LEASE AGREEMENT

Space for Equipment on Existing Tower

THIS LEASE AGREEMENT (Agreement) is made and entered into this _____ day of _____, 2015 (Effective Date) by and between the County of Ouray, Colorado (Lessor), and Clearnetworx, Inc., a Colorado Corporation, hereinafter referred to as the Lessee.

In consideration of the mutual promises and respective obligations undertaken herein, the parties agree as follows:

1. PREMISES. Lessor hereby leases and demises unto Lessee space on a communications tower located on property owned by the Lessor, as depicted on Attachment A to this Agreement (Premises). The space leased is limited to that depicted on Attachment A, and shall allow for three point-to-point connections approximately 26-inches tall and three point to multi-point microwave radio equipment approximately 26-inches tall. No other equipment shall be permitted without amendment to this Lease.

2. TERM. The initial term of this Agreement shall be for five years, commencing on the effective date, above. Except as hereinafter provided, this Agreement may be renewed for four additional five-year periods (each being considered a renewal term). All renewal periods will comply with the same terms and conditions in effect during the initial term, with the exception of the fee for use of the space on the tower. The Agreement shall be automatically renewed for each renewal term unless, not less than six (6) months prior to the expiration of the then current term, Lessee notifies Lessor, in writing, of its intention not to renew the Agreement.

3. LEASE PAYMENTS. Beginning on the effective date, Lessee shall pay to Lessor an annual lease rate of **$2,400** for the first year of the initial term. On the first anniversary of the effective date, and on each anniversary thereafter, during the term of this Agreement, the annual lease rate shall be automatically increased by three percent (3%) over the previous year. Payments shall be due and shall be made on or before the anniversary date, payable to Ouray County, and, if mailed, shall be mailed to:

   County Administrator
   Ouray County
   P.O. Box C
   Ouray, CO 81427

   If hand-delivered, payment shall be delivered to the County Administrator at 541 4th Street, Ouray, Colorado, 81427. Lessor may designate a different location for payments to be made, notice of such to be provided to Lessee in writing not less than thirty (30) days prior to the anniversary date of the Agreement.

   If Lessor has not received the annual lease payment on or before the tenth (10th) day after the date payment is due, a late charge of 5% of the annual payment will be assessed to Lessee. Should Lessee pay by check and it is returned to Lessor for insufficient funds, a penalty of

$100.00 shall be assessed Lessee to cover administrative costs. Lessor and Lessee agree that acceptance by Lessor of a late payment does not waive Lessor's right to declare Lessee in default of the Agreement.

4. USE. Lessee, together with any sub-lessees, sub-licensees and or designated successors or assigns which have been authorized by Lessee to use the space leased or the equipment affixed to the tower, may use and occupy the premised for wireless communications equipment as specified on Attachment A. Lessee has the right to install, operate, repair, maintain and remove the equipment and has the right of access to the tower for those purposes. The premises may not be used for any other purpose without the written prior consent of the Lessor, which consent shall not be unreasonably withheld. Any other use of the premises shall constitute a material breach of this Agreement and, in the event such breach goes uncured as provided herein, may result in the termination of this Agreement at Lessor's discretion.

5. STRUCTURES. No structures or equipment are authorized except as specifically depicted in Attachment A. Lessee shall comply with all applicable provisions of the Ouray County Land Use Code.

6. INSURANCE. Lessee, and any sub-lessees, sub-licensees, successors or assigns, shall obtain and maintain at all times during the term of this Agreement, insurance in the kinds and amounts detailed below. Lessee shall, at its sole cost and expense, obtain insurance on its inventory, equipment, and all other personal property of Lessee located on the Premised against any loss from fire, theft, or other casualty. If Lessor reasonably changes its insurance requirements during the term of this Agreement, Lessee shall be responsible for updating or upgrading its policy to comply with Lessor's requirements prior to the beginning of any five-year renewal term. Lessor shall notify Lessee in writing of any changes to its insurance requirements not less than sixty (60) days prior to the end of any five (5) year term. Lessee shall be required to have Workmen's Compensation insurance as required by Colorado statute, and Employer's Liability Insurance covering all employees acting within the scope of their employment and work on any of the activities authorized by this Agreement. Commercial and General Liability Insurance shall be written ion an ISO occurrence form CG 00 01 10/93 or equivalent, covering all operations, fire damage construction, maintenance, repairs and other work on the premises, with blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

1. **$1,000,000 each occurrence**
2. **$2,000,000 general aggregate**
3. **$50,000 any one fire**

The aggregate limit shall be maintained in the event of claims made or paid through additional insurance obtained by Lessee. Lessor shall be named as an additional insured on all policies required herein.

7. TAXES, UTILITIES, MAINTENANCE AND OTHER EXPENSES. Lessee shall be responsible for paying all applicable personal property taxes on equipment or structures, all utilities and other operating costs and expenses. This Agreement is a NET LEASE.

8. ASSIGNMENT. This Agreement may not be assigned by Lessee without the written permission of Lessee, which permission shall not be unreasonably withheld.

9. TERMINATION. This Agreement may be terminated at the end of each renewal term as provided in paragraph 2 above or as provided in this paragraph. If, at any time during the term of this Lease, it becomes commercially, economically, technologically or legally advisable in Lessee's judgment for Lessee to discontinue using the premises, Lessee may terminate this Agreement by providing thirty (30) days written notice to Lessor. In such event, Lessee shall compensate Lessor by paying Lessor an amount equivalent to one (1) annual payment as liquidated damages. Such payment shall be tendered with the written notice of termination. Should Lessor determine that Lessee has breached or failed to perform any provision of this Agreement, Lessor shall provide Lessee with notice of such breach and intention to cancel the Agreement, and shall provide Lessee with thirty (30) days from the date of such notice to correct or remedy any breach. If the breach remains uncorrected or remedied, Lessor may terminate and cancel this Agreement and shall then provide Lessee with notice to remove any and all equipment, personal property or fixtures from the premises within thirty (30) days.

10. HOLD HARMLESS. Lessee shall save, indemnify and hold harmless Lessor for any liability for damage or loss to persons or property resulting from Lessee's occupancy or use of the premises, except in cases arising from the gross negligence or intentional acts of Lessee or its employees and agents.

11. APPLICABLE LAW. The laws of the State of Colorado and any rules or regulations issued pursuant thereto, including regulations, resolutions and Ordinances of the County of Ouray, shall be applied in the interpretation, execution and enforcement of this Agreement. Any provision of this Agreement rendered null and void by the operation pf this provision shall not invalidate the remainder of the Agreement, to the extent that the Agreement is capable of execution.

12. COMPELTE AGREEMENT. This Agreement, including Attachment A, supersedes all other oral or written discussions or agreements between the parties, and no subsequent amendment to this Agreement shall be operable except to the extent is in writing and executed by both parties.

13. NOTICES. All notices provided hereunder shall be provided via United States Postal Service as follows:

If to Lessor:	**County Administrator** **PO Box C** **Ouray, CO 81427**	If to Lessee:	**Clearnetworx** **343 N. 3rd Street** **Montrose, CO 81401**

14. HAZARDOUS MATERIALS. Lessee agrees to defend, hold harmless and indemnify Lessor, its employees, agents or subcontractors and officials against any and all damages, claims, liability, loss, fees, fines or expenses, including attorneys' fees and litigation costs, related to the presence, disposal, release, or clean-up of any hazardous materials or pollutants affecting the premises, which have been placed on the premises, released, disposed of or otherwise caused to be located on the premises or the adjacent property owned by the Lessor by Lessee, its employees, subcontractors, sub-lessees, sub-licensees, successors or assigns. Lessee agrees to be responsible for all damages, claims and liability caused by Lessee or its employees, subcontractors, sub-lessees, sub-licensees, successors or assigns to the soil, water, air vegetation, buildings or personal property owned by Lessor, related to any contamination or hazardous materials.

IN WITNESS WHEREOF, the parties have executed this Lease Agreement on the day and year first written above.

Connie J. Hunt

Connie Hunt, County Administrator – Ouray County

Doug Seacat, Owner – Clearnetworx, Inc.

ATTACHMENT A

DEEPLY DIGITAL
PROVIDING SOLUTIONS, NOT JUST TECHNOLOGY

Cleametworx
Ridgway Tower

Drawing: C1.1
Date: 10/28/14
Page #:____

RECEPTION# 214890, 09/23/2015 at 08:55:32 AM, 1 OF 2 PAGES,
MICHELLE NAUER, OURAY COUNTY, CO. CLERK & RECORDER

RESOLUTION NO. 2015-035

For Reference Purposes

BOARD OF COUNTY COMMISSIONERS OF OURAY COUNTY, COLORADO REGARDING AN APPLICATION FOR A MODIFICATION TO AN EXISTING TELECOMMUNICATIONS FACILITY AND A DETERMINATION OF SUBSTANTIAL VS NON-SUBSTANTIAL CHANGE

WHEREAS, the Telecommunications Act of 1996 was amended in February 2012 by Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, H.R. 3630, 126 Stat. 156 ("Tax Act") to limit the authority of local governments to regulate modifications to existing telecommunications facilities and requires approval of requests for modifications that are not substantial; and

WHEREAS, Doug Seacat, representing Clearnetworx, LLC, has applied to the Land Use Department for approval of a modification of an existing telecommunications facility and a determination of *substantial change* vs *non-substantial change* as outlined in HR-3630; and

WHEREAS, the Board of County Commissioners has directed Land Use Staff to bring such applications before them for an initial determination of whether the subject modification is a "substantial modification" or "not a substantial modification" as outlined in FCC document 14-153; and

WHEREAS, as required per County procedures to process and review such applications, notification of the request was sent to the adjacent, adjoining, and abutting property owners; and

WHEREAS, information regarding the subject request was posted on the County website on July 15, 2015; and

WHEREAS, all application materials and related documentation was provided to the Board of County Commissioners; and

WHEREAS, Board of County Commissioners reviewed and considered materials provided by the Applicant and Staff, including the FCC Guidance document dated January 25, 2013 interpreting Section 6409(a); and

WHEREAS, Land Use Staff and the County Attorney have reviewed the subject modification and find the proposal to be "not substantial"; and

WHEREAS, Section 6409a of the Middle Class Tax Relief and Job Creation Act of 2012 states that states and local governments "may not deny" and "shall approve", any request for collocation, removal, or replacement of transmission equipment of an existing wireless or base station, provided this action does not substantially change the physical dimensions of the tower or base station.

WHEREAS, the Board of County Commissioners reviewed the application at a properly noticed public meeting on September 8, 2015 to hear and consider public comments and the materials presented by Staff.

NOW THEREFORE, BE IT RESOLVED that the Board of County Commissioners has determined that the Clearnetworx, LLC proposed modification to an existing telecommunications facility is *not* a *substantial change*. Further, the Board declares that Clearnetworx may proceed with the modifications as stated in the application materials with the following conditions:

1. No antenna may be placed within one (1) foot of the existing mast antenna.
2. Ouray County reserves the right to shut down any equipment on the tower if it is found to be causing harmful interference with County communications.

3. Prior to commencing with the proposed modifications, the Applicant shall enter into a lease agreement with the County.

Voting For: Commissioners Batchelder, Padgett, and Tisdel
Voting Against: None

Adopted this **22** day of **SEPTEMBER, 2015**

BOARD OF COUNTY COMMISSIONERS
OF OURAY COUNTY, COLORADO

Don Batchelder, Chair

Lynn M. Padgett, Vice Chair

Ben Tisdel, Commissioner

Attest:

Michelle Nauer, Clerk and Recorder
By: Hannah Hollenbeck, Deputy Clerk of the Board