

Order 181-07/08

Given first reading: 3/17/08

Public Hearing & Passage: 4/7/08 9-0

EDWARD J. SUSLOVIC (MAYOR)

KEVIN J. DONOGHUE (1)

DAVID A. MARSHALL (2)

DANIEL S. SKOLNIK (3)

CHERYL A. LEEMAN (4)

CITY OF PORTLAND

IN THE CITY COUNCIL

JAMES I. COHEN (5)

JOHN M. ANTON (A/L)

JILL C. DUSON (A/L)

NICHOLAS M. MAVODONES (A/L)

ORDER APPROVING LICENSE AGREEMENT WITH AMERICAN TOWER, L.P. RE: RIVERSIDE STREET RADIO TOWER

ORDERED, that the City Manager is authorized to enter into a license Agreement with American Tower, L.P. for the use of the radio tower on Riverside Street for public safety communications equipment, said agreement to be substantially in the form attached as Attachment A.

LICENSE AGREEMENT

Licensor Contract No: _____

This LICENSE AGREEMENT ("Agreement") made this _____ day of _____, 200__, ("Effective Date") by and between American Tower, L.P., with a place of business at 10 Presidential Way, Woburn, MA 01801 ("Licensor") and City of Portland, a government entity, with a place of business at 380 Congress Street, Portland, ME 04101 ("Licensee"). The attached Terms and Conditions are incorporated herein by this reference.

TOWER SITE INFORMATION:

Site Name: PORTLAND ME, ME

Site Number: 10047

Address and/or location of Tower Site: 225 Riverside Industrial Parkway, Portland, ME 04103

Coordinates: Lat. 43-42-21.68 N Long. 70-18-38.6 W

NOTICE & EMERGENCY CONTACTS:

- Licensee's local emergency contact (name and number): Fred LaMontagne (207) 874-8401.
- Licensor's local emergency contact (name and number): Network Operations Communications Center (800) 830-3365.
- Notices to Licensee shall be sent to the address above to the attention of Fred LaMontagne.
- Notices to Licensor shall be sent to the address above to the attention of Contracts Manager.
- Licensor's Remittance Address: American Tower Corporation, Dept. 5305, P.O. Box 30000, Hartford, CT, 06150-5305

APPROVED USE OF TOWER SITE BY LICENSEE:

Transmitting frequencies: 866-868 MHz Receiving frequencies: 821-823 MHz

Antenna mount height on tower: 120, 170, and 200 ft. AGL (See Exhibit A for specific location description)

All other permitted use of the Tower Site including, without limitation, Licensee's Approved Equipment (as defined in Section 1 herein), frequencies, channels and the identification and location of the Licensed Premises (as defined in Section 1 herein) at the Tower Site are described in Exhibits A and B, are incorporated herein by reference and made a part hereof.

FEES & TERM

The "Monthly License Fee" shall be One Thousand Five Hundred and 001/00 Dollars (\$1,500.00), adjusted on the anniversary of the Commencement Date of this Agreement and on each anniversary thereafter during the Initial Term and during any Renewal Terms by the "Annual Escalator". The Annual Escalator shall be four percent (4%) per year.

The "Application Fee" shall be: N/A

The "Site Inspection Fee" shall be: One Thousand Five Dollars (\$1,500.00) for future modifications to Licensee's Approved Equipment, as adjusted annually by a percentage rate increase equal to the Annual Escalator.

Initial Term: The "Initial Term" of this Agreement shall be for a period of five (5) years beginning on the Commencement Date. Subject to Section 1, the "Commencement Date" shall be defined as March 1, 2008.

Renewal Terms: N/A

Electricity for operation of Approved Equipment is to be provided by (check one):

Licensor at the monthly rate of \$_____, adjusted annually by the Annual Escalator and subject to Sections 3 & 5 OR

Licensor, with such being included in the Monthly License Fee and subject to Sections 3 & 5, OR

Licensee, at its sole expense.

OTHER PROVISIONS:

Other provisions: (check one): None As listed below:

- a) The parties acknowledge that space at this Tower Site was previously licensed by and between Licensor and Licensee under the terms and conditions of that certain license agreement as amended from time to time (Licensor Contract No. NE209485) ("Terminated License"). Licensor and Licensee, as successors by assignment to the Terminated License, hereby irrevocably agree to terminate their respective rights and obligations under the Terminated License effective as of the Commencement Date of this Agreement and the terms and conditions of this Agreement shall be the sole instrument governing the license of space by Licensee at this Tower Site.
- b) Notwithstanding anything to the contrary in this Agreement, the offer expressed to Licensee in this Agreement shall automatically become null and void with no further obligation by either party hereto if a structural analysis of the Tower Site completed after the execution of this Agreement by Licensor but before the commencement of the installation of Licensee's Approved Equipment indicates that the Tower Site is not suitable for Licensee's Approved Equipment unless Licensor and Licensee mutually agree that structural modifications or repairs shall be made to the Tower Site on mutually agreeable terms.
- c) Licensor hereby agrees that Licensee is permitted to meet the insurance requirements stated in Exhibit C-1 through a self-insurance program provided that Licensee provides Licensor with a standard letter of such coverage within 30 days of the Effective Date of this Agreement. Licensee agrees that it shall not climb the tower for any reason and that maintenance of Licensee's Approved Equipment shall be limited to Licensee's equipment located on the ground or in Licensee's shelter, if any. Licensee further acknowledges and agrees that any and all contractors, subcontractors, agents or representatives engaged by, or acting on behalf of Licensee shall not be permitted to perform any work, maintenance, and/or repairs to Licensee's Approved Equipment located on the tower until Licensor receives proof that such party maintains insurance of the kind and meeting the limits set forth in Exhibit C-1 attached hereto."

IN WITNESS WHEREOF, the Parties, each in consideration of the mutual covenants contained herein, and for other good and valuable consideration, intending to be legally bound, have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date first above-written; *provided, however,* that this Agreement shall not become effective as to either Party until executed by both Parties.

LICENSOR

American Tower, L.P., a Delaware limited partnership

LICENSEE

City of Portland, a government entity

By: ATC GP, Inc., its sole general partner

By: _____

Print Name: Richard Rossi

Its: Director, Contract Management

Date: _____

By: _____

Print Name: _____

Its: _____

Date: _____

Terms And Conditions

1. **GRANT OF LICENSE.** Licensors hereby agree to license to Licensee space for the housing, installation and operation of the communications equipment specifically described in Exhibit A attached hereto ("Approved Equipment") with the location of such Approved Equipment being more specifically described in Exhibits A and B ("Licensed Premises") at the communications tower, antenna structure or rooftop facility described in the Tower Site Information section on page 1 ("Tower Site"). All Approved Equipment shall be and remain Licensee's personal property. Licensors shall maintain the communication facility located on the Tower Site in good condition and in a manner which will not disturb Licensee's reasonable use of the Licensed Premises. Licensee shall also have a right to: (i) install and maintain wires, cables, conduits and pipes either within, over, under or along the Tower Site; and (ii) to use any specific right of way for access to the Tower Site, each at locations mutually agreed upon by Licensors and Licensee. In the event any public utility is unable to use the existing right-of-way, Licensors agree to grant an additional right-of-way at the Tower Site either to Licensee or to the public utility at no cost to Licensee to the extent permitted under the Ground Lease at a location acceptable to the Licensors. Licensee shall be solely and directly responsible for any and all damage or loss that results from the installation of any cables or utility wires by Licensee or any company or person retained by Licensee (including a public utility company), including, without limitation, any damage or loss that results from the accidental cutting of utility wires or cables of any other party operating at the Tower Site. Licensee shall have the right of access to the Licensed Premises 24 hours per day, 7 days per week, to the extent permitted under the Ground Lease. Licensee shall be responsible for ensuring that Licensors has, at all times, a complete and accurate written list of all employees and agents of Licensee who have been provided the access codes to the Tower Site.
2. **EXHIBITS.** In the event of inconsistency or discrepancy between Exhibit A and Exhibit B hereto, Exhibit A shall govern. If Exhibit B is not approved by Licensors and/or is not attached to this Agreement within thirty (30) days following the Effective Date, then Exhibit A shall govern. Any such inconsistency or discrepancy between Exhibits A and B as set forth in the foregoing sentence shall be deemed a material default by Licensee hereunder. Pursuant to Section 9, below, an amendment to this Agreement shall be prepared to reflect each addition or modification to Licensee's Approved Equipment to which Licensors has given its written consent ("Amendment") which shall update Exhibits A and B hereto. Within forty-five (45) days following the commencement of installation of any additional Approved Equipment, Licensee shall provide Licensors with as-built drawings or construction drawings of the additional Approved Equipment as installed in both hard copy and electronic form ("Construction Drawings"), such Construction Drawings shall include the location of any shelters, cabinets, grounding rings, cables, and utility lines associated with Licensee's use of the Tower Site. Upon receipt, Licensors shall insert hereto the Construction Drawings as Exhibit C to the Amendment. In the event that Licensee fails to deliver the Construction Drawings as required by this section, Licensors may cause such Construction Drawings to be prepared on behalf of Licensee and Licensors shall assess a fee for such Construction Drawings at cost, including in-house labor, plus twenty percent (20%), which upon invoice shall become immediately due and payable. In the event of inconsistency or discrepancy between Exhibit A to the Amendment (with respect to Approved Equipment and antenna locations) together with Exhibit B to the Amendment (with respect to ground space installation locations) and Exhibit C to the Amendment hereto, Exhibits A and B to the Amendment shall govern, notwithstanding any approval or signature by Licensors or its employees.
3. **LICENSE FEES; TAXES; ASSESSMENTS.** The Monthly License Fee, as adjusted by the applicable Annual Escalator, shall be payable in advance on the first day of each calendar month beginning upon the Commencement Date. If the Commencement Date is not the first day of a calendar month, the Monthly License Fee for the first partial month shall be prorated on a daily basis. The Monthly License Fee for any last partial month in the term of this Agreement shall also be prorated on a daily basis. Licensee shall be solely responsible for all utility charges directly attributable to the Approved Equipment, except as otherwise provided on page 1 of this Agreement. Licensors shall be responsible for the payment of any applicable taxes or governmental assessments against the Tower Site or personal property and improvements thereon owned and maintained by Licensors. Licensee shall be responsible for the payment of any applicable taxes, fees or governmental assessments against any equipment, personal property and/or improvements owned, leased or operated by Licensee or directly associated with Licensee's use of the Licensed Premises. Licensee agrees to pay or reimburse Licensors for any and all taxes, fees, or other costs and expenses assessed upon or paid by Licensors to the United States Forest Service or Bureau of Land Management attributable to Licensee's Approved Equipment, Licensee's use of or Licensee's presence at the Tower Site. All payments due under this

Agreement shall be made to Licensor at the address identified hereinabove on page 1 in the Section entitled Notice & Emergency Contacts or such other address as Licensor may notify Licensee of in writing and/or upon such invoice. All payments due under this Agreement shall be rounded up to the nearest whole dollar amount. The CPI means the Consumer Price Index for All Urban Consumers, U.S. City Average (1982-1984=100), as published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as if the Index had not been discontinued or revised.

4. **TERM.** The Initial Term of this Agreement shall be as specified on page 1. This Agreement shall automatically be renewed for the Renewal Terms, if any, also stated on page 1 unless either Party gives to the other one hundred eighty (180) days written notice of termination prior to the expiration of the then-current term. Upon expiration, cancellation or termination of this Agreement for any reason, Licensee shall: (i) remove the Approved Equipment and any other property of Licensee from the Licensed Premises at Licensee's sole risk, cost, and expense; (ii) deliver the Licensed Premises in substantially the same and in as good a condition as received (ordinary wear and tear excepted); and (iii) repair any damage caused by the removal of the Approved Equipment within 10 days of the occurrence of such damage. In the event that Licensor's right to license space to Licensee at the Tower Site is subject to a right of first refusal for the benefit of a third party or consent from the underlying lessor of the Ground Lease, Licensor shall reserve the right to terminate this Agreement in the event that such third party fails to refuse, consent or waive (or is deemed to have refused or waived) such right or consent.
5. **COMMON EXPENSES; UTILITIES.** Licensee shall reimburse Licensor for Licensee's pro-rata share of costs and expenses incurred by Licensor for the maintenance, repair and replacement of common facilities at the Tower Site including, without limitation, damage to fences, gates, access roads, and the tower structure. Notwithstanding the foregoing, the cost and expenses associated with any damage which is directly attributable to the acts or omissions of Licensee or Licensee's contractors shall be borne solely by Licensee. Licensee shall not be required to pay any share of costs or expenses incurred to replace the tower structure. In the event that Licensee also licenses space within a building or shelter owned by the Licensor on the Tower Site, Licensee shall also reimburse Licensor for its pro-rata share of all common expenses incurred for the operation, maintenance, repair and replacement associated with such building or shelter, including, without limitation, the physical structure of the building, HVAC system, and common utility expenses. In the event that Licensee is connected to a generator or back-up power supply owned by the Licensor, Licensee shall also reimburse Licensor for its pro-rata share of all expenses incurred for the operation, maintenance, repair and replacement associated with such generator, including, without limitation, fuel expenses and replacement. For the purposes of this section, a "pro-rata share" of costs and expenses shall be determined based on the number of licensees using the Tower Site on the first day of the month in which an invoice is mailed to Licensee. Licensee shall reimburse Licensor for common expenses within thirty (30) days following receipt of an invoice from Licensor. Licensor and/or Licensee shall be responsible for the utility costs associated with the operation of Licensee's Approved equipment as set forth on page 1; provided, however, that (a) in no event shall Licensor provide Licensee with telephone service; and (b) in the event that Licensor provides access to electricity or utilities to Licensee for a fixed fee or inclusive in the Monthly License Fee, Licensor reserves the right to reasonably increase such fees based on any change in equipment or increased power requirements by Licensee.
6. **INSTALLATION BY LICENSOR.** Intentionally omitted.
7. **SITE INSPECTION.** Not less than ten (10) days prior to any subsequent modifications to Licensee's Approved Equipment, or the installation of any additional Approved Equipment, Licensee shall pay Licensor a Site Inspection Fee. In the event that Licensor installs Licensee's Approved Equipment, Licensor shall waive the Site Inspection Fee with respect to such installation. The Site Inspection Fee shall be waived for the Approved Equipment listed on Exhibit A that was installed at the Tower Site prior to the Effective Date of this Agreement.
8. **LABELING.** Licensee shall identify its equipment and equipment cabinets (unless such cabinet is located in a building owned by Licensee) with labels permanently affixed thereto and stating Licensee's name, contact phone number, and installation date. Licensee's coaxial cables shall be labeled at both the top and bottom of the tower structure. **Should Licensee fail to so identify its equipment, Licensor may, in its sole discretion, interrupt Licensee's operations at the Tower Site and may, in its sole discretion, consider Licensee in default of this Agreement.** In addition, should Licensee

fail to label its equipment as required by this section, Licensor may label Licensee's equipment and assess against Licensee a fee of one thousand five hundred dollars (\$1,500.00), as adjusted annually by a percentage rate increase equal to the Annual Escalator, which upon invoice shall become immediately due and payable.

9. **WORK; ALTERATIONS; STRUCTURAL ANALYSIS & MODIFICATIONS.** Licensee agrees that all of Licensee's property installed and/or to be installed upon the Tower Site and all frequencies utilized by Licensee pursuant to this Agreement will be in exact accordance with that specified in Exhibit A attached hereto. Licensee shall submit to Licensor detailed plans and specifications accurately describing all aspects of the proposed work to be performed including, without limitation, weight and wind load requirements and power supply requirements and evidence that Licensee has obtained all approvals, permits and consents required by, and has otherwise complied with, all legal requirements applicable to the performance of the Work. Licensee agrees that it will not install or make any alterations or additions to the Approved Equipment without the prior written consent of Licensor, hereinafter referred to as a Notice to Proceed (NTP), to be obtained in all cases. An amendment to Exhibit A to this Agreement shall be prepared to reflect each addition or modification to Licensee's equipment from time to time to which Licensor has given its written consent. Any and all work at the Tower Site shall be performed in accordance with the foregoing standards and by qualified contractors approved of in advance by Licensor (which approval of contractors shall not be unreasonably withheld, except as otherwise provided in the following sentence). Licensor reserves the right, in its sole discretion, to refuse to permit any person or company to climb any tower structure at the Tower Site. Such contractors shall have valid and current worker's compensation and general liability insurance certificates on file with Licensor, naming Licensor as an additional insured and which otherwise satisfy the insurance coverage requirements described in Section 14 of this Agreement. Licensee shall indemnify, defend and hold harmless Licensor from and against any and all costs, claims, causes of action and liabilities of every nature and kind arising out of the acts and omissions of Licensee, its employees and agents or Licensee's contractors or subcontractors. At its sole election, Licensor may, in its sole but reasonable judgment, perform or cause to be performed a structural analysis to determine the availability of capacity at the Tower Site for the installation or modification of any Approved Equipment and/or additional equipment at the Licensed Premises by Licensee. Nothing herein shall prevent Licensee from performing such analysis for its own account; *provided, however*, that Licensor shall approve such vendor in Licensor's sole discretion and Licensee shall provide a complete copy of any structural analysis that it performs to Licensor at no cost to Licensor no more than thirty (30) days following the completion of that analysis. If Licensor performs such an analysis or causes one to be performed, Licensee agrees promptly to reimburse Licensor for all reasonable costs and expenses incurred by Licensor or Licensor's vendor in the performance of such structural analysis within thirty (30) days following receipt of an invoice from Licensor. In the event a structural analysis is performed after the execution of this Agreement by Licensor but prior to the installation of Licensee's Approved Equipment, and such analysis indicates that the existing tower structure can not structurally accommodate the proposed installation of Licensee's Approved Equipment thereon, Licensor or Licensee may terminate this Agreement upon written notice at any time prior to the commencement of Licensee's installation. With respect to any permitted structural modifications to the Tower or upgrade of utilities by Licensee that are approved by Licensor, Licensor reserves the right to simultaneously upgrade the tower structure or utilities in excess of the modification required to accommodate Licensee's Approved Equipment in order to increase capacity ("Excess Upgrade"); *provided, however*, that Licensor shall be solely responsible for the costs associated with such Excess Upgrade. Prior to the Commencement Date and/or prior to any Licensee-requested installation or modification Licensor may elect to perform a shared site interference study ("SSIS") and Licensee shall pay Licensor a fee of one thousand six hundred dollars (\$1,600) per study, as adjusted annually by a percentage rate equal to the Annual Escalator. This fee shall be payable at the time of Licensee's application or immediately upon a determination by Licensor that a SSIS is required. Licensor's performance of the SSIS shall in no way constitute a warranty or representation from Licensor that Licensee's proposed operations from the Tower Site will not suffer or cause interference with other users, but shall merely be a customary report intended to assist in the prevention of potential interference.
10. **RF INTERFERENCE.**
- (a) *Interference with a Pre-Existing Use.* Licensee's use of the Tower Site and its operation of all of its Approved Equipment thereon (including any subsequent modification or alteration thereto) shall be conducted in a manner that does not interfere electrically, or in any other manner whatsoever with any then pre-existing use of the Tower Site by Licensor or other users of the Tower Site ("Pre-Existing Use"). In the event that any Pre-Existing Use experiences interference caused by Licensee or Licensee's Approved Equipment (including any subsequent modification or alteration thereto), Licensee

shall be notified in writing of such interference and Licensee shall power down its equipment and/or cease operations in order to correct and eliminate such interference within seventy-two (72) hours after Licensee's receipt of such notice. If Licensee does not cease all interfering operation within such seventy-two (72) hour period, Licensor shall have the right to disconnect Licensee's Equipment until such time as Licensee can affect repairs to the interfering Approved Equipment. If Licensee is unable to eliminate the interference, or reduce it to a level acceptable to the affected user of the Pre-Existing Use, within a period of thirty (30) days following such initial notice (provided that during such 30 day period, Licensee may operate its equipment intermittently during off-peak hours for testing purposes only), then Licensor may, in addition to any other rights it may have for Licensee's breach hereof, terminate this Agreement. In the event that Licensee is notified of any interference experienced by a Pre-Existing Use on the Tower Site alleged to be caused by Licensee's operations thereon, Licensee shall be obligated to perform whatever actions are necessary, at Licensee's sole cost and expense, to eliminate such interference and shall not be released from its obligation to continue to pay the Monthly Licensee Fee during any period that Licensee can not operate from the Tower Site pursuant to this Section 10.

(b) *Interference by a Subsequent Use.* Licensor agrees that Licensor and Licensor's customers' use of the Tower Site whose equipment is installed or modified subsequent to the Licensee's then-current operation of Licensee's Approved Equipment thereon ("Subsequent Use") shall not, interfere with Licensee's then-current permitted operations. In the event that Licensee experiences interference caused by any Subsequent Use, Licensee shall notify Licensor in writing of such interference and Licensor shall, or shall cause the operator of the interfering Subsequent Use, to power down its equipment and/or cease operations in order to correct and eliminate such interference within seventy-two (72) hours after Licensor's receipt of such notice. If such Subsequent Use is unable to operate without causing such interference, or if such interference is not reduced to a level acceptable to Licensee, within a period of thirty (30) days (provided that during such 30 day period the Subsequent Use may be operated intermittently during off-peak hours for testing purposes only), then Licensee may, in addition to any other rights it may have for Licensor's breach hereof, terminate this Agreement. In the event that Licensor is notified of any interference experienced by Licensee alleged to be caused by a Subsequent Use on the Tower Site, Licensor shall be obligated to perform (or cause to be performed) whatever actions are commercially reasonable and necessary, at no cost or expense to Licensee, to eliminate such interference. For the purposes of establishing the rights and obligations under this Section 10, the Parties agree that Licensee's Approved Equipment has been in operation at the Tower Site prior to the Effective Date of this Agreement.

(c) *Interference with Lighting and Building Systems and Building Tenants.* In no event shall Licensee's use of the Tower Site, or operation of any of its equipment thereon, be conducted in a manner that interferes with Licensor's lighting system located on any of the towers, building systems, or, in the event that Licensee's equipment is installed on the rooftop of a building, with equipment of any kind used by building tenants who are not tenants of the Licensor. In the event that such interference does occur, Licensee shall be solely responsible to reimburse Licensor for any and all costs required to modify and/or upgrade Licensor's lighting system, to comply with all necessary FAA/FCC regulations, as a result of said interference.

(d) *No Illegal, Unpermitted Use or Unlicensed Frequency Protection.* Notwithstanding anything to the contrary herein, Licensee shall not illegally transmit on any frequency, transmit on a channel or frequency not specified in Exhibit A attached hereto, operate at variance from the specifications in its FCC license or the FCC's rules governing Licensee's operation of its Approved Equipment, and Licensor shall not provide any protection to Licensee from interference from parties who are not Licensor's tenants at the Tower Site. Nothing in this Section 10 shall be deemed or interpreted to provide any protection to Licensee from any form of interference from any person in the event that Licensee is operating on any unlicensed frequency spectrum or pursuant to FCC Part 15.

11. **SITE RULES AND REGULATIONS.** Licensee agrees to comply with the reasonable rules and regulations established from time to time at the Tower Site by Licensor in its discretion, which may be modified by Licensor from time to time upon receipt by Licensee of such revised rules and regulations or in accordance with Licensor's obligations under the Ground Lease. Such rules and regulations will not unreasonably interfere with Licensee's normal business operations.
12. **CASUALTY; CONDEMNATION.** For purposes of this Agreement it shall be deemed a Casualty Event, if the Licensed Premises or the Tower Site is destroyed or condemned, in whole or part, whether by eminent domain or otherwise. In the event that the Licensed Premises or the Tower Site is wholly destroyed or condemned, whether by eminent domain or otherwise, this Agreement shall terminate without further liability to either Party except for payment of the Monthly License Fees due up to the time of such destruction or condemnation. If the Licensed Premises are partially destroyed or condemned

and are usable by Licensee for its purposes, then Licensor shall, within one hundred and twenty (120) days (which shall be extended for any delays directly caused by governmental action or inaction), repair the Licensed Premises or the Tower Site with a reasonable reduction of the Monthly License Fee to Licensee during the period of repair. In the event that the site repair or reconstruction has not commenced within one hundred eighty (180) days following such Casualty Event, Licensee may terminate this Agreement upon written notice to Licensor prior to the commencement of any such repair or reconstruction of the Tower Site. If, however, any such partial destruction or condemnation occurs within six (6) months prior to termination of this Agreement, either Party may terminate this Agreement without further liability except for payment of the Monthly License Fees up to the time of such destruction or condemnation. Any Monthly License Fees prepaid by Licensee shall be returned to it as part of the operation of this section.

13. **COMPLIANCE WITH LAWS.** Licensor is responsible for ensuring that the tower structure at the Tower Site is operated in compliance with all governmental lighting and marking requirements. Licensor shall indemnify and defend Licensee from and against any loss, cost, or expense sustained or incurred by Licensee as a result of Licensor's failure to comply with duly issued governmental regulations relating to tower lighting and marking. Notwithstanding anything to the contrary in the Agreement, Licensee shall at all times comply with all applicable laws and ordinances and all rules and regulations of municipal, state and federal governmental authorities relating to the installation, maintenance, location, use, operation, and removal of the Approved Equipment and other alterations or improvements authorized pursuant to the provisions of this Agreement.
14. **INDEMNIFICATION; INSURANCE.** Intentionally Omitted.
15. **WAIVER OF CERTAIN DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, EACH PARTY HEREBY WAIVES THE RIGHT TO RECOVER INCIDENTAL, SPECIAL, CONSEQUENTIAL (INCLUDING LOST PROFITS), PUNITIVE, EXEMPLARY AND SIMILAR DAMAGES AND THE MULTIPLIED PORTION OF ANY DAMAGES EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORSEEABLE.**
16. **NOTICES.** Any required or permitted notice or demand shall be made by certified mail, postage prepaid or via nationally recognized overnight courier service addressed to the other Party at the address set forth on page 1. Either Party may modify, add, or delete notice addresses from time to time by notice given in accordance with this section. Any notice or demand shall be deemed to have been given or made at the time it is deposited in a United States Post Office or with a private overnight courier service.
17. **ASSIGNMENT; SUBLEASING.** Licensee may assign this Agreement as a whole with Licensor's prior written consent; *provided, however,* that Licensor's consent will not be required for an assignment to any person or entity which is controlled by, controlling or under common control with Licensee ("Affiliates"). For these purposes, "control" means ownership, directly or indirectly, of 50% or more of the voting stock, equity or beneficial interest or a general partner of any partnership. In no event may Licensee sublet, sublease, or permit any other similar use of the Tower Site or Licensed Premises by any other party. In no event may Licensee diplex or combine signals or grant any shared use rights for itself or others. In the event of a permitted assignment hereunder, Licensee shall be relieved of any of its obligations under this Agreement arising on or after the effective date of such permitted assignment. Any permitted assignee shall expressly assume, and become bound by, all of Licensee's obligations under this Agreement. Licensor may freely assign, transfer, or sublease this Agreement and, in such event, Licensor shall be relieved of all of its obligations under this Agreement from and after the date of such assignment, transfer, or sublease. This Agreement shall be binding upon the successors and permitted assigns of both parties. Licensee shall pay Licensor a fee of \$500.00 (which fee shall increase annually by a percentage rate increase equal to the Annual Escalator) in each instance in which Licensee requests an assignment of this Agreement or in which Licensee seeks an estoppel certificate, nondisturbance agreement, subordination agreement or other similar agreement. Notwithstanding anything to the contrary, Licensor may condition its consent to any assignment, on among other things, requiring that the assignee execute a new form of license agreement so long as the Monthly License Fee and Initial and Renewal Terms of such agreement are consistent with those set forth in this Agreement.
18. **QUIET ENJOYMENT.** Licensor covenants and agrees that, upon Licensee's paying the Monthly License Fee and observing and performing all of the terms, covenants and conditions to be observed

and performed by Licensee under this Agreement, Licensee shall be entitled to quiet enjoyment of the Licensed Premises during the term of this Agreement.

19. **SUBORDINATION TO GROUND LEASE.** The Parties acknowledge and agree that in the event Licensor's rights in the Licensed Premises and/or any part of the Tower Site is derived in whole or part pursuant to an underlying lease, sublease, permit, easement or other right of use agreement ("Ground Lease"), all terms, conditions and covenants contained in this Agreement shall be specifically subject to and subordinate to the terms and conditions of an applicable Ground Lease. In the event that any of the provisions of the Ground Lease are in conflict with any of the provisions of this Agreement (other than those provisions relating to the length of term, termination rights or financial consideration), the terms of the Ground Lease shall control. Further, Licensee agrees to be bound by such Ground Lease as applicable to the access and occupancy of the Licensed Premises. In the event that the Ground Lease expires or terminates prior to the expiration of the Initial Term or applicable Renewal Terms, this Agreement shall automatically terminate upon termination of Licensor's right to possession of the Tower Site and Licensee shall remove its equipment and any improvements from the Tower Site in accordance with this Agreement and any applicable provisions under the Ground Lease. Licensor agrees not to take any action with respect to the Ground Lease as then in effect which will cause the Ground Lease to be prematurely terminated during the term of this Agreement. Licensor hereby warrants and agrees that it shall exercise any existing renewal option available to it pursuant to the Ground Lease through the end of the term of this Agreement. Upon Licensee's written request, Licensor shall provide a copy of any applicable Ground Lease with the economic terms and other terms that Licensor deems reasonably confidential redacted, unless prohibited by the terms of such Ground Lease. Notwithstanding the foregoing, Licensor shall not be required to pay any form of consideration to obtain the approval or consent of any lessor under a Ground Lease.
20. **DEFAULT.** Either Party shall have ten (10) days after receipt (or refusal to accept delivery, which refusal shall be deemed receipt for the purposes hereof) of written notice from the other Party to cure any monetary default (provided, however, that if Licensee fails to make any payment of the Monthly License Fee when due and cures such default two (2) times within any twelve (12) month period, then any further failure within the same twelve (12) month period shall be an automatic default with no cure period) and, except as otherwise provided in this Agreement with respect to RF interference, labeling and Construction Drawings, thirty (30) days after receipt of written notice from the other Party to cure any non-monetary default. Except with respect to RF interference, so long as the Party charged with the default diligently pursues a cure during the prescribed time period, that Party shall be given additional time reasonably necessary to cure the default. If subsequent to the foregoing requisite periods of time, there continues to be an event of default, the non-defaulting Party may terminate this Agreement upon written notice to the defaulting Party and may institute any other available proceedings at law or in equity to recover damages from the defaulting Party.
21. **COLLECTIONS.** Subject to the provisions of Section 20 above, Licensor may take any collections actions it deems necessary without further notice to Licensee, including, without limitation, the disconnection or removal and storage of any and all of Licensee's equipment, including the Approved Equipment or all other Licensee property located on the Tower Site. Licensee shall pay all reasonable attorney's fees, court costs, removal and storage fees (including any damage caused thereby), and other items of cost or expense reasonably incurred by Licensor in recovering the Monthly License Fee or other fee or charge. No endorsement or statement on any check or letter accompanying a check for payment of any monies due and payable under the terms of this Agreement shall be deemed an accord and satisfaction, and Licensor may accept such check or payment without prejudice to its right to recover the balance of such monies or to pursue any other remedy provided by law or in this Agreement. Licensor shall accept any such partial payment for the account of Licensee. Past due amounts under this Agreement will bear interest from the date upon which the past due amount was due until the date paid at a rate equal to: (i) eighteen percent (18%) per annum; or (ii) at a lower rate if required by law in the state in which this Agreement is to be performed. In addition, Licensee shall be assessed a late payment fee equal to twenty-five percent (25%) of the then-current Monthly License Fee for any payment or reimbursement due to Licensor under this Agreement which is overdue by ten (10) days or more and such fee shall be assessed for each thirty (30) day period thereafter that any such amount (or portion thereof) remains unpaid.
22. **GOVERNMENTAL APPROVALS; PERMITS.** In the event that any governmental permit, approval or authorization required for Licensor's use of, operation of, or right to license space to Licensee at the Tower Site is challenged, terminated or withdrawn by any governmental authority or third party as part of any governmental, regulatory, or legal proceeding, Licensor may terminate this Agreement. In the

event that Licensor does not terminate this Agreement, Licensee may elect to install or continue to operate its equipment at its sole cost and risk. Licensee understands and agrees that, in the event of a governmental or legal order requiring the removal of Licensee's equipment from the tower or removal of the tower structure or any structural modification required to accommodate Licensee's Approved Equipment, Licensee shall do so promptly at its sole cost and expense. Licensor shall cooperate with Licensee in Licensee's efforts to obtain any permits or other approvals that may be necessary for Licensee's installation and operation of the Approved Equipment; provided, however such cooperation shall be subject to the foregoing: (a) Licensor shall not be required to expend any funds or undertake any liability or obligation in connection with such cooperation; (b) Licensor reserves the right to obtain such required approvals or permits on Licensee's behalf, at Licensee's sole cost and expense; and (c) in no event may Licensee encourage, suggest, participate in or permit the imposition of any restrictions or additional obligations whatsoever on the Tower Site or Licensor's current or future use or ability to license space at the Tower Site as part of or in exchange for obtaining any such approval or permit. In the event that Licensee's shelter or cabinets are installed above a third-party or Licensor-owned shelter or building, Licensee shall be solely responsible for obtaining any required consents or permits in connection with such shelter or cabinet installation. Licensee hereby consents to the stacking of a third-party or Licensor owned platform, shelter or cabinets above or below Licensee's shelter or cabinets provided Licensor or such third party shall be solely responsible for all costs and expenses associated with obtaining any required consents or permits in connection with such shelter or cabinet installation above Licensee's equipment. In addition to the foregoing, in the event that Licensee has not been requested to install a stackable shelter and does not utilize a stackable shelter, Licensee agrees that Licensor shall have the right to require Licensee to replace its shelter with a stackable shelter upon no less than thirty (30) days prior written notice at the sole cost and expense of a subsequent licensee who installs a stacked shelter above Licensee's equipment shelter.

23. **REPLACEMENT OF TOWER.** Licensor reserves the right, in its sole discretion, to replace or rebuild the tower structure or the top of the tower. In such event, Licensor shall provide Licensee with space at the Tower Site suitable to allow Licensee to continue to operate the Approved Equipment in a substantially similar manner during the construction period. Licensor shall be solely responsible for the costs associated with removing and re-installing the Approved Equipment. Licensor also expressly reserves the right to erect one or more towers on the Tower Site, subject to Licensor's obligations to Licensee under this Agreement. Licensee shall also have the right to establish a temporary facility on the Tower Site to provide such services as Licensee deems necessary during any such construction by Licensor so long as adequate space is then available. The location of such temporary facilities shall be subject to Licensor's approval.
24. **GOVERNING LAW.** This Agreement shall be governed by the laws of the state in which the Tower Site is located, with the exception of its choice of laws provisions. If any provision of this Agreement is found invalid or unenforceable under judicial decree or decision, the remaining provisions of this Agreement shall remain in full force and effect. Any approval, consent, decision, or election to be made or given by a Party may be made or given in such Party's sole judgment and discretion, unless a different standard (such as reasonableness or good faith) is provided for explicitly.
25. **EXCUSABLE DELAYS.** If either Party is unable due to causes beyond its reasonable control to carry out its obligations under this Agreement in whole or in part and if such Party gives written notice and full details of an excusable delay (including, without limitation, a *force majeure* event) to the other as soon as practicable after the occurrence of the event, then the obligations of the affected Party will be suspended to the extent reasonably required as a result of such event. *Excusable Delay* means an event that is not within the reasonable control of the affected Party, including, without limitation, war, riots, civil insurrection or acts of a common enemy, fire, flood, strikes or other labor difficulty, acts of civil or military authority, including governmental laws, orders, actions, inactions or regulations, embargo.
26. **MISCELLANEOUS.** Time is of the essence in this Agreement. The offer of license expressed in this Agreement shall automatically expire and become void if not accepted by Licensee and such acceptance received by Licensor within thirty (30) days from the Effective Date. The only means by which Licensee may accept this offer of license is by timely returning two unaltered copies of this Agreement, executed on behalf of Licensee, to Licensor. Upon Licensor's written request, Licensee shall promptly furnish Licensor with complete and accurate information in response to any reasonable request by Licensor for information about any of the Approved Equipment or utilities utilized by Licensee at any Tower Site or any of the channels and frequencies utilized by Licensee thereon. In the event that this Agreement is executed by Licensor, its Affiliates or any trade name utilized by the Licensor or its Affiliates and such signatory does not hold the real property or leasehold interest in the affected Tower

Site, the execution of this Agreement shall be deemed to have been properly executed by the Licensor or Licensor's Affiliate which properly holds such interest in the affected Tower Site. Either Licensor or Licensee may be referred to herein as a "Party" and both Licensor and Licensee together may be referred to herein as the "Parties". At the sole election of Licensor, in the event that Licensee and Licensor enter into a master tower space license agreement ("New Agreement") which is applicable to this Tower Site during the Initial Term or any Renewal Term of the Agreement, Licensor may give notice to Licensee that this Agreement is terminated ("Termination Date") and Licensee and Licensor shall execute a New Agreement for the Licensed Premises and Licensee's Approved Equipment listed on Exhibit A hereto within thirty (30) days following such notice. Such New Agreement shall specify that the commencement date is the Termination Date. If the New Agreement has pre-determined monthly license fee rates and/or annual escalator rates that conflict with the Monthly License Fee and/or the Annual Escalator listed on page 1 of this Agreement, then the license fee rate and/or the annual escalator rate in the Agreement shall govern. Upon the termination or expiration of this Agreement, Licensee shall immediately upon the request of Licensor deliver a release of any instruments of record evidencing such Agreement. Notwithstanding the expiration or earlier termination of the Agreement, Sections 14, 15, 20, 21 and 26 shall survive the expiration or earlier termination of the Agreement. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless expressly agreed to in writing by the affected Party. This Agreement constitutes the entire agreement of the Parties hereto concerning the subject matter hereof and shall supersede all prior offers, negotiations and agreements, whether written or oral. No revision of the Agreement shall be valid unless made in writing and signed by authorized representatives of both Parties.

27. **CONFIDENTIALITY.** Neither Party shall use the other's name, service mark or trademark in any public announcement or advertisement without the prior written consent of the other party, which may be withheld in such party's sole and absolute discretion.

The offer of license expressed in this proposed Agreement shall automatically expire and become void if not accepted and executed by Licensee and such acceptance received by Licensor within thirty (30) days of the Effective Date.

ATTACHED EXHIBITS:

Exhibit A: List of Approved Equipment and location of the Licensed Premises

Exhibit B: Site Drawing indicating the location of Approved Equipment on the Tower Site

Exhibit C-1: Insurance.

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EXHIBIT A
Approved Equipment

EXHIBIT B
**Site Drawing indicating the location of ground space for Licensee's
equipment shelter or space in Licensor's building (as
applicable)**

To be attached hereto within thirty (30) days of the Effective Date.

EXHIBIT C-1 Insurance

- A. LICENSOR shall maintain in full force during the term of this Agreement the following insurance:
1. Worker's Compensation Insurance with statutory limits in accordance with all applicable state, federal and maritime laws, and Employers' Liability Insurance with minimum limits of \$500,000.00 per accident/occurrence, or in accordance with all applicable state, federal and maritime laws.
 2. Commercial General Liability Insurance (Bodily Injury and Property Damage), the limits of liability of which shall not be less than \$1,000,000.00 per occurrence.
 3. An umbrella policy of not less than Five Million Dollars (\$5,000,000.00).

The above insurance shall provide that LICENSEE will receive not less than 30 days written notice prior to any cancellation of, or material change in coverage. The insurance specified in this Item A shall contain a waiver of subrogation against LICENSEE and shall name LICENSEE as an additional insured, and shall be primary over any insurance coverage in favor of LICENSEE but only with respect to and to the extent of the insured liabilities assumed by LICENSOR under this Agreement and shall contain a standard cross-liability endorsement.

- B. LICENSEE shall maintain in full force during the term of this Agreement and shall cause all contractors or subcontractors performing Work on any Licensed Site prior to the commencement of any such Work on behalf of Licensee to maintain the following insurance:
1. Worker's Compensation Insurance with statutory limits in accordance with all applicable state, federal and maritime laws, and Employers' Liability Insurance with minimum limits of \$500,000.00 per accident/occurrence, or in accordance with all applicable state, federal and maritime laws.
 2. Commercial General Liability Insurance (Bodily Injury and Property Damage), the limits of liability of which shall not be less than \$1,000,000.00 per occurrence.
 3. An umbrella policy of not less than Five Million Dollars (\$5,000,000.00).

The above insurance shall provide that LICENSOR will receive not less than 30 days written notice prior to any cancellation of, or material change in coverage. The insurance specified in this Item B shall contain a waiver of subrogation against LICENSOR and shall name LICENSOR as additional insured, and shall be primary over any insurance coverage in favor of LICENSOR but only with respect to and to the extent of the insured liabilities assumed by LICENSEE under this Agreement and shall contain a standard cross-liability endorsement.

- C. Notwithstanding the foregoing insurance requirements, (a) the insolvency, bankruptcy, or failure of any insurance company carrying insurance for either party, or failure of any such insurance company to pay claims accruing, shall not be held to waive any of the provisions of this Agreement or relieve either party from any obligations under this Agreement, and (b) the Licensor reserves the right, from time to time, to increase the required liability limits described above in Items A and/or B in accordance with then-current customary insurance requirements in the tower industry nationally.