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Skagit County Auditor

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9/9/2015 Page

1 of

11 12:40PM

Document Title:

Assignment of Rents and Leases

Reference Number : N/A

Grantor(s):

additional grantor names on page \_\_\_.

1. Atlas Tower Holdings, LLC

2.

Grantee(s):

additional grantee names on page\_\_\_.

1. First Western Trust Bank (Lender)

2.

Abbreviated legal description:

full legal on page(s) 9.

Section 30; Township 34 N; Range 4 E, W.M.

Assessor Parcel / Tax ID Number:

additional tax parcel number(s) on page \_\_\_.

340430-2-005-0001

UNOFFICIAL DOCUMENT

After recording return to:  
Patricia J. Rogers, Esq.  
Moye White LLP  
16 Market Square, 6th Floor  
1400 16th Street  
Denver, CO 80202

## ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES (hereinafter "**Instrument**") is made as of the 15<sup>th</sup> day of July, 2015, by ATLAS TOWER HOLDINGS, LLC (the "**Assignor**"), whose mailing address is 4450 Arapahoe Ave., Suite 100, Boulder, CO 80303, to FIRST WESTERN TRUST BANK, a Colorado banking corporation (the "**Assignee**"), whose mailing address is 1155 Canyon Blvd, Suite 300, Boulder, CO 80302.

### RECITALS

A. In connection with that certain Credit Agreement by and between Assignee and Assignor, dated November 26, 2014 (the "**Credit Agreement**"), Assignor has executed and delivered to Assignee a Promissory Note (hereinafter, together with all amendments thereto and modifications thereof, called the "**Note**"), dated November 26, 2014 in the principal sum of Three Million and No/100 Dollars (\$3,000,000.00), and, as additional security for the Note, a Security Agreement of even date herewith (the "**Security Agreement**"). Terms not otherwise defined herein shall be as defined in the Credit Agreement.

B. In connection with the execution and delivery of the Credit Agreement and the Note, Assignee has required that Assignor absolutely assign to Assignee all of Assignor's right, title and interest in, to and under any and all leases (hereinafter individually referred to as a "**Lease**" and, collectively, as the "**Leases**") now or hereafter in existence (as amended or supplemented from time to time) and covering space in or applicable to the Property described on Exhibit A hereto, including, without limitation, those Leases listed on Exhibit A hereto, and Assignor desires and intends by this instrument to absolutely assign to Assignee all of Assignor's right, title and interest in, to and under the Leases.

C. It is the intention of the Assignor to create a present assignment of all the leases, rents, issues and profits now due or which may hereafter become due, but inasmuch as this Instrument is made as additional security for the payment of the Note, it is agreed that the Assignee's right to collect said rentals shall be conditioned upon the existence of default in the payment of said Note according to its terms.

THEREFORE, Assignor agrees as follows:

1. Grant of Security Interest. Assignor does hereby absolutely and unconditionally grant, transfer, bargain, sell, assign, convey, and set over unto Assignee, its successors and assigns, all of the right, title and interest of Assignor in, to and under the Leases, together with: (i) all rents, issues, earnings, income, profits, benefits and advantages arising from the Property and from said Leases and all other sums due or to become due under and pursuant thereto, including, but not limited to lease termination fees, purchase option fees, and other fees and expenses arising from the Property or payable under any Lease; (ii) all right and claims for damages against tenants arising out of defaults arising from the Property or under the Leases, including rights to termination fees and compensation with respect to Lease pursuant to Section 365(1) of the Federal Bankruptcy Code or any replacement Section thereof; (iii) any

and all guarantees of or under any of said Leases; (iv) all rights, powers, privileges, options and other benefits of Assignor as lessor under the Leases, including, without limitation, the immediate and continuing right to receive and collect all rents, income, revenues, issues, profits, condemnation awards, insurance proceeds, moneys and security deposits, payable and receivable, or any of the above, under the Lease or pursuant to any of the provisions thereof whether as rent or otherwise, the right to perform all other necessary or appropriate acts with respect to such Leases as agent and attorney-in-fact for Assignor, and the right to make all waivers and agreements, to give and receive all notices, consents and releases, to take such action upon the happening of a default under any Lease, including the commencement, conduct and consummation of proceedings at law or in equity as shall be permitted under any provision of any Lease or by any law, and to do any and all other things whatsoever which the Assignor is or may become entitled to do under any such Leases; and (v) all tenant improvements and fixtures located at the Property. It is intended by Assignor that this Instrument constitute a present, absolute assignment of the Leases, and not an assignment for additional security only. Notwithstanding the provisions of this Section 1, so long as no event of default has occurred and is continuing beyond any applicable cure periods under the Note or any of the Loan Documents, Assignor shall have the revocable right and revocable license to occupy the Property as landlord or otherwise and to collect, use and enjoy the rents, issues and profits and other sums payable under and by virtue of any Lease (but only as the same become due under the provisions of such Lease) and to enforce the covenants of the Leases, provided that any amounts collected by Assignor shall be held by Assignor in trust for the benefit of Assignee for use in the payment or satisfaction of all sums, covenants, conditions, agreements, representations, warranties and other liabilities or obligations of Assignor or any other obligor to or benefiting the Assignee which are evidenced or secured by other otherwise provided in the Note, this Agreement or any of the other Loan Documents, together with all amendments and modifications thereof.

2. Duration. This Instrument is made and given and shall remain in full force and effect until: (a) the payment in full of all principal, interest and other sums due under the Note; and (b) the performance and observance by Assignor of all of the obligations, liabilities, terms, covenants and conditions to be performed or observed under the Note and the other Loan Documents.

3. Representations, Warranties and Covenants. Assignor represents, warrants, covenants and agrees:

(a) that Assignor has good right, title and authority to make this instrument, the Leases are valid, in full force and effect, and Assignor holds the entire and unencumbered right of the landlord under the Leases, subject only to Permitted Encumbrances;

(b) that neither Assignor nor any predecessor lessor has heretofore alienated, assigned, pledged or otherwise disposed of or encumbered the Leases, any security or other deposit, or any of the sums due or to become due thereunder, and that neither Assignor nor any predecessor lessor has performed any acts or executed any other instruments which might prevent Assignee from operating under any of the terms and conditions of this Instrument or which would limit Assignee in such operation;

(c) that Assignor shall not make any other assignment of their entire or any part of their interest in or to any or all Leases, or any or all rents, issues, income or profits assigned hereunder;

(d) that Assignor has not accepted or collected rent or any other payments under any Lease, other than required security deposits, for any period subsequent to the current period for which such rent or other payment has already become due and payable and, except in the ordinary course of business, shall not collect any rents, issues, income or profits assigned hereunder more than thirty (30) days in advance of the due date, except for security deposits;

(e) that Assignor has not executed or granted any amendment or modification whatever of any of the Leases, either orally or in writing;

(f) except as provided in writing to Assignor, that there is no default under any of the Leases now existing and no event has occurred and is continuing which, with the lapse of time or the giving of notice or both, would constitute an event of default under any of the Leases;

(g) that Assignor in a commercially reasonable manner, both before and after revocation of the license granted in Section 1 will observe, perform and discharge, duly and punctually, all and singular the obligations, terms, covenants, conditions and warranties of the Note, this Instrument or any other Loan Document and any Lease, on the part of Assignor to be kept, observed and performed, and Assignor has not and shall not, except in the ordinary course of business (i) release the liability of any tenant under any Lease; (ii) consent to any tenant's withholding of rent or monthly monetary advances and offsetting same against future rentals; (iii) consent to any tenant's claim of partial or total eviction; (iv) consent to a tenant termination or cancellation of lease; or (v) enter into any oral lease with respect to all or any portion of the Property without Assignee's prior written consent;

(h) that except in the ordinary course of business, Assignor will enforce the performance of each and every obligation, term, covenant, condition and agreement in said Leases by any tenant to be performed;

(i) that except in the ordinary course of business, Assignor will appear in and defend any action or proceeding arising under, occurring out of or in any manner connected with said Leases, or the obligations, duties or liabilities of Assignor or any tenant thereunder, and upon request by Assignee to do so in the name and on behalf of Assignee, but at the expense of Assignor;

(j) that Assignor will, upon the request of Assignee, execute and deliver to Assignee such further instruments and do and perform such other acts and things as Assignee may deem reasonably necessary or appropriate to make effective this Instrument and the various covenants of Assignor herein contained, and to more effectively vest in and secure to Assignee the sums due or hereafter to become due under the Leases, including, without limitation, the execution of such additional assignments as shall be deemed necessary by Assignee effectively to vest in and secure to Assignee all rents, income and profits from any and all Lease;

(k) that Assignor will, upon execution thereof, deliver to Assignee a true, correct and complete copy of each and every Lease then affecting all or any portion of the Property, as well as any new ground leases and subleases it enters into (upon which Assignor will also execute and deliver to Assignee any documents required to perfect Assignee's security interests in such subleases pursuant to subsection (j) above); and

(l) that except in the ordinary course of business, the existing Leases contain no cancellation clauses in favor of the lessees, nor prepayment of rent clauses allowing prepayment of more than one month's rent in advance.

4. **Event of Default.** In the event any warranty or representation of Assignor herein shall be false, misleading or materially inaccurate, or an event of default has occurred and continued beyond applicable cure periods under the Credit Agreement, Note, Security Agreement, this Instrument or any other Loan Document, then, in each instance, at the option of Assignee, the same shall constitute and be deemed to be a default hereunder and under the Note, thereby giving Assignee the absolute right to declare all sums secured thereby and hereby immediately due and payable and to exercise any and all rights and remedies provided thereunder and hereunder as well as such remedies as may be available at

law or in equity. Further, upon an event of default, at Assignee's election, without notice or demand to Assignor, and without releasing Assignor from any obligation hereof, Assignee may make or perform in the same manner and to such extent as Assignor may deem necessary to protect the security hereof, including, without limitation, appearing in or defending any action or proceeding purporting to affect the security hereof or the rights or powers of Assignor or Assignee, performing or discharging any obligation, covenant or agreement of Assignor under any Lease and, in exercising any of such powers, paying all necessary costs and expenses, employing counsel, and incurring and paying reasonable attorneys' fees. Any sums advanced or paid by Assignee for any such purposes shall be immediately due and payable to Assignee by Assignor and shall bear interest at the Default Rate from the date paid or advanced by Assignee until repaid by Assignor.

5. Right to Collect Rent. Assignor hereby consents to and irrevocably authorizes and directs the tenants under the Leases and any successor to the interest of any of said tenants, upon demand and notice from Assignee of Assignee's right to receive the rent and other amounts due under such Leases, to pay to Assignee the rents and other amounts due or to become due under the Leases, and said tenants shall have the right to rely upon such demand and notice from Assignee and shall pay such rents and other amounts to Assignee without any obligation or right to determine the actual existence of any default or event claimed by Assignee as the basis for Assignee's right to receive such rents and other amounts and notwithstanding any notices from or claim of Assignor to the contrary, and Assignor shall have no right to claim against said tenants for any such rents and other amounts so paid by said tenants to Assignee.

6. Termination of Right to Collect Rent and Other Rights. Following an event of default that is continuing beyond applicable cure periods under the Credit Agreement, Note, Security Agreement, this Instrument or any of the other Loan Documents, the right and license granted to Assignor in Section 1 above shall be automatically revoked and Assignee, at its option, without waiving any event of default, shall have the complete right, power and authority to:

(a) without taking possession, to demand, collect and receive and sue for the rents and other sums payable under the Lease and, after deducting all reasonable costs and expenses of collection (including, without limitation, attorneys' fees) as determined by Assignee, apply the net proceeds thereof to the payment of any indebtedness secured hereby;

(b) to declare all sums secured hereby immediately due and payable, and, at its option, exercise any or all of the rights and remedies contained in the Credit Agreement, the Note and in the other Loan Documents;

(c) enter upon and take possession of the Property, either in person or by agent or by an ex parte receiver appointed by a court, and have, hold, manage, lease and operate the same on such terms and for such period of time as Assignee may deem necessary or proper, with full power to make from time to time all alterations, revocations, repairs or replacements thereto or thereof as may seem proper to Assignee to make, enforce, modify and accept the surrender of any leases, to obtain and evict tenants, to fix or modify rents, and to do any other act which Assignee deems necessary or proper; and

(d) to make any payment or do any act required herein of Assignor in such manner and to such extent as Assignee may deem necessary, and any amount so paid by Assignee shall become immediately due and payable by Assignor with interest thereon until paid at the Default Rate and shall be secured by this Instrument.

7. Application of Proceeds. All sums collected and received by Assignee out of the rents, issues, income and profits of the Property following the occurrence of any one or more events of default shall be applied as follows:

(a) first, to reimburse Assignee for all of the following expenses, together with costs and attorneys' fees and including interest thereon at the Default Rate: (i) taking and retaining possession of the Property, (ii) managing the Property and collecting the rents, issues, income and profits thereof, including, without limitation, salaries, fees and wages of any property management company and such other employees as Assignee may deem necessary and proper; (iii) operating and maintaining the Property, including, without limitation, payment of rent, taxes, charges, claims, assessments, water rents, sewer rents, other liens, and premiums for any insurance required under the Credit Agreement or any of the other Loan Documents; and (iv) the cost of all alterations, renovations, repairs or replacements of or to the Property which Assignee may deem necessary and proper;

(b) second, to reimburse Assignee for all sums expended by Assignee pursuant to Section 6 above, together with interest thereon at the Default Rate;

(c) third, to reimburse Assignee for all other sums with respect to which Assignee is indemnified pursuant to Section 12 below, together with interest thereon at the Default Rate;

(d) fourth, to reimburse Assignee for all other sums expended or advanced by Assignee pursuant to the terms and provisions of, or constituting additional indebtedness under, any of the other Loan Documents, together with interest thereon at the Default Rate;

(e) fifth, to payment of all accrued and unpaid interest under the Note;

(f) sixth, to the payment of any unpaid principal balance of the Note and any and all other amounts due thereunder or under the other Loan Documents; and

(g) seventh, any balance remaining to Assignor, its respective legal representatives, successors and assigns, or to such other parties which may be legally entitled thereto.

8. Limitations of Liability. The acceptance by Assignee of this Instrument with all of the rights, powers, privileges and authority so created, shall neither be deemed or construed to constitute Assignee a mortgagee in possession nor at any time or in any event to impose any obligation whatsoever upon Assignee to appear in or defend any action or proceeding relating to the Leases or the Property, or to take any action hereunder, or to expend any money or incur any expenses, or perform or discharge any obligation, duty or liability under the Leases, including, without limitation, the responsibility for the condition, safety, control, care, management or repair of the Property, or to assume any obligation or responsibility for any security deposits or other deposits delivered to Assignor by any tenant and not assigned and delivered to Assignee, or render Assignee liable in any way for any injury or damage to person or property sustained by any person or entity in, on, or about the Property.

9. Non-Waiver. Assignor agrees that the collection of rents and the application thereof as aforesaid or the entry upon and taking of possession of the Property, or any part thereof, by Assignee shall not cure or waive any default, or waive, modify or affect any notice of default under the Credit Agreement, the Note or the other Loan Documents, or invalidate any act done pursuant to such notice, and the enforcement of such right or remedy by Assignee, once exercised, shall continue for so long as Assignee shall elect. If Assignee shall thereafter elect to discontinue the exercise of any such right or remedy, the same or any other right or remedy hereunder may be reasserted at any time and from time to time following any subsequent default.

10. Cumulative Remedies. The rights and remedies of Assignee hereunder are cumulative and not in lieu of, but are in addition to, any rights or remedies which Assignee shall have under the Credit Agreement, the Note, the Security Agreement, any of the Loan Documents, or at law or in equity,

which rights and remedies may be exercised by Assignee either prior to, simultaneously with, or subsequent to, any action taken hereunder. The rights and remedies of Assignee may be exercised from time to time and as often as such exercise is deemed expedient, and the failure of Assignee to avail itself of any of the terms, provisions and conditions of this Instrument for any period of time, at any time or times, shall not be construed or deemed to be a waiver of any rights under the terms hereof.

11. Continuing Rights. The right of Assignee to collect and receive the rents assigned hereunder or to exercise any of the rights or powers herein granted to Assignee shall, to the extent not prohibited by law, also extend to the period from and after the filing of any suit to foreclose the lien created under any of the Loan Documents which cover the Property, including any period allowed by law for the redemption of the Property after any foreclosure sale.

12. Indemnification. Assignor agrees to indemnify, defend and hold Assignee harmless from and against any and all liability, loss, damage or expense, which Assignee may or might incur under or by reason of this Instrument, and of and from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligation or undertaking on the part of Assignee to perform or discharge any of the terms, covenants or agreements contained in the Lease. Should Assignee incur any such liability, loss or damage under or by reason of this Instrument, or in the defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, together with interest thereon at the same rate of interest as provided in the Note, shall be secured by this Instrument and by the other Loan Documents. Assignor shall reimburse Assignee therefor immediately upon demand, and upon failure of Assignor so to do, Assignee may declare all sums secured hereby immediately due and payable.

13. Security Deposits. Assignor acknowledges that Assignee has not received for its own account any security deposited by any tenant pursuant to the terms of any Lease and that Assignee assumes no responsibility or liability for any security so deposited.

14. Severability. If any provision of this Instrument is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, Assignee and Assignor shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Instrument, and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect.

15. Successors and Assigns. This Instrument is binding upon Assignor and its legal representatives, successors and assigns, and the rights, powers and remedies of Assignee under this Instrument shall inure to the benefit of Assignee and its successors and assigns.

16. Written Modifications. This Instrument shall not be amended, modified or supplemented without the written agreement of Assignor and Assignee at the time of such amendment, modification or supplement.

17. Notices. Any notice required or permitted to be given by Assignor or Assignee under this Instrument shall be delivered as set forth in Section 8.01 of the Credit Agreement

18. Governing Law; Jurisdiction; Consent to Service of Process.

(a) This Instrument and the transactions contemplated hereunder shall be governed by and construed in accordance with the laws of the State of Colorado, without giving effect to conflict of laws principles.

(b) The Assignor hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the State and Federal courts in the City and County of Denver, Colorado, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Instrument, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such Colorado State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Instrument shall affect any right that the Assignee may otherwise have to bring any action or proceeding relating to this Instrument against the Assignor or its properties in the courts of any jurisdiction.

(c) The Assignor hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Instrument in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

19. Waiver of Jury Trial. THE ASSIGNOR, THE ASSIGNEE, AND EACH OF THEM BY THEIR EXECUTION AND DELIVERY HEREOF HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG THE ASSIGNOR AND ASSIGNEE ARISING OUT OF OR IN ANY WAY RELATED TO THIS ASSIGNMENT OR ANY OTHER LOAN DOCUMENT OR ANY RELATIONSHIP BETWEEN ASSIGNEE AND ASSIGNOR. THIS PROVISION IS A MATERIAL INDUCEMENT TO ASSIGNEE TO PROVIDE THE FINANCING DESCRIBED IN THE CREDIT AGREEMENT OR IN THE OTHER LOAN DOCUMENTS.

20. Counterparts. This Instrument may be executed in any number of duplicate originals or counterparts and each duplicate original or counterpart shall be deemed to be an original.

[Signature Page Follows]

IN WITNESS WHEREOF, Assignor has duly executed this Instrument as of the day and year first above written.

**ASSIGNOR:**

ATLAS TOWER HOLDINGS, LLC  
By: Atlas Tower Holdings Management, LLC  
Its: Manager

By: [Signature]  
Name: Nathan L. Foster  
Title: Manager

STATE OF COLORADO )  
                                  ) ss:  
COUNTY OF BOULDER )

The foregoing instrument was acknowledged before me this \_\_ day of July 2015, by Nathan L. Foster, as Manager of Atlas Tower Holdings Management, LLC, as Manager of Atlas Tower Holdings, LLC, a Colorado limited liability company.

My commission expires:

7/23/2019

[Signature]  
NOTARY PUBLIC

[SEAL]

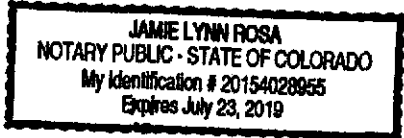


Exhibit A

**LEASE:**

Lease between Atlas Tower Holdings, LLC and Seattle SMSA Limited Partnership, d/b/a Verizon Wireless, dated December 15, 2014.

**PROPERTY:**

A leasehold interest in that certain real property described as:

PARCEL "A":

That portion of the Southeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 30, Township 34 North, Range 4 East, W.M., lying Westerly of the centerline of Britts Slough, EXCEPT the North 200 feet of that portion thereof lying South of the County road running along the North line of said subdivision, AND ALSO EXCEPT that portion lying South of a line beginning 29 rods  $7\frac{1}{2}$  feet North of the Southwest corner of said Southeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  and running thence East to the center of Britts Slough.

Situate in the County of Skagit, State of Washington.

PARCEL "B":

The East 60 feet of the West 360 feet of the North 200 feet of that portion of the Southeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 30, Township 34 North, Range 4 East, W.M., lying South of the County road running along the North line of said subdivision.

Situate in the County of Skagit, State of Washington.

PARCEL "C":

That portion of the Southeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 30, Township 34 North, Range 4 East, W.M., described as follows:

Beginning 29 rods  $7\frac{1}{2}$  feet North of the Southwest corner of said Southeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$ ; thence East to the centerline of Britts Slough, the true point of beginning of the herein described tract; thence continue East to the West line of the County Road; thence Northerly along the Westerly line of the County Road to a point 60 feet North of the line first described herein; thence West parallel to and 60 feet North of the said first described line to the center of Britts Slough; thence Southerly along the centerline of Britts Slough to the true point of beginning.

EXCEPT any portion thereof owned by or used for Dike or Ditch rights of way by Diking District No.3, AND ALSO EXCEPT any portion thereof lying within the boundaries of the following described tract:

Beginning at a point in the centerline of Britts Slough on the line between the Northeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  and the Southeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$ , said Section;  
thence due East 18 rods;  
thence South to the center of Britts Slough;  
thence Northerly along the centerline of Britts Slough to the point of beginning:

Situate in the County of Skagit, State of Washington.