

TELECOMMUNICATIONS NETWORK AGREEMENT

ExteNet Site Name: **Maverik Center**
ExteNet Site Identification Number: **NW-UT-MAVERIK-OPN**

This Telecommunications Network Agreement (this "**Agreement**") is entered into as of the latter signature date on page 15 below (the "**Effective Date**"), among ExteNet Systems, Inc., a Delaware corporation ("**ExteNet**"), West Valley City, a municipal corporation of the State of Utah ("**Owner**"), and Centennial Management Group, Inc., a Utah corporation ("**Manager**").

BACKGROUND

- A. ExteNet designs, constructs and operates outdoor and indoor distributed antenna networks, which provide for the distribution and propagation of wireless telecommunications frequencies or spectrum of one or more wireless service providers, resulting in enhanced or improved coverage for such wireless service providers' customers in the areas served by the networks.
- B. Owner owns, through the West Valley City Building Authority, the building or buildings defined in Section 1.
- C. Manager operates and manages the building or buildings defined in Section 1 on behalf of the Owner pursuant to the terms of a Management Agreement between Manager's parent and Owner.
- D. Owner, Manager and ExteNet desire to enter into this Agreement to establish the terms and conditions whereby Owner and Manager will lease and grant related rights to ExteNet, under the supervision and management of the Manager, with respect to portions of the Building and related improvements in order for ExteNet to design, install and operate the Distributed Network (as defined below) at the Building.

AGREEMENT

NOW, THEREFORE, in consideration of the Background set forth above, the Parties' mutual covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner, Manager and ExteNet agree as follows:

1. **Key Terms.** For purposes of this Agreement, the following capitalized terms or information have the meanings set forth in this Section 1:

Contact Information	
ExteNet:	
Non-emergencies	ExteNet Systems, Inc. 3030 Warrenville Road Suite 340 Lisle, Illinois 60532 Attn: Chief Financial Officer with a copy to the attention of the General Counsel (at the same address)
Emergencies	ExteNet NOC Tel: (866) 892-5327 Email: noc@extenetsystems.com
Owner/Manager:	
Non-emergencies	Centennial Management Group 3200 S. Decker Lake Dr. West Valley City, Utah 84419 Attn: James Fuoco - Controller
Emergencies and Access	Randy Mayne Tel: 801-824-3421 email: rmayne@maverikcenter.com

Building:	The building generally known as “Maverik Center” and having a street address of 3200 South Decker Lake Drive, West Valley City, UT 84119.
Coverage Area:	Areas within the Building within which ExteNet intends to provide enhanced coverage for its Customers by means of the Distributed Network, which areas are generally described as follows: 90% of the total square feet of the interior areas of the Building that are habitable (excluding elevators and stairwells).

Provisions Related to Term of Agreement	
Commencement Date:	The earlier of (i) the date that ExteNet completes the installation of the ExteNet Equipment and such equipment is functional; and (ii) twelve months after the Effective Date.
Expiration Date:	The last day of the calendar month in which the tenth anniversary of the Commencement Date occurs, <u>provided however</u> , if the Commencement Date occurs on the first day of a calendar month, then the Expiration Date will be the day immediately preceding the tenth anniversary of the Commencement Date, but subject to extension for each effective Renewal Term.
Initial Term:	Ten (10) years, subject to adjustment as described in the Key Term “Expiration Date” and in <u>Section 7(a)</u> , commencing on the Commencement Date and expiring on the Expiration Date.
Renewal Term:	Each of the two (2) successive periods of five (5) years each.
Term:	Collectively, the Initial Term, along with each Renewal Term for which ExteNet has not given notice of its election not to renew, as further provided in <u>Section 7(b)</u> .

2. General Definitions. In addition to the terms otherwise defined in this Agreement, the following capitalized terms have the meanings set forth in this section:

(a) **Affiliate:** a corporation or entity which (i) directly or indirectly (through one or more subsidiaries) controls a Party; (ii) is controlled directly or indirectly (through one or more subsidiaries) by a Party; or (iii) is under the common control, directly or indirectly (through one or more subsidiaries) with a Party by the same parent corporation or entity.

(b) **Applicable Law:** all valid statutes, ordinances, laws, regulations and directives of any governmental body having jurisdiction thereof applicable to the Building, the Distributed Network or either of the Parties with respect to the subject matter of this Agreement.

(c) **Approved Plans:** the Plans and Specifications approved by Manager for the installation, reconfiguration and/or modification of the Distributed Network pursuant to Section 8(b).

(d) **Communications Spaces:** the telecommunications pathways, conduits, risers, raceways, HVAC ductwork, remote telecom closets, mechanical rooms, utility connections and entries into and through the Building, and that certain area of the roof as set forth on the Approved Plans and other areas within or without the Building for non-exclusive use by ExteNet, but expressly excluding the Head-End Area.

(e) **Customer:** a WSP that has executed a Network Access Agreement with ExteNet.

(f) **Distributed Network:** the integrated wireless network composed of the ExteNet Equipment to be installed and operated by ExteNet in the Building, consisting of a distributed antenna system or other wireless technologies.

(g) **Distributed Network Equipment:** any communications equipment, including antennas, waveguide, cabling, wiring, battery back-up system, routers, switches, accessories, radio frequency combiners, couplers, splitters, attenuators, optical converters, amplifiers, HVAC probes and any other related equipment or infrastructure necessary for the installation and operation of the Distributed Network, and includes the ExteNet Equipment and the equipment of Customers.

(h) **ExteNet Equipment:** the Distributed Network Equipment owned, leased and/or controlled by ExteNet.

(i) **ExteNet NOC:** ExteNet's network operations and control center, from which ExteNet monitors its distributed networks and which Manager should contact in the case of emergencies.

(j) **FCC:** the Federal Communications Commission or any successor agency of the United States government that licenses spectrum or radio frequencies for the provision of Wireless Services.

(k) **Force Majeure Events:** acts of God, war, natural calamities, strikes, lockouts, or other labor stoppages or disturbances, civil disruptions, riots, epidemics, acts of government or any competent authority having jurisdiction, or any other legitimate cause beyond the reasonable control of a Party, and which such Party could not have prevented through the exercise of reasonable due diligence, but expressly excluding a Party's lack of sufficient funds to perform.

(l) **Head-End Area:** that certain secured area or room comprising approximately 800 square feet in the Building under ExteNet's exclusive control and in which the head-end components of the ExteNet Equipment and certain equipment of its Customers are or will be located, the specific location of which is specified or depicted in Exhibit 1.

(m) **Interference:** interference (through electrical or electromagnetic output or radio frequency) with the proper operation of equipment of third parties that is properly installed and operating within its manufacturer's guidelines, instructions or other sound engineering practices. **Interferes** means the act of Interference.

(n) **Network Access Agreement:** any of the agreements to be entered into between ExteNet and a WSP, granting such WSP the right to interconnect its telecommunications equipment to the Distributed Network and to distribute its Wireless Services in and/or about the Building.

(o) **Party:** either ExteNet, Manager or Owner, and their respective successors and permitted assigns.

(p) **Plans and Specifications:** drawings, plans and specifications for the installation of the Distributed Network, detailing all wiring designations, the type, size and location of ExteNet Equipment, and the Communication Spaces and the Head-End Area to be used by ExteNet and its Customers.

(q) **Prime Lease:** a lease, easement or other interest from a third party from or through which Owner derives its interest in the Building.

(r) **Wireless Services:** any signal transmission, emission or reception services over spectrum licensed by the FCC to WSPs on frequencies in the 700 MHz, 800 MHz, 900 MHz, the Personal Communications Services (PCS) bands (1.9 GHz), the Advanced Wireless Services bands 1.7 GHz and, 2.1 GHz) and 2.5 GHz bands, and such other bands as are or become part of the migration path of WSPs with regard to voice and data to 4G or future generational functionality or may otherwise be licensed by the FCC from time to time, or over unlicensed spectrum for the provision of wireless voice and/or data telecommunications services.

(s) **WSP:** a provider of Wireless Services, including those entities operating the branded services of AT&T Mobility, Sprint, T-Mobile and Verizon Wireless.

3. Pre-Commencement Date Activities. Subject to the terms and conditions of this Agreement and prior to the Commencement Date, Manager and Owner hereby grant ExteNet the right, following advance notice to Manager and during customary working hours, to enter the Building (subject to Section 9) to perform examinations, surveys, tests and evaluations. ExteNet may request reasonable information from Manager, from time to time, to aid in its design of the proposed Distributed Network, including a list of the existing wireless communications users in or at the Building, building and floor plans, and structural and environmental reports possessed by Manager or Owner or within Manager and/or Owner's reasonable control. Manager agrees to exercise commercially reasonable efforts to provide to ExteNet as soon as possible after request such Building-related information.

4. Grant of Rights to Head-End Area and Communications Spaces. Upon the commencement of construction and/or installation of the Distributed Network through the balance of the Term, Manager and Owner grant to ExteNet the exclusive right to occupy, control and use the Head-End Area (subject to the rights of Manager and Owner pursuant to Section 9(b)), together with the non-exclusive right to access and use the Communications Spaces, consistent with the Approved Plans. In connection with the foregoing, ExteNet shall have the right, consistent with the Approved Plans, to install and operate the Distributed Network, which specifically includes the rights to place, install, operate, maintain, repair and replace the Distributed Network Equipment of ExteNet and its Customers in the Head-End Area and Communications Spaces. The uses described in this Section 4 expressly contemplate that ExteNet shall be permitted, from and after execution of this Agreement, to enter into one or more Network Access Agreements with its Customers provided that (i) the term of each Network Access Agreement shall not exceed the maximum Term of this Agreement; and (ii) ExteNet shall remain fully liable for compliance with all of the terms and conditions, and fulfillment of all of its covenants contained in this Agreement, notwithstanding the terms of any such Network Access Agreement.

5. Exclusive Wireless Infrastructure Rights.

(a) As a material inducement for ExteNet to enter into this Agreement and in contemplation of the substantial investment that ExteNet will make in the Distributed Network, Manager and Owner grant ExteNet, from and after the Effective Date and throughout, the exclusive right to market, install, operate and control the operation of telecommunication facilities or systems at or within the Building (as the Building now exists and as later expanded or modified, from time to time), which facilities or systems provide or may provide Wireless Services within or about the Building or any portion thereof using spectrum or frequencies licensed to WSPs by the FCC.

(b) *Rooftop Exception.* Notwithstanding the grant of exclusivity in Section 5(a), Manager reserves the right to grant WSPs or others the right to install and operate wireless telecommunications antennas and related equipment on the rooftop(s) of the Building, provided however that:

(i) the primary purpose of each such telecommunications antenna and related equipment is to serve outdoor areas surrounding the Building rather than to provide the propagation of Wireless Services in the Building in competition with the Distributed Network, either as installed or proposed; and

(ii) the installation and operation of such telecommunications antennas and related equipment by such WSP do not Interfere with the Distributed Network.

6. Payments to Manager

(a) *Access Rights Fee.* In consideration of the access and other rights granted under this Agreement, ExteNet will pay Manager, within 30 days of the Effective Date, a one-time fee in the amount of \$50,000.

(b) *Network Access Agreement Fee.* In addition, ExteNet shall remit to Manager, within 30 days after the respective dates the initial term commences under the Network Access Agreements between ExteNet and its Customers, a payment of \$200,000 (for each of the first and second unaffiliated Customers) and \$100,000 (for each of the third and fourth unaffiliated Customers). No Network Access Agreement fee shall be due after the fourth Customer. If ExteNet finds the WSPs are not willing to contract to join the Network subject to pricing reflecting the Network Access Agreement Fee, ExteNet may approach the Manager to modify the fee amounts.

(c) *Revenue Sharing Fee.* In addition, ExteNet shall also remit to Manager a 30% share of the Gross Recurring Revenues collected by ExteNet from Customers, only during the first and second Renewal Terms, in accordance with this Section 6(c) (the "**Revenue Sharing Fee**"). ExteNet shall compute the Revenue Sharing Fee on a monthly basis as provided below and shall remit the Revenue Sharing Fee to Manager on a quarterly basis in arrears for the calendar quarter just concluded (with a calendar quarter ending March 31, June 30, September 30 and December 31), beginning on the thirtieth day after the close of the first calendar quarter following the expiration of the Initial term and on the thirtieth day after the close of each calendar quarter thereafter. The Revenue Sharing Fee for a particular calendar month shall equal 30% of the Gross Recurring Revenues collected by ExteNet in such month from all Customers.

(d) For purposes hereof, the term "**Gross Recurring Revenues**" mean all regularly or scheduled recurring rents, payments, fees, sums and other amounts actually collected from a Customer and received by ExteNet and allocable to such Customer's Network Access Agreement, which expressly *excludes*, for the avoidance of doubt: (A) construction management or supervision fees related to the installation of the Customer's equipment to serve in whole or in part the Distributed Network; (B) contributions of capital or payments by a Customer to reimburse ExteNet in whole or in part for the installation of the Distributed Network Equipment serving, in whole or in part, of the Building; and (C) any reimbursements or pass-throughs from or contributions by a Customer to ExteNet for utility charges, taxes and other pass-through expenses or in connection with work performed or equipment installed by ExteNet for or on behalf of Customer.

(e) With each quarterly payment of the Revenue Sharing Fee, ExteNet shall provide Manager with a written statement setting forth the amount of Gross Recurring Revenues collected by ExteNet with respect to the Distributed Network in the calendar quarter just concluded. Within 90 days after the conclusion of any calendar year, upon 10 days' prior written notice to ExteNet, Manager shall have the right to cause an inspection or audit to be made of ExteNet's books and records pertaining to the Gross Recurring Revenues payable or collected by ExteNet from Customers with regard to the Distributed Network for the immediately prior calendar year. The inspection or audit shall be performed by a certified public accountant, who shall not be compensated on a contingent fee basis, appointed or designated by Manager; shall occur during normal business hours at the principal office of ExteNet; and shall be completed by Manager with 90 days of the commencement of such audit or inspection (unless a delay in completing such audit or inspection results from the acts or omissions of ExteNet). If such audit or inspection reveals, in the judgment of Manager, an underpayment to Manager of the Revenue Sharing Fee for such calendar year, then Manager will give notice to ExteNet of such underpayment, accompanied by a reasonably detailed explanation of and together with reasonably detailed supporting data evidencing the basis

on which the claim of an underpayment is made, which claim of underpayment shall be given, if at all, by Manager no more than 30 days after the date Manager completes its audit or inspection. The cost of any such inspection or audit is to be borne by Manager unless if such underpayment by ExteNet is determined to be in excess of \$5,000.00 for any particular calendar year, in which case, the reasonable cost of any such third-party inspection or audit shall be borne by ExteNet and reimbursed to Manager within 30 days after presentation of an invoice to ExteNet therefor. Where such inspection or audit uncovers an actual underpayment to Manager of the Revenue Sharing Fee for such calendar year, ExteNet shall pay Manager the amount of the underpayment within 30 days after receipt of an invoice from Manager. ExteNet shall promptly remit to Manager the amount of the underpayment. The failure of Manager to timely request such inspection or audit under the provisions of this Section 6(e) within 90 days after the conclusion of a calendar year or the failure of Manager to provide timely notice of an underpayment as aforesaid shall be deemed conclusive acceptance and agreement by Manager with the calculation of the Revenue Sharing Fee for the immediately prior calendar year.

(f) ExteNet shall utilize an accounting system in accordance with generally accepted accounting principles (GAAP), consistently applied, that will accurately record all Gross Recurring Revenues. ExteNet shall keep at its main office, for at least five years after the passage of any particular calendar year records conforming to such accounting system showing all Gross Recurring Revenues for such particular calendar year.

(g) In connection with the receipt by Manager of any documents or instruments involving the statement or calculation of Gross Recurring Revenues or the Revenue Sharing Fee, the inspection or audit as contemplated in Section 6(e), Manager and if applicable, the person and/or entity conducting the inspection or audit, agree to keep all such information gathered as confidential and shall not disclose same to any other person or entity except on a need-to-know basis in connection with the administration of or a dispute involving this Agreement, any existing financing or any prospective sale, lease or leaseback of all or any part of the Building, or any registration or filing with any governmental authority or pursuant to a subpoena or other judicial process. In addition to the foregoing, all information collected pursuant to the audit or inspection described in this subsection 6(g) shall be considered confidential under applicable Utah law as set forth in Section 32(k) of this Agreement.

(h) *Payment Mechanics.* ExteNet shall remit the Access Rights Fee and Network Access Agreement Fees to the address as provided in Section 1 for non-emergency notices, or to such other person or entity or to such other address as Manager may, from time to time, designate in writing at least 30 days in advance of any payment date.

(i) *Non-refundable.* All payments made by ExteNet to the Manager or Owner are non-refundable and shall be retained by the Manager or Owner in the event of (1) the valid termination of this Agreement by Manager or Owner due to an uncured ExteNet Event of Default or (2) voluntary early termination by ExteNet.

7. Duration of Agreement.

(a) The Initial Term of this Agreement is as set forth in Section 1, and is subject to extension as set forth in Section 7(b). Within 60 days after the Commencement Date, the Parties shall confirm the Commencement Date on a form prepared by ExteNet and delivered to Manager. Notwithstanding anything in this Agreement to the contrary, if (i) an executed Network Access Agreement has an initial term of ten years or less and (ii) the initial term of such Network Access Agreement commences within five years of the Commencement Date and would otherwise expire after the expiration of the Initial Term of this Agreement as then calculated, then the Initial Term of this Agreement shall be automatically extended to be coterminous with the initial term of such Network Access Agreement. Within 20 days of the commencement of the initial term of the Network Access Agreement that effects an extension the Initial Term by operation of the prior sentence, ExteNet shall give written notice of same to Manager, accompanied by a redacted copy of such Network Access Agreement.

(b) After expiration of the Initial Term, the Term will be automatically extended for up to two consecutive Renewal Terms, each Renewal Term commencing immediately after the expiration of the then-applicable Term and expiring five years thereafter unless ExteNet gives written notice to Manager at least 60 days prior to the expiration of the then-current Term (*i.e.*, the then existing Initial Term or Renewal Term), stating that ExteNet elects not to exercise its option to extend the Term for the next succeeding Renewal Term.

8. Installation and Maintenance of the Distributed Network.

(a) *Coverage Area.* The Distributed Network is intended to cover or provide enhanced coverage to the Coverage Areas in the Building as specified in Section 1.

(b) *Plans and Specifications.*

(i) Prior to installing the Distributed Network Equipment, ExteNet shall deliver to Manager Plans and Specifications showing the proposed size and location of the ExteNet Equipment, the location of risers and

wiring connecting same to the power supply source and the telephone lines. Manager shall review the Plans and Specifications promptly after receipt and shall provide written notice to ExteNet either approving or rejecting same, such approval not to be unreasonably withheld, conditioned or delayed. Manager may evidence its approval by written endorsement upon the Plans and Specifications. Upon such approval, the Plans and Specifications shall be deemed the Approved Plans. If Manager rejects any Plans and Specifications, Manager shall accompany such rejection with specific written reasons, after which ExteNet may resubmit amended Plans and Specifications, which Manager shall promptly review and either approve or reject.

(ii) If the Head-End Area is not designated on Exhibit 1 at the time of the execution of this Agreement, then ExteNet shall include in the Plans and Specifications submitted to Manager under Subsection 8(b)(i), a designation of the proposed Head-End Area. If Manager rejects ExteNet's proposed Head-End Area, Manager shall include specific written reasons and a suggested substitute Head-End Area. Upon ExteNet and the Manager's agreement as to location of the Head-End Area, both ExteNet and the Manager shall initial the drawing, sketch or other description of the location of the Head-End Area and attach such drawing, sketch or other description to this Agreement as Exhibit 1.

(iii) After approval of the Approved Plans, if ExteNet or a Customer desires to materially or substantially modify the Distributed Network, then ExteNet shall seek Manager's approval; provided however, that equipment replacement, routine maintenance or repairs which do not involve additional connections to or work on or otherwise adversely affect equipment, cables or other property of Manager or other tenants or third parties in the Building shall not be deemed to be a material or substantial modification of the Distributed Network and shall not require Manager's prior written approval. The process to amend Approved Plans after Manager's initial approval shall be as set forth in this Section 8(b).

(iv) Manager's approval of Plans and Specifications is not a representation or acknowledgement that the Distributed Network Equipment will not cause Interference with other systems or equipment in the Building or that the Plans and Specifications comply with Applicable Law, responsibility for which shall remain with ExteNet. Manager and Owner shall have the right, following at least two days' prior written notice to ExteNet, to inspect the Distributed Network Equipment from time to time to determine that the same is installed in accordance with the Approved Plans.

(c) *Use of Communications Spaces.* Manager acknowledges that the operation of the Distributed Network may use the HVAC system, ductwork, and other Communications Spaces of the Building (which may include the rooftop for placement of GPS antennas) of which ExteNet does not have exclusive rights of use. Accordingly, Manager shall provide ExteNet reasonable advance notice of any maintenance, repair, replacement or upgrade of those portions of the HVAC system or other Communications Spaces used in part by the Distributed Network or which are reasonably anticipated to impact the operation of the Distributed Network.

(d) *ExteNet Upgrade Covenant.* Upon the initial installation of the ExteNet Equipment and through the Term, ExteNet covenants to maintain and upgrade the ExteNet Equipment so that the ExteNet Equipment will be functionally capable of accommodating "New Services." "**New Services**" mean those additional and material new Wireless Services and/or functions actually offered by ExteNet's Customers within other buildings in the greater metropolitan area in which the Building is located which have uses comparable to that of the Building. If the ExteNet Equipment installed at the Building is not capable of hosting specified New Services, and Manager or one or more Customers employing FCC-licensed frequencies within the scope of the exclusivity granted pursuant to Section 5 have requested ExteNet to upgrade the ExteNet Equipment at the Building in order to accommodate one or more such New Services, then ExteNet shall exercise commercially reasonable efforts to upgrade the ExteNet Equipment to accommodate the New Services subject to ExteNet reaching a mutually acceptable agreement with Manager or one or more Customers with regard to making such New Services available to such Customer(s). Notwithstanding anything contained in this Agreement to the contrary, if ExteNet fails to perform fully its obligations under this section, and such failure continues for a period of 60 days from ExteNet's receipt of written notice from Manager of same, Manager and Owner's sole and exclusive remedy for such failure shall be the termination of ExteNet's exclusivity rights granted pursuant to Section 5 solely with regard to such New Services at the Building which ExteNet's then-existing ExteNet Equipment is unable to accommodate.

(e) *ExteNet Maintenance.* ExteNet shall install, construct and maintain the Distributed Network, and from the Commencement Date through the balance of the Term, keep and maintain the non-structural portions of the Head-End Area in a commercially reasonable condition and repair. All work by ExteNet or any Customer is to be performed in compliance with Applicable Law and in a good and workmanlike manner and in such a manner so as not to interfere materially with, delay or impose any additional expense upon Manager or Owner in maintaining, owning or operating the Building. ExteNet agrees to maintain the ExteNet Equipment in good operating condition and within industry-accepted safety standards. Notwithstanding anything in this Agreement to the contrary, ExteNet's obligation to install and construct the Distributed Network (and thereafter maintain it) is subject to the

condition precedent that ExteNet secure a fully executed Network Access Agreement pertaining to the Building from at least one WSP.

(f) *Owner Maintenance.* Manager shall be responsible for the structural maintenance and upkeep of the Building, the roof, the mechanical, plumbing, HVAC and electrical systems, and the common areas of the Building consistent with Manager's policies and procedures pertaining thereto.

(g) *Relocation.* After the installation of the Distributed Network Equipment, Manager may require ExteNet to relocate the Head-End Area and/or the Distributed Network Equipment (whether located within or outside the Head-End Area) as follows:

(i) If Manager reasonably determines that the Distributed Network Equipment, or any component thereof, is causing Interference with the Building's base building systems, including the HVAC, and such Interference cannot be remedied to the reasonable satisfaction of Manager within a reasonable time, Manager may require ExteNet to relocate such Interfering Distributed Network Equipment and/or the Head-End Area upon at least 60 days' prior written notice to ExteNet. In such event, ExteNet shall relocate or cause the relocation of such Interfering Distributed Network Equipment and/or the Head-End Area and shall repair any damage caused to the Building as a result of the relocation, all at the sole cost and expense of ExteNet or, to the extent the equipment causing the Interference is that of a Customer, of the Customer.

(ii) If Manager requires all or some of the Distributed Network Equipment and/or the Head-End Area to be relocated for any reason other than Interference (as provided in Subsection 8(g)(i)), Manager may require ExteNet to relocate such Distributed Network Equipment and/or the Head-End Area upon at least 90 days' prior written notice to ExteNet. In such event, ExteNet shall prepare an estimate of the relocation costs and deliver the estimate to Manager within ten days of such notice. Manager will be entitled to rely upon the estimate for the purposes of determining whether to proceed with the relocation. If Manager determines to proceed, ExteNet shall relocate such Distributed Network Equipment and/or the Head-End Area and shall repair any damage caused to the Building as a result of the relocation, all at the sole cost of Manager, in accordance with the estimate. If ExteNet pays for any such costs directly, then Manager shall reimburse ExteNet within 30 days of an invoice from ExteNet accompanied by reasonable documentation substantiating the amount for which ExteNet seeks reimbursement.

In no event shall a relocation of any of the Distributed Network Equipment or the Head-End Area be required under Subsection 8(g)(ii) if such relocation would negatively affect the functionality or coverage of the Distributed Network as existing immediately before such relocation. Further, Manager shall permit ExteNet to effect any relocation under this Section 8(g) using a procedure that will ensure that the Distributed Network Equipment at the new location is fully operational and optimized for service prior to discontinuing service from the previous location.

9. Access.

(a) The employees, agents and contractors of ExteNet and its Customers shall be entitled to 24 hour, seven days per week access to the Head-End Area and the Communications Spaces for the purpose of installing, operating and maintaining the Distributed Network Equipment, including non-exclusive use of one or more elevators. All such access shall be subject to Section 11 generally and the special access requirements, if any, set forth on Exhibit 3. Persons who are authorized by ExteNet and its Customers and approved in accordance with Manager's security procedures for the Building may have access to the Head-End Area and to the Communications Spaces to the extent their respective equipment is located therein.

(b) Manager and its representatives may enter the Head-End Area or the Communications Spaces for the purpose of inspections, conducting maintenance, repairs and alterations which Manager wishes to make to the Building or to perform any acts related to the safety, protection, preservation, or improvement of the Head-End Area or the Building generally or for such other purposes as Manager reasonably considers necessary. Manager shall use reasonable efforts to minimize any interference with the operation of the Distributed Network. Manager shall provide ExteNet at least two business days' prior notice of entry (except in the case of an emergency) into the Head-End Area. ExteNet reserves the right to escort or accompany Manager and its representatives in connection with any entry into the Head-End Area. If Manager's anticipated entry into the Head-End Area or Communications Spaces might require or give rise to a shut-down of the Distributed Network, then Manager shall provide ExteNet with a reasonable opportunity to approve the proposed work, propose alternative solutions or to make necessary back-up arrangements.

10. Electrical Utilities. ExteNet shall pay for all electricity consumed in the Head-End Area as a result of the operation of the Distributed Network. ExteNet may either (i) contract directly with the electric utility servicing the Building and have such utility install, at ExteNet's sole cost, separate metering devices to measure ExteNet's electrical usage in the Head-End Area, in which case ExteNet shall pay such utility directly for such usage, or (ii) connect to the Building's electrical system and install, at ExteNet sole cost, a sub-meter to measure ExteNet's

usage in the Head-End Area. If ExteNet is not billed directly by the electric utility, (a) ExteNet shall pay for ExteNet's power consumption based on the average kilowatt-hour rate actually paid by Manager to the utility for electricity in the Building without mark-up by or profit to Manager; (b) Manager shall bill ExteNet for such utility usage periodically as and when Manager receives its electricity bill for the Building (but in no event in excess of 90 days after Manager receives such electricity bill), and will include in invoices sent to ExteNet a statement of ExteNet's usage and evidence reasonably substantiating Manager charges therefor; and (c) ExteNet shall pay the charges so billed by Manager within 30 days after receipt of Manager's bill and required accompanying documentation. Notwithstanding the foregoing, Manager consents to the consumption of incidental or immaterial amounts of electricity by that portion of the Distributed Network Equipment located outside of the Head-End Area, provided that such equipment is connected to the Building's electrical system by plugging such equipment into standard 120 volt wall-mounted sockets or receptacles. Manager agrees to make a reasonable effort to schedule any planned utility outage outside of the Building's normal business day and to notify ExteNet at least two business days in advance of any planned utility outage of which Manager has notice that may interfere with the use and operation of the Distributed Network.

11. Rules and Regulations. ExteNet agrees to comply with any rules and regulations, including security requirements, Manager establishes from time to time, provided that such rules or regulations (i) are delivered to ExteNet prior to being enforced against ExteNet; (ii) are applied to the Building's tenants, licensees, occupants, invitees, employees, contractors and subcontractors on a non-discriminatory basis; (iii) are not inconsistent with the terms and conditions of this Agreement; and (iv) do not require ExteNet to pay fees or other amounts to Manager or any of its Affiliates, except as otherwise explicitly provided in this Agreement. If a conflict between such rules and regulations and the terms of this Agreement exists, the terms of this Agreement will prevail and supersede such inconsistent rules and regulations. The current rules and regulations are attached hereto as Exhibit 2.

12. Electromagnetic Interference and Emissions.

(a) The operation of the Distributed Network shall not materially Interfere with (i) the use of the Building by Manager or existing tenants of Manager or Owner (provided such tenants use their space primarily for the same or similar use as a majority of the other tenants in the Building and such use is consistent with the purpose for which the Building is operated); or (ii) the maintenance or operation of the existing systems and components of the Building, including the roof, MATV, CATV or other video systems, HVAC systems, elevator systems, computers, telephone systems, or any other system serving the Building (collectively, "**Priority Uses**"); provided in all events, the equipment which is subject to the Priority Uses is installed and operated consistent with the manufacturer's installation and operation guidelines and instructions, Applicable Law and, to the extent applicable, sound engineering practices. If any Interference resulting directly from ExteNet's operation of its Distributed Network in the Building materially Interferes in any manner with Priority Uses, upon verbal or written notice from Manager to the ExteNet NOC, ExteNet agrees to make prompt efforts to rectify the Interference. Manager may require ExteNet to cease operations (except for intermittent testing on a schedule approved by Manager) for all or a part of the Distributed Network until the Interference with Priority Uses has been corrected to the Manager's reasonable satisfaction. If ExteNet has not corrected such Interference within 90 days after the initial notice to ExteNet, Manager may require that ExteNet immediately remove that portion of the Distributed Network Equipment causing the Interference.

(b) Notwithstanding Section 12(a), if (i) an emergency situation exists which poses an immediate threat to either life or human safety or is likely to result in significant property damage and (ii) Manager reasonably determines that such emergency situation is attributable to the operation of the Distributed Network, then Manager may take such commercially reasonable action as reasonably appears necessary to avoid such consequences, provided Manager notifies the ExteNet NOC either before (if practical) or promptly after taking such action. Notwithstanding the prior sentence, if during the period of any emergency ExteNet acts in good faith to remedy the cause of such emergency, Manager shall restore whatever services it may have previously disrupted in order to permit ExteNet to continue its efforts to remedy the cause of such emergency.

(c) Manager and Owner covenant and agree that, from and after the Effective Date through the Term, Manager and/or Owner (i) will not install equipment in or at the Building or any of Owner's property contiguous to the Building that is of a type and frequency which may reasonably be expected to cause Interference with the operation of the Distributed Network; and (ii) will employ commercially reasonable efforts to prevent its tenants, licensees or occupants of the Building from installing any such Interfering equipment. If the installation or operation of such equipment causes Interference with the proper operation of the Distributed Network Equipment, Manager and/or Owner agrees to employ commercially reasonable efforts to direct and cause such interfering party to correct and eliminate the Interference or to remove the items causing such Interference, except for intermittent testing for the purpose of eliminating such Interference. Notwithstanding the foregoing, nothing in this section shall impair or interfere with the right of (i) any existing or future tenant of the Building or Manager from utilizing general

office machines and equipment, such as copiers, computers, servers, printers, etc. or maintaining within such tenant's demised premises in the Building a Wi-Fi network using unlicensed frequencies; or (ii) Manager to operate within the Building those systems and components described in clause (ii) of Section 12(a), provided in all events, the same are installed and operated consistent with the manufacturer's installation and operation guidelines and instructions, Applicable Law and, to the extent applicable, sound engineering practices.

(d) ExteNet shall at all times during the Term comply with then current Applicable Law, including that pertaining to non-ionizing radiation or electromagnetic emissions. ExteNet shall be responsible for such compliance either with respect solely to the ExteNet Equipment or the integration of the ExteNet Equipment with any other telecommunications facilities or other electromagnetic emitting facilities in the Building. ExteNet shall, at its sole cost, perform any alterations or adjustments to the ExteNet Equipment that may be required during the Term due to a change in or the implementation of Applicable Law, including a reduction of the effective radiated power of the Distributed Network.

13. Hazardous Substances. ExteNet agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within the Building in violation of Applicable Law. Except as disclosed on Exhibit 3, Manager and Owner represent and warrant that (i) neither it, nor to its knowledge, any third party has used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any Hazardous Material on, under, about or within the Building in violation of Applicable Law; and (ii) it will not, and will not permit any third party to, use, generate, store or dispose of any Hazardous Material on, under, about or within the Building in violation of Applicable Law. As used in this section, "**Hazardous Material**" means petroleum or any petroleum product, asbestos, any substance known by the state in which the Building is located to cause cancer and/or reproductive toxicity, and/or any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any Applicable Law.

14. Enjoyment of Rights and Title.

(a) If Owner or an Affiliate thereof occupies and/or operates the Building under a Prime Lease, Owner agrees to provide a true and complete copy of the Prime Lease (redacted to exclude rent and other financial, proprietary or confidential information) upon ExteNet's request. On Exhibit 3 to this Agreement, Owner has indicated whether the Building is owned or leased by Owner, and if leased by Owner, the duration or term of the Prime Lease, which information Owner represents to ExteNet is true.

(b) Owner represents, covenants and warrants to ExteNet that (i) Owner has sufficient title to the Building in order to grant the rights to ExteNet contemplated under this Agreement without the consent or joinder of a third party not had and obtained; (ii) that Owner's interest in the Building is free and clear of any restrictions, easements, leases or licenses that will interfere with, impair or adversely affect the right of ExteNet to own, install and operate the Distributed Network as permitted by this Agreement; (iii) Owner's execution and performance of this Agreement will not violate any Applicable Law, covenants, or the provisions of any mortgage, deed of trust, encumbrance or lease binding on Owner; (iv) to Owner's actual knowledge, Owner is not in default of or aware of the occurrence of a condition that with the mere passage of time or the giving of notice will ripen into a default under any ground or underlying leases from which Owner derives its interest in the Building or under any mortgage or deed of trust which encumbers the Building; and (v) so long as ExteNet timely performs its obligations under this Agreement, ExteNet shall have full and uninterrupted enjoyment of and rights to own, operate and maintain the Distributed Network and the exclusive right to use and occupy the Head-End Area.

15. Mechanics Liens. ExteNet shall not suffer or permit any mechanic's, laborer's, or materialman's lien to be filed against the Building or any part thereof by reason of work, labor, services, or materials requested by ExteNet; and if such lien shall at any time be so filed, ExteNet shall cause it to be cancelled and discharged of record (by bonding or otherwise), within 15 days after notice of the filing thereof, and ExteNet shall indemnify and hold harmless Manager and Owner from any loss incurred in connection therewith.

16. Equipment as Personalty. The Distributed Network Equipment shall remain the personal property of ExteNet or the Customer which owns same notwithstanding the fact that such equipment may be affixed or attached to the Building. The Distributed Network Equipment shall belong to ExteNet and the Customers, and shall be designed to be removable upon the expiration or termination of this Agreement in compliance with the terms and conditions of Section 29. Owner and Manager waive and renounce any interest in the Distributed Network Equipment.

17. Personal Property Taxes and Other Charges. ExteNet shall pay, prior to delinquency, any personal property taxes, charges or fees separately identifiable and directly attributable to the presence of the Distributed Network Equipment and the use of portions of the Building by ExteNet for the Distributed Network that are levied under any Applicable Law. Notwithstanding the foregoing, ExteNet shall have no liability for any excess profit taxes, franchise taxes, gift taxes, capital stock taxes, inheritance and succession taxes, estate taxes, federal, state and

local income taxes, and other taxes to the extent applicable to Manager or Owner's gross or net income or chargeable to Manager as a result of Manager's business.

18. Subordination, Non-Disturbance and Attornment. This Agreement is subject and subordinate to all Prime Leases affecting the Building and to all mortgages, deeds of trust and similar security documents that may now exist encumbering the Building or any portion thereof, and to all renewals, modifications, consolidations, replacements and extensions thereof. Owner represents to ExteNet that all mortgages, deeds of trust and similar security documents that currently encumber the Building or any portion thereof are listed on Exhibit 3. Upon request, Owner shall undertake commercially reasonable efforts to obtain and deliver to ExteNet prior to the Commencement Date and thereafter as new Prime Leases, mortgages, deeds of trust and similar security documents arise, an executed subordination, non-disturbance and attornment agreement in the standard form respectively promulgated by each applicable mortgagee, beneficiary, lessor or other superior interest holder from which Owner derives its interest in the Building, in recordable form, providing in substance that such mortgagee, beneficiary, lessor or senior interest holder agrees that ExteNet's rights under this Agreement shall not be terminated or otherwise disturbed by such mortgagee, beneficiary, lessor or senior interest holder following any foreclosure, deed-in-lieu of foreclosure or other event as long as this Agreement is in force and effect and ExteNet is not subject to an ExteNet Event of Default, and ExteNet agrees to attorn to and recognize such mortgagee, beneficiary, lessor, senior interest holder or the purchaser of the Building at a foreclosure sale or pursuant to a deed in lieu of foreclosure as Owner.

19. Waiver of Liens. Owner hereby waives, renounces, and quitclaims any and all statutory liens which Owner may have with respect to any of the Distributed Network Equipment. ExteNet may pledge or collaterally assign its ownership or other rights in its property located on the Building to any financing source which ExteNet may select, provided however that such collateral assignment or pledge shall not affect Owner's interest in the Building. So long as any lender which has provided financing or funding to ExteNet has cured any failure of ExteNet to perform its obligations under this Agreement within the cure or grace periods set forth in this Agreement, Owner agrees not to dispossess ExteNet or terminate this Agreement and agrees to accept the performance of such lender in curing such failure as that of ExteNet. Owner hereby agrees to give notice of any failure or any ExteNet Event of Default to any lender of ExteNet of which Owner has actual knowledge.

20. Estoppel Agreements. Each Party agrees to provide to the other from time to time, within 15 days of the other Party's written request, a statement duly executed by such Party (i) certifying that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications); (ii) stating whether or not, to the actual knowledge of the receiving Party, the other Party is in default in performance of any of its obligations under this Agreement, and whether the receiving Party is in default to the receiving Party's actual knowledge, and, if so, specifying each such default of which the receiving Party may have knowledge; and (iii) certifying such other facts as the requesting Party reasonably requests, it being intended that any such statement delivered pursuant hereto may be relied upon by others with whom the Party requesting such certificate may be dealing and their respective successors and/or permitted assigns.

21. Insurance. ExteNet shall maintain, from the Commencement Date through the balance of the Term (and if ExteNet shall occupy or conduct activities in or about any portion of the Building prior thereto or after the Term, then also during such period): (i) commercial general liability insurance including contractual liability coverage, with a minimum coverage of \$1 million per occurrence and \$2 million general aggregate per location for injuries to, or illness or death of, persons and damage to property occurring in or about the Building; and (ii) workers' compensation insurance in statutory limits. The commercial general liability insurance policy shall name Manager and Owner and any other parties reasonably designated by Manager or Owner with an interest in the Building as additional insureds and shall be primary to, and not contributing with, any liability policies carried by such additional insureds. ExteNet's commercial general liability insurance shall: (i) be issued by an insurance carrier with a general policyholders' rating of A- or better and a financial size ranking of Class VIII or higher in the most recent edition of Best's Insurance Guide; and (ii) provide that it may not be cancelled or allowed to lapse unless 30 days' (except for nonpayment of premium in which case 10 days') prior written notice to Manager is first given. ExteNet shall deliver to Manager of certificate evidencing the existence of such commercial general liability insurance as required by this section on or before the effective date of such policy and thereafter prior to the expiration date of such policy.

22. Waiver of Subrogation. Manager, Owner and ExteNet release each other and their respective principals, officers, directors, employees, representatives and agents, from any claims for damage to any person, the Building or the Distributed Network caused by, or that result from, risks insured against under any property or casualty insurance policies carried by the Parties and in force at the time of any such damage to the extent that such release and waiver does not invalidate any insurance policy held by a Party. Each Party shall exercise commercially

reasonable efforts to cause each insurance policy it obtains to provide that the insurance carrier waives all right of recovery by way of subrogation against the other in connection with any damage covered by any such policy.

23. Indemnities.

(a) ExteNet shall indemnify, defend and hold harmless Manager and Owner and their respective stockholders, directors, members, managers, partners, officers, employees and agents (collectively, "**Owner Parties**") from and against all liabilities, obligations, damages, penalties, claims, costs, charges and expenses, including reasonable attorneys' fees actually incurred, which may be imposed upon, incurred by or asserted against the Owner Parties for bodily injury or property damage based upon, arising from or due to (i) any work or act done in, on or about or use of the Building or any part thereof for the Distributed Network by ExteNet, its agents, contractors, subcontractors or employees, except if such work or act is done or performed by the Owner Parties or their contractors, agents or employees; or (ii) any negligence or other wrongful act or omission on the part of ExteNet or any of its agents, contractors, subcontractors or employees; excluding in each event liability, obligations, damages, penalties, claims, costs, charges and expenses caused or resulting from the negligence or willful misconduct of Owner Parties or their employees, contractors or subcontractors.

(b) Manager and Owner shall indemnify, defend and hold harmless ExteNet and its stockholders, directors, officers, employees and agents (collectively, "**ExteNet Parties**") from and against all liabilities, obligations, damages, penalties, claims, costs, charges and expenses, including reasonable attorneys' fees actually incurred, which may be imposed upon, incurred by or asserted against the ExteNet Parties for bodily injury or property damage based upon, arising from or due to (i) any work or act done in, on or about or use of the Building or any part thereof, at the direction of Owner Parties or their agents, contractors, subcontractors or employees, except if such work or act is done or performed by the ExteNet Parties or their contractors, subtenants, licensees, agents or employees; or (ii) any negligence or other wrongful act or omission on the part of Owner or any of its agents, contractors, subcontractors or employees; excluding in each event liability, obligations, damages, penalties, claims, costs, charges and expenses caused by or resulting from the negligence or willful misconduct of the ExteNet Parties or their employees contractors or subcontractors.

24. Assignment or Alienation of Agreement.

(a) ExteNet may assign this Agreement without the prior consent of Manager or Owner to any person or entity which (i) is an Affiliate of ExteNet; (ii) purchases all or substantially all of (A) ExteNet's assets; or (B) ExteNet's indoor Distributed Network assets; or (iii) is a *bona fide* lender extending credit to ExteNet for the purpose of financing all or part of its business. ExteNet shall provide written notice to Manager of such an assignment within 30 days of the effectiveness of same.

(b) Except as provided in Section 24(a), ExteNet may assign this Agreement to any other third party with the prior written consent of Manager and Owner, which consent shall not be unreasonably withheld, conditioned or delayed and shall be based upon a demonstration to Manager and Owner that the proposed assignee has the operational capacity to perform the obligations that it would assume under this Agreement; and the capability as of the time of the proposed assignment to meet its financial obligations under this Agreement.

(c) Owner may assign this Agreement only to a person or entity that purchases or acquires title to the Building without the consent of, but with notice as soon as practicable to, ExteNet. Owner covenants and agrees that it shall not convey title to the Building unless Owner assigns this Agreement to the successor owner and the successor owner assumes the obligations of Owner thereafter arising under this Agreement.

25. Casualty. In case of damage to the Building, the Head-End Area or those portions of the Building which are essential to the operation of the Distributed Network by fire or other casualty, Manager shall notify ExteNet within 30 days of such damage, informing ExteNet whether Manager or Owner has elected to repair such damage, at its expense, to a condition as nearly as practicable to that existing prior to the casualty and otherwise consistent with Applicable Law, with reasonable speed and diligence, but subject to delays which may arise by reason of adjustment of loss under insurance policies or a Force Majeure Event. The foregoing notwithstanding, if Manager or Owner elects to perform such repairs and fails to complete same within 180 days from the date of such damage, or elects not to perform such repairs, then ExteNet may terminate this Agreement upon written notice to Manager. Unless such casualty damage is caused by the gross negligence or willful misconduct of Manager or Owner or its employees or agents, Manager or Owner shall not be liable for any inconvenience or annoyance to ExteNet or injury to ExteNet's business resulting in any way from such casualty or the repair thereof consistent with the terms of this Agreement. To the extent and for the time that the Building or the Head-End Area are thereby rendered unusable for the operation of the Distributed Network, any amounts payable by ExteNet to Manager shall proportionately abate.

26. Condemnation. During the Term, if any governmental or other authority shall take all or a portion of the Head-End Area, so that the remaining portion thereof shall not be of sufficient size or condition to permit the continuation of ExteNet's or a Customer's use in a commercially reasonable manner, or the Building through the exercise of the power of eminent domain, or by deed in lieu of condemnation, then ExteNet may terminate this Agreement by providing written notice to Manager and Owner within 30 days of such condemnation or taking, which termination shall be effective as of the date of the vesting of title in such taking. Manager, Owner and ExteNet shall each be entitled to pursue their own separate awards with respect to any such taking.

27. Events of Default.

(a) It shall be an "**ExteNet Event of Default**" if:

(i) one or more of ExteNet's representations or warranties made in this Agreement is false in any material respect;

(ii) ExteNet fails to pay any liquidated sum of money which ExteNet is required to pay under this Agreement and such failure continues more than ten business days after Manager provides written notice thereof to ExteNet;

(iii) ExteNet fails to observe or perform any terms and conditions which this Agreement requires ExteNet to observe or perform, other than payment failures specified in (ii) above, and ExteNet does not remedy such failure within 30 days after written notice of such failure or, if such failure is not reasonably susceptible to being remedied in such period, if ExteNet does not within such period commence to remedy such failure and thereafter exercise commercially reasonable efforts to prosecute such remedy to completion; or

(iv) ExteNet makes an assignment of all or substantially all of its property for the benefit of creditors, or files a voluntary petition under any bankruptcy or insolvency law, or an involuntary petition alleging an act of bankruptcy or insolvency is filed against ExteNet under any bankruptcy or insolvency law, or if a permanent receiver is appointed for ExteNet or its property, and if such foregoing event occurs without the acquiescence or consent of ExteNet, such event continues or remains pending for 90 days after its initial occurrence.

(b) It shall be a "**Manager or Owner Event of Default**" if (i) one or more of Manager's or Owner's representations or warranties made in this Agreement is false in any material respect; or (ii) Manager or Owner fails to observe or perform any of the terms and conditions which this Agreement requires either the Manager or Owner to observe or perform, and Manager or Owner does not remedy such failure within 30 days after written notice of such failure, or if such failure is not reasonably susceptible to being remedied within such 30 day period, if Manager or Owner does not within such 30 day period commence to remedy such failure and thereafter exercise commercially reasonable efforts to prosecute such remedy to completion.

(c) After the occurrence of an ExteNet Event of Default or a Manager or Owner Event of Default, the non-defaulting Party shall be entitled to pursue any and all legal and equitable rights and remedies permitted by Applicable Law. Upon a valid termination of this Agreement, all rights of the Parties under this Agreement (other than those that shall or are intended to survive expiration or termination) shall terminate and ExteNet shall thereupon quit and surrender possession of the Head-End Area and the Communications Spaces to Manager in the condition required elsewhere in this Agreement. The non-defaulting Party shall have the obligation to mitigate its damages resulting from a default by the other Party.

(d) **Notwithstanding anything in this Agreement to the contrary, ExteNet, Manager and Owner hereby waive any claim that each may have against the other with respect to indirect damages (including for loss of use, data, business, goodwill, reputation, credit, revenue or profits) or any punitive, exemplary or consequential damages (but without limiting either Party's obligations to indemnify the other under Section 23).**

28. Termination of Agreement.

(a) Prior to the Commencement Date, ExteNet may terminate this Agreement if ExteNet determines, in its sole discretion, that (i) the Building is not suitable for ExteNet and potential Customers' intended use from either an economic or a technical engineering basis; (ii) required consents from third parties necessary to install and/or operate the intended Distributed Network in the Building will be unreasonably difficult or expensive to acquire; (iii) pre-existing conditions, liens, easements, restrictions or other rights or grants exist which would interfere with ExteNet's intended use of the Building for the Distributed Network; or (iv) if ExteNet is unable to secure a fully executed Network Access Agreement or a written and binding commitment to execute a Network Access Agreement pertaining to the Building from at least one WSP. In any such event, ExteNet will have the right to terminate this Agreement upon written notice to Manager. If ExteNet does not provide such notice of termination prior to the Commencement Date, then ExteNet will be deemed to have waived the right to terminate this Agreement under this Section 28(a).

(b) Upon written notice to the other parties, and following a 60 day cure period during which ExteNet makes reasonable and good faith efforts to cure the defect, ExteNet may terminate this Agreement if:

(i) ExteNet does not, despite the exercise of good faith efforts and reasonable diligence, obtain or maintain any license, permit or other approval necessary for the construction and operation of the Distributed Network;

(ii) only one Network Access Agreement with a Customer for the Building is then in effect (*i.e.*, has not terminated or expired); or

(iii) ExteNet determines that the Building is not appropriate for its continuing operations for technological reasons, including irresolvable Interference.

(c) Manager may terminate this Agreement as provided in the next sentence if within eighteen (18) months of the Effective Date, at least one WSP has not fully executed a Network Access Agreement with ExteNet. In such event, at any time after such one year period, Manager may send written notice to ExteNet that this Agreement shall, without further act or deed, terminate pursuant to this section on the 60th day after such written notice, if the full execution of at least one Network Access Agreement has not occurred on or before such 60th day.

29. Removal of ExteNet Equipment Upon Termination or Expiration of this Agreement. Within 60 days of the termination or expiration of this Agreement, ExteNet shall cause the removal of all Distributed Network Equipment from the Building. In performing such removal, ExteNet shall restore the Head-End Area and the Communications Spaces to as good a condition as they were prior to the installation or placement thereof, reasonable wear and tear, casualty and acts of third parties excepted. Notwithstanding the foregoing, nothing contained in this Agreement shall require ExteNet to remove any of the fiber optic or other cable, wiring, sleeving or conduit installed by ExteNet or restore or fill-in the risers or any core drillings that ExteNet created in the Building or any improvements. ExteNet shall properly cut, cap and secure such fiber and other cable, wiring, sleeving or conduit within the Building or such other improvements within 60 days of the termination or expiration of this Agreement.

30. Notices. Ordinary course business communications in connection with the performance of this Agreement may be given electronically, by facsimile, by mail or any other comparable means, but any such communication will be deemed received only upon actual receipt. All other notices and communications, including specifically those which require the receiving Party to act or respond within a time period designated in this Agreement, those which threaten to declare or declaring the receiving Party in default under this Agreement, or those which contain demands or notices of termination of this Agreement, shall be in writing either personally delivered; mailed via United States certified mail, return receipt requested; or transmitted by overnight courier for next business day delivery to the addresses of ExteNet and Owner set forth in Section 1. Notices, other than ordinary course business communications, will be deemed to have been given upon either receipt or rejection. Notwithstanding the foregoing, (i) in the event of an emergency, the Parties may provide notices as provided in Section 1 via facsimile or electronic mail, and (ii) only notices and communications threatening to declare or declaring such receiving Party in default under this Agreement or terminating this Agreement shall be required to be sent to the attorneys representing such receiving Party (provided that the Party to which such notice is being sent included its attorney's address in Section 1). Notwithstanding the foregoing, ExteNet and Manager each reserve the right to modify or change their contact information set forth in Section 1 by providing notice to the other Party as otherwise provided in this section, with such new notice address being effective 15 days after receipt by the other Party.

31. Relationship of Owner and Manager. Owner is the owner of the Building which is the subject of this Agreement (through a Master Lease from its municipal financing entity, the West Valley City Building Authority). Owner has entered into a Management Agreement with WVE, Inc., parent company of Manager, pursuant to an

assignment of which agreement Manager is responsible for the day to day operation and management of the Building. Owner has delegated all authority to the Manager for the administration of this Agreement and all interactions with ExteNet with respect to the installation and maintenance of ExteNet's systems and the Distributed Network. All payments to be made by ExteNet under the terms of this Agreement shall be made to the Manager, as provided in more detail in Section 6, above. The Owner is a party to this Agreement for the purpose of granting certain rights to ExteNet as set forth in this Agreement and to provide its approval of this Agreement as required by the Management Agreement between the Owner and Manager's parent. Notwithstanding the foregoing, if Manager shall cease to be the manager of the Building, for any reason whatsoever, then ExteNet's rights shall be unimpaired, but Owner, as the owner of the Building, shall assume any and all rights and duties of the "Manager" as set forth in this Agreement, or may assign such rights and duties to a replacement manager.

32. Miscellaneous.

(a) *Brokers Fees.* Manager, Owner and ExteNet each shall be responsible for any obligations or liability, contingent or otherwise, for brokerage or finder's fees or agent's commissions or other like payments arising out of such Party's dealings with third parties. Each Party agrees to indemnify, defend and hold the other Party harmless from and against any and all liability, damages, costs and expenses (including reasonable attorneys' fees incurred) in respect to such obligation or liability based in any way on any agreement, arrangement or understanding claimed to have been made by such Party with any third party, which indemnity shall survive the expiration or termination this Agreement.

(b) *Authority.* Each Party hereby represents and warrants to the other that (i) all necessary corporate authorizations required for execution and performance of this Agreement by such Party have been obtained; (ii) that the officer or agent of such Party who executes this Agreement is duly authorized to execute same and bind the Party for which such person signs; and (iii) such Party has full right and authority to execute and enter into this Agreement and to perform the obligations imposed upon it without the consent of any other party not obtained.

(c) *Multiple Counterparts.* This Agreement may be executed in multiple counterparts, each counterpart of which shall, for all purposes, be deemed an original, but which together shall constitute one and the same instrument.

(d) *Scanned or Electronically Reproduced Versions.* The Parties agree that a scanned or electronically reproduced copy or image of this Agreement, as executed, shall be deemed an original and may be introduced or submitted in any action or proceeding as a competent evidence of the execution, terms and existence of this Agreement notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Agreement and without the requirement that the unavailability of such original, executed counterpart of this Agreement first be proven.

(e) *Rules of Construction.* The terms of this Agreement shall be governed by and construed in accordance with the laws of the state in which the Building is located, without reference to its conflicts of laws principles. The pronouns of any gender shall include the other gender, and either the singular or the plural shall include the other, as the context requires. "Include" and "including" and their derivatives shall be construed as illustrative but not limiting. References in this Agreement to sections shall refer to those sections of this Agreement unless the context expressly requires otherwise. Headings of sections are for convenience only and shall not be considered in construing the meaning of the contents of such sections. If any term, covenant, condition or provision of this Agreement is determined by a court of competent jurisdiction to be, to any extent, invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by Applicable Law. If the day for performance of any act required under this Agreement falls on a Saturday, Sunday or holiday for which banking institutions in the state of Utah are generally closed, then the day for such performance, as the case may be, shall be the next following regular business day.

(f) *Entire Agreement.* This Agreement, including all exhibits hereto, constitutes the entire agreement between ExteNet, Manager and Owner and any modification to this Agreement or any exhibits hereto must be in writing, signed by authorized representatives of the Party to be charged and delivered to the other Party in order to be effective. There are no representations or understandings existing prior to the Effective Date between ExteNet, Manager and Owner which are not stated in this Agreement.

(g) *Attorneys' Fees.* Should either Party institute any legal proceedings against the other for breach or failure to perform any provision contained in this Agreement and prevail in such action, the non-prevailing Party shall in addition be liable for the costs of the prevailing Party, including its reasonable attorneys' fees at trial and through appeal.

(h) *Good Faith.* The Parties shall cooperate in good faith with each other to effectuate the purposes of this Agreement.

(i) *Strict Performance / Waiver.* A Party's failure to exercise its rights with respect to a breach of any term, covenant or condition contained in this Agreement, to insist on strict performance of any of the conditions or provisions in this Agreement, or to otherwise exercise any of such Party's rights hereunder shall not be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition contained in this Agreement.

(j) *Force Majeure.* If a Party fails to fulfill any of its obligations under this Agreement within the time prescribed, and such failure is caused by, or materially contributed to by, a Force Majeure Event, then such failure shall be deemed not to be a breach of such Party's obligations, and the time for the performance of such obligation shall be extended accordingly as may be appropriate under the circumstances.

(k) *Confidentiality.* The Parties agree that the negotiations and terms and conditions of this Agreement are confidential and that the Owner and Manager and its Affiliates keep as confidential facts concerning the Building and its operations. Accordingly, the Parties agree that: (i) without the prior written consent of the non-disclosing party, the terms and conditions of this Agreement may not be disclosed to third parties; (ii) ExteNet shall not disclose information that it becomes aware of concerning the Building and its operations, except that any such information (whether described in the foregoing clause (i) or (ii)), may be disclosed (A) to its employees, directors, consultants, legal counsel, contractors and others on a need-to-know basis who, in the case of disclosure to each of the foregoing, shall be directed to treat as confidential any information so disclosed, (B) as may be required by Applicable Law or pursuant to a subpoena or court order or similar legal requirement, (C) by Owner or its Affiliates, to their respective actual and potential lenders, purchasers and others who may acquire an interest in the Building and/or the land on which the Building is situated, and (D) by ExteNet, to WSPs; (iii) pursuant to Section 63-2-304, Utah Code Annotated, ExteNet and the Manager hereby claim business confidentiality protection for the terms of this Agreement and for any records provided to the Owner pursuant to this Agreement. This claim of business confidentiality is based upon the following reasons: (A) Disclosure of the terms of this Agreement or records related to its performance by the Parties may cause unfair competitive injury to ExteNet and the Manager and will place ExteNet and the Manger at a competitive disadvantage with competing businesses, (B) Disclosure of the terms of this Agreement or any records related to the performance of this Agreement by the Parties may reveal trade secrets of ExteNet or the Manager.

Notwithstanding the foregoing, no obligation of confidentiality shall extend to any information of the disclosing Party which: (I) was publicly known at the time it was disclosed by the disclosing Party or thereafter becomes publicly known through no fault or breach of the aforesaid confidentiality obligations by the receiving Party; (II) was known to and recorded by the receiving Party prior to the disclosure by the disclosing Party; or (III) becomes known to the receiving Party from a source other than the disclosing Party.

IN WITNESS WHEREOF, each Party has executed this Agreement as of the respective dates set forth below.

EXTENET SYSTEMS, INC.,
a Delaware corporation
By: _____
Name: _____
Title: _____
Date: _____

Centennial Management Group, Inc., a Utah
corporation, as Manager of the Building
By: _____
Name: _____
Title: _____
Date: _____

West Valley City, a municipal corporation of the State of Utah; as Building Owner

Mayor Date

Attest:

City Recorder Date

The following Exhibits are attached to and incorporated into this Agreement:

- Exhibit 1: Location / Description of Head-End Area
- Exhibit 2: Rules and Regulations
- Exhibit 3: Miscellaneous Information

Exhibit 1

Location / Description of Head-End Area

[To be agreed by the parties.]

Exhibit 2

Rules and Regulations

[To be supplied by Manager.]

Exhibit 3

Miscellaneous Information

1. Pursuant to Section 9(a), the following are the special access requirements:

Access may be granted by contacting the Manager's representative listed on page 1 of this Agreement. In non-emergency situations, the Manager will facilitate access as soon as is reasonably practical or at such later time as ExteNet may request.

2. Pursuant to Section 13, the following are the existing environmental issues affecting the Building which are known to Owner and reasonably could affect ExteNet in connection with its installation or operation of the Distributed Network:

None

3. Pursuant to Section 14(a), Building is owned by Owner:

Yes No

- a. The land on which the Building is located is owned by the Owner. The Building is owned by the West Valley City Building Authority which is the municipal financing entity of Owner. Owner has possession of the Building pursuant to a Master Lease that was executed in connection with the issuance of its Lease Revenue Refunding Bonds, Series 2002A (the "**Bonds**"). The trustee for the Bonds is Zions First National Bank.

4. Pursuant to Section 18, Owner states that the following existing mortgages, deeds of trust and similar security documents encumber the Building:

The Indenture and other documents associated with the Bonds.