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**SITE LEASE AGREEMENT**

 This Site Lease Agreement (the “**Agreement**”) is made and effective as of the date the last Party executes this Agreement (the “**Effective Date**”), by and between ESS Prisa II LLC, a Delaware limited liability company having a place of business at 2795 E. Cottonwood Parkway #300, Salt Lake City, UT 84121 (“**Landlord**”), and DISH Wireless L.L.C., a Colorado limited liability company having a place of business at 9601 S. Meridian Blvd., Englewood, Colorado 80112 (“**Tenant**,” and together with Landlord, the “**Parties**,” each a “**Party**”).

**WITNESSETH:**

**1. Definitions**.

“**Affiliate(s)**” means, with respect to a Party, any person or entity, directly or indirectly, controlling, controlled by, or under common control with such Party, in each case for so long as such control continues. For purposes of this definition, “control” shall mean (i) the ownership, directly or indirectly, or at least fifty percent (50%) of either: (a) the voting rights attached to issued voting shares; or (b) the power to elect fifty percent (50%) of the directors of such entity, or (ii) the ability to direct the actions of the entity. Notwithstanding the preceding, for purposes of this Agreement, EchoStar Corporation and its direct and indirect subsidiaries shall not be deemed to be “Affiliates” of Tenant unless after the Effective Date any such entity qualifies as a direct or indirect subsidiary of DISH Network Corporation.

“**Applicable Law**” means any applicable federal, state or local act, law, statute, ordinance, building code, rule, regulation or permit, or any order, judgment, consent or approval of any Governmental Authority having jurisdiction over the Parties or this Agreement.

“**Governmental Authority**” means any: (i) federal, state, county, municipal, tribal or other local government and any political subdivision thereof having jurisdiction over the Parties or this Agreement; (ii) any court or administrative tribunal exercising proper jurisdiction; or (iii) any other governmental, quasi-governmental, self-regulatory, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity of competent jurisdiction.

“**Installation**” means the installation of Tenant’s Equipment at the Premises.

“**Permitted Modifications**” means adding, replacing, or modifying Tenant’s Equipment, without adversely impacting the structural integrity of the roof, within the Premises and with prior written notice to Landlord.

“**Property**” means that certain parcel of real property upon which the Structure is located.

“**Structure**” means that certain structure of which the Premises are a part.

**2. Premises, Term, Rent and Contingencies**.

2.1 Premises. Landlord is the owner of the Property located at 7 Arden Avenue, Staten Island, NY 10312 as more particularly described in Exhibit A. Landlord leases to Tenant approximately thirty-five (35) square feet of space for its communications equipment, together with additional space for antennas, cabling and related improvements in connection with the use and operation of its facilities as such are initially described in Exhibit B, collectively referred to as the **“Premises**”.  Landlord also grants to Tenant: (a) the right to use available electrical systems and/or fiber installed at the Property to support Tenant’s Installation; and (b) any easements on, over, under, and across the Property for utilities, fiber and access to the Premises, as generally shown on Exhibit B. Landlord agrees that providers of utility or fiber services may use such easement(s) and/or available conduit(s) for the installation of any equipment necessary to provide utility or fiber service. If the existing utility or fiber sources located within the Premises or on the Property are insufficient for Tenant’s Permitted Use, Landlord agrees to grant Tenant and/or the applicable third party utility or fiber provider the right, at Tenant’s sole cost and expense, to install such utilities or fiber on, over and/or under the Property as is necessary for Tenant’s Permitted Use; provided that Landlord and Tenant shall mutually agree on the location of such installation(s).

2.2 Term. This Agreement shall be effective as of the Effective Date. The initial term of this Agreement (the “**Initial Term**”) will commence on the first (1st) day of the month following the commencement of Tenant’s Installation (the “**Commencement Date**”), and will expire on the last day of the month that is sixty (60) months after the Commencement Date unless terminated sooner, renewed or extended in accordance with this Agreement. The Initial Term shall automatically renew for up to four (4) additional terms of sixty (60) months each (each, a “**Renewal Term**” and together with the Initial Term, the “**Term**”). However, Tenant may, in Tenant’s sole and absolute discretion, elect not to renew the lease at the end of the then-current Term by giving Landlord written Notice at least one hundred twenty (120) days prior to the end of the then-current Term. The Parties agree that, subject to the Contingencies, this Agreement constitutes a binding and valid obligation on each Party and that each Party has vested rights in this Agreement as of the Effective Date.

2.3 Rent. Beginning on the Commencement Date and continuing through the term of this Agreement, Tenant shall pay Landlord rent for the Premises (“**Rent**”) in the amount of Two Thousand and 00/100 Dollars ($2,000.00) per month. In addition, as consideration for Landlord executing this Agreement on or before January 14, 2022, Tenant shall make a one-time, lump sum payment of Three Thousand and 00/100 Dollars ($3,000.00) within sixty (60) days of the Effective Date. The first monthly installment of Rent shall be paid to Landlord within twenty (20) business days of the Commencement Date, with subsequent rent payable in advance and due by the fifth day of each month. On each anniversary of the Commencement Date, the Rent shall be automatically increased by two percent (2%) of the then-current Rent. Payments shall be delivered to the address designated by Landlord in Section 12.11, or by electronic payment. All payments for any fractional month shall be prorated based upon the number of days during such month that the payment obligation was in force (“**Payment Terms**”). Tenant shall require receipt of a validly completed IRS approved W-9 form (or its equivalent) prior to paying any Rent or any other amount(s) due under this Agreement.

2.4 Contingencies. The Parties acknowledge and agree that Tenant’s ability to lawfully use the Premises is contingent upon Tenant obtaining all certificates, permits, approvals and other authorizations that may be required by any Governmental Authority in accordance with Applicable Law (collectively, the “**Governmental Approvals**”). Tenant will endeavor to obtain all such Governmental Approvals promptly. Landlord hereby authorizes Tenant, at Tenant’s sole cost and expense, to file and submit for Governmental Approvals. Landlord shall: (a) reasonably cooperate with Tenant in Tenant’s efforts to obtain such Governmental Approvals; (b) promptly execute and deliver all documents necessary to obtain and maintain the Government Approvals; and (c) not knowingly take any action that would adversely affect Tenant’s ability to obtain and/or maintain the Governmental Approvals. If: (i) any application for Governmental Approvals is rejected, conditioned, materially delayed or otherwise not approved for any or no reason; or (ii) Tenant determines, in Tenant’s sole and absolute discretion, that such Governmental Approvals cannot be obtained in a timely and commercially reasonable manner (clauses (i) and (ii) collectively, the “**Contingencies**”), then, Tenant shall have the right in its sole and absolute discretion to terminate this Agreement immediately upon Notice to Landlord, without penalty or further obligation to Landlord (or Landlord’s affiliates, employees, officers, agents or lenders). If, following the Commencement Date, and through no fault of Tenant, any Governmental Approval issued to Tenant is canceled, expires, lapses or is otherwise withdrawn or terminated by the applicable Governmental Authority, then Tenant shall have the right in its sole and absolute discretion to terminate this Agreement upon ninety (90) days’ Notice to Landlord without penalty or further obligation to Landlord (or Landlord’s affiliates, employees, officers, agents or lenders). If this Agreement is terminated, this Agreement shall be of no further force or effect (except as set forth to the contrary herein).

**3.** **Use, Access and Modifications to Tenant’s Equipment**.

3.1 Tenant’s Permitted Use. Landlord agrees that Tenant may use the Premises for the purpose of the installation, operation, maintenance and management of a telecommunications facility (including, without limitation, equipment designed to transmit and receive radio frequency signals) (collectively, “**Tenant’s Equipment**”), which shall include the right to replace, repair, add, or otherwise modify any or all of Tenant’s Equipment within the Premises and the frequencies over which Tenant’s Equipment operates (“**Tenant’s Permitted Use**”). Landlord has reviewed and approved the lease exhibits attached hereto as Exhibit B and, with the exception of material changes to said lease exhibits, no additional review or approval by Landlord shall be required in connection with Tenant’s Installation. Landlord acknowledges and agrees that if radio frequency signage and/or barricades are required by Applicable Law, Tenant shall have the right to install the same on the Property. Any of the Tenant’s antenna that is readily visible from the ground level shall be painted as shown on Exhibit B by Tenant, at its sole cost and expense, so that such equipment reasonably blends in with the Structure but without compromising the operating efficiency and performance levels of such equipment as Tenant may require.

3.2 Access. Commencing on the Effective Date and continuing throughout the Term, Tenant, its employees, agents and contractors shall have unrestricted access to the Premises 24 hours per day, 7 days per week and at no additional cost or expense to Tenant. Further, Landlord grants to Tenant the right of ingress and egress to the Structure and the Premises. When accessing the Property and Structure, Tenant shall use commercially reasonable efforts to minimize any physical disturbance to Landlord’s, or other tenant’s, access to the Property and Structure.

3.3 Modifications to Tenant’s Equipment. After Tenant’s initial Installation, Tenant may make Permitted Modifications within the Premises, including those which allow Tenant to: (i) modify or add additional technologies; and (ii) modify or add equipment within the Premises; in either case, without adversely impacting the structural integrity of the roof and without incurring any increase in the then-current Rent, or other modification of the terms and conditions set forth in this Agreement. For any modification or addition that is not a Permitted Modification, Tenant shall seek Landlord’s approval of Tenant’s installation plans and specifications prior to commencing any such addition or modification, such approval not to be unreasonably withheld, conditioned, or delayed. Except as otherwise provided herein, work performed by Tenant shall comply with the Rooftop and Work Activities Policy (the **“Building Policy**”) attached hereto as **Exhibit C,** provided that such Building Policy does not materially diminish Tenant’s rights, or increase Tenant’s duties and/or obligations, under this Agreement and are applied to all other tenants in a uniform and consistent manner. In the event of any conflict or inconsistency between the terms and conditions of this Agreement and the Building Policy, the conflict or inconsistency shall be resolved by giving precedence to the terms and conditions of this Agreement.

3.4 Post-Construction Obligations. Upon the completion of installation of Tenant’s Equipment, the Property and Premises shall be free of Tenant’s debris and Tenant will remove any of its remaining unused parts or remnants. Access routes and any other areas disturbed solely by Tenant due to construction staging, parking, and equipment storage shall be repaired and restored to their pre-construction state, reasonable wear and tear and casualty excepted. Within ninety(90) days after Landlord’s request and the completion of the installation of Tenant’s Equipment, Tenant shall provide Landlord with a close out package which will include (i) final drawings of Tenant’s Equipment and easements including (i) the location of any underground conduits and utilities, (ii) all zoning approval documents and building permits, and (ii) photo documentation of Tenant’s Equipment at the time of construction completion as part of Landlord’s permanent records for the Premises.

**4. Utilities, Liens and Taxes**.

4.1 Utilities. Tenant may have its own utility meter installed as shown on Exhibit B, or in a mutually agreed upon location in which case Tenant will pay the utility company directly for utility service. If separate metering is not commercially reasonable, then Tenant may install a utility sub meter on Landlord’s main utility meter, which Landlord shall read and bill to Tenant on a monthly basis (without mark-up) for Tenant’s utility consumption and provide Tenant with documentation to substantiate all invoiced amounts. Tenant’s actual utility usage charges shall be paid by Tenant to Landlord (each without mark-up) within thirty (30) days following Tenant’s receipt of an undisputed invoice and documentation substantiating all invoiced amounts. If neither of the foregoing options is commercially reasonable, then Tenant may use and make reasonable modifications to the Premises’ electrical system to accommodate the electrical requirements of Tenant’s Equipment at Tenant’s sole cost and expense.

4.2 Liens. Tenant will use commercially reasonable efforts to prevent any lien from attaching to the Structure or any part thereof. If any lien is filed purporting to be for labor or material furnished or to be furnished at the request of Tenant, then Tenant shall do all acts necessary to discharge such lien by payment, satisfaction or posting of bond within forty-five (45) days of receipt of Notice that such lien has been filed; provided, that Tenant may contest any such lien if Tenant provides Landlord with cash or a letter of credit in the amount of said lien as security for its payment within such forty-five (45) day period, and thereafter diligently contests such lien. In the event Tenant fails to deposit the aforementioned security with Landlord and fails to pay any lien claim after entry of final judgment in favor of the claimant, then Landlord, upon notice to Tenant, shall have the right to expend all sums reasonably necessary to discharge the lien claim and invoice Tenant for one hundred fifteen percent (115%) of all documented costs actually incurred by Landlord, which costs shall be due upon sixty (60) days after receipt of undisputed invoices and supporting documentation.

4.3 Taxes. Landlord shall pay all taxes that accrue against the Structure and Property during the Term. If any such tax or excise is levied or assessed directly against Tenant, then Tenant shall be responsible for and shall pay the taxing authority directly. Tenant shall be liable for all taxes against Tenant’s personal property or Tenant’s fixtures placed in the Premises, whether levied or assessed against Landlord or Tenant. Landlord shall reasonably cooperate with Tenant, at Tenant’s expense, in any appeal or challenge to Taxes. If, as a result of any appeal or challenge by Tenant, there is a reduction, credit or repayment received by Landlord for any Taxes previously paid by Tenant, Landlord agrees to promptly reimburse to Tenant the amount of said reduction, credit or repayment. If Tenant does not have the standing rights to pursue a good faith and reasonable dispute of any Taxes under this section, Landlord will reasonably pursue such dispute at Tenant’s sole cost and expense upon written request of Tenant.

**5. Interference and Relocation of Tenant’s Equipment**.

 5.1 Interference. Tenant agrees to use commercially reasonable efforts to ensure that Tenant’s Equipment does not physically block, obstruct, or otherwise cause measurable transmission or reception interference (“**Interference**”) with any equipment installed at the Structure as of the Effective Date (“**Existing Equipment**”). Except for intermitting testing, in the event that Tenant’s Equipment causes Interference with any Existing Equipment for a period more than forty-eight (48) hours following Tenant’s receipt of notification thereof, then Tenant will cease operating and/or relocate the source of Interference and/or to reduce the power sufficiently to minimize the Interference until such Interference can be remedied. Following the Effective Date, Landlord agrees not to install or to permit others to install any structure or equipment which could knowingly cause Interference with Tenant’s Equipment. If any structure or equipment is installed after the Effective Date that causes Interference with Tenant’s Equipment for a period of more than forty-eight (48) hours following Landlord’s receipt of notification thereof, then Landlord shall cause the interfering party to cease operating, and/or relocate, the source of Interference, or to reduce the power sufficiently to minimize the Interference until such Interference can be remedied.

 5.2 Relocation of Tenant’s Equipment. Following Tenant’s receipt of a written Notice from Landlord, Tenant agrees to temporarily relocate its equipment to a mutually agreed upon location on the Property (a “**Temporary Location**”) to facilitate Landlord’s performance of maintenance, repair or similar work at the Property or in or on the Structure, provided that: (a) Landlord pays all costs incurred by Tenant for relocating Tenant’s Equipment to the Temporary Location as well as back to the original location, except to the extent that such maintenance, repair, or similar work is solely caused by the acts or omissions of Tenant or the installation of Tenant’s Equipment; (b) Landlord gives Tenant at least six (6) months prior written Notice, except in the case of a bona fide emergency which shall include any event that is reasonably likely to result in damage or injury to persons, property, the Structure, or the Property (an “**Emergency**”), in which event Landlord will provide the greatest amount of notice possible under the circumstances; and (c) except for an Emergency, Tenant shall not be required to relocate its equipment to a Temporary Location more than one (1) time within any five (5) year period. If Tenant’s use of the Temporary Location requires Tenant to undergo re-zoning or re-permitting, Landlord shall not require Tenant to relocate Tenant’s Equipment, absent an Emergency, until Tenant’s receipt of all Governmental Approvals applicable to Tenant’s use of the Temporary Location. Absent relocation requests or projects necessitating relocation of Tenant’s Equipment, Tenant shall reasonably cooperate with Landlord’s reasonable requests in connection with other rooftop maintenance matters, including repairs and re-roofing projects; provided that Landlord shall coordinate such work with Tenant to minimize any interference to Tenant’s operations at the Property.

**6.** **Maintenance and Repair Obligations**.

6.1 Landlord Maintenance of the Structure. Landlord represents and warrants that, to the best of Landlord’s knowledge and without inspection, as of the Effective Date, the Structure, the Structure’s systems and all structural elements of the Structure are in compliance with Applicable Law. Throughout the term of this Agreement, Landlord shall maintain, at its sole cost and expense, the Structure and the Property (but not Tenant’s Equipment located thereon) in good operating condition. Landlord shall maintain the security measures for the Property that are in effect as of the Effective Date. Subject to Sections 3.1 and 5.1 of this Agreement, Tenant may take all actions necessary, in Tenant’s reasonable discretion, to secure and/or restrict access to Tenant’s Equipment, provided that such actions are not otherwise prohibited by Applicable Law or the terms and conditions of this Agreement.

6.2 Tenant Maintenance of Tenant’s Equipment. Tenant assumes sole responsibility for the maintenance, repair and/or replacement of Tenant’s Equipment, except as set forth in Section 6.1. Tenant agrees to perform all maintenance, repair or replacement of Tenant’s Equipment (“**Tenant Maintenance**”) in accordance with Applicable Law, the Building Policy (to the extent set forth in Section 3.3 of this Agreement), and in a good and workmanlike manner. Tenant shall not be permitted to conduct Tenant Maintenance in a manner that would increase the size of the Premises or adversely impact the structural integrity of the roof. Tenant shall repair or replace, at its sole cost and expense, to Landlord’s reasonable satisfaction and in accordance with Applicable Law, generally accepted engineering standards and practices, and in a good and workmanlike manner, any portion of the Structure or Property damaged solely and directly due to in the installation, maintenance, repair, replacement, operation, or removal of Tenant’s Equipment to its then existing condition, reasonable wear and tear and casualty damage excepted.

**7. Surrender and Hold Over**.

###  7.1 Surrender. Except as set forth to the contrary herein, within sixty (60) days following the expiration or termination of this Agreement pursuant to Section 8.3 and while continuing to pay rent (the “Equipment Removal Period”), in accordance with the terms of this Agreement, Tenant will surrender the Premises to Landlord in a condition similar to that which existed immediately prior to Tenant’s Installation together with any additions alteration and improvements to the Premises, in either case, normal wear and tear excepted. Subject to Section 3.2, Tenant shall have the right to access the Premises or remove any or all of Tenant’s Equipment from the Premises at any time during the Term or the Equipment Removal Period. If Tenant’s Equipment is not removed at the conclusion of the Equipment Removal Period, Tenant will be deemed to be in Hold Over (as defined in Section 7.2 below) until Tenant’s Equipment is removed from the Premises, provided the Hold Over term shall not exceed one hundred twenty (120) days unless otherwise agreed to by both parties in writing. If Tenant fails to remove Tenant’s Equipment within one hundred twenty (120) days following the expiration of the Equipment Removal Period, or such later period agreed to by the Parties, then Landlord shall have the option – to be exercised by prior Notice to Tenant – to declare Tenant’s Equipment abandoned and Landlord may remove and dispose of the Tenant’s Equipment. If Landlord exercises this option, then following at least thirty (30) days written Notice to Tenant (i) Landlord shall take possession and title of the property and dispose of it in a commercially reasonable manner; (ii) the reasonable costs associated with removal and disposition of the property shall be itemized and billed to Tenant (“Removal Fee”); (iii) Tenant shall pay such Removal Fee within thirty (30) days of such billing; and (iv) Tenant’s obligation to pay rent at the Holdover rate shall terminate.

7.2 Hold Over. If Tenant occupies the Premises beyond the Equipment Removal Period without Landlord’s written consent (“**Hold Over**”), Tenant will be deemed to occupy the Premises on a month-to-month basis, terminable by either Party on thirty (30) days’ written Notice to the other Party. All of the terms and provisions of this Agreement shall be applicable during that period, except that Tenant shall pay Landlord a rental fee equal to one hundred and fifty percent (150%) of the then current monthly Rent applicable at the expiration or termination of the Agreement, prorated for the number of days of such Hold Over.

**8. Default, Remedies and Termination**.

8.1 Default. If any of the following events occur during the Term (each a “**Default**”), then the non-Defaulting Party may elect one or more of the remedies set forth below in this Section 8 or seek any other remedy available: (a) Tenant’s failure to make any payment required by this Agreement within thirty (30) days after receipt of written Notice from the Landlord of such failure to pay; (b) failure by either Party to observe or perform any provision of this Agreement where such failure: (1) continues for a period of thirty (30) days after written Notice thereof from the non-Defaulting Party and the Defaulting Party has failed to cure or commenced the cure of such Default; and/or (2) based upon Tenant’s reasonable determination, materially affects Tenant’s ability to transmit or receive wireless communications signals to or from the Premises; (c) either Party files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws or under any insolvency act of any state, or admits the material allegations of any such petition by answer or otherwise, or is dissolved or makes an assignment for the benefit of creditors; and/or (d) involuntary proceedings under any such bankruptcy law or insolvency act or for the dissolution of either Party are instituted against either Party, or a receiver or trustee is appointed for all or substantially all of the property of either Party, and such proceeding is not dismissed, or such receivership or trusteeship vacated within sixty (60) days after such institution or appointment.

8.2 Remedies. Upon the occurrence of any uncured Default, the non-Defaulting Party may thereafter terminate this Agreement immediately upon written Notice to the other Party without prejudice to any other remedies the non-Defaulting Party may have at law or in equity.

8.3 Termination. Tenant shall have the right to terminate this Agreement without further liability upon ninety (90) days prior written Notice to Landlord due to any one or more of the following: (i) changes in Applicable Law which prohibit or adversely affect Tenant’s ability to operate Tenant’s Equipment at the Premises; (ii) Tenant, in its sole discretion, determines that Tenant’s Permitted Use of the Premises is obsolete or unnecessary; (iii) Landlord or a third party installs any structure, equipment, or other item which blocks, hinders, limits, or prevents Tenant from being able to use the Tenant Equipment for Tenant’s Permitted Use. In the event that Tenant exercises the termination stated in 8.3(ii) above, then Tenant shall pay a one-time, lump sum termination fee equal to six (6) months of then-current Rent in connection with the termination.

**9. Limitation of Liability and Indemnification**.

 9.1 Limitation of Liability. EXCEPT FOR EACH PARTY’S INDEMNIFICATION OBLIGATIONS SET FORTH BELOW IN THIS SECTION 9, NEITHER PARTY NOR ANY OF ITS AGENTS, CONTRACTORS OR EMPLOYEES, SHALL BE LIABLE TO THE OTHER PARTY OR ANY PERSON CLAIMING THROUGH THAT PARTY FOR ANY EXEMPLARY, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR ANY CAUSE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, CLAIMS CAUSED BY OR RESULTING FROM THE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THAT PARTY, ITS AGENTS, CONTRACTORS OR EMPLOYEES.

 9.2 Tenant’s Indemnity. Except to the extent caused by the breach of this Agreement by Landlord or the acts or omissions of Landlord, its officers, agents, employees, contractors, or any other person or entity for whom Landlord is legally responsible, Tenant shall defend, indemnify and hold Landlord and its officers, directors, shareholders, employees, agents and representatives (“**Landlord’s Representatives**”) harmless from and against any and all claims, demands, litigation, settlements, judgments, damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys’ fees) (individually or collectively, a “**Claim**”) arising directly or indirectly out of: (i) any act or omission of Tenant, its officers, agents, employees, contractors, or any other person or entity for whom Tenant is legally responsible (“**Tenant’s Representatives**”); or (ii) a breach of any representation, warranty or covenant of Tenant contained or incorporated in this Agreement. Tenant’s obligations under this Section 9.2 shall survive the expiration or earlier termination of this Agreement for two (2) years.

 9.3 Landlord’s Indemnity. Except to the extent caused by the breach of this Agreement by Tenant or the acts or omissions of Tenant or Tenant’s Representatives, Landlord shall defend, indemnify and hold Tenant, its officers, directors, shareholders, employees, agents and representatives harmless from and against any and all Claims arising directly or indirectly out of: (i) any act or omission of Landlord, its officers, agents, employees, contractors or any other person or entity for whom Landlord is legally responsible; (ii) a breach of any representation, warranty or covenant of Landlord contained or incorporated in this Agreement; and/or (iii) the generation, possession, use, storage, presence, release, spill, treatment, transportation, manufacture, refinement, handling, production and/or disposal of Hazardous Substances in, on, about, adjacent to, under or near the Premises, the Structure and/or the Property, and/or any contamination of the Premises, the Structure and/or the Property by any Hazardous Substance, but only to the extent not caused by Tenant or Tenant’s Representatives. Landlord’s obligations under this Section 9.3 shall survive the expiration or earlier termination of this Agreement for two (2) years.

9.4 Indemnification Procedure. The Party seeking indemnification (the “**Indemnified Party**”) shall promptly send Notice to the Party from whom indemnification is being sought (the “**Indemnifying Party**”) of the claim or suit for which indemnification is sought. The Indemnified Party shall not make any admission as to liability or agree to any settlement of or compromise any claim without the prior written consent of the Indemnifying Party. The Indemnified Party shall, at the Indemnifying Party request and expense, give the Indemnifying Party all reasonable assistance in connection with those negotiations and litigation.

**10. Insurance**.

 10.1 Landlord Obligations. Throughout the Term, Landlord shall maintain, at Landlord’s sole cost and expense, the following insurance coverage Commercial General Liability of not less than $1,000,000 per occurrence and $2,000,000 aggregate. All such policies shall be endorsed to include Tenant as an additional insured. Subject to the policy minimums set forth above in this Section 10.1, the insurance required of Landlord hereunder may be maintained by a blanket or master policy that includes properties other than the Property.

 10.2 Tenant Obligations. Throughout the Term, Tenant shall maintain, at Tenant’s sole cost and expense, the following insurance coverage: (i) workers’ compensation insurance with no less than the minimum limits required by Applicable Law; (ii) employer’s liability insurance with such limits as required by Applicable Law; and (iii) Commercial General Liability with a minimum limit of $2,000,000 per occurrence and $4,000,000 aggregate. All such policies shall be endorsed to include Landlord; Extra Space Management, Inc. and Extra Space Storage LP; and Terabonne, Inc. (Landlord’s wireless property manager) as their interests may appear under this Agreement as additional insured. Upon request from Landlord, Tenant shall provide Landlord a certification of insurance proving such coverage within thirty (30) days of receipt of Landlord’s request.

 10.3 Insurance Requirements. All policies required by this Section 10 shall be issued by insurers that are (1) licensed to do business in the state in which the Property and/or Structure are located, and (2) rated A- or better by Best’s Key Rating Guide.

 10.4 Waiver of Subrogation. To the fullest extent permitted by law, Landlord and Tenant for themselves and any and all parties claiming under or through them, including, without limitation, their respective insurers, hereby mutually release and discharge each other and the other’s Affiliates, and their respective officers, directors, shareholders, agents, employees, contractors, and/or any other person or entity for whom a Party is legally responsible from any claims for damage to any person or to the Premises or any other real or personal property that are or are claimed to have been caused by or result from risks insured against under any insurance policies carried by the waiving party and in force at the time of such damage and hereby waive any right of subrogation that might otherwise exist in or accrue to any person on account thereof. All policies required to be carried by either Party herein shall contain an endorsement in favor of the other Party waiving the insurance company’s right of subrogation against such other Party. THIS RELEASE SHALL APPLY EVEN IF THE LOSS OR DAMAGE IS CAUSED BY THE FAULT OR NEGLIGENCE OF A PARTY HERETO OR BY ANY PERSON FOR WHICH SUCH PARTY IS RESPONSIBLE. EACH PARTY AGREES TO NOTIFY ITS INSURANCE CARRIER(S) OF THIS PROVISION.

**11. Representations and Warranties**.

11.1 Representations and Warranties. Landlord represents, warrants and covenants that: (a) Landlord has the right and authority to execute and perform this Agreement; (b) to the best of Landlord’s knowledge, there are no liens, judgments or other title matters materially and adversely affecting Landlord’s title to the Property, and Landlord represents, warrants, and covenants that Landlord shall immediately cure the judgments and violations on Schedule 1 attached hereto to the extent such violations adversely impact Tenant’s ability to obtain a building permit, and if Landlord fails to cure the judgments and violations impacting Tenant’s ability to obtain a building permit within thirty (30) days after notice from Tenant of such impact, Tenant shall have the right to terminate this Agreement and shall be released from all obligations hereunder; (c) to the best of Landlord’s knowledge, there are no covenants, easements or restrictions that prevent the use of the Premises for Tenant’s Permitted Use; (d) to the best of Landlord’s knowledge and without inspection, the Structure and the Premises are in good repair and suitable for Tenant’s Permitted Use; (e) Landlord will comply with all federal, state, and local laws in connection with any substances brought on to the Property and/or Structure that are identified as toxic or hazardous by any Applicable Law, ordinance or regulation (“**Hazardous Substance**”); and (f) Tenant’s use and quiet enjoyment of the Premises shall not be disturbed. Landlord is responsible for any loss or damage, including remediation, with respect to Hazardous Substances as per Applicable Law, except to the extent solely and directly caused by Tenant. Landlord understands and agrees that notwithstanding anything contained in this Agreement to the contrary, in no event shall Tenant have any liability whatsoever with respect to any Hazardous Substance that was on, about, adjacent to, under or near the Structure prior to the Effective Date, or that was generated, possessed, used, stored, released, spilled, treated, transported, manufactured, refined, handled, produced or disposed of on, about, adjacent to, under or near the Property and/or Structure by: (1) Landlord, its agents, employees, contractors or invitees; or (2) any third party who is not an employee, agent, contractor or invitee of Tenant. Tenant understands and agrees that notwithstanding anything contained in this Agreement to the contrary, in no event shall Landlord have any liability whatsoever with respect to any Hazardous Substance that was brought onto, about, adjacent to, under or near the Structure by Tenant after the Effective Date, or that was generated, possessed, used, stored, released, spilled, treated, transported, manufactured, refined, handled, produced or disposed of on, about, adjacent to, under or near the Property and/or Structure by Tenant, its agents, employees, contractors or invitees.

**12. Miscellaneous**.

12.1 Assignment. Subject to Section 12.2 hereto, either Party may assign or otherwise transfer any of its rights or obligations under this Agreement to any third party without the prior written approval of the other Party.

12.2 Rights Upon Sale of Property or Structure. Should Landlord, at any time during the Term, sell or transfer all or any part of the Property or the Structure to a purchaser other than Tenant, such transfer shall be subject to this Agreement and Landlord shall require any such purchaser or transferee to recognize Tenant’s rights under the terms of this Agreement in a written instrument signed by Landlord and the third party transferee.

12.3 Subordination and Non-Disturbance. This Agreement shall be subordinate to any mortgage, deed of trust, or other security agreement (each a “**Mortgage**”) by Landlord which, from time to time, may encumber all or part of the Property; provided, however, the lender under every such Mortgage shall, in the event of a foreclosure of Landlord’s interest, recognize the validity of this Agreement and Tenant’s right to remain in occupancy of and have access to the Premises, as long as no Default by Tenant exists under this Agreement. If the Property is encumbered by a Mortgage, then Landlord shall, promptly following Tenant’s request, make reasonable efforts to obtain and furnish to Tenant a non-disturbance agreement, in recordable form, for each such Mortgage.

12.4 Condemnation. If all or any portion of the Premises is condemned, taken by a Governmental Authority or otherwise appropriated by the exercise of the right of eminent domain or a deed or conveyance in lieu of eminent domain (each, a “**Taking**”), either Party hereto shall have the right to terminate this Agreement immediately upon Notice to the other Party. If either Party elects to terminate this Agreement, Tenant shall remove its Equipment in accordance with Section 7.1, and this Agreement shall terminate as of the earlier of the date of such Taking or the date on which Tenant’s Equipment is removed. If this Agreement is not terminated as herein provided, then (i) this Agreement shall continue in full force and effect; (ii) Landlord shall, within a reasonable time after possession is physically taken by the condemning authority, restore the remaining portion of the Property and Structure necessary to render it reasonably suitable for the uses permitted by this Agreement;(iii) Tenant shall restore any improvements and installations within the Premises; and (iv) the Rent shall be proportionately and equitably reduced. Notwithstanding the foregoing, Landlord shall not be obligated to expend an amount greater than the proceeds received from the condemning authority less all expenses reasonably incurred in connection therewith (including attorneys’ fees) for the restoration. All compensation awarded in connection with a Taking shall be the property of Landlord, provided that if allowed under Applicable Law, Tenant may apply for and keep as its property a separate award for (i) the value of Tenant’s leasehold interest; (ii) the value of Tenant’s Equipment or other personal property of Tenant; (iii) Tenant’s relocation expenses; and (iv) if and to the extent that it does not diminish the compensation awarded to Landlord, damages to Tenant’s business incurred as a result of such Taking.

12.5 Recording. If requested by Tenant, Landlord and Tenant agree to execute a Memorandum of Lease that Tenant may record at Tenant’s sole cost and expense. The date set forth in the Memorandum of Lease is for recording purposes only, and bears no reference to commencement of the Term or rent payments of any kind.

 12.6 Force Majeure. Notwithstanding anything to the contrary in this Agreement, neither Party shall be liable to the other Party for nonperformance or delay in performance of any of its obligations under this Agreement due to causes beyond its reasonable control, including, without limitation, strikes, lockouts, pandemics, labor troubles, acts of God, accidents, technical failure governmental restrictions, insurrections, riots, enemy act, war, civil commotion, fire, explosion, flood, windstorm, earthquake, natural disaster or other casualty (“**Force Majeure**”). Upon the occurrence of a Force Majeure condition, the affected Party shall promptly notify the other Party with as much detail as possible and shall promptly inform the other Party of any further developments. Immediately after the Force Majeure event is removed or abates, the affected Party shall perform such obligations with all due speed. Neither Party shall be deemed in default of this Agreement to the extent that a delay or other breach is due to or related to a Force Majeure event. A proportion of the Rent herein reserved, according to the extent that such Force Majeure event shall interfere with the full enjoyment and use of the Premises, shall be suspended from the date of commencement of such Force Majeure event until the date that such Force Majeure event subsides. The foregoing notwithstanding, a Force Majeure event will not excuse the obligation to pay Rent or any other payments due hereunder or extend in any way the due date of payment of Rent or any other payments due hereunder, except to the extent that such Force Majeure event creates a condition that blocks, hinders, limits, or prevents Tenant from being able to use the Tenant Equipment for Tenant’s Permitted Use. If such Force Majeure event prevents the affected Party from performing its obligations under this Agreement, in whole or in part, for a period of forty-five (45) or more days, then the other Party may terminate this Agreement immediately upon Notice to the affected Party.

 12.7 Successors and Assigns. The respective rights and obligations provided in this Agreement shall bind and shall continue to apply for the benefit of the Parties hereto, their legal representative, heirs, successors and permitted assigns.

12.8 Governing Law and Construction.This Agreement shall be construed, governed and enforced in accordance with the laws of the state in which the Property and/or Structure are located. The section and paragraph headings contained in this Agreement are solely for reference purposes, and shall not affect in any way the meaning or interpretation of this Agreement.

12.9 Severability. Each provision of this Agreement shall be construed as separable and divisible from every other provision and the enforceability of any one provision shall not limit the enforceability, in whole or in part, of any other provision. If a court or administrative body of competent jurisdiction holds any provision of this Agreement to be invalid, illegal, void or less than fully enforceable as to time, scope or otherwise, such provision shall be construed by limiting and reducing it so that such provision is valid, legal and fully enforceable while preserving to the greatest extent permissible the original intent of the parties; the remaining terms and conditions of this Agreement shall not be affected by such alteration, and shall remain in full force and effect.

12.10 Waiver; Remedies. It is agreed that, except as expressly set forth in this Agreement, the rights and remedies herein provided in case of Default or breach by either Landlord or Tenant are cumulative and shall not affect in any manner any other remedies that the non-breaching Party may have by reason of such default or breach. The exercise of any right or remedy herein provided shall be without prejudice to the right to exercise any other right or remedy provided herein, at law, in equity or otherwise. In addition to, and not in limitation of, the preceding, the Parties acknowledge and agree that there will not be an adequate remedy at law for noncompliance with the provisions of Section 5, and therefore either Party shall have the right to equitable remedies, including, without limitation, injunctive relief and specific performance.

12.11 Notice. All notices or requests that are required or permitted to be given pursuant to this Agreement must be given in writing by certified US mail (postage pre-paid) with return receipt requested or by courier service (charges prepaid) to the party to be notified, addressed to such party at the address(es) set forth below, or such other address(es) as such Party may have substituted by written notice (given in accordance with this Section 12.12) to the other Party (“**Notice**”). The receipt of such Notice will constitute the giving thereof.

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| --- | --- |
| **If to be given to Landlord:** | **If to be given to Tenant:** |
| ESS Prisa II LLC | DISH Wireless L.L.C. |
| 2795 E. Cottonwood Parkway #300Salt Lake City, UT 84121 | Attn: Lease Administration5701 South Santa Fe Blvd.Littleton, Colorado 80120 |

12.12 Entire Agreement.This Agreement sets forth the entire, final and complete understanding between the Parties hereto regarding the subject matter of this Agreement, and it supersedes and replaces all previous understandings or agreements, written, oral, or implied, regarding the subject matter of this Agreement made or existing before the date of this Agreement. Except as expressly provided by this Agreement, no waiver or modification of any of the terms or conditions of this Agreement shall be effective unless in writing and signed by both Parties. Any provision of this Agreement that logically would be expected to survive termination or expiration, shall survive for a reasonable time period under the circumstances, whether or not specifically provided in this Agreement.

12.13 Compliance with Law. Each Party shall, with respect to its actions and/or inactions pursuant to and in connection with this Agreement, comply with all applicable statutes, laws, rules, ordinances, codes and governmental or quasi-governmental orders or regulations (in each case, whether federal, state, local or otherwise) and all amendments thereto, now enacted or hereafter promulgated and in force during the term of this Agreement, a Renewal Term or any extension of either of the foregoing.

12.14 Counterparts. This Agreement may be executed in any number of identical counterparts and, if so executed, shall constitute one agreement, binding on all the Parties hereto, notwithstanding that all the Parties are not signatories to the original or the same counterpart. Execution of this Agreement by facsimile or electronic signature shall be effective to create a binding agreement and, if requested, Landlord and Tenant agree to exchange original signed counterparts in their possession.

 12.15 Attorneys’ Fees. If an action is brought by either Party for breach of any covenant and/or to enforce or interpret any provision of this Agreement, the prevailing Party shall be entitled to recover its costs, expenses and reasonable attorneys’ fees, both at trial and on appeal, in addition to all other sums allowed by law.

 12.16 Incorporation of Exhibits. All exhibits referenced herein and attached hereto are hereby incorporated herein in their entirety by this reference.

[*Remainder of page intentionally left blank. Signature page follows.*]

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Agreement as of the Effective Date.

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| --- | --- |
| **LANDLORD:****ESS Prisa II LLC** By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **TENANT:****DISH WIRELESS L.L.C.**By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

EXHIBIT A

**Legal Description of Property**



Block 5965 Lot 84

EXHIBIT B

**LEASE EXHIBITS**

**[To be inserted prior to execution]**

EXHIBIT C

building policy



schedule 1

JUDGMENTS AND violations

