

## WATER TOWER LEASE AGREEMENT

This Agreement (“Agreement”), effective on the date it is awarded to the Lessee by the Lessor and executed by the Lessor, by and between the Township of Long Beach (“Lessor”), with its principal offices located at 6885 Long Beach Boulevard, Brant Beach, New Jersey 08008 and \_\_\_\_\_ (“Lessee”), with its principal offices located at \_\_\_\_\_.

The Lessor and Lessee are at times collectively referred to hereinafter as the “Parties” or individually as the “Party.”

### WITNESSETH

In consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties hereto agree as follows.

#### **1. LEASE OF RIGHTS TO PROPERTY; OBLIGATIONS**

1.01. Rights to Property. Lessee is granted the right to a certain portion of that certain space (“Tower Space”) on the Lessor’s water tower (“Tower”) located at Block 1.19, Lots 3 and 4, as shown on the Tax Map of the Lessor and commonly known as 21 West Roosevelt Avenue, Long Beach Township, New Jersey (“Property”), together with a parcel of land (“Land Space”) sufficient for the installation of Lessee’s equipment building, if necessary for the Lessee’s use of the Tower Space, as well as the access and utility easement included herein (“Right-of-Way”). Lessee shall use the Tower Space and Land Space solely for the purpose of constructing, maintaining, repairing, and operating a communications facility, a communications equipment shelter, if necessary, and uses incidental thereto.

1.01.1. Lessee’s rights to locate, install, maintain, and operate the wireless communications equipment, proposed structures, antennas, coaxial cables, mounting brackets, equipment, base stations and units, paving, landscaping, security measures, all structures, and accessory structures, and any improvements and personal property relating thereto (collectively “Equipment and Property”) on the Tower Space shall be limited to the location and scope provided by the Lessee following the execution of this Agreement and which is subject to the approval of the Lessor’s engineer (“Township Engineer”), which approval shall not be unreasonably withheld. The location and scope of the Tower Space shall be limited only by the Lessor’s need to continue to use the Tower as a water tower, the public health, welfare, and safety, and the terms of this Agreement, including, but not limited to, the requirements of Paragraph 1.01.3. Upon approval by the Township Engineer, the Tower Space shall be attached as Exhibit A and incorporated herein.

1.01.2. Lessee’s rights to locate, install, maintain, and operate the Equipment and Property, such as ancillary ground equipment and accessory structures, in the Land Space shall be limited to the location and scope provided by the Lessee following the execution of this Agreement and which is subject to the approval of the Township Engineer, which approval shall not be unreasonably withheld, and the Land Space shall provide the Lessee with the right to install or construct one (1) accessory/ancillary building or equipment cabinet concrete platform within the site and footage for ground installation not to exceed approximately 160 square feet.

The location and scope of the Land Space shall be limited only by the Lessor's need to continue to use the Property for public purposes, the public health, welfare, and safety, and the terms of this Agreement. Upon approval by the Township Engineer, the Land Space shall be attached as Exhibit B and incorporated herein.

1.01.3. The Lessee shall design, construct, and install Equipment and Property and Utility Equipment on the Tower Space, in the Land Space, and in the Right-of-Way in such a manner that provides sufficient space for and does not encroach upon or interfere with the existing communications providers located on the Tower.

1.01.4. If the Tower Space, Land Space, and/or the Right-of-Way are unable to be approved by the Township and Township Engineer pursuant to the requirements of this Lease, then this Lease shall be null and void, all amounts paid by the Lessee shall be refunded, and the parties shall have no liability or responsibility to each other.

1.02. Installation, Placement, Collocation, Etc. The location, installation, placement, collocation, and replacement of any and all Equipment and Property pursuant to the terms of this Agreement shall require the approval of the Lessor and the Township Engineer, shall be in accordance with Exhibit A and Exhibit B, and shall comply with and obtain all local, state, and federal approvals and regulations. For all such requests, the Lessee shall provide to the Lessor three (3) sets of proposed construction plans and one (1) electronic set for any and all location, installation, placement, collocation, and replacement of its Equipment and Property. The plans shall include fully dimensioned site plan drawn to scale showing the proposed locations for ground area required, the height of antenna, type and sizing of antenna mountings, the proposed type and height of any fencing, the proposed landscaping, and the proposed sizing and type of construction materials for all structures. Nothing shall be located, installed, placed, replaced, constructed, collocated, or improved at the Property until the plans have been approved by the Lessor and the Township Engineer, and the approvals by the local, state, and federal approvals, as required, are obtained by the Lessee. The installation, maintenance, replacement, removal, etc. of any and all Equipment and Property shall be at Lessee's sole cost and expense.

1.03. Access to Tower and Grant of Right-of-Way. Lessee is granted a non-exclusive and subordinate Right-of-Way, the Right-of-Way, for ingress and egress seven (7) days a week, twenty-four (24) hours a day, on foot or motor vehicle, and for the installation and maintenance of utility wires, poles, cables, conduits, and pipes (collectively "Utility Equipment") over, under, or along a right-of-way to be proposed by the Lessee and approved by the Lessor and the Township Engineer, which shall not be unreasonably withheld, extending from the nearest public right-of-way to the Land Space over and through the Property between the Land Space and the Tower Space for the installation and maintenance of the Equipment and Property and Utility Equipment. Upon approval of the Right-of-Way, same shall be attached as Exhibit C and incorporated herein. Except in the case of emergency, the Lessee may use and access the Right-of-Way upon prior notice to the Lessor's Department of Public Works during regular business hours or to the Township of Long Beach Police Department after regular business hours. Said Right-of-Way is an easement in gross and shall expire upon the termination of the Agreement and is subject to the following restrictions and limitations: (i) the Right-of-Way and Lessee's use of same shall not interfere with the Lessor's quiet enjoyment and use of the Property and area of the

Right-of-Way; (ii) Lessee's rights arising out of the Right-of-Way shall at all times be subordinate to the Lessor's rights to the area in the Right-of-Way; (iii) the Lessee's use of the Right-of-Way in excess of the foregoing rights, ingress and egress, and to maintain existing utilities on or under the Right-of-Way shall be subject to the Lessor's consent, terms, and schedule at the discretion of the Lessor; and (iv) for any installation work above ground or underground, the Lessee shall be required to obtain approval from the Lessor and the Township Engineer and shall be required to remit payment of all costs relating to the Lessor's professionals for such review of each request, and shall be subject to the Lessor's approval, which shall not be unreasonably withheld, and the Lessor's scheduling. Only authorized engineers, employees, properly authorized contractors of Lessee, or persons under their direct supervision will be permitted to enter said premises.

1.04. Replacement. Lessee is granted the right to replace the Equipment and Property and Utility Equipment with similar and comparable equipment and property in accordance with the requirements of this Agreement, provided said replacement does not increase tower loading of the Tower, is approved by the Lessor and the Township Engineer, does not increase overall amount or size of the Equipment and Property, does not interfere with any other tenants located at the Property, and otherwise complies with the terms of this Agreement.

1.05. Condition of Property, Maintenance, Expense, and Safety. Lessee shall, at its own expense, maintain all Equipment and Property and Utility Equipment installed at the Property pursuant to this Agreement in a safe condition, good order, and repair, and in such a manner so as to not conflict with the existing use of the Tank Space, Land Space, and Property by the Lessor or others. Lessee shall keep the Property free from debris and anything dangerous, noxious, or offensive in nature or which would create a hazard or undue vibration, heat, noise, or interference. Lessee shall possess the sole responsibility for the repair and security of its Equipment and Property and Utility Equipment. Lessor reserves the right to inspect the Equipment and Property and Utility Equipment upon ten (10) days written notice to Lessee, except in emergency situations, as designated by Lessor at Lessor's discretion, in which the Lessor may immediately inspect the Equipment and Property and Utility Equipment and shall provide written notice to the Lessee within a reasonable amount of time upon the termination of the emergency.

1.06. Subordination of Rights. Lessee shall maintain and use the Tower, Tower Space, Land Space, Property, and Right-of-Way pursuant to this Agreement in such a manner so as not to conflict with the existing or future uses of the Property and Tower by the Lessor.

1.07. Integrity of Tower. Lessee's use of the Tower shall not damage or impair the strength of the Tower and the accessories thereon, nor interfere with the maintenance or lighting systems on the Tower. Upon completion of the installation and construction of the Equipment and Property, the Lessee shall submit a written report from a licensed professional engineer certifying to the structural integrity of the installation of the Equipment and Property and all antenna mounted upon the Tower Space are secure and that they meet or exceed applicable design-to, structure, and construction safety requirements.

1.08. Contractors and Employees. Lessee shall utilize only licensed and qualified contractors and employees to install, repair, remove, and maintain the Equipment and Property and Utility Equipment upon the Property, including, but not limited to, the proposed structures,

antennas, mounting brackets, equipment, wireless communications equipment, base stations, paving, landscaping, security measures, all structure, accessory structures, and any improvements relating thereto.

1.08.1. All agents, employees, independent contractors, and all others working on behalf of, at the direction, or request of the Lessee shall conduct themselves in an orderly and respectable manner in connection with the operation of all Equipment and Property and Utility Equipment.

1.09. Camouflaging. Lessee shall be required to paint all conduits, cables, and equipment installed to match the color of the Tower or shall have covers installed to match the color of the water tank, provided that such paints and/or covers are approved by the Lessor and the Township Engineer.

1.10. Governmental Approvals and Requirements. Lessee shall be responsible for obtaining any and all federal, state, county, and/or municipal approvals, licenses, and permits relating to and/or arising out of this Agreement (collectively "Governmental Approvals"). Lessee shall comply with all applicable governmental laws, rules, regulations, and orders respecting the Property and the Tower and the Lessee's use thereof. It is understood and agreed that Lessee's ability to use the Tower Space and Land Space is contingent upon its obtaining all Governmental Approvals after the execution date of this Agreement, as well as satisfactory soil boring tests and structural analysis which will permit Lessee to use of the Property.

1.10.1. Lessor shall cooperate with Lessee in its effort to obtain such approvals and shall take no action which would adversely affect the status of the Property with respect to the proposed use thereof by Lessee.

1.10.2. In the event the Governmental Approvals are not be obtained in a timely manner or obtained at all, except as otherwise provided by this Lease, the Lessee shall nevertheless remain liable for the payment of all amounts required through the existing term of this Agreement set forth in Paragraph 3. In the event that such Governmental Approvals may not be obtained as a result of circumstances outside the Lessee's control, the Lessee shall nevertheless remain liable for the payment of all amounts required through a period six (6) months from the date the Lessor receives written notice that the Governmental Approvals could not be obtained as a result of circumstances outside of the Lessee's control.

1.11. Interference. Lessee's Equipment and Property and Utility Equipment may not and shall not be permitted to interfere with any communications equipment installed by Lessor, any other communications providers presently leasing any property from Lessor, any of the existing wireless and radio equipment and/or frequencies owned and/or operated by Lessor, and the communications equipment installed by any lessee entering into a lease agreement with Lessor for communications equipment for location on the Tower. Lessee agrees to install Equipment and Property and Utility Equipment of the type and frequency that will not cause harmful interference which is measurable in accordance with then existing industry standards to any equipment of Lessor or other tenants at the Property which existed on the Property prior to the date this Agreement is executed by the Parties. In the event Lessee's Equipment and

Property and Utility Equipment causes such interference, and after Lessor has notified Lessee in writing of such interference, Lessee shall take all reasonable steps necessary to correct and eliminate the interference, including but not limited to, at Lessee's option, powering down such Equipment and Property and Utility Equipment and later powering up such Equipment and Property and Utility Equipment for intermittent testing. In no event will Lessor be entitled to terminate this Agreement or relocate the Equipment and Property and Utility Equipment as long as Lessee is making a good faith effort to remedy the interference issue, except that Lessee shall turn off any such Equipment and Property and Utility Equipment causing interference to Lessor's emergency or police communications immediately and such shall remain powered down and turned off until the issue is resolved by Lessee, and except that in the event that Lessee is unable to resolve the non-emergency interference within two (2) months, Lessee shall be in default, this Agreement shall terminate, and the Lessee shall comply with all such requirements set forth in this Agreement, including, but not limited to Paragraph 7.02.1. Lessor agrees that Lessor and/or any other tenants of the Property who in the future take possession of the Property will be permitted to install only such equipment that is of the type and frequency that will not cause harmful interference which is measurable in accordance with then existing industry standards to the then existing Equipment and Property and Utility Equipment of Lessee. The Parties acknowledge that there will not be an adequate remedy at law for noncompliance with the provisions of this Paragraph, and, therefore, either Party shall have the right to equitable remedies, such as, without limitation, injunctive relief and specific performance.

1.11.1. The Lessor presently leases portions of the Tower to other lessees for similar uses set forth in this Agreement. Neither Lessee nor the other lessee of the Tower shall interfere with or permit interference with each other in accordance with Paragraph 1.01.3 and pursuant to Paragraph 1.11. Lessee's rights conveyed by this Agreement, therefore, are subject to the Lessor's right to enter into agreements with and allow other communications providers, information or data services, internet service providers, or others to locate communication, information, data, internet service, or other facilities and equipment on the Tower at the Property, or elsewhere in the Township, so long as such does not extinguish the rights provided by the Lessor to the Lessee pursuant to this Agreement and that said services do not constitute interference as provided by this Agreement.

1.12. Local Approvals. Lessee shall not be required to apply for approval by the local zoning authority in order to commence construction, installation, etc. In addition to the Lessor and Township Engineer approvals required by this Agreement, the Lessee may begin construction, installation, etc. upon approval by the Lessor of a building permit from the Township Construction Department. The approval of the building permit shall not be unreasonably withheld or denied.

1.13. Site Testing and Due Diligence. Lessee may, at its own option and expense, perform the following due diligence investigations: (i) title search; (ii) phase one and phase two environmental inspections; (iii) structural analysis; (iv) soil boring tests; (v) historic screening as required by the National Environmental Protection Act Checklist; and (vi) regulatory filing with the Federal Aviation Administration, if applicable. All insurance and indemnification requirements set forth in this Agreement shall apply to the Lessee and its employees, agents, and contractors for any such site investigation and due diligence.

1.13.1. In the event that any of the foregoing test results preclude the operation of a communications facility at the Property, then this Agreement shall terminate upon ninety (90) days written notice and the Lessee shall nevertheless be liable for the first year of the Lease term and the additional consideration set forth in Paragraph 3.01.4.

1.14. Rights Subject To. The rights conveyed to the Lessee pursuant to this Agreement are subject to the following: (i) any and all covenants, easements, and restrictions of record, if any, the building and zoning ordinances of the Lessor and such facts as an accurate survey and title search may disclose; (ii) the existing utilities, utility lines, and cable facilities that traverse the Property, if any; and (iii) the Lessor's use of the Property, except that subject to the notice and other provisions governing the Lessee's access to the Property, the Lessee shall have quiet enjoyment of the use of the Tower Space, Land Space, and Right-of-Way.

## **2. PROFESSIONAL FEES**

2.01. Reimbursement of Professional Fees. Lessee shall be responsible for the payment of the Lessor's professional fees relating to and arising out of and/or relating to the Lessor's professionals' review, investigations, and approvals required and/or provided for in this Agreement.

2.01.1. The reimbursement and payment of any such fees set forth in Paragraph 2.01 shall be due within sixty (60) days of presentment.

## **3. TERM; CONSIDERATION; ELECTRICAL**

3.01. Term and Rental Rate. This Agreement shall be effective as of the date of execution by both Parties and award by resolution of the Lessor and the initial term shall be for five (5) years, which shall commence on the Commencement Date (as hereinafter defined) at which time the rental payments shall commence and be due at a total annual rental of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) to be paid in equal monthly installments on the first day of the month, in advance, made payable to "Township of Long Beach" and delivered to the Lessor's Chief Financial Officer or to such other person, firm or place as Lessor may, from time to time, designate in writing at least thirty (30) days in advance of any rental payment date by notice given in accordance with this Agreement. The Commencement Date shall be sixty (60) days from the date this Agreement is executed by the Lessee and awarded by resolution of the Lessor.

3.01.1. Upon agreement of the Parties, Lessee may pay rent by electronic funds transfer and in such event, Lessor agrees to provide to Lessee bank routing information for such purpose upon request of Lessee.

3.01.2. This Agreement shall automatically be extended for four (4) additional five (5) year terms unless Lessee or Lessor terminates it at the end of the then current term by giving the other Party written notice of the intent to terminate at least six (6) months prior to the end of the then current term.

3.01.3. The annual rent shall increase at a rate of three percent (3.00%) per annum starting with the second year of the initial term and increasing three percent (3.00%) per annum for each subsequent year of the initial term, first renewal term, second renewal term, third renewal term, and fourth renewal term as follows.

INITIAL TERM

First Year – Annual Rent Set by Highest Bid (minimum \$42,000.00)  
Second Year through Fifth Year – 3.00% per annum increase

FIRST RENEWAL TERM

First Year through Fifth Year – 3.00% per annum increase

SECOND RENEWAL TERM

First Year through Fifth Year – 3.00% per annum increase

THIRD RENEWAL TERM

First Year through Fifth Year – 3.00% per annum increase

FOURTH RENEWAL TERM

First Year through Fifth Year – 3.00% per annum increase

3.01.4. As additional consideration, the Lessee shall pay to the Lessor the amount of \$15,000.00 within thirty (30) day of the Commencement Date, which shall, inter alia, offset Lessor’s professional and staff costs relating to and/or arising out of this Agreement, related specifications, and award of the Agreement.

3.02. Rental Documentation. Lessor hereby agrees to provide to Lessee certain documentation (“Rental Documentation”) evidencing Lessor’s interest in and right to receive payments under this Agreement, including, without limitation: (i) documentation acceptable to Lessee in Lessee’s reasonable discretion, evidencing Lessor’s good and sufficient title to and/or interest in the Property and right to receive rental payments and other benefits hereunder; (ii) a complete and fully executed Internal Revenue Service Form W-9, or equivalent, in a form acceptable to Lessee, for any Party to whom rental payments are to be made pursuant to this Agreement; and (iii) other documentation reasonably requested by Lessee relating to the title to the Property and Lessor’s status. From time to time during the Term of this Agreement and within thirty (30) days of a written request from Lessee, Lessor agrees to provide updated Rental Documentation in a form reasonably acceptable to Lessee. The Rental Documentation shall be provided to Lessee in accordance with the provisions of and at the address given in Paragraph 8.09. Delivery of Rental Documentation to Lessee shall be a prerequisite for the payment of any rent by Lessee and notwithstanding anything to the contrary herein, Lessee shall have no obligation to make any rental payments until Rental Documentation has been supplied to Lessee as provided herein.

3.02.1. Within fifteen (15) days of obtaining an interest in the Property or this Agreement, any assignee(s), transferee(s), or other successor(s) in interest of Lessor shall provide to Lessee Rental Documentation in the manner set forth in the preceding Paragraph. From time to time during the Term of this Agreement and within thirty (30) days of a written request from Lessee, any assignee(s) or transferee(s) of Lessor agrees to provide updated Rental Documentation in a form reasonably acceptable to Lessee. Delivery of Rental Documentation to Lessee by any assignee(s), transferee(s), or other successor(s) in interest of Lessor shall be a prerequisite for the payment of any rent by Lessee to such Party and notwithstanding anything to the contrary herein, Lessee shall have no obligation to make any rental payments to any assignee(s), transferee(s), or other successor(s) in interest of Lessor until Rental Documentation has been supplied to Lessee as provided herein.

3.03. Electrical and Utilities. Lessee shall, at all times during the term of this Agreement, provide and be responsible for the payment of any and all electrical service, telephone service, water, gas, sewer, and any and all required other utilities and utility access for its use of the Property, as well as any costs relating to and/or arising therefrom. If permitted by the local utility company servicing the Property, Lessee shall furnish and install an electrical meter at the Property for the measurement of electrical power used by Lessee's installation. In the alternative, if permitted by the local utility company servicing the Property, Lessee shall furnish and install an electrical sub-meter at the Property for the measurement of electrical power used by Lessee's installation. In the event such sub-meter is installed, the Lessee shall pay the utility directly for its power consumption if billed by the utility; if not billed by the utility, then the Lessee shall pay the Lessor thirty (30) days after receipt of an invoice from Lessor indicating the usage amount based upon Lessor's reading of the sub-meter. All invoices for power consumption shall be sent by Lessor to Lessee to the address set forth in the notice provision of this Agreement. Lessee shall be permitted at any time during the Term to install, maintain, and/or provide access to and use of, as necessary (during any power interruption at the Property), a temporary power source, and all related equipment and appurtenances within Land Space, or elsewhere on the Property in such locations as reasonably approved by Lessor and the Township Engineer. As provided in this Agreement, shall have the right to install conduits connecting the temporary power source and related appurtenances to the Tower Space and Land Space. The installation of all utilities, conduits, etc. shall require the approval of the Lessor and the Township Engineer.

3.04. Taxes. Lessee shall have the responsibility to pay any personal property, real estate taxes, assessments, and charges owed on the Property which Lessor demonstrates is the result of this Agreement, including, but not limited to the Lessee's use of the Property and/or the installation, maintenance, and/or operation of the Lessee's improvements, Equipment and Property, and Utility Equipment, and any sales tax imposed on the rent (except to the extent that Lessee is or may become exempt from the payment of sales tax in the jurisdiction in which the Property is located), including any increase in real estate taxes at the Property which Lessor demonstrates arises from the Lessee's improvements and/or Lessee's use of the Property. Lessor and Lessee shall each be responsible for the payment of their respective taxes, levies, assessments, and other charges imposed including franchise and similar taxes imposed upon the business conducted by Lessor or Lessee at the Property, if any. Notwithstanding the foregoing, Lessee shall not have the obligation to pay any tax, assessment, or charge that Lessee is disputing in good faith in appropriate proceedings prior to a final determination that such tax is properly

assessed provided that no lien attaches to the Property. Nothing in this Paragraph shall be construed as making Lessee liable for any portion of Lessor's income taxes in connection with any Property or otherwise. Except as set forth in this Paragraph, Lessor shall have the responsibility to pay any personal property, real estate taxes, assessments, or charges owed on the Property and shall do so prior to the imposition of any lien on the Property.

3.04.1. Lessee shall have the right, at its sole option and at its sole cost and expense, to appeal, challenge, or seek modification of any tax assessment or billing for which Lessee is wholly or partly responsible for payment. Lessor shall reasonably cooperate with Lessee at Lessee's expense in filing, prosecuting and perfecting any appeal or challenge to taxes as set forth in the preceding sentence, including but not limited to, executing any consent, appeal or other similar document. In the event that as a result of any appeal or challenge by Lessee, there is a reduction, credit or repayment received by the Lessor for any taxes previously paid by Lessee, Lessor agrees to promptly reimburse to Lessee the amount of said reduction, credit or repayment.

3.05. License Fees. Lessee shall pay, as they become due and payable, all fees, charges, taxes, and expenses required for licenses and/or permits required for or occasioned by Lessee's use of the Property.

#### **4. INDEMNIFICATION AND INSURANCE**

4.01. Indemnification. Lessee expressly, knowingly, and, to the fullest extent permitted by law, agrees to and shall release, indemnify, defend, and hold harmless Lessor, its elected and appointed officials, officers, employees, agents, volunteers, and others working on behalf of Lessor from and against any loss, damages, claims, causes of action, liabilities, obligations, penalties, demands, municipal mechanic's liens filed pursuant to N.J.S.A. 2A:44-125, *et seq.*, and any conduct or action taken by Lessor relating to any such lien, and any and all other costs and expenses, including attorneys' fees and costs, threatened against, suffered, and/or incurred by Lessor, its elected and appointed officials, officers, employees, agents, volunteers, and others working on behalf of Lessor, known and unknown and see or unforeseen, arising out of and/or in any manner relating to the permitted, contracted, and/or licensed activity engaged in by Lessee in and/or relating to this Agreement, and the acts and/or omissions of the Lessee, its officers, owners, agents, employees, independent contractors, guests, volunteers, others working on behalf of Lessee. Lessee shall be responsible and liable for the payment of any and all of the foregoing attorney's fees and costs, to attorneys of Lessor's selection, for any investigation and review, pre-litigation, litigation, post-judgment litigation, bankruptcy, and any and all appeals arising out of and/or relating to this Agreement. The existence of any available and/or applicable insurance shall not waive or release Lessee from the Lessee's obligations set forth in this Agreement.

4.02. Lessee's Insurance. Lessee, at its own cost and expense, shall maintain or cause to be maintained in full force and effect and at its sole cost and expense, the following types and limits of insurance.

4.02.1 Commercial general liability insurance with limits not less than \$5,000,000.00 personal injury, bodily injury, and death of one or more persons in any one

occurrence, \$5,000,000.00 for property damages in any one occurrence, and \$10,000,000.00 for any aggregate claim.

4.02.2. Automobile liability insurance covering all owned, hired, and non-owned vehicles in use by Lessee, its employees, and agents, with personal protection insurance and property protection insurance to comply with the provisions of state law with minimum limits of \$2,000,000.00 as the combined single limit for reach occurrence for bodily injury and property damage.

4.03.3. Workers' compensation insurance meeting applicable statutory requirements and employer's liability insurance with statutory limits as provided by the State of New Jersey.

4.03.4. At the start of and during the period of any construction, builders' all-risk insurance, together with an installation floater or equivalent property coverage covering cables, materials, machinery, and supplies of any nature whatsoever that are to be used in or incidental to the installation of the Equipment and Property and Utility Equipment. Upon completion of the installation of the Equipment and Property and Utility Equipment, Lessee shall substitute for the for the foregoing insurance policies of fire, extended coverage and vandalism, and malicious mischief insurance on the Equipment and Property and Utility Equipment. The amount of insurance at all times shall be representative of the insurable values installed or constructed.

4.03. Named Insureds. All Lessee's policies, except for business interruption and workers' compensation policies, shall name Lessor and all associated, affiliated, allied, and subsidiary entities of Lessor now existing or hereafter created, as well as their respective officers, boards, commissions, employees, agents, contractors, and elected officials as additional insureds.

4.04. Deductibles. All insurance policies may be written with deductibles not to exceed \$50,000.00 unless approved by Lessor. Lessee agrees to indemnify, defend, and hold Lessor harmless from and against the payment of any deductible and from the payment of any premium on any policy required to be furnished by the Lessee pursuant to this Agreement. Such indemnification shall be to the same extent set forth in Paragraph 4.01.

4.05. Evidence of Insurance. Certificates of insurance for each insurance policy required to be obtained by Lessee, along with written evidence of payment of required premiums, shall be filed and maintained with the Lessor's annually during the term of this Agreement.

4.06. Contractors. Lessee shall require that each and every one its contractors and subcontractors who perform work on the Property carry, in full force and effect, workers' compensation, commercial general public liability, and automobile liability insurance coverages of the type and limits that Lessee is required to obtain pursuant to the terms of this Agreement.

4.07. Increase of Insurance Limits. Notwithstanding the foregoing, the Lessor may require that all policy limits set forth above be increased by up to twenty-five percent (25.00%)

for each and every five-year lease option and/or extension period with said increase to be calculated upon and applied to the coverage amounts in effect for the prior five-year period.

4.08. Cancellation of Insurance. All insurance policies maintained pursuant to this Agreement shall contain an endorsement requiring at least ninety (90) days of prior written notice shall be given to the Lessor by the Insurer of any intention not to renew such policy or to cancel, replace, or materially alter the same.

4.09. Insurance Companies. All insurance shall be effected under valid and enforceable policies, insured by insurers licensed to do business by the State of New Jersey or surplus line carriers on the State of New Jersey Insurance Commissioner's approved list of companies qualified to do business in the State of New Jersey. All insurance carriers and surplus line carriers shall be rated A or better by A.M. Best Company.

4.10. Waiver of Negligence. The Parties hereby waive and release any and all rights of action for negligence against the other which may hereafter arise on account of damage to the Property or the Property resulting from any fire or other casualty which is insurable under "Causes of Loss – Special Form" property damage insurance or for the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the Parties, even if any such fire or other casualty shall have been caused by the fault or negligence of the other Party. These waivers and releases shall apply between the Parties and they shall also apply to any claims under or through either Party as a result of any asserted right of subrogation. All such policies of insurance obtained by either Party concerning the Property or the Property shall waive the insurer's right of subrogation against the other Party.

4.11. Limitation of Liability. Except for indemnification pursuant to this Agreement, neither Party shall be liable to the other, or any of their respective agents, representatives, or employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

4.12. Subrogation. Each insurance policy carried by or on behalf of the Lessor insuring against loss by fire and causes covered by standard extended coverage, and each insurance policy carried by Lessee insuring Lessee's Equipment and Property and Utility Equipment against loss by fire and causes covered by standard extended coverage, shall be written in a manner so as to provide that the insurance company waives all right of recovery by way of subrogation against Lessor or Lessee in connection with any loss or damages covered by such policies. Neither Lessor nor Lessee shall be liable for any loss or damage caused by fire, water, or any of the risks enumerated in standard extended coverage insurance, except that Lessee shall nevertheless be bound by and liable for the indemnification provisions set forth in Paragraph 4.01.

4.13. Performance Bond. Lessee shall deliver prior to the Commencement Date an executed performance bond issued by a surety approved by the State of New Jersey, in a form acceptable to the Lessor and the Lessor's attorney, and in the amount of one (1) year's lease

amount as security for the faithful performance of this Agreement. The performance bond shall be renewed and provided within ten (10) days of each renewal period of each year at the new annual rent amount.

## **5. TOWER COMPLIANCE AND ENVIRONMENTAL**

5.01. Compliance. Lessor covenants that it will keep the Tower in good repair as required by this Agreement. The Lessor shall also comply with all rules and regulations enforced by the Federal Communications Commission with regard to the lighting, marking, and painting of towers.

5.02. Materials. Lessee shall not use materials in the installation of the antennas or transmission lines that will cause corrosion or rust or deterioration of the Tower or its appurtenances.

5.03. Antenna and Transmission Line Markings. All antennas on the Tower must be identified by a marking fastened securely to its bracket on the Tower and all transmission lines are to be tagged at the conduit opening where it enters any user's equipment space.

5.04. Lessor Tower Maintenance and Painting. The Lessee acknowledges that the primary function of the water tank is to provide water storage for the Lessor and the public and that the Property itself is used for public purposes. Accordingly, upon the request of the Lessor, Lessee shall relocate its equipment on a temporary basis to another location on the Property, hereinafter referred to as the "Temporary Relocation," for the purpose of Lessor performing maintenance, repair, painting, or similar work at the Property or on the Tower. As a result of any such request, Lessee shall pay any and all costs related to the removal, relocation, reinstallation, and re-attachment of any and all equipment. Lessor shall have no financial responsibility, liability, and/or obligation to Lessee for any such costs, fees, and/or damages relating to and/or arising out of the Lessor's request(s). In the event that no temporary relocation site is similar to Lessee's existing location in size and/or is not fully compatible for Lessee's use, then Lessee's sole remedy is that the rental payments shall abate for the period of time of the Temporary Relocation. Provided that the maintenance and/or repairs required do not constitute an emergency, in Lessor's discretion, Lessor shall provide Lessee at least ninety (90) days written notice prior to requiring Lessee to relocate. Upon the completion of any maintenance, repair or similar work by Lessor, Lessee is permitted to return to its original location from the temporary location with all costs for the same being paid by Lessee.

5.04.1. In the event the maintenance and/or painting permits same, in the discretion of the Lessor, the Lessor may also permit the Lessee to cover the Equipment and Property to protect same in the event the Lessee requests to cover the Equipment and Property instead of moving same. The cost of covering the Equipment and Property shall be borne by the Lessee.

5.04.2. Should Lessor determine it must perform routine maintenance or repair to the Equipment and Property in the Tower Space or Land Space, the Lessee shall give the Lessor at least ninety (90) days written notice of such work, such that Lessee has sufficient time within which to remove the Equipment and Property that the Lessor requires to be removed. In the event that the Lessee fails to remove the Equipment and Property within the time required,

the Lessor may elect to move and store the Equipment and Property, the Lessee shall be responsible for the payment of all costs and expenses, including, but not limited to, contractors fees, overtime, professional fees, storage fees, and any other related costs relating to such removal, and the Lessee releases the Lessor, its officers and elected officials, employees, agents, and contractors from any claims for damage to the Equipment and Property or any other damage or claim arising therefore, and Lessee forever waives any and all claims it may have against the Lessor, its officers, employees, agents, and contractors relating to such removal, storage, and reinstallation of same.

5.05. Environmental. 5.04.1 shall conduct its business in compliance with all applicable laws governing the protection of the environment or employee health and safety (“EH&S Laws”). Lessee shall indemnify, defend, and hold harmless the Lessor from claims to the extent resulting from Lessee’s violation of any applicable EH&S Laws or to the extent that Lessee causes a release of any regulated substance to the environment to the extent required in Paragraph 4.01. Lessor shall indemnify and hold harmless Lessee from all claims resulting from the violation of any applicable EH&S Laws or a release of any regulated substance to the environment except to the extent resulting from the activities of Lessee. The Parties recognize that Lessee is only leasing a small portion of the Property and that Lessee shall not be responsible for any environmental condition or issue except to the extent resulting from Lessee’s specific activities and responsibilities. In the event Lessee encounters any hazardous substances that do not result from its activities, Lessee may relocate its facilities to avoid such hazardous substances to a mutually agreeable location, or, if Lessee desires to remove at its own cost all or some the hazardous substances or materials (such as soil) containing those hazardous substances, Lessor agrees to sign any necessary waste manifest associated with the removal, transportation and/or disposal of such substances.

5.06. Emergency Maintenance. Lessor shall have the unfettered right and access to the Tower Space and Land Space to engage in and conduct inspections and any emergency maintenance and repairs to the Tower. Should Lessor determine in its discretion that it must undertake emergency maintenance or repair, as defined by Lessor, of the water tank and Tank Space, Lessor shall give as much notice as reasonably possible of the emergency work, except that Lessor may engage in any emergency inspections, maintenance, and repairs as it deems necessary and proper in its discretion without prior notice to the Lessee. Lessor shall, however, provide notice to the Lessee within a reasonable amount of time thereafter. The provisions of Paragraph 5.04.2 shall apply to the liabilities of the Parties relating to and/or arising out of the removal, storage, and replacement of the Equipment and Property under emergency circumstances. The Lessor, therefore, shall have no liability to the Lessee in the event that it is required to take emergency actions relating to the Tower, Land Space, Right-of-Way, and/or Equipment and Property.

## **6. END OF AGREEMENT**

6.01. Removal at End of Term. At its sole cost and expense, Lessee shall, upon expiration of this Agreement, or within sixty (60) days after any termination of the Agreement, remove any and all Equipment and Property and remove any Utility Equipment requested to be removed by Lessor and restore the Property to its original condition. Lessor agrees and acknowledges that all of the Equipment and Property of Lessee shall remain the personal

property of Lessee and Lessee shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and attachments to real property under applicable Laws. If such time for removal causes Lessee to remain on the Property after termination of this Agreement, Lessee shall pay rent at the then existing monthly rate or on the existing monthly pro-rata basis if based upon a longer payment term, plus one-hundred percent (100.00%) *per annum* (for a total of 200.00% of the then existing rent) until such time as the removal of the Equipment and Property and remove any Utility Equipment requested to be removed by Lessor are completed, except that if the Lessee remains on the Property without the written authorization of the Lessor for a period of more than sixty (60) days, Lessor shall be entitled to any and all attorney's fees and costs for any investigation and review, pre-litigation, litigation, post-judgment litigation, and any and all appeals arising out of and/or relating to any legal action commenced by Lessor to compel the removal, in addition to the aforesaid monthly rate and interest rate. Such removal shall be performed in a workmanlike and careful manner and without interference or damage to any other equipment, structures, or operations on the Property, including the use of the Property by Lessor or any of Lessor's assignees or lessees. If, however, Lessee requests permission not to remove all or a portion of the improvements and Lessor consents to such non-removal, title to the affected improvements shall thereupon transfer to Lessor free and clear of all liens and encumbrances and the same thereafter shall be the sole and entire property of Lessor, and Lessee shall be relieved of its duty to otherwise remove same.

## **7. DEFAULT; TERMINATION; REMEDIES**

7.01. Notice of Default. In the event there is a breach with respect to any of the provisions of this Agreement or its obligations under it, the non-breaching Party shall provide written notice of such breach. After receipt of such written notice, the breaching Party shall have fifteen (15) days in which to cure any monetary breach and thirty (30) days in which to cure any non-monetary breach, provided the Party shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that the Lessor agrees it reasonably requires more than thirty (30) days and the Party commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. A Party may not maintain any action or effect any remedies for default against the other Party unless and until the breaching Party has failed to cure the breach within the time periods provided in this Paragraph. The provisions of this Paragraph shall not apply to the rights and responsibilities of the Parties relating to authorized emergency actions and the Lessor shall be authorized to perform any and all actions required by an emergency without any notice of default or otherwise.

7.02. Remedies. In the event of Lessee's default other than default in the payments required by this Agreement, the Lessor may at its option (but without obligation to do so), perform the defaulting Lessee's duty or obligation on the defaulting Lessee's behalf, including but not limited to the obtaining of reasonably required insurance policies. The costs and expenses of any such performance by the Lessor shall be due and payable by the defaulting Lessee upon invoice therefor. In the event of a default by either Party with respect to a material provision of this Agreement, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such default, the non-defaulting Party may terminate the Agreement and/or pursue any remedy now or hereafter available to the non-defaulting Party under the Laws or judicial decisions of the state in which

the Premises are located. Lessee shall bear its own attorney's fees and costs arising out of any such dispute and/or litigation arising out and/or relating to the terms of this Agreement. In the event that the Lessor is the prevailing Party on any claim or defense, Lessee shall be responsible and liable for the payment of any and all of Lessor's attorney's fees and costs for any investigation and review, pre-litigation, litigation, post-judgment litigation, and any and all appeals arising out of and/or relating to this Agreement.

7.02.1. In the event of Lessee's default, the Lessee shall remain liable for the payment of all amounts required through the existing term of this Agreement set forth in Paragraph 3. If, in the sole discretion of the Lessor, the Lessor elects to advertise and attempt to secure a new tenant for the Property, the continued liability for payments shall cease at the time the Lessor receives the first payment from the new tenant after Lessor secures a new tenant pursuant to the Local Public Contracts Law.

7.02.2. In the event of Lessee's default, Lessor shall have the right, at its option, in addition to and not exclusive of any other remedy Lessor may have by operating of law, pursuant to this Agreement, and in equity, and without any further demand or notice, to re-enter the Property and eject all persons therefrom, and either (i) declare this Agreement at an end, in which event the Lessee shall immediately remove the Equipment and Property and Utility Equipment pursuant to the terms of this Agreement and pay the Lessor the rental payments and payments due pursuant to this Lease in accordance with Paragraph 7.02.1, and, if litigation shall ensue, any other amount necessary to compensate Lessor for all detriment proximately caused by Lessee's failure to perform its obligations pursuant to this Agreement.

7.03. Termination. Lessee's right to termination of this Agreement is set forth in Paragraph 3.01.2, which provides that the Lessee may elect to terminate this Agreement a minimum of six (6) months prior to the end of the existing term. Lessee may also terminate this Agreement upon six (6) months written notice if: (i) changes in local or State laws and regulations prevent the Lessee from operating the communications facility; or (ii) FCC rulings or regulations beyond the Lessee's control that renders the Tower Space unusable. Lessee shall have no other right to terminate this Agreement unless Lessor materially breaches the terms of this Agreement and fails to cure the breach pursuant to the cure provisions of this Agreement. In addition to the right to terminate set forth in Paragraph 3.01.2 and notwithstanding any other term of this Agreement, in the event that the Lessor determines by majority vote of the Board of Commissioners that the Lessor determines, in its discretion, that this Agreement must be terminated for the benefit of the public health, welfare, and safety, then the Lessor may, at its sole option, declare this Agreement terminated and such termination shall be effective six (6) months from the date of the notice of termination. Lessor may also terminate this Agreement if the Lessee loses its license to provide communications services for any reason.

7.04. Tower Deficiency. If the event it is determined that a structural deficiency not caused by or the result of the negligence of Lessee exists with respect to the Tower necessitating the dismantling and removal of the Tower, or, in the event any governmental rule, regulation, order, or decree applicable to the Tower is issued or adopted by any entity having jurisdiction over the Tower that would require for correction of same or compliance therewith extensive repair to the Tower or that necessitates the demolition of the Tower, then Lessor may, in its discretion, afford the Lessee the option of constructing a monopole for its antenna on the

Property. In the event that the Lessor elects not to permit Lessee the option of constructing a monopole and related and necessary equipment, this Agreement shall terminate upon notice by the Lessor that the Tower is structurally deficient and required to be removed or dismantled and the parties shall have no further obligation upon the Lessee's compliance with the requirements of this Agreement at its termination, including, but not limited to, the removal of the Equipment and Property and Utility Equipment in accordance with the terms of this Agreement and the Lessee's indemnification requirements set forth in Paragraph 4.01.

## **8. MISCELLANEOUS**

8.01. Rights Upon Sale. Should Lessor, at any time during this Agreement decide (i) to sell or transfer all or any part of the Property or the Tower thereon to a purchaser other than Lessee, or (ii) to grant to a third-party by easement or other legal instrument an interest in and to that portion of the Tower and or Property occupied by Lessee, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, such sale or grant of an easement or interest therein shall be under and subject to this Agreement and any such purchaser or transferee shall recognize Lessee's rights hereunder under the terms of this Agreement. To the extent that Lessor grants to a third-party by easement or other legal instrument an interest in and to that portion of the Tower and/or Property occupied by Lessee for the purpose of operating and maintaining communications facilities or the management thereof and in conjunction therewith, Lessor shall not be released from its obligations to Lessee under this Agreement, and Lessee shall have the right to look to Lessor and the third-party for the full performance of this Agreement.

8.02. Lessor's Consent. When Lessor's consent is required, Lessor's consent shall not be unreasonably or arbitrarily withheld.

8.03. Mechanic's Lien Prohibited. Lessee shall not suffer any mechanic's notice of intention or lien claim to be filed against the Property by reason of work, labor, services, or materials performed for or furnished to Lessee or to anyone holding the Property, or any part thereof, through or under Lessee. If Lessee shall fail to remove or discharge any mechanic's notice of intention or lien claim as described above within ninety (90) days after notice or knowledge of the filing of same, then in addition to all other rights of Lessor hereunder, or by law upon a default by Lessee, Lessor may, at its option, procure the removal or discharge of same. Lessee shall pay to Lessor all amounts paid by Lessor relating to and/or arising out of the mechanic's lien, including all attorney's fees and costs for any investigation and review, pre-litigation, litigation, post-judgment litigation, and any and all appeals arising out of and/or relating to the mechanic's lien.

8.04. Lessee's Bankruptcy. If the Lessee shall file a petition of bankruptcy, or be adjudicated a bankrupt, or make an assignment for the benefit of creditors to take advantage of any insolvency act, then, in that event, this Agreement may be terminated by Lessor upon thirty (30) days written notice to Lessee without any penalty or further liability to Lessor provided that none of the foregoing shall constitute an event of default, if, at the time of the occurrence, Lessee is current with its payments, continues to make payments on time, and is not otherwise in default under the terms of this Agreement.

8.05. Quiet Enjoyment. Lessor covenants that Lessee, on paying the rent and performing of the covenants set forth in this Agreement, shall peaceably and quietly have, hold, and enjoy the rights granted to the Lessor pursuant to this Agreement, except that the Lessee's rights shall be subordinate to the Lessor's rights to quiet enjoyment and use of the Property, provided that such does not interfere with the Tower Space except as otherwise provided in this Agreement.

8.06. Title. Lessor represents and warrants to Lessee as of the execution date of this Agreement, and covenants during the Term that Lessor is seized of good and sufficient title and interest to the Property and has full authority to enter into and execute this Agreement. Lessor further covenants during this Agreement that there are no liens, judgments, or impediments of title on the Property, or affecting Lessor's title to the same and that there are no covenants, easements or restrictions which prevent or adversely affect the use or occupancy of the Premises by Lessee as set forth above.

8.07. Integration. This Agreement, together with the Lessor's bid specifications, comprise the entire agreement and understanding between the Parties and it is acknowledged that there is and supersedes all previous understandings and agreements between the Parties, whether oral or written. In the case of conflict with the bid specifications, this Agreement shall supersede the specifications. The Parties hereby acknowledge and agree that they have not relied on any representation, assertion, guarantee, warranty, collateral contract or other assurance, except those set out in this Agreement. The Parties hereby waive all rights and remedies, at law or in equity, arising or which may arise as the result of a Party's reliance on such representation, assertion, guarantee, warranty, collateral contract or other assurance.

8.08. Assignment. This Agreement may be sold, assigned, or transferred by the Lessee without the approval and consent of the Lessor to the Lessee's principal, affiliates, subsidiaries of its principal, or to any entity which acquires all or substantially all of Lessee's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition, or other business reorganization. As to other Parties, this Agreement may not be sold, assigned, or transferred without the written consent of the Lessor, which such consent will not be unreasonably withheld, delayed, or conditioned. No change of stock ownership, partnership interest or control of Lessee or transfer upon partnership or corporate dissolution of Lessee shall constitute an assignment hereunder.

8.09. Notices. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested, or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

LESSOR:      Municipal Clerk  
                 Township of Long Beach  
                 6885 Long Beach Boulevard  
                 Brant Beach, New Jersey 08008

LESSEE: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

8.10. Subordination and Non-Disturbance. Lessor shall obtain not later than fifteen (15) days following the execution of this Agreement, a Non-Disturbance Agreement, as defined below, from its existing mortgagee(s), ground Lessors, and master Lessors, if any, of the Property. At Lessor's option, this Agreement shall be subordinate to any future master lease, ground lease, mortgage, deed of trust, or other security interest ("Mortgage") by Lessor which from time to time may encumber all or part of the Property, Tower, or right-of-way; provided, however, as a condition precedent to Lessee being required to subordinate its interest in this Agreement to any future Mortgage covering the Tower or Property, Lessor shall obtain for Lessee's benefit a non-disturbance and attornment agreement for Lessee's benefit in the form reasonably satisfactory to Lessee, and containing the terms described below ("Non-Disturbance Agreement"), and shall recognize Lessee's right to remain in occupancy of and have access to the Premises as long as Lessee is not in default of this Agreement beyond applicable notice and cure periods. The Non-Disturbance Agreement shall include the encumbering Party's ("Lender's") agreement that, if Lender or its successor-in-interest or any purchaser of Lender's or its successor's interest ("Purchaser") acquires an ownership interest in the Tower or Property, Lender or such successor-in-interest or Purchaser will (1) honor all of the terms of the Agreement, (2) fulfill Lessor's obligations under the Agreement, and (3) promptly cure all of the then-existing Lessor defaults under the Agreement. Such Non-Disturbance Agreement must be binding on all of Lender's participants in the subject loan (if any) and on all successors and assigns of Lender and/or its participants and on all Purchasers. In return for such Non-Disturbance Agreement, Lessee will execute an agreement for Lender's benefit in which Lessee (1) confirms that the Agreement is subordinate to the Mortgage or other real property interest in favor of Lender, (2) agrees to attorn to Lender if Lender becomes the owner of the Tower or Property and (3) agrees accept a cure by Lender of any of Lessor's defaults, provided such cure is completed within the deadline applicable to Lessor. In the event Lessor defaults in the payment and/or other performance of any mortgage or other real property interest encumbering the Property, Lessee, may, at its sole option and without obligation, cure or correct Lessor's default and upon doing so, Lessee shall be subrogated to any and all rights, titles, liens and equities of the holders of such mortgage or other real property interest and Lessee shall be entitled to deduct and setoff against all rents that may otherwise become due under this Agreement the sums paid by Lessee to cure or correct such defaults.

8.11. Recording. Lessor agrees to execute a Memorandum of this Agreement, which Lessee may record with the appropriate recording officer. The date set forth in the Memorandum of Lease is for recording purposes only and bears no reference to commencement of either the Term or rent payments.

8.12. Estoppel. Either Party shall, from time to time, on not less than ten (10) days prior written request by the other, execute, acknowledge, and deliver a written statement certifying that this Agreement is unmodified and in full force and effect, or that this Agreement is in full force and effect as modified and listing the instruments of modification, the dates to which rental payments have been paid, and whether to the best knowledge of the Party delivering the estoppel the other Party is in default hereunder, and, if so, specifying the nature of the default. No such statement shall be provided that is not accurate.

8.13. Casualty. In the event of damage by fire or other casualty to the Tower or Premises that cannot reasonably be expected to be repaired within forty-five (45) days following same, or, if the Property is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt Lessee's operations at the Premises for more than forty-five (45) days, then Lessee may, at any time following such fire or other casualty, provided Lessor has not completed the restoration required to permit Lessee to resume its operation at the Premises, suspend this Agreement upon fifteen (15) days prior written notice to Lessor for a period of five (5) months, and, provided the casualty shall be repaired within those five (5) months, this Agreement shall resume at the time the casualty is repaired. In the event that the casualty is not repaired within five (5) months of the aforesaid notice, Lessee may terminate this Agreement. Any such notice of termination shall cause this Agreement to be suspended with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the Parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under this Agreement. Notwithstanding the foregoing, the rent shall abate during the period of repair following such fire or other casualty in proportion to the degree to which Lessee's use of the Premises is impaired.

8.14. Assumption of Risk. Lessee undertakes and assumes for its officers, agents, affiliates, contractors, subcontractors, and employees (collectively "Lessee" for purposes of this Paragraph), all risk of known dangerous conditions, if any, on or about the Property and Lessee hereby agrees to indemnify, defend, and hold harmless the Lessor, its elected and appointed officials, officers, employees, agents, volunteers, and others working on behalf of Lessor in accordance with Paragraph 4.

8.14. Condemnation. In the event of any condemnation of all or any portion of the Property, this Agreement shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever occurs first. If as a result of a partial condemnation of the Premises or Tower, Lessee, in Lessee's sole discretion, is unable to use the Premises for the purposes intended hereunder, or if such condemnation may reasonably be expected to disrupt Lessee's operations at the Premises for more than forty-five (45) days, Lessee may, at Lessee's option, to be exercised in writing within fifteen (15) days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within fifteen (15) days after the condemning authority shall have taken possession) terminate this Agreement as of the date the condemning authority takes such possession. Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the Parties shall make an appropriate adjustment as of such termination date with respect to payments due to the other under this Agreement. If Lessee does not terminate this Agreement in accordance with the

foregoing, this Agreement shall remain in full force and effect as to the portion of the Premises remaining, except that the rent shall be reduced in the same proportion as the rentable area of the Premises taken bears to the total rentable area of the Premises. In the event that this Agreement is not terminated by reason of such condemnation, Lessor shall promptly repair any damage to the Premises caused by such condemning authority.

8.15. Amendment by Operation of Law. Any provision of this Agreement which is affected by any changes in federal or state law or administrative regulations will necessarily and accordingly be modified automatically and such changes shall be deemed incorporated herein by reference as if set forth fully herein, without any action by the Parties required, so as to render this Agreement consistent with such changes in federal or state law or administrative regulations.

8.16. Severability. If any term of this Agreement or the application thereof to any extent be held invalid or unenforceable, the remainder of this Agreement, or the application of such term to the Parties or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

8.17. Governing Law. The Parties acknowledge that this Agreement was prepared under the laws of the State of New Jersey, and, therefore, that this Agreement shall be interpreted under the laws of the State of New Jersey.

8.18. Venue. Any dispute arising out of and/or relating to this Agreement shall be venued in the Superior Court of New Jersey, Ocean County.

8.19. Binding Effect. This Agreement shall extend to and bind the heirs, personal representative, successors, and assigns of the Parties hereto.

8.20. Amendments. This Agreement may not be amended, altered, or modified in any manner except in writing signed by the Parties.

8.21. Waivers. Any failure or delay in the enforcement of any of the provisions of this Agreement by either of the Parties shall not be construed as a waiver of those provisions.

8.22. Election of Remedies. Neither the exercise of nor the failure to exercise a right or to give notice of a claim under this Agreement shall constitute an election of remedies or limit any Party in any manner in the enforcement of any other remedies that may be available to such Party, whether at law or in equity.

8.23. Force Majeure. Neither Party is liable for any default or delay in the performance of any of its obligations under this Agreement (other than failure to make payments when due) if such default or delay is caused, directly or indirectly, by forces beyond such Party's reasonable control, including, without limitation, fire, flood, acts of God, labor disputes, accidents, acts of war or terrorism, interruptions of transportation or communications, supply shortages or the failure of any third Party to perform any commitment relative to the production or delivery of any equipment or material required for such Party to perform its obligations hereunder.

8.24. Authorization. The Parties represents and warrants that he/she/it has the authority to enter into and be bound by the terms of this Agreement.

8.25. Survival. The provisions of the Agreement relating to indemnification shall survive any termination or expiration of this Agreement. Additionally, any provisions of this Agreement which require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.

8.26. Headings. The headings preceding the text of sections of this Lease are for convenience only and shall not be deemed part of this Lease.

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

**LESSOR:**

\_\_\_\_\_

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

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

Its: \_\_\_\_\_

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

**LESSEE:**

\_\_\_\_\_

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

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

Its: \_\_\_\_\_

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

\_\_\_\_\_

WITNESS

\_\_\_\_\_

WITNESS

## **EXHIBIT A**

## **EXHIBIT B**

## **EXHIBIT C**