

# LEASE AGREEMENT

## STATE OF ARIZONA

This LEASE AGREEMENT (“Lease”), is made as of the date of the final signature below, by and between **CARINO CANYON Homeowners Association**, an Arizona nonprofit corporation [Tax ID: \_\_\_\_\_] (“Landlord”), and **NewPath Networks, LLC**, a New Jersey limited liability company [Tax ID:20-0724687] (“Tenant”).

A. Landlord owns or controls in fee simple that certain plot, parcel or tract of land, together with all rights and privileges arising in connection therewith, located in the City of Scottsdale, County of Maricopa, State of Arizona, as more particularly described in the Declaration of Covenants, Conditions and Restrictions, as amended from time to time, for Landlord dated October 3, 1994 (collectively, the “Property”).

B. Tenant owns and/or operates distributed antenna systems (“DAS”), which typically include Nodes that distribute signals to and from hub sites to allow wireless communications users to connect with their networks. Tenant licenses the use of its DAS systems to third party wireless carriers (“Carriers”).

C. Tenant desires to use a portion of the Property in connection with its DAS business. Landlord desires to grant to Tenant the right to use a portion of the Property in accordance with this Lease.

NOW, THEREFORE, Landlord and Tenant agree and covenant as follows:

### ARTICLE 1. DEFINITIONS

Section 1.1 The following are definitions in addition to those made elsewhere in this Lease.

1.1.1 “Approvals” means all certificates, permits, licenses and other approvals that Tenant, in its sole discretion, deems necessary for its intended use of the Premises.

1.1.2 “Hazardous Material” means any substance which is (i) designated, defined, classified or regulated as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under any Environmental Law, as currently in effect or as hereafter amended or enacted, (ii) a petroleum hydrocarbon, including crude oil or any fraction thereof and all petroleum products, (iii) PCBs, (iv) lead, (v) asbestos, (vi) flammable explosives, (vii) infectious materials, or (viii) radioactive materials. “Environmental Law(s)” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Sections 9601, et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901, et seq., the Toxic Substances Control Act, 15 U.S.C. Sections 2601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. 5101, et seq., and the Clean Water Act, 33 U.S.C. Sections 1251, et seq., as said laws have been supplemented or amended to date, the regulations promulgated pursuant to said laws and any other federal, state or local law, statute, rule, regulation or ordinance which regulates or proscribes the use, storage, disposal, presence, clean-up, transportation or release or threatened release into the environment of Hazardous Material.

1.1.3 “Improvements” shall mean the structures, fixtures, equipment, utility lines, conduits, landscaping and all other improvements made in, on, under and about the Premises by Tenant from time to time.

1.1.4 “Lease Commencement Date” shall mean the first day of the month following the month in which this Lease was fully executed.

1.1.5 “Lease Year” shall mean a 12-month period beginning on the Lease Commencement Date or an anniversary of the Lease Commencement Date and ending twelve (12) months thereafter.

1.1.6 “Mortgage” and “Mortgagee” shall include a mortgage, deed of trust or security agreement, and a sublease and subsubleaseback or other form of leaseback used for financing purposes, and the mortgagee, the beneficiary of a deed of trust or secured party, and a sublessee-subsublessor, as appropriate, and the making of any such relationship.

1.1.7 “Node” means the location of any antenna or any other signal distribution point on a Tenant facility (e.g. rooftop or faux cactus) and, as the context requires, equipment (e.g. antennas, repeaters) placed at such location.

1.1.8 “Person” and “Persons” wherever used in this Lease shall include both individuals and partnerships, firms, associations, corporations or any other form of business entity.

1.1.9 “Premises” shall mean, collectively as follows, that certain portion(s) of the Property including the air space above the Improvements as described on attached Exhibits A and B, together with unrestricted access, 24 hours per day and seven days per week, from the nearest public or private right-of-way along the Property to the Premises as described on the attached Exhibits A and B as necessary for Tenant’s employees, agents, contractors, and invitees to install, maintain, repair, operate, replace, and remove the Improvements, and an easement for underground utilities, conduits, and structures.

1.1.10 “Term” shall have the meaning set forth in Article 5 below.

## ARTICLE 2. LEASING

Landlord hereby leases the Premises to Tenant solely for the uses and purposes contained herein and upon the terms and conditions herein set forth. Landlord shall retain all other rights, title and interest in the Premises. This is intended as a present Lease of the Premises without further confirmation or agreement.

## ARTICLE 3. USE OF PREMISES

Section 3.1 Tenant’s Use. The Premises shall be used by Tenant for the purposes of constructing, maintaining and operating Improvements consisting of telecommunications facilities which may include, but not be limited to, an equipment vault, antennas, repeaters, and supporting structures, and appurtenant underground utilities and conduits. The location of each Node on the Premises shall be as shown on Exhibit A attached hereto, with the precise location to be determined by site conditions. Tenant shall supply to Landlord the final location of each Node, using latitude and longitude, after installation.

Section 3.2 Compliance with Laws. Tenant shall obtain and keep in good standing any and all Approvals for such operation as may be required by applicable laws and regulations and shall comply with any laws or governmental regulations applicable to the operation and maintenance of the DAS facilities located within the Premises, including but not limited to applicable rules and regulations of the Federal Communications Commission with respect to the safe operation of DAS facilities. The Premises shall not be used for any illegal purposes. Tenant expressly agrees to defend, hold harmless and indemnify Landlord, its agents, directors, officers, and employees from and against all claims against Landlord, its agents, directors, officers or employees based on Tenant’s violation of any Federal, State or local laws and regulations arising out of Tenant’s use of the Premises, and to pay all damages resulting therefrom, including reasonable fees and expenses for court costs, attorneys and any expert witnesses.

Section 3.3 Landlord’s Cooperation. During the Term of this Lease, Landlord shall: (i) cooperate with Tenant in its efforts to obtain all of the Approvals, including all appeals; and (ii) take no action that would adversely affect the Premises or interfere with Tenant’s lease rights hereunder. Landlord acknowledges that Tenant’s ability to use the Premises is contingent upon Tenant obtaining and maintaining the necessary Approvals. Landlord understands that any applications for such Approvals and/or the satisfaction of any requirements thereof may require Landlord’s cooperation, which Landlord hereby agrees to provide. Landlord shall not “knowingly” do or permit anything that will interfere with or negate any Approvals pertaining to the Improvements or Premises or

cause them to be in nonconformance with applicable local, state or federal laws. Landlord agrees to execute such documents as may be necessary to obtain and thereafter maintain the Approvals, and agrees to be named as the applicant for said Approvals.

Section 3.4 Harmful Interference. Tenant shall operate its Improvements on the Premises in a manner that will not cause harmful interference with equipment in use by Landlord and other parties as of the Lease Commencement Date (“Existing Users”). Except for equipment in use by Existing Users, Landlord agrees not to permit the construction, installation or operation of any equipment or device on the Property that interferes with Tenant’s Improvements, including the operation of its Nodes.

#### ARTICLE 4. LEASEHOLD IMPROVEMENTS

Section 4.1 Plans. This is a lease of the Premises in their present condition, without warranty to any Person whatsoever as to condition or suitability for any purpose except as expressly stated herein and Landlord has no obligation to Tenant to provide any Improvements whatsoever. Tenant will construct the Improvements on the Premises substantially in conformance with the plans and specifications contained in Exhibits A and B attached hereto (“Plans”), at Tenant’s sole cost. Tenant shall commence construction of the Improvements promptly and shall proceed with construction diligently. Tenant shall use reasonable commercial standards to minimize disruption to Landlord and Landlord’s members. Landlord’s execution of this Lease will signify Landlord’s approval of and reliance on the specifications set forth in Exhibits A and B. In the event Tenant desires to modify or upgrade the Improvements, and Tenant requires an additional portion of the Property (the “Additional Premises”) for such modification or upgrade, Tenant shall obtain Landlord’s prior written approval, which approval shall not be unreasonably withheld, delayed or conditioned, to lease to Tenant the Additional Premises, upon the same terms and conditions set forth herein, except that Exhibits A and B, as applicable, will be amended accordingly and the Rent shall increase in conjunction with the lease of the Additional Premises [based on the number of additional Nodes installed or licensed for use by Carriers, as the case may be]. Landlord agrees to take such actions and enter into and deliver to Tenant such documents as Tenant reasonably requests in order to effect and memorialize the lease of the Additional Premises to Tenant in accordance with this Section 4.1.

Section 4.2 Construction. Tenant shall use good faith reasonable efforts to cause the work necessary to construct the Improvements in substantial conformance with the Plans and in compliance with all applicable governmental requirements. All such Improvements, whether or not affixed to the real property, shall be and remain the property of Tenant. If Tenant or Tenant’s licensees cause damage to the Premises or any portion of the Property during such construction of Improvements, Tenant shall repair such damage within ten (10) business days at its sole expense. Tenant shall name Landlord as an additional insured on Tenant’s general liability insurance policy during the construction period.

#### ARTICLE 5. TERM

The initial term of this Lease (“Initial Term”) shall commence on the Lease Commencement Date and shall be for ten (10) Lease Years. This Lease will automatically renew for two (2) renewal terms each consisting of five (5) Lease Years (each a “Renewal Term”), upon the same terms and conditions unless Tenant provides written notice to Landlord of its intention not to renew the Lease at least ninety (90) days prior to the end of the Initial Term or any Renewal Term then in effect. If, at least sixty (60) days prior to the end of the second (2nd) Renewal Term, neither Landlord nor Tenant has given the other written notice of its desire that the term of this Lease end at the expiration of the second (2nd) Renewal Term, then upon the expiration of the second (2nd) Renewal Term this Lease shall continue in full force and effect upon the same covenants, terms and conditions for a further term of one (1) Lease Year (an “Annual Term”), and for Annual Terms thereafter until terminated by either party by giving to the other written notice of its intention to so terminate at least sixty (60) days prior to the end of any such Annual Term. If Tenant remains in possession of the Premises after the termination of this Lease, then Tenant will be deemed to be occupying the Premises on a month-to-month basis (the “Holdover Term”), subject to the terms and conditions of this Lease. The Initial Term, the Renewal Term, and each Annual Term are collectively referred to herein as the “Term”. During the Term, Tenant shall have the right to terminate this Lease at any time, without cause, by providing Landlord with ninety (90) days’ prior written notice. Upon such termination, this

Lease shall become null and void and neither party shall have any further rights or duties hereunder, except that any monies owed by either party to the other up to the date of termination shall be paid within thirty (30) days of the termination date.

ARTICLE 6. RENT

**[OPTION 1 – PER CARRIER ON NODE]**

For each Node on the Property, Tenant agrees to pay as rent (“Rent”) to Landlord the sum of One Thousand Eight Hundred Dollars (\$1,800.00) per Carrier licensed to use such Node during a Lease Year as part of the Carrier’s access to Tenant’s DAS system. The following table illustrates the annual Rent for each Node based upon the number of Carriers licensed to use such Node:

<b>Number of Carriers</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
Yearly Rent	\$1,800.00	\$3,600.00	\$5,400.00	\$7,200.00	\$9,000.00

The Rent payable for a Lease Year shall be paid in advance at the beginning of each Lease Year, with the first payment of Rent due on the Lease Commencement Date, and shall be based upon the number of Carriers then licensed to use each Node on the Property on the first day of each Lease Year. Provided, however, if the license for use of a Node by a Carrier changes during a Lease Year, either by entering into a license to use or terminating a license to use a Node by a Carrier, then either additional pro rata Rent will immediately become due and payable or a credit will be applied to the Rent paid in the following Lease Year, in each case the amount of which shall be calculated by dividing the Rent amount in effect for the Lease Year in which the change in use occurs by twelve (12) and multiplying that per month Rent amount by the number of months remaining in such Lease Year following the change in use of the Node.

At the end of the of the first Lease Year and each Lease Year thereafter during the Term (the “Adjustment Date”), the Rent shall increase based on the Consumer Price Index published by the Bureau of Labor and Statistics of the United States Department of Labor for all Urban Consumers, US City Average (“CPI-U”) indicator and shall be determined by dividing the CPI-U indicator published three (3) months prior to the Adjustment Date, by the CPI-U indicator published one (1) year and three (3) months prior to the Adjustment Date, and multiplying the resultant number by the annual lease rental amount of the Rent in effect during the previous Lease Year. In no event shall the increase in Rent calculated for any 1-year period exceed three percent (3%) of the annual lease rental amount of the Rent in effect during the previous Lease Year.

All amounts to be reimbursed to Landlord under this Lease shall be billed by Landlord within one (1) year from the end of the Lease Year in which the charges were incurred; any charges beyond such period shall not be billed by Landlord, and shall not be payable by Tenant. The foregoing shall not apply to the Rent which is due and payable without a requirement that it be billed by Landlord. The provisions of the foregoing sentence shall survive the termination or expiration of this Lease.

**[OR]**

**[OPTION 2 – PER NODE]**

Tenant agrees to pay as rent (“Rent”) to Landlord the sum of Three Thousand One Hundred Eighty-Three and no/100 Dollars (\$3,183.00) per Lease Year, payable in advance, for each Node then on the Property.

The Rent payable for a Lease Year shall be paid in advance at the beginning of each Lease Year, with the first payment of Rent due on the Lease Commencement Date, and shall be based upon the number of Nodes on the Property on the first day of each Lease Year. Provided, however, if the number of Nodes changes during a Lease Year, then either additional pro rata Rent will immediately become due and payable or a credit will be applied to the amount of Rent due in the following Lease Year, in each case the amount of which shall be

calculated by dividing the Rent amount in effect for the Lease Year in which the addition or removal of a Node occurs by twelve (12) and multiplying that per month Rent amount by the number of months remaining in such Lease Year following such change in the number of Nodes.

At the end of the of the first Lease Year and each Lease Year thereafter during the Term (the "Adjustment Date"), the Rent shall increase based on the Consumer Price Index published by the Bureau of Labor and Statistics of the United States Department of Labor for all Urban Consumers, US City Average ("CPI-U") indicator and shall be determined by dividing the CPI-U indicator published three (3) months prior to the Adjustment Date, by the CPI-U indicator published one (1) year and three (3) months prior to the Adjustment Date, and multiplying the resultant number by the annual Rent amount in effect during the previous Lease Year. In no event shall the increase in Rent calculated for any 1-year period exceed three percent (3%) of the annual lease rental amount of the Rent in effect during the previous Lease Year.

All amounts to be reimbursed to Landlord under this Lease shall be billed by Landlord within one (1) year from the end of the Lease Year in which the charges were incurred; any charges beyond such period shall not be billed by Landlord, and shall not be payable by Tenant. The foregoing shall not apply to the Rent which is due and payable without a requirement that it be billed by Landlord. The provisions of the foregoing sentence shall survive the termination or expiration of this Lease.

#### ARTICLE 7. TAXES AND ASSESSMENTS

Landlord shall pay all real estate taxes on Landlord's Property. Tenant agrees to reimburse Landlord for personal property taxes levied against Landlord's Property that are directly attributable to the Improvements. In no event shall Tenant be liable for any taxes paid or payable by Landlord (including but not limited to any transaction privilege tax or income tax) arising out of or based upon this Lease or the payments made by Tenant hereunder. Landlord agrees to provide Tenant any documentation evidencing such personal property taxes and how such personal property taxes are attributable to the Improvements. Tenant reserves the right to challenge any such assessment, and Landlord agrees to cooperate with Tenant in connection with any such challenge.

#### ARTICLE 8. INSURANCE

Section 8.1 General Provisions. Every policy of insurance required by this Lease shall (i) provide that no act or default of any Person other than Landlord or its agent shall render the policy void as to Landlord or affect Landlord's right to recover thereon, and (ii) be obtained and maintained from insurers authorized to do business in the State of Arizona. A certificate of insurance for listing each such policy shall be delivered to Landlord. If Tenant fails to maintain any of the insurance coverage required hereunder, without waiving any other remedy, Landlord may at its option obtain such coverage and Tenant shall pay the premium and all expenses therefor with interest as additional Rent due and payable with the next payment of Rent hereunder. The limits of coverage required by this Article shall be reviewed by Landlord and Tenant at least once every five (5) years during the Term and shall be increased or decreased from time to time as reasonably required to provide coverage in extent substantially equivalent to the coverage as provided below to the extent reasonably and economically available in the Scottsdale, Arizona area for comparable Improvements and uses.

Section 8.2 Property Insurance. Tenant shall keep and maintain its Improvements, including all structures and appurtenant equipment and fixtures on the Premises insured pursuant to a broad form perils insurance policy.

Section 8.3 Liability Insurance. Tenant shall maintain, throughout the term of this Lease, general liability insurance having combined single limits of not less than \$2,500,000 per occurrence for injury to persons or property arising out of the construction, operation, maintenance, use or occupancy of the Premises. Landlord shall be named as an additional insured thereunder.

Section 8.4 Workers' Compensation Insurance. Tenant shall maintain, throughout the Term of this Lease, such workers' compensation insurance as may be required by law in the States of Arizona.

Section 8.5 Waivers of Subrogation. All property insurance policies carried by either party covering the Premises, including without limitation, contents, fire and casualty insurance, shall expressly waive any right on the part of the insurer against the other party. The respective policies shall each include such a waiver clause or endorsement therefor so long as the same will be obtainable without extra cost, or if extra cost shall be charged therefor, so long as the other party pays such extra cost. If extra cost shall be chargeable therefor, each party shall advise the other thereof and of the amount of the extra cost, and the other party, at its election, may pay the same, but shall not be obligated to do so. The foregoing shall apply to claims for damage whether such damage is caused, wholly or partially, by the negligence or other fault of the other party or its agents, employees, members, subtenants, licensees, invitees or assignees.

## ARTICLE 9. UTILITIES

Tenant shall have the right at its sole expense to bring in utility service for heat, light, water, electricity, telephone, data, and all other utilities and telecommunications services which shall be used in or at the Premises during the Term. If installation of any utility service damages the Premises or any portion of the Property, Tenant shall repair the Premises or Property within ten (10) business days after installation of the utility service at issue, at Tenant's sole expense, or if not reasonably practicable to repair the Premises or other portion of the Property within such ten (10) business day period, Tenant shall undertake such repair within the ten (10) business day period and diligently prosecute the work until completion. Landlord will fully cooperate with any utility company requesting an easement over, under and across the Property in order for the utility company to provide service to Tenant. Landlord grants a utility and optical fiber easement (the "Utility/Fiber Easement") upon the Property to Tenant, Tenant's employees, agents, contractors, sublessees, licensees and their employees, agents and contractors in the location(s) shown in Exhibit B, for the installation, repair, replacement and maintenance of utility and optical fiber lines, wires, poles, cables, conduits, pipes and related equipment. In the event that any public utility or Tenant is unable or unwilling to use the Utility/Fiber Easement in the location(s) shown in Exhibit B, at the sole option of Tenant, Landlord shall grant an alternate easement in recordable form either to Tenant or directly to the public utility at no cost and in a location(s) acceptable to Tenant and the public utility.

## ARTICLE 10. CARE OF PREMISES AND LIENS

Section 10.1 Care of Premises. Tenant shall maintain the appearance of the Improvements similar to that when first installed, ordinary wear and tear and loss or damage by fire or other insured loss excepted. Landlord shall be responsible for maintaining the landscaping on the Premises in a similar manner to that of the portion of the Property immediately surrounding the Premises; provided, however, that if landscaping used to screen the Improvements needs to be replaced, Tenant shall be responsible for paying the full cost of the replacement of such landscaping; and provided further that Landlord shall not interfere with any of Tenant's Nodes, structures, fixtures, equipment, utility lines, conduits or similar Improvements located on the Premises. Tenant shall not permit or commit waste of the Premises, or permit any illegal use of the Premises. Tenant has the right to remove obstructions from the Property, including but not limited to vegetation, which may encroach upon, interfere with or present a hazard to Tenant's use of the Premises or any related easements. Tenant shall dispose of any materials removed by it. Tenant shall not violate governmental regulations existing from time to time pertaining to its use and maintenance of the Improvements, including but not limited to rules promulgated by the Federal Communications Commission ("FCC").

Section 10.2 Tenant's Liens/Mechanic's Liens. Tenant shall keep the Premises free and clear of, and shall indemnify Landlord against, all mechanics' liens and other liens on account of work done for or materials, supplies or equipment furnished to Tenant or Persons claiming under it for maintenance, repairs, alterations and additions. Tenant shall reimburse Landlord for all reasonable costs and attorneys' fees incurred by Landlord in investigating, defending or clearing the same, with interest from the date incurred by Landlord until paid by Tenant. Tenant, however, shall have the right to contest any lien or claim of lien provided that it does so in good faith and shall cause the same to be cleared prior to execution on judgment. If Tenant elects to contest any

lien or claim of lien, Landlord may request in writing that Tenant furnish a bond or other assurance of payment in order to protect the Premises and Landlord from and against liens of mechanics and materialmen performing services in or on the Premises or furnishing materials, supplies and equipment to the Premises.

#### ARTICLE 11. QUIET ENJOYMENT

Subject to the terms and provisions of this Lease, on payment of the Rent and other charges hereunder due from Tenant and Tenant's observing, keeping and performing all of Tenant's covenants, Tenant shall lawfully, peaceably and quietly have, hold, occupy and enjoy the Premises and any appurtenant rights granted to Tenant under this Lease during the Term without hindrance or ejection by any Person lawfully claiming under Landlord. Landlord warrants that it is the fee owner of the Premises and is authorized to execute this Lease.

#### ARTICLE 12. SUBLEASE; LICENSE; ASSIGNMENT

Tenant has the right, in its sole discretion, to lease or license the use of the Premises, easements and/or Improvements without notice to or the consent of Landlord. Tenant has the right, in its sole discretion, to assign or transfer this Lease, which assignment or transfer shall be effective upon Tenant sending written notice to Landlord and shall relieve Tenant from any further liability or obligation. Tenant has the further right to pledge or encumber its interest in this Lease. Upon request to Landlord from any leasehold mortgagee, Landlord agrees to give the holder of such leasehold mortgage written notice of any default by Tenant and an opportunity to cure any such default within fifteen (15) days after such notice with respect to monetary defaults and within a commercially reasonable period of time after such notice with respect to any non-monetary default.

#### ARTICLE 13 RESTORATION

All portions of the Improvements brought onto the Premises by Tenant will be and remain Tenant's personal property and, at Tenant's option, may be removed by Tenant at any time during the Term. Landlord covenants and agrees that no part of the Improvements constructed, erected or placed on the Premises by Tenant will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of Landlord that all Improvements of every kind and nature constructed, erected or placed by Tenant on the Premises will be and remain the property of Tenant and may be removed by Tenant at any time during the Term. Within sixty (60) days of the termination of this Lease, Tenant will remove all of Tenant's above-ground Improvements and Tenant will restore as nearly as possible the Premises to its original condition as of the Lease Commencement Date, reasonable wear and tear and loss by casualty or other causes beyond Tenant's control excepted. If Tenant shall fail to remove the above-ground Improvements or restore the Premises as provided in this Article within sixty (60) days of the termination of this Lease, then Landlord shall have the remedies provided in Section 16.2.

#### ARTICLE 14. HOLD HARMLESS AND ENVIRONMENTAL

Section 14.1 Hold Harmless. Each party shall indemnify and defend the other party against, and hold the other party harmless from, any claim of liability or loss from personal injury or property damage arising from the use and occupancy of the Premises or the Property by such indemnifying party, its employees, contractors, members, servants or agents, except to the extent such claims are caused by the intentional misconduct or negligent acts or omissions of the other party, its employees, contractors, members, servants or agents.

Section 14.2 Hazardous Materials; Obligation and Indemnity. Neither party shall (either with or without negligence) cause or permit the escape, disposal or release of any Hazardous Materials on or from the Premises in any manner prohibited by law. Each party shall indemnify and hold the other harmless from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, any and all sums paid for settlement of claims, attorneys' fees, and consultants' and experts' fees) from the release or disposal of any Hazardous Materials on the Premises if caused by such party or persons acting under such party, except to the extent the liability and/or losses are caused by the other party or persons acting under the other party.

## ARTICLE 15. DAMAGE OR DESTRUCTION

If any loss or damage occurs that renders the Improvements economically unsuitable for their intended purposes, Tenant may elect either to terminate this Lease and remove the remaining Improvements pursuant to Article 13 of this Lease or to promptly and diligently repair and reconstruct the Improvements, provided that unless Tenant notifies Landlord of Tenant's election to terminate within ninety (90) days after such damage or loss, it shall be deemed to have elected to reconstruct or repair. Work for reconstruction and repair shall be commenced by Tenant no later than one hundred twenty (120) days after the loss or damage. Prior to termination of this Lease, and until the Premises has been restored pursuant to Article 13, pursuant to this Article 15, there shall be no abatement of Rent as a result of damage or destruction of the Improvements except to the extent such damage or destruction is caused by Landlord or its officers, agents, members, employees, contractors or subcontractors.

## ARTICLE 16. DEFAULT; REMEDIES

Section 16.1 Notice of Default; Cure Period. In the event that there is a default by Landlord or Tenant (the "Defaulting Party") with respect to any of the provisions of this Lease or Landlord's or Tenant's obligations under this Lease, the other party (the "Non-Defaulting Party") shall give the Defaulting Party written notice of such default. After receipt of such written notice, the Defaulting Party shall have thirty (30) days in which to cure any monetary default and sixty (60) days in which to cure any non-monetary default. The Defaulting Party shall have such extended periods as may be required beyond the sixty (60) day cure period to cure any non-monetary default if the nature of the cure is such that it reasonably requires more than sixty (60) days to cure, and Defaulting Party commences the cure within the sixty (60) day period and thereafter continuously and diligently pursues the cure to completion. The Non-Defaulting Party may not maintain any action or effect any remedies for default against the Defaulting Party unless and until the Defaulting Party has failed to cure the same within the time periods provided in this Section 16.1.

Section 16.2 Consequences of Tenant's Default. Landlord acknowledges that under the terms of this Lease, Tenant has the right to terminate this Lease at any time during the Term upon ninety (90) days' written notice to Landlord. Accordingly, in the event that Landlord maintains any action or effects any remedies for default against Tenant, resulting in Tenant's dispossession or removal, (i) the Rent shall be paid up to the date of such dispossession or removal and/or (ii) Landlord shall be entitled to recover from Tenant, in lieu of any other damages, as liquidated, final damages, a sum equal to three (3) months' Rent based on the Rent amount in the Lease Year in which the default occurs. In no event shall Tenant be liable to Landlord for consequential, indirect, speculative or punitive damages in connection with or arising out of any default.

Section 16.3 Consequences of Landlord's Default. In the event that Landlord is in default beyond the applicable periods set forth above in Section 16.1, Tenant may, at its option, upon written notice: (i) terminate the Lease, vacate the Premises and be relieved from all further obligations under this Lease; (ii) perform the obligation(s) of Landlord specified in such notice, in which case any expenditures reasonably made or incurred by Tenant in so doing shall be deemed paid for the account of Landlord and Landlord agrees to reimburse Tenant for said expenditures upon demand; (iii) take any actions that are consistent with Tenant's rights; and/or (iv) sue for injunctive relief, and/or sue for specific performance, and/or sue for damages, and/or set-off from Rent any amount reasonably expended by Tenant as a result of such default.

## ARTICLE 17. NO WAIVER

Section 17.1 Delay. Time is of the essence hereof and no delay or failure on the part of Landlord or Tenant in exercising or enforcing any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise of any other right, power or privilege.

Section 17.2 No Oral Waiver. Any waiver or release by a party hereto and any cancellation, termination or modification of this Lease must be in writing signed by a duly authorized representative of the party granting the waiver or release.

ARTICLE 18. COSTS AND ATTORNEYS' FEES

In the event of litigation between the parties hereto, declaratory or otherwise, in connection with this Lease, the non-prevailing party shall pay the reasonable attorneys' fees, costs, and expenses actually incurred by the prevailing party, which shall be determined and fixed by the court as part of the judgment. A party is deemed to have prevailed if it obtains a judgment or settlement in its favor which substantially provides for the relief contemplated either in its complaint or responsive pleading.

ARTICLE 19. NOTICES

Whenever in this Lease it shall be required or permitted that notice, demand, consent, approval or communication be given or served by either party to the other, it shall be given or served as provided in this Article 19. The current addresses of the parties for such written communication (“Notice Address”) are as follows:

If to Landlord: CARINO CANYON Homeowners Association  
[ADDRESS]  
[CITY, STATE ZIP]  
Attn: [NAME and TITLE]

If to Tenant:	NewPath Networks, LLC	<u>With a copy to:</u>
	c/o Crown Castle USA Inc. E. Blake Hawk, General Counsel, 2000 Corporate Drive Canonsburg, PA 15317-8564 Attn: Legal Department – DAS	NewPath Networks, LLC 1100 Dexter Avenue North, Suite 250 Seattle, WA 98109 Attn: Michael J. Kavanagh, President - DAS

All notices hereunder shall be in writing and shall be given by (i) established national courier service which maintains delivery records, (ii) hand delivery, or (iii) certified or registered mail, postage prepaid, return receipt requested. Notices are effective upon receipt, or upon attempted delivery if delivery is refused or if delivery is impossible because of failure to provide reasonable means for accomplishing delivery. The notices shall be sent to Landlord at Landlord’s Notice Address and to Tenant at Tenant’s Notice Address or to such other single Person and single Notice Address as either party may direct in writing from time to time.

ARTICLE 22. MISCELLANEOUS

Section 20.1 Relationship of Parties. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third Person to create the relationship of principal and agent or partnership or joint venture or of any association between Landlord and Tenant, and no provision contained in this Lease or any acts of the parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the relationship of Landlord and Tenant.

Section 20.2 Headings; Adverbs; Number; Gender. The headings used in this Lease are for convenience only and shall not be considered or referred to in resolving questions of interpretations or construction. The locative adverbs “herein,” “hereunder”, “hereto”, “hereby”, “hereinafter”, etc., wherever the same appear herein, mean and refer to this Lease in its entirety and not to any specific Article, Section or subsection hereof. The terms “Landlord” and “Tenant” wherever used herein shall be applicable to one or more Persons, as the case may be, and the singular shall include the plural and neuter shall include the masculine and feminine, and if there be more than one, the obligations hereof shall be joint and several.

Section 20.3 Eminent Domain. If Landlord receives notice of a proposed taking by eminent domain of any part of the Premises, Landlord will notify Tenant of the proposed taking within five (5) days of receiving said notice and Tenant will have the option to: (i) declare this Lease null and void and thereafter neither party will have any liability or obligation hereunder; or (ii) remain in possession of that portion of the Premises that will not be taken, in which event there shall be an equitable adjustment in Rent on account of the portion of the Premises. With either option Tenant shall have the right to contest the taking and directly pursue an award.

Section 20.4 Landlord's Waiver. Landlord hereby waives and releases any and all liens, whether statutory or under common law, with respect to any of Tenant's Improvements now or hereafter located on the Premises.

Section 20.5 IRS Form W-9. Landlord agrees to provide Tenant with a completed IRS Form W-9, or its equivalent, upon execution of this Lease and at such other times as may be reasonably requested by Tenant. In the event the Property is transferred, the succeeding Landlord shall have a duty at the time of such transfer to provide Tenant with a completed IRS Form W-9, or its equivalent, and other related paper work to effect a transfer in Rent to the new Landlord. Landlord's failure to provide the IRS Form W-9 within thirty (30) days after Tenant's request shall be considered a default and Tenant may take any reasonable action necessary to comply with IRS regulations including, but not limited to, withholding applicable taxes from Rent payments.

Section 20.6 Estoppel Certificates. Either party shall at any time and from time to time, upon not less than fifteen (15) days prior written request from the other Party, execute, acknowledge, and deliver to such party a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there has been any modification thereof that the same is in full force and effect as modified and stating the modification or modifications); that there are no known defaults existing (or if there is a claimed default, stating the nature and extent thereof); and stating the dates to which the Rent and other charges have been paid in advance. It is expressly understood and agreed that any such statement delivered pursuant to this Section 21.7 may be relied upon by any prospective assignee or subtenant of the leasehold estate, or any prospective purchaser of the estate of Landlord, or any lender or prospective assignee of any lender on the security of the Premises or Tenant's property or any part thereof, and any other third Person.

Section 20.7 Effect of Unavoidable Delays. If either party to this Lease, as the result of any (a) strikes, lockouts, or labor disputes, (b) inability to obtain labor or materials, or reasonable substitutes therefore, (c) acts of God, governmental action, condemnation, civil commotion, fire or other casualty, (d) delay in obtaining necessary land use or other permits to construct the Improvements from the appropriate governmental agencies, (e) adverse weather conditions, including inversions, or (f) other conditions similar to those enumerated in this Section 20.7 beyond the reasonable control of the party obligated to perform fails punctually to perform any obligation on its part to be performed under this Lease, then such failure shall be excused and not be a breach of this Lease by the party in question, but only to the extent occasioned by such event. If any right, duty or option of either party to take any action under or with respect to this Lease is conditioned upon any prescribed period of time or at or before a named date, then such named date shall be deemed to be extended or delayed, as the case may be for a period equal to the period of the delay occasioned by any event described above.

Section 20.8 Heirs and Successors. The covenants and agreements of this Lease shall be binding upon the heirs, legal representatives, successors and assigns of each of the parties hereto.

Section 20.9 Interest. Wherever in this Lease any sum payable shall bear interest, the rate of interest shall be one percent (1%) in excess of the prime rate as announced and charged by Bank of America on the first (1<sup>st</sup>) day of each calendar year, computed from the due date unless otherwise specified.

Section 20.10 Amendment; Entire Agreement; Successors. This Lease contains the complete agreement between the parties, and cannot be changed except by the written agreement of Landlord and Tenant. There are no representations, covenants, warranties, promises, agreements, conditions or undertakings, oral or written, between Landlord and Tenant other than herein set forth. Except as otherwise provided herein, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant

unless in writing and signed by both parties. All rights and liabilities herein given or imposed upon the respective parties hereto shall bind and inure to the respective heirs, successors, administrators, executors and assigns of the parties. Landlord shall upon request of Tenant deliver an executed and acknowledged instrument amending this Lease in any respects as may reasonably be required by any present or future assignee, sublessee or licensee.

Section 20.11 Representation by Tenant. Tenant represents and warrants that during the term of this Lease, Tenant shall not engage in any other business on the Premises other than that provided in this Lease, including the operation of the Improvements.

Section 20.12 Representation by Landlord. Landlord represents and warrants that this Lease has been duly approved as required by and conforms with requirements under the governing documents of Landlord.

Section 20.13 Memorandum. Tenant shall have the right to record a memorandum of this Lease with the appropriate recording officer. Landlord shall execute and deliver such a memorandum, for no additional consideration, promptly upon Tenant's request. In the event that Landlord fails to execute such a memorandum, Tenant is granted a limited power of attorney for the sole and exclusive purpose of executing such document, and shall have the right to execute the same on behalf of Landlord and record such document on behalf of the parties.

Section 20.14 Authority to Execute Agreement. Tenant and Landlord each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power and authority to enter into this Lease and bind itself hereto through the party set forth as signatory for the party below.

Section 20.15 Governing Law. This Lease will be governed by the laws of the State of Arizona, without regard to conflicts of law. All judicial proceedings to be brought with respect to this Lease shall be brought in Maricopa County in the State of Arizona in a State or Federal court of competent jurisdiction. Each party accepts generally and unconditionally the exclusive jurisdiction of such a court and irrevocably waives any objection, including any objection to venue based upon forum non-conveniens, which either of them may now have or hereafter have to the bringing of any such proceeding with respect to this Lease.

Section 20.16 Severability. If any term or condition of this Lease is found to be unenforceable, the remaining terms and conditions will remain binding upon the parties as though said unenforceable provision were not contained herein.

Section 20.17 Counterparts. This Lease may be executed in two (2) counterparts, both of which shall be considered one and the same agreement and shall become effective when a counterpart has been signed by each of the parties. It being understood that all parties need not sign the same counterpart.

*[No further text on this page; signature page immediately follows.]*

IN WITNESS WHEREOF, Landlord and Tenant having read the foregoing and intending to be legally bound hereby, have executed this Lease as of the day and year this Lease is fully executed.

**TENANT:**

NEUPATH NETWORKS, LLC

\_\_\_\_\_  
Michael J. Kavanagh, President – DAS

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

**LANDLORD:**

CARINO CANYON HOMEOWNERS ASSOCIATION

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

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

Title: \_\_\_\_\_

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

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that s/he signed this instrument, and on oath stated that s/he was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of **NewPath Networks, LLC**, a New Jersey limited liability company, to be free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Please print name legibly)

NOTARY PUBLIC in and for the State of \_\_\_\_\_, residing at \_\_\_\_\_.

My commission expires: \_\_\_\_\_.

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that s/he signed this instrument, and on oath stated that s/he was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of **CARINO CANYON HOMEOWNERS ASSOCIATION**, an Arizona nonprofit corporation, to be free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Please print name legibly)

NOTARY PUBLIC in and for the State of \_\_\_\_\_, residing at \_\_\_\_\_.

My commission expires: \_\_\_\_\_.

**EXHIBIT A**

NODE LOCATIONS

[Site sketch and location of each Node on the Property]

**EXHIBIT B**

SITE EQUIPMENT AND DETAILS

[Improvements, plans and specifications, including access to each Node site]