

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of

*Electronic* Application of Tillman )  
Infrastructure LLC for a Certificate of )  
Public Convenience and Necessity to )  
Construct a Wireless Communications )  
Facility in Marshall County, Kentucky )  
Site Name: Benton )

Case No. 2020-00282

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**Motion for Confidential Treatment**

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Tillman Infrastructure LLC (hereinafter “Applicant”) respectfully submits this Motion pursuant to 807 KAR 5:001, § 13, for confidential treatment of certain information relating to the Application in this case. In support of this Motion, the Applicant states as follows:

1. On this date, Applicant filed with the Commission its Application for a Certificate of Public Convenience and Necessity to Construct a Wireless Communications Facility in Marshall County, Kentucky, Site Name: Benton.

2. 807 KAR 5:063 § 1(1)(f) requires that a utility filing such an Application must provide the lease or sale agreement for the property on which the tower is proposed to be located. The Applicant has therefore provided a copy of the relevant Lease Agreement with certain information redacted therein as Exhibit J to the Application. Specifically, the dollar amounts in the Lease Agreement have been redacted in the publicly-filed copy attached to the Application and to this Motion, and are highlighted in the unredacted paper copy filed under seal.

3. The information in the Exhibit for which Applicant seeks confidential treatment is not publicly disseminated, and public disclosure of this information would harm the Applicant.

The Applicant is not generally regulated by the Commission, and the redacted information in the Exhibit would not be disclosed to a regulatory body in the usual course of business.

4. There is a risk of harm if the dollar amounts contained in the Exhibit are disclosed. Such disclosure could create incentives for other potential competitors to undercut efforts by Applicant to successfully build the proposed tower. In the event that the Commission does not approve the Application, or in the event that a proposed build otherwise does not occur, the Applicant would suffer harm if this information were accessible to other potential competitors, as it could distort competition in a subsequent bidding process. Such disclosure would also be costly in the future when attempts to provide additional infrastructure in Kentucky are made and the Applicant's ability to negotiate terms specific to a parcel of land and its circumstances has been compromised.

5. The dollar amounts in the Lease Agreement could be used by competitors to the business injury of the Applicant in other ways as well. For example, if disclosed, the agreement prices and plans for the future would give competitors sensitive information about, *e.g.*, (a) acquisition strategy and capability and (b) valuation of build sites, their problems, and potential.

6. Under KRS 61.878(1)(c)(1), commercial information generally recognized as confidential is protected if disclosure would cause competitive injury and permit competitors an unfair commercial advantage. Public disclosure of the information in the identified Application Exhibit may cause competitive harm to the Applicant and could cause a reduction in competition relating to available infrastructure in the Kentucky telecommunications industry.

7. The information redacted from the Exhibit is treated as confidential by the Applicant; even among employees, it is not disseminated to those who do not have a business reason to use the information.

8. If the Commission's tentative assessment is that the information redacted from the Exhibit is not exempt from disclosure as confidential commercial information, it must hold an evidentiary hearing to protect the Applicant's due process rights and permit an opportunity to supply the Commission with a complete record to enable it to reach a decision with regard to this confidentiality request.

9. In compliance with 807 KAR 5:001, §§ 8(3) and 13(2)(a)(3), the Applicant will file one paper copy of this Motion with the Commission in paper medium within 30 days of the lifting of the state of emergency pursuant to the Commission's 3/16/20 and 3/24/20 Orders in Case No. 2020-00085. Per 807 KAR 5:001 § 13 and the 3/24/20 Order, Applicant will also submit to the Commission under seal one unredacted copy of Application Exhibit J via a method identified in the 3/24/20 Order.

10. Section 13(2)(a)(2) of 807 KAR 5:001 provides that a motion for confidential treatment shall state the time period in which the material should be treated as confidential and the reasons for this time period. Applicant respectfully submits that five (5) years from the date of the filing of the Application is a reasonable period of time for the material in this Exhibit to be treated as confidential in the light of competitive conditions in the telecom industry.

WHEREFORE, the Applicant, Tillman Infrastructure LLC, respectfully requests that the Commission grant confidential treatment of the information described herein and shown as redacted on the attached publicly-filed Motion Exhibit.

Respectfully submitted,

*/s/ Kathryn A. Eckert*

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*Attorneys for Applicant*

Market: Southeast  
Cell Site Number: \_\_\_\_\_  
Cell Site Name: Benton  
Search Ring Name: \_\_\_\_\_  
Fixed Asset Number: 14944231  
TZ-001-15818

## OPTION AND LEASE AGREEMENT

THIS OPTION AND LEASE AGREEMENT ("**Agreement**"), dated as of the latter of the signature dates below (the "**Effective Date**"), is entered into by James Patrick Gordon, a married person, having a mailing address of 786 Mayfield Hwy, Benton, KY 42025 ("**Landlord**") and Tillman Infrastructure LLC, a Delaware limited liability company, having an address at 152 West 57<sup>th</sup> Street, New York, New York 10019 ("**Tenant**").

### BACKGROUND

Landlord owns or controls that certain plot, parcel or tract of land, as described on **Exhibit 1**, together with all rights and privileges arising in connection therewith, located at Sunset Dr S, Property Index Number 0B0501056000000, in the County of Marshall, State of Kentucky (collectively, the "**Property**"). Landlord desires to grant to Tenant the right to use a portion of the Property in accordance with this Agreement.

The parties agree as follows:

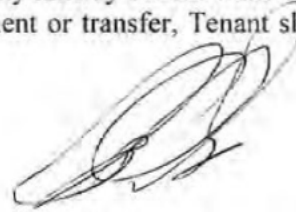
#### 1. OPTION TO LEASE.

(a) Landlord grants to Tenant an exclusive option (the "**Option**") to lease a certain portion of the Property consisting of a 100' x 100' parcel of property including the air space above such ground space, as described on attached **Exhibit 1**, (the "**Premises**"), for the placement of a Communication Facility in accordance with the terms of this Agreement.

(b) During the Option Term, and during the Term, Tenant and its agents, engineers, surveyors and other representatives will have the right to enter upon the Property to inspect, examine, conduct soil borings, drainage testing, material sampling, radio frequency testing and other geological or engineering tests or studies of the Property (collectively, the "**Tests**"), to apply for and obtain licenses, permits, approvals, or other relief required of or deemed necessary or appropriate at Tenant's sole discretion for its use of the Premises and include, without limitation, applications for zoning variances, zoning ordinances, amendments, special use permits, registrations with the Federal Communications Commissions and construction permits (collectively, the "**Government Approvals**"), initiate the ordering and/or scheduling of necessary utilities, and otherwise to do those things on or off the Property that, in the opinion of Tenant, are necessary in Tenant's sole discretion to determine the physical condition of the Property, the environmental history of the Property, Landlord's title to the Property and the feasibility or suitability of the Property for Tenant's Permitted Use, all at Tenant's expense. Tenant will not be liable to Landlord or any third party on account of any pre-existing defect or condition on or with respect to the Property.. Tenant will restore the Property to its condition as it existed at the commencement of the Option Term, reasonable wear and tear and loss by casualty or other causes beyond Tenant's control excepted.

(c) In consideration of Landlord granting Tenant the Option, Tenant agrees to pay Landlord the sum of [REDACTED] Dollars [REDACTED] within thirty (30) business days after the Effective Date. The Option may be exercised during an initial term of [REDACTED] commencing on the Effective Date (the "**Initial Option Term**") which term may be renewed by Tenant for an [REDACTED] (the "**Renewal Option Term**") upon written notification to Landlord and the payment of an additional [REDACTED] Dollars [REDACTED] no later than five (5) days prior to the expiration date of the Initial Option Term. The Initial Option Term and any Renewal Option Term are collectively referred to as the "**Option Term.**"

(d) The Option may be sold, assigned or transferred at any time by Tenant without the written consent of Landlord. Upon notification to Landlord of such sale, assignment or transfer, Tenant shall immediately be



forth herein unless Tenant notifies Landlord in writing of Tenant's intention not to renew this Agreement at least sixty (60) days prior to the expiration of the Initial Term or the then-existing Extension Term.

(c) Unless (i) Landlord or Tenant notifies the other in writing of its intention to terminate this Agreement at least six (6) months prior to the expiration of the final Extension Term, or (ii) the Agreement is terminated as otherwise permitted by this Agreement prior to the end of the final Extension Term, this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of one (1) year, and for annual terms thereafter ("**Annual Term**") until terminated by either party hereto by giving to the other party hereto written notice of its intention to so terminate at least six (6) months prior to the end of any such Annual Term. Monthly rent during such Annual Terms shall be equal to the Rent paid for the last month of the final Extension Term. If Tenant remains in possession of the Premises after the termination of this Agreement, then Tenant will be deemed to be occupying the Premises on a month-to-month basis (the "**Holdover Term**"), subject to the terms and conditions of this Agreement.

(d) The Initial Term, any Extension Terms, any Annual Terms and any Holdover Term are collectively referred to as the "**Term**."

#### 4. RENT.

(a) Commencing on the first day of the calendar month following the date that Tenant commences construction (the "Rent Commencement Date"), Tenant will pay Landlord on or before the tenth (10<sup>th</sup>) day of each calendar month in advance [REDACTED] Dollars [REDACTED] (the "Rent"), at the address set forth above. In any partial month occurring after the Rent Commencement Date, the Rent will be prorated. The initial Rent payment will be forwarded by Tenant to Landlord within forty-five (45) days after the Rent Commencement Date.

(b) Upon the commencement of each Extension Term, and for the remainder of the Term, the monthly Rent will increase by [REDACTED] over the Rent paid during the previous term.

(c) All charges payable under this Agreement such as utilities and taxes shall be billed by Landlord within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by Landlord, and shall not be payable by Tenant. Tenant shall tender payment for such charges within thirty (30) days of the receipt of Landlord's bill from Tenant. The foregoing shall not apply to monthly Rent which is due and payable without a requirement that it be billed by Landlord. The provisions of this subsection shall survive the termination or expiration of this Agreement.

#### 5. APPROVALS.

(a) Landlord agrees that Tenant's ability to use the Premises is contingent upon the suitability of the Premises and Property for the Permitted Use and Tenant's ability to obtain and maintain all Government Approvals. Landlord authorizes Tenant to prepare, execute and file all required applications to obtain Government Approvals for the Permitted Use and agrees to reasonably assist Tenant with such applications and with obtaining and maintaining the Government Approvals.

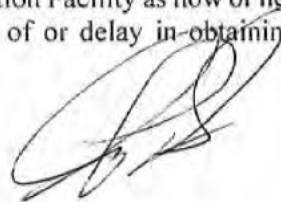
(b) Tenant has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of its choice.

(c) Tenant may also perform and obtain, at Tenant's sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports on, over, and under the Property, necessary to determine if Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system, design, operations or Government Approvals.

#### 6. TERMINATION. This Agreement may be terminated, without penalty or further liability, as follows:

(a) by either party on thirty (30) days prior written notice, if the other party remains in default under Section 15 of this Agreement after the applicable cure periods;

(b) by Tenant upon written notice to Landlord, if Tenant is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now or hereafter intended by Tenant; or if Tenant determines, in its sole discretion that the cost of or delay in obtaining or retaining the same is commercially unreasonable;



(c) by Tenant, upon written notice to Landlord, if Tenant determines, in its sole discretion, due to the title report results or survey results, that the condition of the Premises is unsatisfactory for its intended uses;

(d) by Tenant upon written notice to Landlord for any reason or no reason, at any time prior to commencement of construction by Tenant; or

(e) by Tenant upon sixty (60) days' prior written notice to Landlord for any reason or no reason, so long as Tenant pays Landlord a termination fee equal to twelve (12) months' Rent, at the then-current rate, provided, however, that no such termination fee will be payable on account of the termination of this Agreement by Tenant under any termination provision contained in any other Section of this Agreement, including the following: Section 5 Approvals, Section 6(a) Termination, Section 6(b) Termination, Section 6(c) Termination, Section 6(d) Termination, Section 11(d) Environmental, Section 18 Condemnation or Section 19 Casualty.

7. **INSURANCE.** During the Option Term and throughout the Term, Tenant will purchase and maintain in full force and effect such general liability policy as Tenant may deem necessary, naming Landlord as an "additional named insured". Said policy of general liability insurance will at a minimum provide a combined single limit of [REDACTED]. Notwithstanding the foregoing, Tenant shall have the right to self-insure such general liability coverage or by adding this site as an endorsement on a pre-existing master policy which contains the above limit. Proof of such coverage shall be provided to Landlord as reasonably requested.

8. **INTERFERENCE.**

(a) Prior to or concurrent with the execution of this Agreement, Landlord has provided or will provide Tenant with a list of radio frequency user(s) and frequencies used on the Property as of the Effective Date. Tenant warrants that its use of the Premises will not interfere with those existing radio frequency uses on the Property, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations.

(b) Landlord will not grant, after the Effective Date, a lease, license or any other right to any third party, if the exercise of such grant may in any way adversely affect or interfere with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will notify Tenant in writing prior to granting any third party the right to install and operate communications equipment on the Property.

(c) Landlord will not, nor will Landlord permit its employees, tenants, licensees, invitees, agents or independent contractors to interfere in any way with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will cause such interference to cease within twenty-four (24) hours after receipt of notice of interference from Tenant. In the event any such interference does not cease within the aforementioned cure period, Landlord shall cease all operations which are suspected of causing interference (except for intermittent testing to determine the cause of such interference) until the interference has been corrected.

(d) For the purposes of this Agreement, "interference" may include, but is not limited to, any use on the Property or Surrounding Property that causes electronic or physical obstruction with, or degradation of, the communications signals from the Communication Facility.

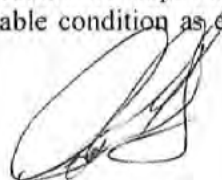
(b) Landlord and Tenant agree to hold harmless and indemnify the other from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of the indemnifying party for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding (“Claims”), to the extent arising from that party’s breach of its obligations or representations under Section 11(a). Landlord agrees to hold harmless and indemnify Tenant from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of Landlord for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from subsurface or other contamination of the Property with hazardous substances prior to the Effective Date or from such contamination caused by the acts or omissions of Landlord during the Term. Tenant agrees to hold harmless and indemnify Landlord from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of Tenant for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent the same is occasioned by Tenant’s use of the Property.

(c) The indemnification provisions contained in this Section 11 specifically include reasonable costs, expenses and fees incurred in connection with any investigation of Property conditions or any clean-up, remediation, removal or restoration work required by any governmental authority. The provisions of this Section 11 will survive the expiration or termination of this Agreement.

(d) In the event Tenant becomes aware of any hazardous materials on the Property, or any environmental, health or safety condition or matter relating to the Property, that, in Tenant’s sole determination, renders the condition of the Premises or Property unsuitable for Tenant’s use, or if Tenant believes that the leasing or continued leasing of the Premises would expose Tenant to undue risks of liability to a government agency or other third party, then Tenant will have the right, in addition to any other rights it may have at law or in equity, to terminate this Agreement upon written notice to Landlord.

**12. ACCESS.** At all times throughout the Term of this Agreement, and at no additional charge to Tenant, Tenant and its employees, agents, and subcontractors, will have twenty-four (24) hour per day, seven (7) day per week pedestrian and vehicular access (“Access”) to and over the Property, from an open and improved public road to the Premises, for the installation, maintenance and operation of the Communication Facility and any utilities serving the Premises. Tenant agrees that it will not unreasonably interrupt the peaceable enjoyment of the adjoining property use of Landlord, or third parties. As may be described more fully in **Exhibit 1**, Landlord grants to Tenant, it’s subtenants, lessees assigns and licensees an easement for such Access and Landlord agrees to provide to Tenant such codes, keys and other instruments necessary for such Access at no additional cost to Tenant (the “Access Easement”, the Utility Easement and Access Easement are sometimes collectively referred to as “Easements”). Upon Tenant’s request, Landlord will execute a separate recordable easement evidencing this right. Landlord shall execute a letter granting Tenant Access to the Property substantially in the form attached as Exhibit 4, and upon Tenant’s request, Landlord shall execute additional letters during the Term. Landlord acknowledges that in the event Tenant cannot obtain Access to the Premises, Tenant shall incur significant damage. If Landlord fails to provide the Access granted by this Section 12, such failure shall be a default under this Agreement. Tenant shall provide written notice to Landlord of such default, and Landlord shall have five (5) days to cure. Should Landlord fail to cure, Landlord shall, in addition to any other rights or remedies available to Tenant under this Agreement or at law or equity, shall pay Tenant, as liquidated damages and not as a penalty, [REDACTED] per day in consideration of Tenant’s damages until Landlord cures such default. Landlord and Tenant agree that Tenant’s damages in the event of a denial of Access are difficult, if not impossible, to ascertain, and the liquidated damages set forth above are a reasonable approximation of such damages.

**13. REMOVAL/RESTORATION.** All portions of the Communication Facility brought onto the Property by Tenant will be and remain Tenant’s personal property and, at Tenant’s option, may be removed by Tenant at any time during or after the Term. Landlord covenants and agrees that no part of the Communication Facility constructed, erected or placed on the Premises by Tenant will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of Landlord that all improvements of every kind and nature constructed, erected or placed by Tenant on the Premises will be and remain the property of Tenant and may be removed by Tenant at any time during or after the Term. Tenant will repair any damage to the Property resulting from Tenant’s removal activities to the same or comparable condition as existed prior to Tenant’s use. Any



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