the Term of this Easement shall be for a period of fifty (50) years (the "Term"). Grantee may surrender this Easement for any reason or at any time by giving thirty (30) days' notice to Grantor. Upon surrender, this Easement shall be terminated, Grantor and Grantee shall execute and record such documents reasonably required to terminate this Easement and neither Grantor nor Grantee will have any further obligations under this Easement. This Easement may not be terminated by Grantor. In the event of termination of the Easement by Grantee, Grantor shall not be responsible for any reimbursement or payments related to the "Purchase Price" to Grantee.

5. Easement Payments. Grantee shall pay to Grantor the "Purchase Price" for the Easement in accordance with the terms of the Purchase Agreement.

6. Use. Grantee shall only use the Easement Premises for the purpose of constructing, maintaining, repairing, operating, improving, replacing and removing such Communications Equipment reasonably

required by Grantee and its tenants and licensees for use as a telecommunications facility and any other related incidental activities as may be required or permitted by applicable laws, rules, regulations or guidelines. As used in this Easement, "Communications Equipment" shall include but is not limited to the following equipment, whether owned by Grantee or any of its tenants or licensees: (a) antenna support structures (including towers) and building(s) and cabinets to house equipment, including generators, necessary to operate the equipment; (b) coaxial transmission lines; (c) radio communication antennas and equipment consisting of transmitters, receivers and microwave dishes; (d) a fence to enclose all improvements; and (e) any and all equipment, supplies or materials reasonably related to the foregoing. All improvements constructed or installed by Grantee upon the Easement Premises shall be at Grantee's expense. Grantee, or any assignee or tenant of Grantee, may add to or modify its Communications Equipment or telecommunications equipment, as the case may be, on the Easement Premises as reasonably required for the maintenance or operation of the Communications Equipment, or any telecommunications equipment of an assignee or tenant or licensee. Grantee will not use the Easement Premises, the Access Easement or the Utility Easement in a manner that interferes with Grantor's use of Grantor's Property.

7. Insurance. Grantee shall, at its expense, maintain during the Term, comprehensive general liability and property liability insurance with liability limits of not less than Two Million Dollars (\$2,000,000.00) for injury to or death of one or more persons in any one occurrence, and Five Hundred Thousand Dollars (\$500,000.00) for damage to or destruction of property in any one occurrence. Grantor shall be named as an additional insured, as its interest may appear, and the policies shall contain cross liability endorsements. Grantee may carry said insurance under a blanket policy. Grantee shall deliver to Grantor, upon request, certificates evidencing the existence and amounts of such insurance. No policy shall be cancelable or subject to reduction of coverage except after ten (10) days' prior written notice to Grantor.

8. Defaults and Remedies:

(a) Notwithstanding anything in this Easement to the contrary, neither Grantor or Grantee shall be in default under this Easement for failure to perform any obligation under this Easement until thirty (30) days after receipt of written notice of the act or omission constituting the default; provided, however, if any such default cannot reasonably be cured within thirty (30) days, neither party shall be deemed to be in default under this Easement if such defaulting party commences to cure such default within said thirty (30) day period and thereafter diligently pursues such cure to completion.

(b) Should Grantee fail to perform any obligations under this Easement and such breach shall continue uncured thirty (30) days following the receipt of written notice, as provided in Section 8(a) above, Grantor may seek specific performance or actual damages or invoke any other remedies available in law or in equity except for termination of this Easement.

(c) Should Grantor breach any material term or covenant in this Easement or fail to perform any obligation under this Easement, and such breach shall continue uncured thirty (30) days following the receipt of written notice, as provided in Section 8(a) above, Grantee may seek specific performance or actual damages or invoke any other remedies available in law or in equity or, at its option, cure such default. All sums expended by Grantee in connection therewith shall be paid by Grantor to Grantee upon demand.



9. Taxes. Grantee will pay all personal property taxes assessed on, or any portion of such taxes attributable to, the Communications Equipment. Grantee, upon presentation of sufficient and proper documentation, will pay, within thirty (30) days, any increase in real property taxes levied against Grantor's Property (excluding any additional taxes that relate to the period prior to the commencement date of the Tower-Related Ground Lease, i.e., rollback taxes) which is directly attributable to Grantee's use of the Easement Premises, provided Grantee will be entitled to appeal any such increase payable to it. Grantor agrees that it will reasonably cooperate with an appeal of such taxes and will promptly pay when due all real estate taxes (the "Taxes") levied against Grantor's Property and this Easement. If Grantor fails to pay any Taxes when due, Grantee shall have the right, but not the obligation, to pay such Taxes on behalf of Grantor after Grantee gives Grantor thirty (30) days' notice. In such event, Grantor shall reimburse Grantee for the full amount of such Taxes paid by Grantee on Grantor's behalf within fifteen (15) business days of Grantor's receipt of an invoice from Grantee.

10. Tests. Throughout the Term, Grantee and its tenants and licensees shall have the right to conduct survey, soil, radio coverage, and environmental tests and conduct any other investigations needed to determine if the Easement Premises, Access Easement and Utility Easement are suitable for the construction, installation, maintenance, repair, replacement, improvement, operation and removal of the Communications Equipment.

11. Non-Interference.

11.1 Intentionally Omitted.

11.2 Grantor Interference. Grantor shall not, nor shall Grantor permit its lessees, licensees, employees, invitees or agents to, use any portion of Grantor's Property in a way which interferes with the operations of Grantee or which interfere with the Access Easement or Utility Easement. For purposes of this Section 11.2, "interferes" means any activity that impedes access to the site, interrupts utility access to the site or prevents the successful transmission of the tower occupants' signals from the site.

12. Nature of Grantee's Property.

12.1 Fixtures. Grantor covenants and agrees that notwithstanding any contrary provision of statutory or common law, no part of the improvements, including without limitation, the Communications Equipment, constructed, erected or placed by Grantee or Grantee's tenants or licensees on the Easement Premises shall be deemed by Grantor to be or become affixed to or a part of the Easement Premises, it being the specific agreement of Grantor and Grantee that all improvements of every kind and nature constructed, erected or placed by Grantee or any tenants or licensees on the Easement Premises shall be and remain the personal property of Grantee or Grantee's tenants or licensees and may be removed by Grantee as provided in this Easement. Grantee agrees to save Grantor harmless on account of claims or mechanic's, materialman or other liens imposed upon the Easement Premises in connection with any alterations, addition, or improvements to the Easement Premises made by Grantee, Grantee's agents, employees, contractors, tenants or licensees.

12.2 Waiver of Grantor Liens. Grantor waives any rights it may have to assert any liens, encumbrances or adverse claims, statutory or otherwise, against the Communications Equipment, including any rights it may have in its capacity as Grantor under this Easement. Grantee, Grantee's tenants, licensees or such designee in its sole discretion, may remove its Communications Equipment or

any portion of it at any time during the Term of the Easement, without notice to Grantor and without Grantor's consent.

13. Assignment. Grantee may assign, transfer or otherwise encumber all or any part of this Easement or the Easement Premises without the prior consent of Grantor provided that such assignee assumes in full all of Grantee's obligations under this Easement. Upon assignment, Grantee shall be relieved of all liabilities and obligations under this Easement, provided that the recipient of such assignment agrees to be bound by the terms of this Easement. Grantee shall also have the right to lease or sublet the Easement Premises without the prior consent of Grantor. Grantee shall give Grantor fifteen (15) days' notice of Grantee's assignment, transfer, lease, sublet or encumbrance of any part of this Easement or the Easement Premises.

14. Governmental Condemnation or Taking. In the event that any governmental, quasi-governmental agency or other public body exercises its power of eminent domain and thereby takes all or part of the Easement Premises or adjoining or adjacent property subject to an easement hereunder, apportionment thereby making it physically or financially unfeasible, as determined by Grantee in its sole discretion, for the Easement Premises to be used in the manner it was intended to be used by Grantee under this Easement, Grantee shall have the right to assert a claim against the condemning agency for the portion attributable to Grantee's interest in the Easement Premises and to terminate this Easement effective as of the date the condemning agency takes possession. If only a portion of the Easement Premises is taken by eminent domain, and Grantee does not elect to terminate this Easement under this provision, then this Easement shall continue.

15. Damage or Destruction.

(a) In the event of any damage to or destruction of the Easement Premises, the Access Easement or the Utility Easement or any condemnation thereof, which renders the Communications Equipment inoperable or unusable, Grantee and its tenants and licensees shall have the right, at Grantee's option and upon reasonable prior notice to Grantor, to construct or install temporary facilities, including temporary or replacement antennae, if necessary, elsewhere on the Easement Premises or on the Grantor's Property and to establish alternative easements for access and utilities, in such locations as may be reasonably acceptable to Grantor and in a manner which will not interfere with any repair or reconstruction efforts, in order to continue operation of the Communications Equipment. Grantor shall allow Grantee and its tenants and licensees to install such additional equipment and fixtures, including but not limited to, antennae, cables and wires, and shall permit Grantee and its tenants and licensees access, repair and maintenance rights as may be necessary to allow Grantee and its tenants and licensees to operate and maintain such temporary facilities until the Easement Premises, Access Easement and/or Utility Easement have been sufficiently repaired to permit use of the Communications Equipment on its prior location on the Easement Premises, or until a substitute permanent location on Grantor's Property (with substitute access and utility easements, if necessary) that does not materially interfere with Grantor's or Grantor's other tenants' normal use of Grantor's Property has been mutually chosen by Grantor and Grantee and a substitute permanent facility has been completed.

(b) If the Easement Premises are repaired, Grantee and its tenants and licensees shall have the right to construct and install replacement Communications Equipment, including, but not limited to, the antenna support structures, antennae, cables, conduits, poles, wires and electronic or other equipment, in and on the repaired Easement Premises together with replacement access and utility easements if

necessary, in substantially the same location and manner as prior to the occurrence of the damage or at another location on the Easement Premises provided that such relocation does not materially interfere with Grantor's or Grantor's other tenants' normal use of Grantor's Property. It is the intention of the parties that Grantee and its tenants and licensees shall be able to maintain continuous operation and use of the Communications Equipment and any future Communications Equipment throughout the Term.

(c) If Grantee elects to continue operation of the Communications Equipment pursuant to this Section 15, this Easement shall not terminate on account of such damage, destruction or condemnation, but shall continue in effect.

16. Consents and Approvals. Grantee and/or its tenants and licensees shall maintain the permits necessary for the Communications Equipment. Upon execution of this Easement, Grantor agrees to cooperate with Grantee in all respects in connection with any application made by Grantee, in the name of Grantor, to any governmental authority for any license, permit or approval or renewal thereof. Procurement of licenses, permits and/or approvals necessary for the construction, maintenance and operation of Grantee's or its tenants' or licensees' Communications Equipment shall be made at Grantee's expense, and Grantor shall have no obligations with respect thereto. Whenever the consent or approval of either party is required or a determination must be made by either party under this Easement, no such consent or approval shall be unreasonably withheld, denied or delayed, and all such determinations shall be made on a reasonable basis and in a reasonable manner.

17. Quiet Possession; Maintenance of Grantor's Property. Grantor hereby covenants that Grantee is seized and possessed of a valid easement estate in and to the Easement Premises, that Grantee shall have quiet and peaceable possession of the Easement Premises, that Grantor shall defend title to the Easement Premises for and on behalf of Grantee, and that Grantor shall provide such further assurances of title as may be necessary or appropriate. Grantor further agrees to maintain Grantor's Property in a commercially reasonable condition and repair during the Term of this Easement, normal wear and tear and casualty excepted.

18. Debt Security. Grantor covenants and agrees that, without the prior consent of Grantor, at all times during the Term, Grantee shall have the right to mortgage or convey by deed of trust, deed to secure debt or other instrument adequate for the purpose of securing any bona fide indebtedness or evidence thereof, this Easement or the easement holder's interest of Grantee created hereby, together with all of Grantee's right, title, and interest in and to the improvements hereinafter constructed, erected, or placed on the Easement Premises by Grantee, provided that no such mortgage, conveyance or encumbrance, nor any foreclosure thereof, nor any purchase thereunder, shall impair or abridge the rights of Grantor, as provided herein.

19. Estoppel Certificates, Grantor's Acknowledgment of Rights, and other Similar Documents. Grantor agrees that it will from time to time, within fifteen (15) days after request by Grantee, execute and deliver an estoppel certificate, Grantor's acknowledgement of rights or other similar statement, in a form that is reasonably acceptable to both Grantor and Grantee.

20. Environmental Matters.

20.1 Grantor's Representations. The operation of Grantor's Property has met, in all material respects, the applicable laws and regulations of all federal, state, and local government authorities having

jurisdiction, including, without limitation, all requirements pursuant to environmental protection, health, or safety laws and regulations (including the disposal of hazardous substances and solid wastes) and Grantor will continue to operate Grantor's Property so that it continues to comply with such health, or safety laws and regulations. Neither Grantor nor any of its agents or affiliates have, in connection with the operation of Grantor's Property, ever generated, stored, treated, transported, handled, disposed of, or released any hazardous substance or solid, liquid, or gaseous waste ("Hazardous Substances") in a manner that would give rise to any material liability under any statute or governmental regulation.

20.2 Grantee's Representations and Limitation. Grantee shall not introduce or use any Hazardous Substance on the Easement Premises or Grantor's Property in violation of any applicable federal, state or local environmental laws. Grantee shall not be responsible for any Hazardous Substances arising or present on or before the Effective Date except to the extent otherwise provided in the Tower-Related Ground Lease. Liability of Grantee for any claims with respect to any Hazardous Substances at Grantor's Property or the Easement Premises shall be limited to contamination that is shown by clear evidence to have been solely caused by a release of a Hazardous Substance by Grantee (whether prior to, on or after the Effective Date), and in violation of any applicable federal, state or local environmental laws.

21. Notices. Notices will be effective if and when sent by registered or certified U.S. mail or reputable same-day or overnight courier, postage prepaid or otherwise accounted for by sender, and sent to the addresses set forth in in the Preamble above. Any party may change the address to which notices are to be addressed by giving the other party notice in the manner set forth in this Section 21.

22. Entire Agreement and Binding Effect. This Easement and any attached Exhibits constitute the entire agreement between Grantor and Grantee. No prior written or prior, contemporaneous or subsequent oral promises or representations shall be binding. This Easement shall not be amended or changed except by written instrument signed by authorized representatives of the parties hereto. The provisions of this Easement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties.

23. Counterparts. This Easement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute but one instrument.

24. Recording of Easement. Grantor and Grantee hereby agree, following the execution of this Easement, that Grantee, at its sole expense, shall have the right to file this Easement of record in the county and state where the Easement Premises is located.

25. Time is of the Essence. Time is of the essence of this Easement and each and all of its provisions.

26. Governing Law. This Easement shall be construed and governed in accordance with the laws of the State of Arizona.

27. Severability. If any term, covenant, condition or provision of this Easement or application thereof shall, to any extent, be invalid or unenforceable, the remainder of this Easement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

28. Waiver. No failure or delay of the parties hereto to exercise their rights hereunder or to insist upon the strict compliance with any obligation imposed hereunder, and no course of dealing or custom or

practice of either party hereto at variance with any term hereof, shall constitute a waiver or a modification of the terms hereof or the right to demand strict compliance with the terms hereof.

29. Covenant Running with the Land. The provisions of and covenants contained in this Easement shall run with the land and shall bind and inure to the benefit of Grantor, Grantee and their respective successors, heirs and assigns.

[signatures start on the next page]

Exhibit - Not for Execution

IN WITNESS WHEREOF, the parties have executed this Easement as of \_\_\_\_\_, 2021.

GRANTOR:

Pima County, a political subdivision of the State of  
Arizona

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

STATE OF ARIZONA       )  
  )  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me personally appeared \_\_\_\_\_, as  
\_\_\_\_\_ of Pima County, a political subdivision of the State of Arizona, whose identity was  
proven to me on the basis of satisfactory evidence to be the person who he/she claims to be, and  
acknowledged that he/she signed the foregoing document for the purposes therein stated.

[Seal]

\_\_\_\_\_  
Notary Public, State of Arizona

\_\_\_\_\_  
(print or type name)  
Commission No.

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

GRANTEE:

Sun State Towers IV, LLC, a Delaware limited liability company

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

STATE OF OHIO                    )  
  ) SS:  
COUNTY OF CUYAHOGA        )

Before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, known to be the \_\_\_\_\_ of Sun State Towers IV, LLC, a Delaware limited liability company, and acknowledged the execution of the foregoing for and on behalf of said limited liability company.

Witness my hand and Notarial Seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public - Signature

\_\_\_\_\_  
Notary Public - Printed

My Commission Expires:

My County of Residence:

## LIST OF EXHIBITS

Exhibit A: Legal Description of Grantor's Property  
Exhibit B: Tower-Related Ground Lease  
Exhibit C: Legal Description of Easement Premises

Exhibit - Not for Execution



**EXHIBIT A**

**Legal Description of Grantor's Property**

[To be inserted]

Exhibit - Not for Execution

**EXHIBIT B**

**Tower-Related Ground Lease**

1. Communications Site Lease dated October 3, 2017 between Pima County, a political subdivision of the State of Arizona ("Pima County"), as landlord, and Sun State Towers III, LLC ("Sun State III"), as tenant, as evidenced by Memorandum of Communications Site Lease dated October 3, 2017 and recorded October 9, 2017 as Document 20172820265 of the Pima County, Arizona Recorder.

A.	Name/Location:	Old Tucson Studios/201 S. Kinney Road, Tucson, AZ 85735
B.	Tenant:	Sun State III
C.	Current Term Commencement:	November 1, 2017
D.	Current Term Expiration:	October 31, 2022
E.	Number/Length of Renewal Terms:	6 five-year

## EXHIBIT C

### Legal Description of the Easement Premises

1. Tower Easement Area

[Existing leased area under Tower-Related Ground Lease]

2. Access and Utility Easements

[Existing access and utility easements under Tower-Related Ground Lease]

Exhibit - Not for Execution

**SCHEDULE 8.3**  
**ALLOCATION STATEMENT**

Easements:

1. Old Tucson Studios	\$10,000.00
2. Green Valley Wastewater Facility	\$10,000.00
3. Thomas Jay Park	\$10,000.00
4. Denny Dunn Park	\$10,000.00
5. Pima County Fairgrounds (Verizon)	\$10,000.00
6. Pima County Fairgrounds (New Cingular)	\$10,000.00
7. Nanini Government Center	\$10,000.00

<u>TOTAL</u>	<u>\$70,000.00</u>
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Intangibles, including Assignment of

Leases:	\$4,450,000.00
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<u>GRAND TOTAL:</u>	<u>\$4,520,000.00</u>
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