

**ORDINANCE NO. 2018-16**

**AN ORDINANCE OF THE CITY OF FRUITA, COLORADO APPROVING A BUILDING AND ROOFTOP LEASE AGREEMENT BETWEEN THE CITY OF FRUITA AND VERIZON WIRELESS CONCERNING THE INSTALLATION, MAINTENANCE AND OPERATION OF COMMUNICATIONS EQUIPMENT ON CITY PROPERTY.**

**WHEREAS**, the installation, maintenance and operation of Verizon Wireless' equipment will include land owned by the City of Fruita and located within the City of Fruita; and

**WHEREAS**, the City of Fruita and Verizon Wireless desire to enter into an agreement concerning Verizon's use of the City's property for installation, maintenance and operation of communications equipment; and

**WHEREAS**, Section 2.11(D) of the Fruita City Charter requires that an ordinance be enacted approving the lease of any real estate for a period of more than one (1) year.

**NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO:**

**Section 1.** The Building and Rooftop Lease Agreement between the City of Fruita, Colorado and Verizon Wireless, attached hereto as Exhibit "A" and incorporated herein by this reference is hereby approved.

**Section 2.** The Mayor of the City of Fruita is hereby authorized and directed to execute the attached Building and Rooftop Lease Agreement on behalf of the City of Fruita.

**PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL, THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2018.**

CITY OF FRUITA

\_\_\_\_\_  
Joel Kincaid, Mayor

ATTEST:

\_\_\_\_\_  
Margaret Sell, City Clerk

**EXHIBIT A TO ORDINANCE 2018-16**  
**ROOFTOP LEASE AGREEMENT**

This Land and Rooftop Lease Agreement (the "Agreement") made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between The City of Fruita, a municipal corporation with its principal offices located at 325 E. Aspen St, Fruita, CO 81521, hereinafter designated LESSOR and Verizon Wireless (VAW) LLC d/b/a Verizon Wireless with its principal offices at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920, hereinafter designated LESSEE. LESSOR and LESSEE are at times collectively referred to hereinafter as the "Parties" or individually as the "Party."

WITNESSETH

In consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties hereto agree as follows:

1. GRANT. In accordance with this Agreement, LESSOR hereby grants to LESSEE the right to install, maintain and operate communications equipment ("Use") upon a portion of the property and in and/or upon that certain building or facility owned, leased or controlled by LESSOR at 324 N. Coulson St, Fruita, CO 81521 (the "Property" or "Building"). The Property is legally described on Exhibit "A" attached hereto and made a part hereof. LESSEE's communications equipment will be installed on a portion of the Property consisting of approximately 260 square feet of building space and rooftop space on the Building (the "Premises"). The Premises are shown in detail on Exhibit "B" attached hereto and made a part hereof. LESSEE may survey the Premises. Upon completion, the survey shall replace Exhibit "B" in its entirety.

2. INITIAL TERM. This Agreement shall be effective as of the date of execution by both Parties ("Effective Date"). The initial term of the Agreement shall be for 5 years beginning on the Commencement Date (as hereinafter defined). The "Commencement Date" shall be the first day of the month after LESSEE begins installation of LESSEE's communications equipment. The parties agree to acknowledge the Commencement Date in writing.

3. EXTENSIONS. This Agreement shall automatically be extended for 4 additional 5 year terms unless Lessee terminates it at the end of the then current term by giving LESSOR written notice of the intent to terminate at least 3 months prior to the end of the then current term. The initial term and all extensions shall be collectively referred to herein as the "Term".

4. RENTAL.

(a). Rental payments shall begin on the Commencement Date and be due at a total annual rental of \$25,000.00, to be paid in equal monthly installments on the first day of the month, in advance, to LESSOR at 324 N. Coulson St, Fruita, CO 81521, or to such other person, firm, or place as LESSOR may, from time to time, designate in writing at least 30 days in advance of any rental payment date by notice given in accordance with Paragraph 22 below. LESSOR and LESSEE acknowledge and agree that the initial rental payment shall not be delivered by LESSEE until 90 days after the Commencement Date. Upon agreement of the Parties, LESSEE may pay rent by electronic funds transfer and in such event, LESSOR agrees to provide to LESSEE bank routing information for such purpose upon request of Lessee.

(b). For any party to whom rental payments are to be made, LESSOR or any successor in interest of LESSOR hereby agrees to provide to LESSEE (i) a completed, current version of Internal Revenue Service Form W-9, or equivalent; (ii) complete and fully executed state and local withholding forms if required; and (iii) other documentation to verify LESSOR's or such other party's right to receive rental as is reasonably requested by LESSEE. Rental shall accrue in accordance with this Agreement, but LESSEE shall have no obligation to deliver rental payments until the requested documentation has been received by LESSEE. Upon receipt of the requested documentation, LESSEE shall deliver the accrued rental payments as directed by LESSOR.

(c). Beginning on the first anniversary of the Commencement Date and continuing throughout the Term, including any extensions or additional extensions, the annual rental due hereunder shall increase by 2.5% over the annual rental due during the immediately preceding lease year.

5. ACCESS. LESSEE shall have the non-exclusive right of ingress and egress from a public right-of-way, 7 days a week, 24 hours a day, over the Property to and from the Premises for the purpose of installation, operation and maintenance of LESSEE's communications equipment over or along a 10 foot easement (the "Easement") for the installation and maintenance of utility wires, poles, cables, conduits, and pipes over, under, or along one or more rights of way to and from the Premises. Both the Easement and the Utility Easement shall be depicted on Exhibit "B". LESSEE may use the Easement for the installation, operation and maintenance of wires, cables, conduits and pipes for all necessary electrical, telephone, fiber and other similar support services. Without limitation, the Premises may include certain space within the building, on the roof of the building or elsewhere on the building sufficient for the installation, operation and maintenance of communications equipment. Notwithstanding anything to the contrary, the Premises shall include (1) such additional space necessary for the installation, operation and maintenance of wires, cables, conduits and pipes running between and among the various portion of the Premises and to all necessary electrical, telephone, fiber and other similar support services located within the Property or the nearest public right of way, and (2) such additional space sufficient for LESSEE's radio frequency signage and/or barricades as are necessary to ensure LESSEE's compliance with Laws (as defined in Paragraph 30). In the event it is necessary, LESSOR agrees to grant LESSEE or the provider the right to install such services on, through, over and/or under the Property, provided the location of such services shall be reasonably approved by LESSOR.

6. CONDITION OF PROPERTY. LESSOR shall deliver the Premises to LESSEE in a condition ready for LESSEE's use and clean and free of debris. LESSOR represents and warrants to LESSEE that as of the Effective Date, the Premises and the structure of the Building (including without limitation the roof, foundations, exterior walls), the common areas and all building systems (including, without limitation, the plumbing, electrical, ventilating, air conditioning, heating, and loading doors, if any) are (a) in good operating condition and free of any leakage; (b) in compliance with all Laws; and (c) in compliance with all EH&S Laws (as defined in Paragraph 26).

7. RELOCATION. Following the third year of this Agreement, should LESSOR wish to redevelop the Property, LESSOR shall have a one-time right to relocate LESSEE's equipment at LESSEE's expense to another location on the Property, hereinafter referred to as the "Relocation Site." Upon LESSOR's request, LESSEE agrees to relocate its equipment to a Relocation Site for the purpose of LESSOR

redeveloping or performing construction, maintenance, repair, or similar work at the Property or in the Building, provided:

- i. The Relocation Site is similar to LESSEE's existing location in size, is compatible for LESSEE's use and LESSEE approves of the new site as a reasonable alternative, which approval shall not be unreasonably withheld;
- ii. LESSOR gives LESSEE at least eighteen (18) months written notice prior to requiring LESSEE to relocate;
- iii. LESSEE's use at the Premises is not materially interrupted or diminished during the relocation and LESSEE is allowed, if necessary, in LESSEE's reasonable determination, to place a temporary installation on the Property during any such relocation;
- iv. In the event that LESSEE cannot continue its operations or place temporary transmission and reception facilities on the Property, the Rent shall abate until LESSEE commences its operations or is permitted to place a temporary transmission and reception facility;
- v. Upon the relocation of the Premises, LESSEE's rights in the surrendered area shall be terminated upon the LESSOR and LESSEE entering into an amendment to this Agreement referencing the revised description of the Premises.

#### 8. ELECTRICAL.

a. LESSOR shall, at all times during the Term, provide access for electrical service and telephone service to the Premises. LESSEE shall connect to LESSOR's existing electrical service at the Property or if permitted by the local utility company, shall furnish and install an electrical sub-meter for the measurement of electrical power used by LESSEE's facility. Effective as of the date LESSEE commences rent payments hereunder, LESSEE shall be obligated to make a payment of One Hundred and 00/100 Dollars (\$100.00) per month ("Electrical Payment") to LESSOR as a payment for LESSEE's electrical usage for one month, in accordance with the payment procedures and subject to adjustment as provided below:

i. Within sixty (60) days after each anniversary of the Commencement Date, LESSOR may request reimbursement from LESSEE for amounts paid or owing for the preceding lease year to the extent that the cost of LESSEE's electrical usage exceeds the Electrical Payment (a "Reimbursement Request"), and shall submit to LESSEE copies of invoices ("Invoices") documenting Lessee's electrical usage for the relevant lease year with its Reimbursement Request. Licensor shall send Reimbursement Requests to Verizon Wireless, M/S 3846, P.O. Box 2375, Spokane, WA 99210-2375, livebills@ecova.com. If LESSOR fails to submit a Reimbursement Request within such sixty (60) day period, LESSOR shall be deemed to have waived its rights to an accounting as provided by this paragraph.

ii. The Invoices submitted by LESSOR will constitute a final determination as between LESSOR and LESSEE of LESSEE's electrical usage for the periods represented by the Invoices and shall be paid by LESSEE within sixty (60) days after receipt by LESSEE of the Invoices, unless, within sixty (60) days after receipt by LESSEE of the Invoices, LESSEE gives written notice to LESSOR that it disputes the accuracy of the Invoices and describes the inaccuracies (the "Dispute Notice").

iii. If LESSOR and LESSEE are unable to reach agreement with respect to the disputed Invoices the disagreement shall be decided by a professional consultant chosen by LESSEE and acceptable to LESSOR, whose determination shall be binding on LESSOR and LESSEE.

b. Lessee shall be permitted at any time during the Term, to install, maintain and/or provide access to and use of, as necessary (during any power interruption at the Premises), a temporary power source, and all related equipment and appurtenances within the Premises, or elsewhere on the Property in such locations as may be reasonably approved by Lessor. Lessee shall have the right to install conduits connecting the temporary power source and related appurtenances to the Premises.

9. IMPROVEMENTS. The communications equipment including, without limitation, antennas, conduits, fencing and other screening, and other improvements shall be at LESSEE's expense and installation shall be at the discretion and option of LESSEE. LESSEE shall have the right to replace, repair, add or otherwise modify its communications equipment, antennas, conduits, fencing and other screening, or other improvements or any portion thereof and the frequencies over which the communications equipment operates, whether or not any of the communications equipment, antennas, conduits or other improvements are listed on any exhibit.

10. GOVERNMENT APPROVALS. LESSEE's Use is contingent upon LESSEE obtaining all of the certificates, permits and other approvals (collectively the "Government Approvals") that may be required by any Federal, State or Local authorities (collectively, the "Government Entities") as well as a satisfactory soil boring test, environmental studies, satisfactory structural analysis of the building or other structure, or any other due diligence LESSEE reasonably chooses that will permit LESSEE's Use. LESSOR shall cooperate with LESSEE in its effort to obtain such approvals and shall take no action which would adversely affect the status of the Property with respect to LESSEE's Use.

11. TERMINATION. LESSEE may, unless otherwise stated, immediately terminate this Agreement upon written notice to LESSOR in the event that (i) any applications for such Government Approvals should be finally rejected; (ii) any Government Approval issued to LESSEE is canceled, expires, lapses or is otherwise withdrawn or terminated by any Government Entity; (iii) LESSEE determines that such Government Approvals may not be obtained in a timely manner; (iv) LESSEE determines any structural analysis is unsatisfactory; (v) LESSEE, in its sole discretion, determines the Use of the Premises is obsolete or unnecessary; (vi) with 3 months prior notice to LESSOR, upon the annual anniversary of the Commencement Date; or (vii) at any time before the Commencement Date for any reason or no reason in LESSEE's sole discretion. LESSOR may immediately terminate this Agreement upon the making by LESSEE of any general assignment for the benefit of creditors; the filing by or against LESSEE of a petition to have LESSEE adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against LESSEE, the same is dismissed within sixty days); the appointment of a trustee or receiver to take possession of substantially all of LESSEE's

assets located at the Property or of LESSEE's interest in this Agreement, where possession is not restored to Lessee with thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of LESSEE's assets located at the Property or of LESSEE's interest in this Agreement where such seizure is not discharged within thirty (30) days.

12. MAINTENANCE. LESSEE will maintain LESSEE's communication equipment within the Premises in good condition, reasonable wear and tear and casualty damage excepted. LESSOR shall maintain, in good operating condition and repair, the structural elements of the building and the Premises, and all building systems (including, but not limited to, the foundations, exterior walls, structural condition of interior bearing walls, exterior roof fire sprinkler and/or standpipe and hose or other automatic fire extinguishing system, fire hydrants, parking lots, walkways, parkways, driveways, landscaping, fences, signs and utility systems serving the common areas) and the common areas.

13. INSURANCE.

(a). The Parties agree that at their own cost and expense, each will maintain commercial general liability insurance with limits not less than \$2,000,000 for injury to or death of one or more persons in any one occurrence and \$2,000,000 for damage or destruction in any one occurrence. The Parties agree to include the other Party as an additional insured. The Parties hereby waive and release any and all rights of action for negligence against the other which may hereafter arise on account of damage to the Premises or the Property, resulting from any fire, or other casualty which is insurable under "Causes of Loss – Special Form" property damage insurance or for the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the Parties, even if any such fire or other casualty shall have been caused by the fault or negligence of the other Party. These waivers and releases shall apply between the Parties and they shall also apply to any claims under or through either Party as a result of any asserted right of subrogation. All such policies of insurance obtained by either Party concerning the Premises or the Property shall waive the insurer's right of subrogation against the other Party.

(b). LESSOR shall obtain and keep in force during the Term a policy or policies insuring against loss or damage to the building with a commercially reasonable valuation, as the same shall exist from time to time without a coinsurance feature. LESSOR's policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and earthquake unless required by a lender or included in the base premium), including coverage for any additional costs resulting from debris removal and reasonable amounts of coverage for the enforcement of any ordinance or law regulating the reconstruction or replacement of any undamaged sections of the building required to be demolished or removed by reason of the enforcement of any building, zoning, safety or land use laws as the result of a covered loss, but not including plate glass insurance.

14. LIMITATION OF LIABILITY. Neither Party shall be liable to the other, or any of their respective agents, representatives, or employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

15. INTERFERENCE.

(a). LESSEE agrees that LESSEE will not cause interference that is measurable in accordance with industry standards to LESSOR's equipment. LESSOR agrees that LESSOR and other occupants of the Property will not cause interference that is measurable in accordance with industry standards to the then existing equipment of LESSEE.

(b). Without limiting any other rights or remedies, if interference occurs and continues for a period in excess of 48 hours following notice to the interfering party via telephone to LESSEE'S Network Operations Center at (800) 264-6620 or to LESSOR at (970) 858-0360 x6405, the interfering party shall or shall require any other user to reduce power or cease operations of the interfering equipment until the interference is cured.

(c). The Parties acknowledge that there will not be an adequate remedy at law for noncompliance with the provisions of this paragraph and therefore the Parties shall have the right to equitable remedies such as, without limitation, injunctive relief and specific performance.

16. REMOVAL AT END OF TERM. Upon expiration or within 90 days of earlier termination, LESSEE shall remove LESSEE's Communications Equipment (except footings) and restore the Premises to its original condition, reasonable wear and tear and casualty damage excepted. LESSOR agrees and acknowledges that the communications equipment shall remain the personal property of LESSEE and LESSEE shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and attachments to real property under applicable laws. If such time for removal causes LESSEE to remain on the Premises after termination of the Agreement, LESSEE shall pay rent at the then existing monthly rate or on the existing monthly pro-rata basis if based upon a longer payment term, until the removal of the communications equipment is completed.

17. HOLDOVER. If upon expiration of the Term the Parties are negotiating a new lease or a lease extension, then this Agreement shall continue during such negotiations on a month to month basis at the rental in effect as of the date of the expiration of the Term. In the event that the Parties are not in the process of negotiating a new lease or lease extension and LESSEE holds over after the expiration or earlier termination of the Term, then Lessee shall pay rent at the then existing monthly rate or on the existing monthly pro-rata basis if based upon a longer payment term, until the removal of the communications equipment is completed.

18. RIGHT OF FIRST REFUSAL. If at any time after this Agreement is fully executed, LESSOR receives an offer or letter of intent from any person or entity that is in the business of owning, managing or operating communications facilities or is in the business of acquiring landlord interests in agreements relating to communications facilities, to purchase fee title, an easement, a lease, a license, or any other interest in the Premises or any portion thereof or to acquire any interest in this Agreement, or an option for any of the foregoing, LESSOR shall provide written notice to LESSEE of said offer ("LESSOR's Notice"). LESSOR's Notice shall include the prospective buyer's name, the purchase price being offered, any other consideration being offered, the other terms and conditions of the offer, a description of the portion of and interest in the Premises and/or this Agreement which will be conveyed in the proposed transaction, and a copy of any letters of intent or form agreements presented to LESSOR by the third party offeror.

LESSEE shall have the right of first refusal to meet any bona fide offer of sale or transfer on the terms and conditions of such offer or by effectuating a transaction with substantially equivalent financial terms. If LESSEE fails to provide written notice to LESSOR that LESSEE intends to meet such bona fide offer within thirty (30) days after receipt of LESSOR's Notice, LESSOR may proceed with the proposed transaction in accordance with the terms and conditions of such third party offer, in which event this Agreement shall continue in full force and effect and the right of first refusal described in this paragraph shall survive any such conveyance to a third party. If LESSEE provides LESSOR with notice of LESSEE's intention to meet the third party offer within thirty (30) days after receipt of LESSOR's Notice, then if LESSOR's Notice describes a transaction involving greater space than the Premises, LESSEE may elect to proceed with a transaction covering only the Premises and the purchase price shall be pro-rated on a square footage basis. Further, LESSOR acknowledges and agrees that if LESSEE exercises this right of first refusal, LESSEE may require a reasonable period of time to conduct due diligence and effectuate the closing of a transaction on substantially equivalent financial terms of the third party offer. LESSEE may elect to amend this Agreement to effectuate the proposed financial terms of the third party offer rather than acquiring fee simple title or an easement interest in the Premises. For purposes of this paragraph, any transfer, bequest or devise of LESSOR's interest in the Property as a result of the death of LESSOR, whether by will or intestate succession, or any conveyance to LESSOR's family members by direct conveyance or by conveyance to a trust for the benefit of family members shall not be considered a sale for which LESSEE has any right of first refusal.

19. RIGHTS UPON SALE. Should LESSOR, at any time during the Term, decide (i) to sell or otherwise transfer all or any part of the Property, or (ii) to grant to a third party by easement or other legal instrument an interest in and to any portion of the Premises, such sale, transfer, or grant of an easement or interest therein shall be under and subject to this Agreement and any such purchaser or transferee shall recognize LESSEE's rights hereunder. In the event that LESSOR completes any such sale, transfer, or grant described in this paragraph without executing an assignment of the Agreement whereby the third party agrees in writing to assume all obligations of LESSOR under this Agreement, then LESSOR shall not be released from its obligations to LESSEE under this Agreement, and LESSEE shall have the right to look to LESSOR and the third party for the full performance of the Agreement.

20. LESSOR'S TITLE. LESSOR covenants that LESSEE, on paying the rent and performing the covenants herein, shall peaceably and quietly have, hold and enjoy the Premises. LESSOR represents and warrants to LESSEE as of the Effective Date and covenants during the Term that LESSOR has full authority to enter into and execute this Agreement and that there are no liens, judgments, covenants, easement, restrictions or other impediments of title that will adversely affect LESSEE's Use.

21. ASSIGNMENT. Without any approval or consent of the other Party, this Agreement may be sold, assigned or transferred by either Party to (i) any entity in which the Party directly or indirectly holds an equity or similar interest; (ii) any entity which directly or indirectly holds an equity or similar interest in the Party; or (iii) any entity directly or indirectly under common control with the Party. LESSEE may assign this Agreement to any entity which acquires all or substantially all of LESSEE's assets in the market defined by the FCC in which the Property is located by reason of a merger, acquisition or other business reorganization without approval or consent of LESSOR. As to other parties, this Agreement may not be sold, assigned or transferred without the written consent of the other Party, which such consent will not be unreasonably withheld, delayed or conditioned. No change of stock ownership, partnership interest or



control of LESSEE or transfer upon partnership or corporate dissolution of either Party shall constitute an assignment hereunder. LESSEE may sublet the Premises in LESSEE's sole discretion.

22. NOTICES. Except for notices permitted via telephone in accordance with Paragraph 15, all notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

LESSOR: City of Fruita  
325 E. Aspen St.  
Fruita, CO 81521

LESSEE: Verizon Wireless (VAW) LLC  
d/b/a Verizon Wireless  
180 Washington Valley Road  
Bedminster, New Jersey 07921  
Attention: Network Real Estate

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

23. SUBORDINATION AND NON-DISTURBANCE. Within 15 days of the Effective Date, LESSOR shall obtain a Non-Disturbance Agreement, as defined below, from its existing mortgagee(s), ground lessors and master lessors, if any, of the Property. At LESSOR's option, this Agreement shall be subordinate to any future master lease, ground lease, mortgage, deed of trust or other security interest (a "Mortgage") by LESSOR which from time to time may encumber all or part of the Property; provided, however, as a condition precedent to LESSEE being required to subordinate its interest in this Agreement to any future Mortgage covering the Property and/or building, LESSOR shall obtain for LESSEE's benefit a non-disturbance and attornment agreement for LESSEE's benefit in the form reasonably satisfactory to LESSEE, and containing the terms described below (the "Non-Disturbance Agreement"), and shall recognize LESSEE's rights under this Agreement. The Non-Disturbance Agreement shall include the encumbering party's ("Lender's") agreement that, if Lender or its successor-in-interest or any purchaser of Lender's or its successor's interest (a "Purchaser") acquires an ownership interest in the Property and/or building, Lender or such successor-in-interest or Purchaser will honor all of the terms of the Agreement. Such Non-Disturbance Agreement must be binding on all of Lender's participants in the subject loan (if any) and on all successors and assigns of Lender and/or its participants and on all Purchasers. In return for such Non-Disturbance Agreement, LESSEE will execute an agreement for Lender's benefit in which LESSEE (1) confirms that the Agreement is subordinate to the Mortgage or other real property interest in favor of Lender, (2) agrees to attorn to Lender if Lender becomes the owner of the Property and/or building and (3) agrees to accept a cure by Lender of any of LESSOR's defaults, provided such cure is completed within the deadline applicable to LESSOR. In the event LESSOR defaults in the payment and/or other performance of any mortgage or other real property interest encumbering the Property, LESSEE, may, at its sole option and without obligation, cure or correct LESSOR's default and upon doing so, LESSEE shall be subrogated to any and all rights, titles, liens and equities of the holders of

such mortgage or other real property interest and LESSEE shall be entitled to deduct and setoff against all rents that may otherwise become due under this Agreement the sums paid by LESSEE to cure or correct such defaults.

24. DEFAULT. It is a "Default" if (i) either Party fails to comply with this Agreement and does not remedy the failure within 30 days after written notice by the other Party or, if the failure cannot reasonably be remedied in such time, if the failing Party does not commence a remedy within the allotted 30 days and diligently pursue the cure to completion within 90 days after the initial written notice, or (ii) LESSOR fails to comply with this Agreement and the failure interferes with LESSEE's Use and LESSOR does not remedy the failure within 5 days after written notice from LESSEE or, if the failure cannot reasonably be remedied in such time, if LESSOR does not commence a remedy within the allotted 5 days and diligently pursue the cure to completion within 15 days after the initial written notice. The cure periods set forth in this Paragraph 24 do not extend the period of time in which either Party has to cure interference pursuant to Paragraph 15 of this Agreement.

25. REMEDIES. In the event of a Default, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such default, the non-defaulting Party may terminate this Agreement and/or pursue any remedy now or hereafter available to the non-defaulting Party under the Laws or judicial decisions of the state in which the Property is located. Further, upon a Default, the non-defaulting Party may at its option (but without obligation to do so), perform the defaulting Party's duty or obligation. The costs and expenses of any such performance by the non-defaulting Party shall be due and payable by the defaulting Party upon invoice therefor. If LESSEE undertakes any such performance on LESSOR's behalf and LESSOR does not pay LESSEE the full undisputed amount within 30 days of its receipt of an invoice setting forth the amount due, LESSEE may offset the full undisputed amount due against all fees due and owing to LESSOR under this Agreement until the full undisputed amount is fully reimbursed to LESSEE.

26. PREVAILING PARTY ATTORNEY FEES. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover reasonable costs and attorneys' fees.

27. ENVIRONMENTAL. LESSEE shall conduct its business in compliance with all applicable laws governing the protection of the environment or employee health and safety ("EH&S Laws"). LESSEE shall indemnify and hold harmless the LESSOR from claims to the extent resulting from LESSEE's violation of any applicable EH&S Laws or to the extent that LESSEE causes a release of any regulated substance to the environment. LESSOR shall indemnify and hold harmless LESSEE from all claims resulting from the violation of any applicable EH&S Laws or a release of any regulated substance to the environment except to the extent resulting from the activities of LESSEE. The Parties recognize that LESSEE is only leasing a small portion of LESSOR's property and that LESSEE shall not be responsible for any environmental condition or issue except to the extent resulting from LESSEE's specific activities and responsibilities. In the event that LESSEE encounters any hazardous substances that do not result from its activities, LESSEE may relocate its facilities to avoid such hazardous substances to a mutually agreeable location or, if LESSEE desires to remove at its own cost all or some the hazardous substances or materials (such as soil) containing those hazardous substances, LESSOR agrees to sign any necessary waste manifest associated with the removal, transportation and/or disposal of such substances.

28. CASUALTY. If a fire or other casualty damages the Property or the Premises and impairs LESSEE's Use, rent shall abate until LESSEE'S Use is restored. If LESSEE's Use is not restored within 45 days, LESSEE may terminate this Agreement.

29. CONDEMNATION. If a condemnation of any portion of the Property or Premises impairs LESSEE's Use, Lessee may terminate this Agreement. LESSEE may on its own behalf make a claim in any condemnation proceeding involving the Premises for losses related to LESSEE's communications equipment, relocation costs and, specifically excluding loss of LESSEE's leasehold interest, any other damages LESSEE may incur as a result of any such condemnation.

30. APPLICABLE LAWS. During the Term, LESSOR shall maintain the Property in compliance with all applicable laws, EH&S Laws, rules, regulations, ordinances, directives, covenants, easements, consent decrees, zoning and land use regulations, and restrictions of record, permits, building codes, and the requirements of any applicable fire insurance underwriter or rating bureau, now in effect or which may hereafter come into effect (including, without limitation, the Americans with Disabilities Act and laws regulating hazardous substances) (collectively "Laws"). LESSEE shall, in respect to the condition of the Premises and at LESSEE's sole cost and expense, comply with (i) all Laws relating solely to LESSEE's specific and unique nature of use of the Premises; and (ii) all building codes requiring modifications to the Premises due to the improvements being made by LESSEE in the Premises. It shall be LESSOR's obligation to comply with all Laws relating to the Property, without regard to specific use (including, without limitation, modifications required to enable LESSEE to obtain all necessary building permits).

31. TAXES.

(a). LESSOR shall invoice and LESSEE shall pay any applicable transaction tax (including sales, use, gross receipts, or excise tax) imposed on the LESSEE and required to be collected by the LESSOR based on any service, rental space, or equipment provided by the LESSOR to the LESSEE. LESSEE shall pay all personal property taxes, fees, assessments, or other taxes and charges imposed by any Government Entity that are imposed on the LESSEE and required to be paid by the LESSEE that are directly attributable to the LESSEE's equipment or LESSEE's use and occupancy of the Premises. Payment shall be made by LESSEE within 60 days after presentation of a receipted bill and/or assessment notice which is the basis for such taxes or charges. LESSOR shall pay all ad valorem, personal property, real estate, sales and use taxes, fees, assessments or other taxes or charges that are attributable to LESSOR's Property or any portion thereof imposed by any Government Entity.

(b). LESSEE shall have the right, at its sole option and at its sole cost and expense, to appeal, challenge or seek modification of any tax assessment or billing for which LESSEE is wholly or partly responsible for payment. LESSOR shall reasonably cooperate with LESSEE at LESSEE's expense in filing, prosecuting and perfecting any appeal or challenge to taxes as set forth in the preceding sentence, including but not limited to, executing any consent, appeal or other similar document. In the event that as a result of any appeal or challenge by LESSEE, there is a reduction, credit or repayment received by the LESSOR for any taxes previously paid by LESSEE, LESSOR agrees to promptly reimburse to LESSEE the amount of said reduction, credit or repayment. In the event that LESSEE does not have the standing rights to pursue a good faith and reasonable

dispute of any taxes under this paragraph, LESSOR will pursue such dispute at LESSEE's sole cost and expense upon written request of LESSEE.

32. MOST FAVORED LESSEE. LESSOR represents and warrants that the rent, benefits and terms and conditions granted to LESSEE by LESSOR hereunder are now and shall be, during the Term, no less favorable than the rent, benefits and terms and conditions for substantially the same or similar tenancies or licenses granted by LESSOR to other parties. If at any time during the Term LESSOR shall offer more favorable rent, benefits or terms and conditions for substantially the same or similar tenancies or licenses as those granted hereunder, then LESSOR shall, within 30 days after the effective date of such offering, notify LESSEE of such fact and offer LESSEE the more favorable offering. If LESSEE chooses, the parties shall then enter into an amendment that shall be effective retroactively to the effective date of the more favorable offering, and shall provide the same rent, benefits or terms and conditions to LESSEE. LESSEE shall have the right to decline to accept the offering. LESSOR's compliance with this requirement shall be subject, at LESSEE's option, to independent verification.

33. MISCELLANEOUS. This Agreement contains all agreements, promises and understandings between the LESSOR and the LESSEE regarding this transaction, and no oral agreement, promises or understandings shall be binding upon either the LESSOR or the LESSEE in any dispute, controversy or proceeding. This Agreement may not be amended or varied except in a writing signed by all Parties. This Agreement shall extend to and bind the heirs, personal representatives, successors and assigns hereto. The failure of either party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights hereunder shall not waive such rights and such party shall have the right to enforce such rights at any time. The performance of this Agreement shall be governed, interpreted, construed and regulated by the laws of the state in which the Premises is located without reference to its choice of law rules. Except as expressly set forth in this Agreement, nothing in this Agreement shall grant, suggest or imply any authority for one Party to use the name, trademarks, service marks or trade names of the other for any purpose whatsoever. LESSOR agrees to execute a Memorandum of this Agreement, which LESSEE may record with the appropriate recording officer. The provisions of the Agreement relating to indemnification from one Party to the other Party shall survive any termination or expiration of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

**LESSOR:**

**City of Fruita, a municipal corporation**

By: \_\_\_\_\_

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

Its: \_\_\_\_\_

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

**LESSEE:**

**Verizon Wireless (VAW) LLC d/b/a Verizon  
Wireless**

By: \_\_\_\_\_

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

Its: \_\_\_\_\_

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

**EXHIBIT "A"**

**DESCRIPTION OF PROPERTY**

The land referred to in Schedule A is situated in the County of Mesa, State of Colorado and is described as follows:

THE NORTH 200 FEET OF TRACT 43, ORCHARD SUBDIVISION TO THE TOWN OF FRUITA, COUNTY OF MESA, STATE OF COLORADO.

**EXHIBIT "B"**

**PREMISES**

**(Attached)**

# EXHIBIT B (1 of 2)

### LEGEND

- ⊠ ALUMINUM CAP IN HANDHOLE
- ⊙ AIR CONDITIONING UNIT
- ⊞ ELECTRICAL POLE BOX
- ⊞ ELECTRICAL TRANSFORMER
- ⊞ ELECTRIC VAULT
- ⊞ POWER POLE
- ⊞ LIGHT POLE
- ⊞ VENT STACK
- ⊞ VENT PIPE
- ⊞ ROOF DRAIN
- ⊞ GAS METER
- ⊞ FIRE HYDRANT
- ⊞ WATER VALVE
- ⊞ WATER METER
- ⊞ SANITARY SEWER MANHOLE
- ⊞ SANITARY SEWER CLEANOUT
- ⊞ IRRIGATION CONTROL VALVE
- ⊞ STORM MANHOLE
- ⊞ STORM DRAIN CHUTE
- ⊞ DECADUOUS TREE
- ⊞ SHrub
- ⊞ BREAKLINE

- ⊙ SPOT ELEVATION
- ⊙ SCHEDULE B HP
- ⊙ POSITION OF GEODETIC COORDINATES
- APN APN
- ⊞ BUILDING
- CLF CHAIN LINK FENCE
- CS CONCRETE SURFACE
- DRW DRIVEWAY
- FS FURNISH SURFACE
- NO NATURAL GRADE
- PV ASPHALT
- PRM TOP OF PARAPET
- RM SIDEWALK
- RHW RIGHT OF WAY
- TWC TOP OF CURB
- TW TOP OF WALL
- ⊙ ROOF LIGHT
- PROPERTY LINE
- PROPERTY LINE (OTHER)
- RIGHT OF WAY LINE
- CENTERLINE

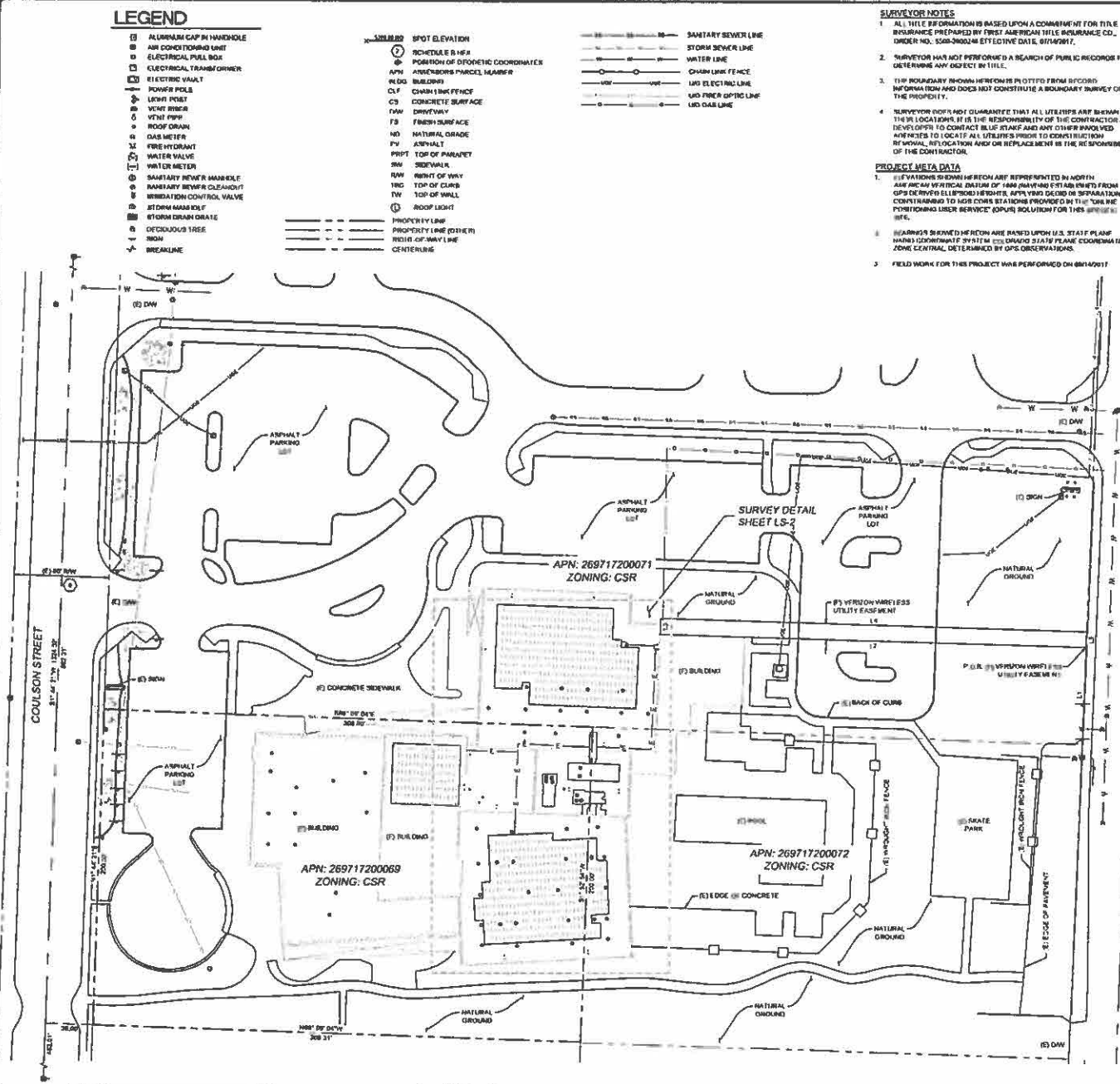
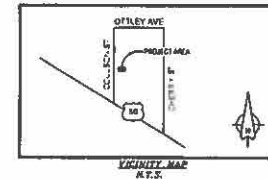
- SANITARY SEWER LINE
- STORM SEWER LINE
- WATER LINE
- CHAIN LINK FENCE
- GAS ELECTRIC LINE
- GAS ELECTRIC LINE
- GAS LINE

### SURVEYOR NOTES

1. ALL TITLE INFORMATION IS BASED UPON A COMMENT FOR TITLE INSURANCE PREPARED BY FIRST AMERICAN TITLE INSURANCE CO., UNDER NO. 1003029189 EFFECTIVE DATE: 07/26/07.
2. SURVEYOR HAS NOT PERFORMED A SEARCH OF PUBLIC RECORDS TO DETERMINE ANY DEFECT BY TITLE.
3. THE BOUNDARY SHOWN HEREON IS PLOTTED FROM EXISTING INFORMATION AND DOES NOT CONSTITUTE A BOUNDARY SURVEY OF THE PROPERTY.
4. SURVEYOR DOES NOT GUARANTEE THAT ALL UTILITIES ARE SHOWN ON THIS LOCAL MAP. IT IS THE RESPONSIBILITY OF THE CONTRACTOR AND DEVELOPER TO CONTACT BLUE STAKE AND ANY OTHER APPROPRIATE AGENCIES TO LOCATE ALL UTILITIES PRIOR TO CONSTRUCTION, REMOVAL, RELOCATION AND/OR REPLACEMENT IS THE RESPONSIBILITY OF THE CONTRACTOR.

### PROJECT META DATA

1. ELEVATIONS SHOWN HEREON ARE REPRESENTED IN NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD8) EIGHTH EDITION FROM GPS CONTROLLED ELLIPSOID HEIGHTS, AFTER VARIOUS CORRECTIONS CONTRIBUTING TO ACCURACY BEHAVIOR PROVIDED BY THE "REAL TIME POSITIONING USER SERVICE" (RTUP) SOLUTION FOR THIS SERVICE IS NOT APPLICABLE.
2. BOUNDARIES SHOWN HEREON ARE BASED UPON U.S. STATE PLANNING MAPS CORRECTED BY THE SURVEYOR'S OWN FIELD OBSERVATIONS AND ZONE CENTRAL, DETERMINED BY GPS OBSERVATIONS.
3. FIELD WORK FOR THIS PROJECT WAS PERFORMED ON 08/14/2017.



**LESSOR'S LEGAL DESCRIPTION**  
THE LAND REFERRED TO IN SUBSECTION A IS SITUATED IN THE COUNTY OF MESA, STATE OF COLORADO AND IS DESCRIBED AS FOLLOWS:  
THE NORTH 200 FEET OF TRACT 43, ORCHARD SURVESSION TO THE TOWN OF FRUITA, COUNTY OF MESA, STATE OF COLORADO.

**FLOOD ZONE DESIGNATION**  
THE PROPOSED LEASE PREMISES SHOWN HEREON APPEAR TO BE WITHIN FLOOD ZONE "A" AS DELINEATED ON THE FEDERAL EMERGENCY MANAGEMENT AGENCY FEMA MAP NO. 08036C-0406-D-080405.  
FLOOD ZONE "A" IS DEFINED AS AN AREA DETERMINED TO BE OUTSIDE 48-YEAR FLOODPLAIN, DETERMINED TO BE OUTSIDE THE 1% AND 0.2% ANNUAL CHANCE FLOODPLAINS.

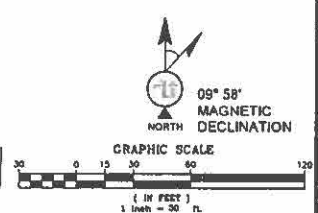
**VERIZON WIRELESS UTILITY EASEMENT LEGAL DESCRIPTION**  
A PORTION OF TRACT 43, ORCHARD SURVESSION TO THE TOWN OF FRUITA, COUNTY OF MESA, STATE OF COLORADO, DESCRIBED AS FOLLOWS:  
COMMENCING AT THE SOUTHWEST CORNER OF SAID TRACT 43, THENCE NORTH 87°01'55" WEST ALONG THE EAST LINE OF SAID TRACT 43, 40.48 FEET TO THE POINT OF BEGINNING.

THENCE DEPART AND EAST LINE NORTH 87°02'00" WEST, 266.75 FEET, THENCE NORTH 87°55'00" EAST, 60.00 FEET, THENCE NORTH 87°02'00" WEST, 374.19 FEET TO THE EAST LINE OF SAID TRACT 43, THENCE NORTH 87°01'55" WEST ALONG SAID EAST LINE, 43.00 FEET TO THE POINT OF BEGINNING.

**SCHEDULE D EXCEPTIONS**  
NOTES AND EASEMENTS AS SHOWN ON THE PLAT OF ORCHARD SURVESSION TO THE TOWN OF FRUITA AS RECORDED NOVEMBER 5, 2004 AT RECORD NO. 2275.

NOTES 1.1 AND 2.11 OF THE CLIENT PROVIDED TITLE REPORT DO NOT CONTAIN GRAPHICALLY PLOTTABLE EASEMENTS, RESTRICTIONS OR OTHER ENCUMBRANCES, AND/OR EASEMENTS IN NATURE OR DO NOT AFFECT SUBJECT SITE. THE SURVEYOR CANNOT GUARANTEE THAT ADDITIONAL ENCUMBRANCES DO NOT EXIST THAT MAY AFFECT THE SUBJECT LEASED PREMISES.

LINE TABLE	
LINE	BEARING / REFERENCE
L1	81.00' N07°01'20"E
L2	256.75' N08°19'20"W
L3	10.00' N11°57'33"E
L4	266.75' S08°19'20"E
L5	18.00' S07°01'20"W



3131 S. VALDORA WAY, SUITE 500  
ALDEN, CO 80014

**CHARLES STECKLY**  
ARCHITECTURE

FIELD BY:	JWS
DRAWN BY:	CRS
CHECKED BY:	AMM

REVISIONS		
NO.	DATE	DESCRIPTION
2	08/20/17	FINAL
1	08/20/17	PRELIMINARY

BY THE ORDER OF THE SURVEYOR:  
THE SURVEYOR HAS REVIEWED THESE RECORDS, AND HAS NO OBJECTION TO THE PRESENTED INFORMATION. THE SURVEYOR HAS REVIEWED THESE RECORDS AND HAS NO OBJECTION TO THE PRESENTED INFORMATION.

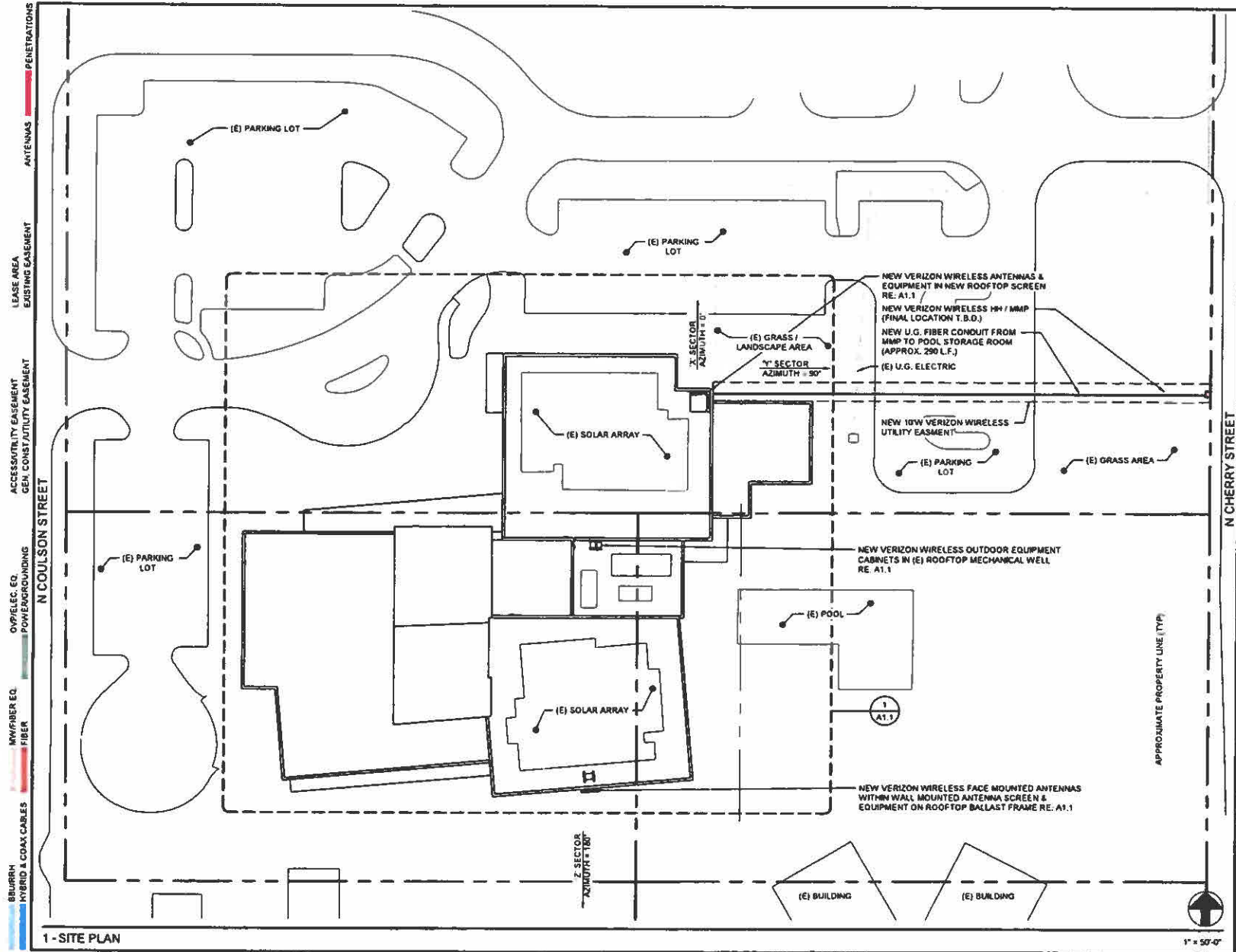
**PROJECT NO.**  
15010110  
**SITE NAME:**  
CD3 DT FRUITA

**SITE ADDRESS:**  
324 N COULSON STREET  
FRUITA, CO 81521

**SHEET TITLE:**  
TOPOGRAPHIC SURVEY  
**SHEET NO.** LS-1  
**REVISION:**



# EXHIBIT B (2 of 2)



VERIZON WIRELESS SERVICES  
3131 S. VAUGHN WAY SUITE 350  
ALBANY, CO 80914

PROJECT INFORMATION  
SITE NAME

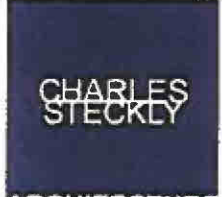
**CO3 DT FRUITA**

724 N. COULSON ST  
FRUITA, CO 81521

CONSULTANT

- A 09/27/17 CONCEPT ERR
- B 10/18/17 CLIENT COMMENTS ERR
- C 03/07/18 CLIENT COMMENTS ERR

1M REVIEW SOX 2M REVIEW SGP



5805 SOUTH ZANG STREET SUITE 200  
LITTLETON, COLORADO 80127  
OFFICE: 303.932.2974

**NOT FOR CONSTRUCTION**

SITE PLAN

**A1.0**