

NOTICE TO BIDDERS

CELL TOWER

Borough of Carteret

PLEASE TAKE NOTICE that sealed bids must be received by the Borough of Carteret, Middlesex County, New Jersey on or before April 29, 2010 at 2:00 p.m. in the Council Meeting Room of the Borough of Carteret, 61 Cooke Avenue, Carteret, New Jersey 07008, for:

**LEASE OF REAL PROPERTY FOR THE CONSTRUCTION
AND OPERATION OF A WIRELESS COMMUNICATION LATTICE TOWER OR
MONOPOLE AS DETERMINED BY THE BOROUGH AND SUCCESSFUL BIDDER AND
RELATED
FACILITIES AT 339 ROOSEVELT AVENUE NEW JERSEY;
(ALSO KNOWN AS BLOCK 6.01, LOT(S) 1)**

A bid package consisting of this Notice to Bidders, Instructions to Bidders, Bid Form, Affidavit of Non-Collusion, Form of Ground Lease, Specifications, Affirmative Action Affidavit, and Affidavit of Stockholder Disclosure may be obtained at the office of the Law Director, Borough of Carteret at the above address between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

Proposals must be submitted on the Bid Form provided by the Borough of Carteret and placed in a sealed opaque envelope addressed to the Borough of Carteret bearing the name and address of the bidder and clearly marked "Bid--Cell Tower" or they will not be considered. Proposals shall be mailed or delivered to:

Law Director
Borough of Carteret
Municipal Building
61 Cooke Avenue
Carteret, New Jersey 07008

The Borough of Carteret assumes no responsibility for bids returned by mail or delivered after the deadline for submission of bids.

Bidders are required to comply with all applicable statutory requirements including the requirement of P.L. 1975 C. 127 (Affirmative Action)

The Borough of Carteret reserves the right to reject any and all bids or to waive any minor informalities or irregularities in the Proposal received and to accept the bid which is in the best interest of the Borough of Carteret.

The Borough of Carteret reserves the right to award the lease to the highest responsible bidder.

The Borough of Carteret reserves the right to reject any and all bids.

Robert J. Bergen, Esq.
Law Director
Borough of Carteret

Dated: April 6, 2010

COVER SHEET

CELL TOWER

Borough of Carteret

Bid Package

With regard to a bid to be received for the construction of a telecommunications facility cell tower and related improvements at 339 Roosevelt Avenue, Block 6.01, Lot 1, Borough of Carteret, County of Middlesex, State of New Jersey), all of the following documents jointly constitute the Bid Documents for the proposed facility:

1. Notice to Bidders;
2. Cover Sheet Including Bid Checklist
3. Instructions to Bidders;
4. Specifications;
5. Exhibit 1 Sketch of Premises
6. Form of Land Lease Agreement;
7. Bid Form
7. Non-Collusion Affidavit
8. Mandatory Equal Opportunity Language
9. Affirmative Action Affidavit;
10. Stockholders Disclosure Statement.

Bid Checklist

The following documents must be submitted to the Township in order for a bid to be accepted:

| | <u>Check</u> |
|--|--------------|
| A. Bid Form | _____ |
| B. Bid Security | _____ |
| C. Consent of Surety (Form to be Supplied by Surety Company) | _____ |
| D. Non-Collusion Affidavit | _____ |
| E. Affirmative Action Affidavit | _____ |
| F. Stockholders Disclosure Certification | _____ |
| G. New Jersey Certificate of Employee Information Report | _____ |
| H. New Jersey Business Registration Certificate | _____ |
| I. Mandatory Affirmative Action Language | _____ |
| J. Business Registration Certificate | _____ |
| K. Complete Bid Specifications | _____ |

INSTRUCTIONS TO BIDDERS

Cell Tower Facility Borough of Carteret

1. Submission of Bids

The Borough of Carteret (hereinafter, the "Borough"), Middlesex County, New Jersey invites sealed bids, pursuant to the Notice to Bidders. All the terms and conditions of the Notice to Bidders are incorporated herein by reference.

- A. Sealed bids will be received by the designated representative at the time and place stated in the Notice to Bidders, and at such time and place will be publicly opened and read aloud.
- B. The bid proposal form shall be submitted: (1) in a sealed envelope; (2) addressed to the Law Director, Borough of Carteret, Municipal Building; 61 Cooke Avenue, Carteret, NJ 07008 (3) bearing the name and address of the bidder written on the face of the envelope; and (4) clearly marked "Wireless Communications Facility Lease".
- C. It is the bidder's responsibility to see that bids are presented to the Borough on the hour stated at the place designated. Bids may be hand delivered or mailed; however, the Borough disclaims any responsibility for bids forwarded by regular or overnight mail. Bids received after the designated time and date will be returned unopened.
- D. Sealed bids forwarded to the Borough of before the time of opening of bids may be withdrawn upon written application of the bidder who shall be required to produce evidence showing that the individual is or represents the principal or principals involved in the bid. Once bids have been opened, they must remain firm for a period of sixty (60) calendar days.
- E. All prices and amounts must be written in ink or preferably typewritten. Bids containing any conditions, omissions, unexplained erasures or alterations, items not called for in the bid proposal form, attachment of additive information not required by the specifications, or irregularities of any kind, may be rejected by the Borough. Any changes, white-outs, strikeouts, etc. on the proposal page must be initialed in ink by the person responsible for signing the bid.
- F. Each bid proposal form must give the full business address of the bidder and be signed by an authorized representative. Bids by partnerships must be signed in the partnership name by one of the members of the partnership or by an authorized representative, followed by the signature and designation of the person signing. Bids by corporations must be signed in the legal name of the corporation, followed by the name of the State in which incorporated and must contain the signature and designation of the president, secretary or other person authorized to bind the corporation in the matter. When requested, satisfactory evidence of the authority of the officer signing shall be furnished.

2. Bid Documents and Submissions

Each bid shall be made on the prescribed official bid forms and must be accompanied by the items specified in the Bid Checklist. Failure to provide these items will be a cause for rejecting a bid.

3. Bid Security

Accompanying each bid shall be cash, certified check, cashier's check or a Bid Bond in an amount equal to 10% of the total rent for the entire (12 months) first year, or \$20,000.00, whichever is less.

When submitting a Bid Bond, it shall contain Power of Attorney for the full amount of the Bid Bond from a surety company authorized to do business in the State of New Jersey and acceptable to the Borough. The cash, certified check, cashier's check or Bid Bond of the unsuccessful bidder(s) shall be returned as prescribed by law. The cash, certified check, cashier's check or Bid Bond of the bidder to whom the bid is awarded shall be retained unless a lease is fully executed. The cash, certified check, cashier's check or Bid Bond of the successful bidder shall be forfeited if the bidder fails to enter into a lease pursuant to N.J.S.A. 40A:11-2(t).

4. Performance Bond and Consent of Surety

Within thirty (30) days of full execution of a lease between the highest successful bidder and the Borough said bidder shall deliver to the Borough a Performance Bond issued by a reputable bonding company authorized to issue such bonds in the State of New Jersey in the amount of One Hundred and Twenty (120%) Percent of the estimated construction cost of the Cell Tower and common facilities. The Performance Bond shall guarantee the Borough that the bidder shall construct the Cell Tower and common facilities of the wireless communications facility and install the Lead Bidders equipment and/or equipment shelter in accordance with the terms of these bid specifications and the Land Lease Agreement. At such time as construction of the Cell Tower and common facilities and the installation of said bidder's equipment and/or shelter have been completed and accepted, the Borough shall return the Performance Bond to said Bidder, and same may be cancelled.

Each Bid shall be accompanied by a signed Consent of Surety on the surety company's form, which shall certify that if the bidder is awarded the bid, the surety company shall issue a performance bond in the amount and for the purposes set forth herein.

5. Failure to Enter Into a Lease

Should the successful bidder fail to execute and deliver the Lease and as required herein within thirty (30) days (subject, to reasonable extensions of time with the consent of the Borough) after award of the bid, the Borough may declare that the bid guarantee deposited with the bid is forfeited.

6. Right to Reject Bids

The Borough reserves the right to reject any and all bids or parts thereof and to waive any informality, if deemed in the best interests of the Borough.

7. Form of Lease

The Borough and the highest successful bidder shall enter into a Land Lease Agreement, substantially in the form annexed hereto.

8. Term of Lease

The initial term of the lease will be for a period of five (5) years, which term shall renew automatically for three (3) successive periods of five (5) years each, unless terminated in accordance with the terms of the lease.

9. Minimum Bid

The minimum bid, which is equivalent to the annual rent for the first year of the lease shall be not less than \$ 30,000.00.

Following the first year of the lease, rent shall increase annually by three percent (3%) for each subsequent year of the initial or any renewal term.

10. Award of Bids

- A. The highest bidder as tabulated by the Law Director will be awarded the right to erect its cell tower on the leased portion of the property, and shall have the prior right to select the location for its antenna array and ground facility. After the award to the highest bidder, the second highest bidder for the site will be afforded the opportunity to select its desired location for antenna array and ground building at the site. This selection process shall proceed through the exhaustion of all bidders for the site. Subject to the provisions of these bid specifications, the Borough reserves the right to locate municipal antennas on the property at no cost to the Borough.
- B. The highest bidder as tabulated by the Law Director shall be considered the “Lead Bidder” and shall be responsible for the design and development of the wireless communications facility and maintenance of the cell tower and other common areas on the site; however, each successful bidder shall be responsible for the installation and maintenance of its own antennas and equipment.
- C. In the event of a tie in bidding between two or more successful bidders, the order of priority between said bidders shall be determined by a drawing. The drawing shall be held at the Borough Municipal Building on notice to all interested bidders.

11. Design Visit

Prior to being required to select their respective locations for ground space, equipment and antennas, each successful bidder shall be afforded an opportunity to conduct a design visit at the property and to produce satisfactory Lease Exhibits depicting the bidder’s proposed locations. The Lease Exhibits when prepared shall be submitted to the Borough in support of the successful bidder’s selection of their respective locations.

No successful shall be required to enter into a Land Lease Agreement with the Borough, unless and until the bidder is satisfied with the location of its ground space, and equipment and the location and heights of its antennas.

12. Notwithstanding anything to the contrary set forth herein, each bidder shall have the right to perform the following due diligence investigations (“Due Diligence”): (i) Title Search; (ii) Phase One and Phase Two Environmental Inspections; (iii) Soil Boring Tests; (iv) Historic Screening as required by the National Environmental Protection Act Checklist; (v) regulatory filing with the Federal Aviation Administration (FAA), if applicable. Each bid shall be contingent upon the bidder being completely satisfied with the results of its Due Diligence. In the event that a Bidder is not completely satisfied for any reason, in its sole discretion, with the results of its Due Diligence, the Bidder shall have the right to withdraw its bid proposal by giving written notice to Borough. In the event of such withdrawal of the bid

proposal, neither party shall have any further liability to the other, except that the Borough shall be obligated to return that bidder's bid security.

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SPECIFICATIONS

1. The Borough of Carteret is soliciting bids for the lease of real property for the construction and operation of a wireless communications tower and related facilities (“Wireless Communications Facility”).
2. The leased premise (“Premises”) will consist of a parcel of land, of approximately fifty (50) feet by sixty (60) feet located at 339 Roosevelt Avenue, Borough of Carteret, New Jersey, as such Premises are depicted in Exhibit 1, Sketch of Premises. The highest bidder (“Lead Bidder”), as announced by the Borough, will construct on the site a lattice tower or monopole (“Cell Tower”) not exceeding 150 feet in height as determined by the Borough and Lead Bidder for use in connection with wireless communications transmitting and receiving equipment, and have the right to construct an equipment shelter at the base of the Cell Tower and any other accessories and related improvements (collectively “Improvements”), (all the aforementioned being considered the “Wireless Communications Facility” or “Facility”). The Cell Tower foundation shall be engineered to accommodate up to five (5) Co-Locators, as determined by the Borough in consultation with the Lead Bidder, provided that in no event shall the Lead Bidder be required to design the foundation to accommodate more carriers than can be adequately supported by the available ground space. The Cell Tower shall be constructed of galvanized steel. The Wireless Communications Facility shall be surrounded with security fencing a minimum of six (6) feet in height.
3. Bidders are hereby notified and advised that the Borough has invited bids which allow for Co-Location at the Premises.

A. Subject to the provisions of these Bid Specifications, the Lead Bidder shall sublease or sublicense (hereinafter, collectively “sublease”) the Premises, upon terms approved by the Borough, to any Federal Communication Commission (“FCC”) licensed Wireless Communications Company, and the Lead Bidder shall also be obligated to sublease the Premises to successful bidders, subject to limitations of available ground space and tower space. The form of sublease shall be subject to the approval of the Borough, which shall not be unreasonably withheld; provided that a sublease in the form included in any Master Lease or License Agreement between the Lead Bidder and the Sublessee shall be acceptable without specific approval of the Borough. A sublease that is entered into by Lead Bidder shall be subject to the provisions of the Land Lease Agreement and shall be binding upon the successors, assigns, heirs and legal representatives of the respective Parties thereto. Every sublease that is entered into with a Sublessee that is a successful bidder shall provide for the payment by the Sublessee of rent in accordance with the bid award. In the event Lead Bidder subleases the Premises or any part of it in accordance herewith, any rental actually paid by any Sublessee(s) shall be divided between the Borough and Lead Bidder in the following manner: 60% to Borough and 40% to Lead Bidder. Any Sublessee shall be directed to pay the foregoing percentage amounts directly to the Borough and the Lead Bidder. The Lead Bidder shall not be responsible to the Borough for the collection and payment of rents by the sublessee to the Borough, and the Lead Bidder shall have no liability to the Borough in the event of failure of payment by Sublessee. Subject to the obligation to sublease the Premises to successful bidders and other FCC licensed Wireless Communications Companies as provided for herein, the Lead Bidder shall have no liability of any nature to the Borough for failure to sublet all or any part of the Premises to any or all potential Sublessees. For each sublease, Lead Bidder shall provide Borough with a tri-party agreement in substantially the same form as the Sample Tri-Party Agreement, which is Exhibit B to the attached Land Lease Agreement, to be executed by the Lead Bidder, its Sublessee, and the Borough, along with a copy of the sublease of the Premises; in order to confirm the direct payment obligation from the Sublessee to the Borough, and to provide the Borough with remedies against the Sublessee in the event of non-payment.

If the Lead Bidder is unable to accommodate any or part of Sublessee's facilities within the Premises, then the Borough, in its sole discretion, may choose to accommodate said potential Sublessee's facilities and may enter into an agreement with the Sublessee for a portion of the Property that Sublessee requires to locate its ground facilities. In this event, the Borough shall receive 100% of the rental negotiated by the Borough and Sublessee, for the portion of Sublessee's facilities that are located on the Property outside Lead Bidder's Premises.

B. The Lead Bidder shall submit to the Borough a complete Building Department Application with a Site Plan prior to construction of the Wireless Communications Facility at the Premises and pay all required fees. The Site Plan shall be subject to the approval of the Borough Engineer. The Lead Bidder shall coordinate the plan with each bidder that is awarded a bid by the Borough and each successful bidder shall cooperate with the Lead Bidder, to the end that the resulting Site Plan shall adequately provide for the installation of the facilities and equipment of all successful bidders, as well as the Cell Tower and other common facilities. Subject to obtaining necessary cooperation from the Borough and all successful bidders, the Lead Bidder shall provide the Borough with a satisfactory structural analysis of the Cell Tower.

C. The Lead Bidder shall also be responsible to apply for and obtain, at its own cost and expense, all Governmental Approvals, as defined in the Land Lease Agreement, which are required from any Federal State, County or local municipal authority in order to permit the construction and operation of the wireless communications facility on the property.

D. Lead Bidder shall construct the Cell Tower and construct and install other common facilities in accordance with the approved Site Plan and the Governmental Approvals.

E. The Lead Bidder shall also be responsible for maintenance of the Cell Tower and all common facilities during the term of the Land Lease.

F. In performing its obligations pursuant to these specifications the Lead Bidder shall act with reasonable diligence, shall at all times act in good faith and deal fairly with the Borough and with all other co-locating parties. In no event in connection with the performance of its responsibilities, pursuant hereto, shall the Lead Bidder act in such manner so as to confer upon itself a competitive advantage, to the detriment of other co-locating parties.

4. During the term of the Lease, the Cell Tower and other common facilities shall be deemed to be owned by the Lead Bidder. Upon expiration or earlier termination of the Lease, at the election of the Borough, the Lead Bidder shall either: (i) convey the Cell Tower and all common facilities to the Borough by means of a Bill of Sale for a consideration of One dollar (\$1.00); or (ii) remove the Cell Tower upon the written instructions of the Borough. Further, the Cell Tower may not be removed except upon the written instructions of the Borough.
5. Notwithstanding anything to the contrary set forth herein, each party other than the Borough, which co-locates on the Cell Tower shall be responsible for the payment of its pro rata share of the costs of development and maintenance, repair and restoration of the Cell Tower and common facilities. The Lead Bidder shall include substantially identical provisions in each sublease of the Premises providing that the sublessee shall reimburse the Lead Bidder for the sublessee's pro rata share of said costs.
6. The Borough shall have the right to use the Cell Tower for all of its communication purposes and operations at no cost to the Borough; provided that, prior to the submission by the Lead Bidder of the Site Plan to the Borough for approval, the Borough shall provide the Lead bidder with detailed specifications with respect to the Borough's antennas and equipment, including, but not

limited to the model numbers, dimensions and weight of the antennas, operating frequencies and power and desired locations, so that the Lead Bidder can integrate the Borough's requirements into the overall plans. In the event that the Borough does not provide the Lead Bidder with the required information within the time frame set forth herein, and any reasonable extensions thereof, then no successful bidder shall be required to relocate its equipment or antennas, in order to accommodate the needs of the Borough. In no event, will the Lead Bidder be required to install Borough equipment which would unreasonably interfere with any successful bidder.

7. Each successful bidder shall maintain such insurance, as shall protect the Borough and/or itself as is specified in the Land Lease Agreement attached hereto.

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Exhibit 1

Sketch of Premises



CELL TOWER 1.pdf



CELL TOWER 2.pdf

LAND LEASE AGREEMENT

This Agreement, made this ____ day of _____, 2010 between the Borough of Carteret, its principal offices located at 61 Cooke Avenue Carteret, New Jersey 07008, hereinafter designated LESSOR and _____, with its principal office located at _____, New Jersey _____, hereinafter designated LESSEE. The LESSOR and LESSEE are at times collectively referred to hereinafter as the "Parties" or individually as the "Party".

1. PREMISES. LESSOR hereby leases to LESSEE a portion of that certain parcel of property (the entirety of LESSOR's property is referred to hereinafter as the Property), located at 339 Roosevelt Avenue, Carteret, Middlesex County, New Jersey, and being described as a 50' by 60' parcel containing 3000 square feet (the "Land Space"), together with the non-exclusive right (the "Rights of Way") for ingress and egress, seven (7) days a week twenty-four (24) hours a day, on foot or motor vehicle, including trucks over or along a _____ (') foot wide right-of-way extending from the nearest public right-of-way, Roosevelt Avenue, to the Land Space, and for the installation and maintenance of utility wires, poles, cables, conduits, and pipes over, under, or along one or more rights of way from the Land Space, said Land Space and Rights of Way (hereinafter collectively referred to as the "Premises") being substantially as described herein in Exhibit "A" attached hereto and made a part hereof. The Property is also shown on the Tax Map of the Borough of Carteret as Block 6.01, Lot 1.

In the event any public utility is unable to use the Rights of Way, the LESSOR hereby agrees to grant an additional non-exclusive right-of-way either to the LESSEE or to the public utility at no cost to the LESSEE.

2. SURVEY. LESSOR also hereby grants to LESSEE the right to survey the Property and the Premises, and said survey shall then become Exhibit "B" which shall be attached hereto and made a part hereof, and shall control in the event of boundary and access discrepancies between it and Exhibit "A". Cost for such work shall be borne by the LESSEE.

3. TERM; RENTAL.

a. This Agreement shall be effective as of the date of execution by both Parties, provided, however, the initial term shall be for five (5) years and shall commence on the Commencement Date (as hereinafter defined) at which time 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, to _____ 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 Paragraph 23 below. The Agreement shall commence based upon the date LESSEE is granted a building permit by the governmental agency charged with issuing such permits, or the date of execution of the Agreement by the Parties, whichever is later. In the event the date at which LESSEE is

granted a building permit or the date of execution of the Agreement, whichever is applicable, falls between the 1st and 15th of the month, the Agreement shall commence on the 1st of that month and if such date falls between the 16th and 31st of the month, then the Agreement shall commence on the 1st day of the following month (either the "Commencement Date"). LESSOR and LESSEE acknowledge and agree that initial rental payment(s) shall not actually be sent by LESSEE until thirty (30) days after the Commencement Date. By way of illustration of the preceding sentence, if the Commencement Date is January 1, LESSEE shall send to the LESSOR the rental payments for January 1 and February 1 by February 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.

b. LESSOR hereby agrees to provide to LESSEE certain documentation (the "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 requested by LESSEE in LESSEE's reasonable discretion. 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 23. 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 reasonable Rental Documentation has been supplied to LESSEE as provided herein.

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 reasonable Documentation has been supplied to LESSEE as provided herein.

4. EXTENSIONS. This Agreement shall automatically be extended for three (3) additional five (5) year terms unless LESSEE terminates it at the end of the then current term by giving LESSOR written notice of the intent to terminate at least six (6) months prior to the end of the then current term.

5. RENTAL INCREASES. The annual rental for the second (2nd) year of the Initial Term shall be increased by three percent (3%) of the prior year's annual rent and each subsequent

year's rent shall increase by three percent (3%) annually thereafter for all subsequent years of the Initial Term and for all years of each five (5) year extension term.

6. ADDITIONAL EXTENSIONS. If at the end of the third (3rd) five (5) year extension term this Agreement has not been terminated by either Party by giving to the other written notice of an intention to terminate it at least three (3) months prior to the end of such term, this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of five (5) years and for five (5) year terms thereafter until terminated by either Party by giving to the other written notice of its intention to so terminate at least three (3) months prior to the end of such term. Annual rental for each such additional five (5) year term shall be calculated in accordance with Paragraph 5, The initial term and all extensions shall be collectively referred to herein as the "Term".

7. TAXES. LESSEE shall have the responsibility to pay any personal property, real estate taxes, assessments, or charges owed on the Property which LESSOR demonstrates is the result of LESSEE's use of the Premises and/or the installation, maintenance, and operation of the LESSEE's improvements, 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 Premises. LESSOR and LESSEE shall each be responsible for the payment of any taxes, levies, assessments and other charges imposed including franchise and similar taxes imposed upon the respective business conducted by LESSOR or LESSEE at the Property. 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 by it and shall do so prior to the imposition of any lien on the Property.

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. In the event that LESSEE does not have the standing rights to pursue a good faith and reasonable dispute of any taxes under this paragraph, LESSOR will pursue such dispute at LESSEE's sole cost and expense upon written request of LESSEE.

8. USE; GOVERNMENTAL APPROVALS. LESSEE shall use the Premises for the purpose of constructing, maintaining, repairing and operating a communications facility and uses incidental thereto. A security fence consisting of chain link construction or similar but comparable construction may be placed around the perimeter of the Premises at the discretion of LESSEE (not including the access easement). All improvements, equipment, antennas and conduits shall be at

LESSEE's expense and their installation shall be at the discretion and option of LESSEE. LESSEE shall have the right to replace, repair, add or otherwise modify its utilities, equipment, antennas and/or conduits or any portion thereof and the frequencies over which the equipment operates, whether the equipment, antennas, conduits or frequencies are specified or not on any exhibit attached hereto, during the Term. It is understood and agreed that LESSEE's ability to use the Premises is contingent upon its obtaining after the execution date of this Agreement all of the certificates, permits and other approvals (collectively the "Governmental Approvals") that may be required by any Federal, State or Local authorities as well as satisfactory soil boring tests which will permit LESSEE use of the Premises as set forth above. 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. In the event that (i) any of such applications for such Governmental Approvals should be finally rejected; (ii) any Governmental Approval issued to LESSEE is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; (iii) LESSEE determines that such Governmental Approvals may not be obtained in a timely manner; (iv) LESSEE determines that any soil boring tests are unsatisfactory; (v) LESSEE reasonably determines that the Premises is no longer technically compatible for its use, or (vi) LESSEE, reasonably determines that it will be unable to use the Premises for its intended purposes, LESSEE shall have the right to terminate this Agreement. Notice of LESSEE's exercise of its right to terminate shall be given to LESSOR in writing by certified mail, return receipt requested, and shall be effective upon the mailing of such notice by LESSEE, or upon such later date as designated by LESSEE. All rentals paid to said termination date shall be retained by LESSOR. Upon such termination, this Agreement shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each Party to the other hereunder. Otherwise, the LESSEE shall have no further obligations for the payment of rent to LESSOR.

9. CO-LOCATION AND COST SHARING. This Land Lease Agreement is being executed by the LESSEE as the Lead Bidder, having been awarded the contract by the LESSOR following a public bid. The bid specifications contemplate that LESSEE shall construct a lattice tower or monopole ("Cell Tower"), as determined by LESSOR in consultation with the Lead Bidder, and wireless communication facility on the Premises, and further contemplate co-location at the Premises by other successful bidders and other FCC licensed Wireless Communications Companies. As contemplated by the bid specifications, and, notwithstanding any provision to the contrary set forth herein, the following provisions shall apply:

A. LESSEE shall submit to LESSOR a complete Building Department Application with a Site Plan prior to construction at the Premises and pay all required fees. The Site Plan shall be subject to the approval of LESSOR'S Engineer. The LESSEE shall coordinate the plan with each bidder that is awarded a bid by the LESSOR and each successful bidder shall be required to cooperate with the LESSEE, to the end that the resulting Site Plan shall adequately provide for the installation of the facilities and equipment of all successful bidders, as well as the Cell Tower and other Common Facilities.

B. Subject to obtaining necessary cooperation from the LESSOR and all successful bidders, the LESSEE shall provide the LESSOR with a satisfactory structural analysis of the Cell Tower.

C. Subject to reimbursement, as further provided herein, the LESSEE shall also be responsible to apply for and obtain, at its own cost and expense, all Governmental Approvals, as defined herein, which are required from any Federal State, County or local municipal authority in order to permit the construction and operation of the wireless communications facility on the property.

D. LESSEE shall construct the Cell Tower and construct and install other common facilities in accordance with the approved Site Plan and the Governmental Approvals.

E. The LESSEE shall maintain the Cell Tower and all common facilities during the term of the Agreement.

F. In performing its obligations, the Lessee shall act with reasonable diligence, shall at all times act in good faith and deal fairly with the LESSOR and with all other co-locating parties. In no event in connection with the performance of its responsibilities, pursuant hereto, shall the Lessee act in such manner so as to confer upon itself a competitive advantage to the detriment of other co-locating parties.

G. During the term of the Lease, the Cell Tower and other common facilities shall be deemed to be owned by the LESSEE. Upon expiration or earlier termination of the Agreement, at the election of the LESSOR, the LESSEE shall either: (i) convey the Cell Tower and all common facilities to the LESSOR by means of a Bill of Sale for a consideration of One Dollar (\$1.00); or (ii) remove the Cell Tower and common facilities upon the written instructions of the LESSOR. Further, the Cell Tower may not be removed except upon the written instructions of the LESSOR.

H. Notwithstanding anything to the contrary set forth herein, each party other than the LESSOR which co-locates ("Co-Locators") on the Cell Tower shall be responsible for the payment of its pro rata share of the costs of development and maintenance, repair and restoration of the Cell Tower and common facilities.

I. The LESSOR shall have the right to use the Cell Tower for all of its communication purposes and operations at no cost to the LESSOR; provided that, prior to the submission by the LESSEE of the Site Plan to the LESSOR for approval, the LESSOR shall provide the LESSEE with detailed specifications with respect to the LESSOR's antennas and equipment, including, but not limited to, the model numbers, dimensions and weight of the antennas, operating frequencies and power and desired locations, so that the LESSEE can integrate LESSOR's requirements into the overall plans. In the event that the LESSOR does not provide the LESSEE with the required information within the time frame set forth herein, and any reasonable extensions thereof, then neither LESSEE, nor any successful bidder shall be required to relocate its equipment or antennas, in order to accommodate the needs of the LESSOR. In no event, will the LESSEE be required to install LESSOR equipment which would unreasonably interfere with the LESSEE or Co-Locators.

10. INDEMNIFICATION. Subject to Paragraph 10 below, each party shall indemnify and hold the other harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of the indemnifying Party, its employees, contractors or agents, except to the extent such claims or damages may be

due to or caused by the negligence or willful misconduct of the other Party, or its employees, contractors or agents.

11. INSURANCE. The LESSEE shall purchase at its own expense and maintain for the duration of this lease such insurance as will protect it and/or the LESSOR from claims set forth below which may arise out of the LESSEE'S operation under the contract. Such insurance shall be issued by a company or companies licensed to do business in the State of New Jersey, and rated at least A-, and provide coverage for:

- a. Claims under Worker's Compensation, disability benefit and other similar employee benefits acts;
- b. Claims for damages because of bodily injury, occupational sickness or disease, or death of any person other than his employees;
- c. Claims for damages other than to the work itself because of injury to or destruction of tangible property including loss of use resulting there from; and
- d. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

The LESSOR shall be named as an additional insured on all general and automobile liability insurance policies. Said liability policies shall contain a clause stating that they shall be primary insurance with respect to LESSEE's negligence, notwithstanding any insurance maintained by the LESSOR.

Liability insurance shall be on a comprehensive form or on a commercial general form and shall be written on an occurrence basis (policy shall not be a claims-made basis). It shall include:

Premises—Operations
Products—Completed Operations
Contractual Liability
Independent Contractors
Personal and Advertising Injury
Property Damage
XCU Coverages

LESSEE agrees that at its own cost and expense, it will maintain commercial general liability insurance with limits not less than \$2,000,000 combined single limit for bodily injury or property damage per occurrence. LESSEE agrees that at its own cost and expense, it will also will maintain automobile liability insurance with limits not less than \$2,000,000 combined single limit for bodily injury or property damage per occurrence. Automobile liability insurance shall include owned, non-owned and hired vehicle coverage.

LESSEE shall name LESSOR as an additional insured on its liability insurance policies.

If policies are cancelled before the expiration date thereof, the issuing company or broker shall mail thirty (30) days written notice (10 days for cancellation due to non-payment of premium) to the certificate holder named therein.

If by the terms of the insurance mandatory deductibles are required, LESSEE shall be responsible for payment of said deductibles.

12. LIMITATION OF LIABILITY. Except for indemnification pursuant to Paragraphs 10 and 28, neither Party shall be liable to the other, or any of their respective agents, representatives, 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.

13. INTERFERENCE. LESSEE agrees to install equipment of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to any equipment of LESSOR or other lessees of the Property which existed on the Property prior to the date this Agreement is executed by the Parties. In the event any after-installed LESSEE's equipment causes such interference, and after LESSOR has notified LESSEE in writing of such interference, LESSEE will take all commercially reasonable steps necessary to correct and eliminate the interference, including but not limited to, at LESSEE's option, powering down such equipment and later powering up such equipment for intermittent testing. In no event will LESSOR be entitled to terminate this Agreement or relocate the equipment as long as LESSEE is making a good faith effort to remedy the interference issue, except if said interference prevents the LESSOR from adequately performing its public safety related governmental functions. LESSOR agrees that LESSOR and/or any other tenants of the Property who currently have or in the future take possession of the Property will be permitted to install only such equipment that is of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to the then existing 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.

14. REMOVAL AT END OF TERM. Subject to LESSOR's election pursuant to the terms of Paragraph 6G, LESSEE shall, upon expiration or earlier termination of the Term, remove its building(s), antenna structures (except footings), equipment, conduits, fixtures and all personal property and restore the Premises to its original condition, reasonable wear and tear and casualty damage excepted; except that if so elected by LESSOR, LESSEE shall convey title to the Cell Tower and common facilities to the LESSOR by means of a Bill of Sale for a consideration of One (\$1.00) Dollar. In the event of early termination of the Term, LESSEE shall have ninety (90) days within which to remove the foregoing from the property. LESSOR agrees and acknowledges that all of the equipment, conduits, fixtures and personal property of LESSEE shall remain the personal property of LESSEE and subject to the limitations of Paragraph 6G, 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 (as defined in Paragraph 32 below). If such time for removal causes LESSEE to remain on the Premises 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, until such time as the removal of the building, antenna structure, fixtures and all personal property are completed.

15. HOLDOVER. LESSEE has no right to retain possession of the Premises or any part thereof beyond the expiration of that removal period set forth in Paragraph 14 herein, unless the Parties are negotiating a new lease or lease extension in good faith. In the event that the Parties are not in the process of negotiating a new lease or lease extension in good faith, LESSEE holds over in violation of Paragraph 14 and this Paragraph 15, then the rent then in effect payable from and after the time of the expiration or earlier removal period set forth in Paragraph 14 shall be increased to one hundred and ten percent (110%) of the rent applicable during the month immediately preceding such expiration or earlier termination.

16. RIGHTS UPON SALE. Should LESSOR, at any time during the Term decide (i) to sell or transfer all or any part of the Property 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 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 Property occupied by LESSEE for the purpose of operating and maintaining communications facilities or the management thereof and in conjunction therewith, assigns this Agreement to said third party, 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.

17. QUIET ENJOYMENT. LESSOR covenants that LESSEE, on paying the rent and performing the covenants herein, shall peaceably and quietly have, hold and enjoy the Premises.

18. 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 the Term 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.

19. INTEGRATION. It is agreed and understood that this Agreement contains all agreements, promises and understandings between LESSOR and LESSEE and that no verbal or oral agreements, promises or understandings shall be binding upon either LESSOR or LESSEE in any dispute, controversy or proceeding at law, and any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing signed by the Parties or in a written acknowledgment in the case provided in Paragraph 3. In the event any provision of the Agreement is found to be invalid or unenforceable, such finding shall not affect the validity and enforceability of the remaining provisions of this Agreement. The failure of either Party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under the Agreement shall not waive such rights and such Party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, in law or in equity.

20. GOVERNING LAW. This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the Laws of the State in which the Property is located.

21. ASSIGNMENT. This Agreement may be sold, assigned or transferred by the LESSEE without any approval or 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.

Subject to the provisions of the Bid Specifications and Award resulting in this Lease Agreement, LESSEE shall sublease or sublicense (hereinafter, collectively "sublease") the Premises, upon terms approved by the LESSOR, to any Federal Communication Commission ("FCC") licensed Wireless Communications Company, to include, but not limited to, other successful bidders, subject to limitations of available ground space and tower space. The form of sublease shall be subject to the approval of the Borough, which shall not be unreasonably withheld; provided that a sublease in the form included in any Master Lease or License Agreement between the Lead Bidder and the Sublessee shall be acceptable without specific approval of the Borough. A sublease that is entered into by LESSEE shall be subject to the provisions of this Agreement and shall be binding upon the successors, assigns, heirs and legal representatives of the respective Parties hereto.

Every sublease that is entered into with a successful bidder shall provide for the payment by the Sublessee of rent in accordance with the bid award, and the payment by the Sublessee of Sublessee's pro rata share of LESSEE's actual costs of designing, developing, constructing, installing, maintaining, restoring and repairing the Cell Tower and common facilities of the wireless communications facility.

In the event LESSEE subleases the Premises or any part of it in accordance with this Agreement, any rental actually paid by any Sublessee(s) shall be divided between the LESSOR and LESSEE in the following manner: 60% to LESSOR and 40% to LESSEE. Any Sublessee shall be directed to pay the foregoing percentage amounts directly to the LESSOR and the LESSEE, respectively. The LESSEE shall not be responsible to the LESSOR for the collection and payment of rents by the Sublessee to the LESSOR, and the LESSEE shall have no liability to the LESSOR in the event of failure of payment by Sublessee. Subject to the obligation to sublease the Premises to successful bidders and other FCC licensed Wireless Communications Companies, the LESSEE shall have no liability of any nature to the LESSOR for failure to sublet all or any part of the Premises to any or all potential Sublessees. For each sublease, LESSEE shall provide LESSOR with a tri-party agreement in substantially the same form as the Sample Tri-Party Agreement, which is attached hereto as Exhibit B, to be executed by the LESSEE, its Sublessee, and the LESSOR, along with a copy of any sublease of the Premises; in order to confirm the direct payment obligation from the Sublessee to the LESSOR, and to provide the LESSOR with remedies against the Sublessee in the event of non-payment.

If the LESSEE is unable to accommodate any or part of Sublessee's facilities within the Premises, then the Borough, in its sole discretion may choose to accommodate said potential Sublessee's facilities and may enter into an agreement with the Sublessee for a portion of the Property that Sublessee requires to locate its ground facilities. In this event, the LESSOR shall receive 100% of the rental negotiated by the LESSOR and Sublessee for the portion of Sublessee's facilities that are located on the Property outside LESSEE'S Premises.

22. Any sublease or license that is entered into by LESSEE shall not relieve LESSEE of its obligations to LESSOR under this Agreement, shall be subject to the provisions of this Agreement and shall be binding upon the successors, assigns, heirs and representatives of the respective Parties hereto.

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: Borough Clerk
61 Cooke Avenue
Carteret New Jersey, 07008

LESSEE:

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

23. SUCCESSORS. This Agreement shall extend to and bind the heirs, personal representative, successors and assigns of the Parties hereto.

24. 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 (a "Mortgage") by LESSOR which from time to time may encumber all or part of the Property 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 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 (the "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 (a "Purchaser") acquires an ownership interest in the 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 Property and (3) agrees to 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.

25. 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.

26. DEFAULT.

a. In the event there is a breach by LESSEE with respect to any of the provisions of this Agreement or its obligations under it, including the payment of rent, LESSOR shall give LESSEE written notice of such breach. After receipt of such written notice, LESSEE 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 LESSEE shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and LESSEE commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. LESSOR may not maintain any action or effect any remedies for default against LESSEE unless and until LESSEE has failed to cure the breach within the time periods provided in this Paragraph.

b. In the event there is a breach by LESSOR with respect to any of the provisions of this Agreement or its obligations under it, LESSEE shall give LESSOR written notice of such breach. After receipt of such written notice, LESSOR shall have thirty (30) days in which to cure any such breach, provided LESSOR shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and LESSOR commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. LESSEE may not maintain any action or effect any remedies for default against LESSOR unless and until LESSOR has failed to cure the breach within the time periods provided in this Paragraph. Notwithstanding the foregoing to the contrary, it shall be a default under this Agreement if LESSOR fails, within five (5) days after receipt of written notice of such breach, to perform an obligation required to be performed by LESSOR if the failure to perform such an obligation interferes with LESSEE's ability to conduct its business on the Property; provided, however, that

if the nature of LESSOR's obligation is such that more than five (5) days after such notice is reasonably required for its performance, then it shall not be a default under this Agreement if performance is commenced within such five (5) day period and thereafter diligently pursued to completion.

27. REMEDIES. Upon a default, the non-defaulting Party may at its option (but without obligation to do so), perform the defaulting Party's duty or obligation on the defaulting Party's behalf, including but not limited to the obtaining of reasonably required insurance policies. The costs and expenses of any such performance by the non-defaulting Party shall be due and payable by the defaulting Party 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, upon notice and reasonable opportunity to cure, 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; provided, however, non-defaulting party shall use reasonable efforts to mitigate its damages in connection with any such default.

28. ENVIRONMENTAL.

a. LESSOR will be responsible for all obligations of compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or concerns as may now or at any time hereafter be in effect, that are or were in any way related to activity now conducted in, on, or in any way related to the Property, unless such conditions or concerns are caused by the specific activities of LESSEE in the Premises.

b. LESSOR shall hold LESSEE harmless and indemnify LESSEE from and assume all duties, responsibility and liability at LESSOR's sole cost and expense, for all duties, responsibilities, and liability (for payment of penalties, sanctions, forfeitures, losses, costs, or damages) and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is in any way related to: a) failure to comply with any environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene concerns or conditions as may now or at any time hereafter be in effect, unless such non-compliance results from conditions caused by LESSEE; and b) any environmental or industrial hygiene conditions arising out of or in any way related to the condition of the Property or activities conducted thereon, unless such environmental conditions are caused by LESSEE.

c. LESSEE will be responsible for all obligations of compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or concerns as may now or at any time hereafter be in effect, that are or were in any way related to activity now conducted in, on, or in any way related to the Premises, unless such conditions or concerns are caused by the specific activities of LESSOR in the Property.

d. LESSEE shall hold LESSOR harmless and indemnify LESSOR from and assume all duties, responsibility and liability at LESSEE's sole cost and expense, for all duties, responsibilities, and liability (for payment of penalties, sanctions, forfeitures, losses, costs, or damages) and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is in any way related to: a) failure to comply with any environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene concerns or conditions as may now or at any time hereafter be in effect, unless such non-compliance results from conditions caused by LESSOR; and b) any environmental or industrial hygiene conditions arising out of or in any way related to the condition of the Premises or activities conducted thereon, unless such environmental conditions are caused by LESSOR.

29. CASUALTY. In the event of damage by fire or other casualty to the 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, terminate this Agreement upon thirty (30) days prior written notice to LESSOR. 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. 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 unreasonably impaired.

30. 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 Property, 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. LESSEE may on its own behalf make a claim in any condemnation proceeding involving the Premises for losses related to the equipment, conduits, fixtures, its relocation costs and its damages and losses (but not for the loss of its leasehold interest). 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.

31. SUBMISSION OF AGREEMENT/PARTIAL INVALIDITY/AUTHORITY. The submission of this Agreement for examination does not constitute an offer to lease the Premises and this Agreement becomes effective only upon the full execution of this Agreement by the Parties. If any provision herein is invalid, it shall be considered deleted from this Agreement and shall not invalidate the remaining provisions of this Agreement. Each of the Parties hereto warrants to the other that the person or persons executing this Agreement on behalf of such Party has the full right, power and authority to enter into and execute this Agreement on such Party's behalf and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this Agreement.

32. APPLICABLE LAWS. During the Term, LESSOR shall maintain the Property in compliance with all applicable laws, rules, regulations, ordinances, directives, covenants, easements, zoning and land use regulations, and restrictions of record, permits, building codes, and the requirements of any applicable fire insurance underwriter or rating bureau, now in effect or which may hereafter come into effect (including, without limitation, the Americans with Disabilities Act and laws regulating hazardous substances) (collectively "Laws"). LESSEE shall, in respect to the condition of the Premises and at LESSEE's sole cost and expense, comply with (a) all Laws relating solely to LESSEE's specific and unique nature of use of the Premises (other than general office use); and (b) all building codes requiring modifications to the Premises due to the improvements being made by LESSEE in the Premises.

33. SURVIVAL. The provisions of the Agreement relating to indemnification from one Party to the other Party 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.

34. CAPTIONS. The captions contained in this Agreement are inserted for convenience only and are not intended to be part of the Agreement. They shall not affect or be utilized in the construction or interpretation of the Agreement.

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

BALANCE OF PAGE INTENTIONALLY LEFT BLANK

LESSOR:

By: _____

Its: _____

LESSEE:

By: _____

Its: _____

WITNESS

WITNESS

Exhibit "A"

(Sketch of Premises within Property)

Exhibit "B"

Sample Tri-Party Agreement

**SAMPLE TRI-PARTY AGREEMENT
AGREEMENT**

This Agreement made this @@ day of @@, 2008, among
with a principal mailing address of _____, hereinafter called the
"Lessor"; _____, with a principal mailing address,
New Jersey, hereinafter called the "Lessee" and @@, with a principal mailing address of
@@, hereinafter called "Sublessee".

WHEREAS, Lessor and Lessee entered into a Lease Agreement dated @@,
hereinafter referred to as "Lease", with respect to property known as
_____; and

WHEREAS, Lessee and Sublessee have or are considering entering into a
Sublease Agreement or Sublicense Agreement ("Sublease") with respect to part of the
Premises; and

WHEREAS, Lessor, Lessee and Sublessee desire to confirm and specify certain
of the rights and obligations with respect to subleasing of the Premises.

NOW, THEREFORE, in consideration of the premises and intending to be
legally bound hereby, Lessor, Lessee and Sublessee agree to the following:

1. Lessor hereby confirms the right of the Lessee to sublease and consents to
the Lessee's subleasing of part of the Premises to the Sublessee.

2. In the event Lessee subleases part of the Premises to Sublessee, any rental
actually paid by Sublessee shall be divided between Lessor and Lessee in the following
manner: 60% to Lessor and 40% to Lessee. The payment of the foregoing percentage
amount to Lessor shall be in addition to the rental payments that Lessee makes to Lessor
pursuant to the Lease Agreement. The Sublessee shall pay the foregoing percentage
amounts directly to the Lessor and the Lessee in accordance with the time schedule for

payment as set forth in the Sublease. The Lessee shall provide to the Lessor a copy of the Sublease and amendments thereto. The payment from the Sublessee shall be made to the Lessee in accordance with the provisions of the Sublease and the payment from the Sublessee shall be made to the Lessor at the address specified above, unless the Lessor advises the Sublessee of another address or other payee upon thirty (30) days written notice. In the event the Sublessee fails to make payment to the Lessor of any rental amount as set forth herein, the Lessor may give Sublessee written notice of such non-payment at the address set forth above. Notice must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial carrier, provided the carrier'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 carrier's receipt from sender. The notice shall be deemed received by the Sublessee one day after it is delivered to a commercial carrier as set forth in the preceding sentence and three days after sent by certified mail or upon actual signed receipt by the Sublessee, whichever is earlier. After receipt of such notice, the Sublessee shall have thirty (30) days in which to cure any non-payment. In the event that Sublessee fails to cure the non-payment within the time period set forth, such non-payment shall be deemed a breach of the Sublease, in which event the Lessor, at its option, may seek to enforce any and all remedies against the Sublessee respecting the Sublease, including but not limited to termination of the Sublease. Lessee will have no responsibility or liability to Lessor, nor Lessor to Lessee, if Sublessee fails to make payment to the Lessor or Lessee as set forth herein or in the event the Sublease is terminated as a result thereof and Lessee shall have no obligation to enforce remedies against the Sublessee on behalf of the Lessor. Additionally, any non-payment by the Sublessee to the Lessor or breach of the Sublease

resulting from such non-payment shall not affect or negate in any way the Lease or Lessee's rights to the Premises.

3. Subject to Lessee's obligations under the terms of the Bid Specifications and Land Lease Agreement Lease regarding the subleasing of the Premises, the Lessee shall have no other liability of any nature to the Lessor for failure to sublet any and or all of the Premises to the Sublessee.

4. The terms "Sublease", "sublet", "Sublessee" and any other similar terms shall apply to any situation by which the Sublessee comes upon the Premises for co-location, whether it be by formal sublease, license or other agreement.

5. Except as modified herein, all other terms and conditions of the Lease and Sublease shall remain in full force and effect. In the event of any contradictions between the terms of this Agreement and the Lease or Sublease, the terms of this Agreement shall prevail.

IN WITNESS WHEREOF, the undersigned have set their hands and seals the date and year first written above.

WITNESS:

LESSOR:

BY:

LESSEE:

BY:

SUBLESSEE: @@

BY:

BID FORM

Cell Tower Communications Facility

LEASE OF PUBLIC PROPERTY

THE UNDERSIGNED bidder, having read the Notice to Bidders, Specifications, Form of Ground Lease, Non-Collusion Affidavit and Instructions to Bidders (“Bid Documents”) and understanding that it will be bound thereby, hereby bids the sum of

(Print the amount of bid in words and in numerals – conflicts shall be resolved by the printed amount.)

as **annual** rent (12 months) for the Lease of a portion or premises known as Block 6.01, Lot(s) 1, Borough of Carteret, New Jersey 07008, as described in and in accordance with all of the aforesaid Bid Documents. Rent shall increase by three percent (3%) annually, thereafter, during the initial and any renewal terms.

Bidder certifies that:

Cash, certified check, cashier’s check or Bid bond representing the bid security in the amount of \$_____ payable to the Borough of Carteret, accompanies this bid form.

A properly signed and notarized Non-Collusion Affidavit, as required by the Notice to Bidders, accompanies this bid form. Failure to provide the said Affidavit shall render the Bid null and void.

This completed official Bid Form, with all required accompanying forms, must be received by 2 p.m. on April 29, 2010 at the Borough of Carteret’s Municipal Building, in a sealed envelope addressed to the Law Director of the Borough of Carteret, bearing the words “Wireless Communications Facility Lease” and the name and address of the bidder on the outside of the sealed envelope.

Type of Entity (Corporation, etc.):

Organized Under the Laws of the State of

Address of the Bidder:

Contact Person:

Telephone Number:

Signature of Bidder:

Print Name of Signer:

Title of Signer:

PLEASE NOTE AS FOLLOWS; SEE NEXT PAGE

Bids sent through the U.S. Postal Service or other delivery service is done at the bidder's own risk. **ALL DOCUMENTS MUST BE ORIGINAL. FACSIMILE OR PHOTOCOPIES ARE NOT ACCEPTABLE.**

CELL TOWER

Borough of Carteret

LEASE OF PUBLIC LAND

NON-COLLUSION AFFIDAVIT

STATE OF NEW JERSEY)
)
COUNTY OF _____) SS:

I, _____, having offices at _____, in the County of _____, State of _____, of full age and being duly sworn according to law on my oath depose and say that:

I am the _____ of the bidder making the proposal for the above-named Lease, and that I executed the said proposal and this Affidavit, with full authority to do so; that said bidder has not, directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free, competitive bidding in connection with the above-named Lease; and that all statements contained in said proposal and in this Affidavit are true and correct, and made with full knowledge that the Township of _____ relies upon the truth of the statements contained in said proposal and in the statements contained in this Affidavit in awarding said Lease.

I further warrant that no person or selling agency has been employed or retained to solicit or secure such contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee.

Signature: _____
Name (Printed): _____
Title: _____

Sworn and Subscribed to before me, this _____ day of _____, 2008

Notary Public of _____
My Commission Expires _____

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE
N.J.S.A. 10:5-31 et seq., N.J.A.C. 17:27

GOODS, PROFESSIONAL SERVICES AND GENERAL SERVICE CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex. Except with respect to affectional orientation, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of the nondiscrimination clause.

The contractor or subcontractor, where applicable, will in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex.

The contractor or subcontractor, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to employ minority and women workers consistent with the applicable county employment goals established in accordance with N.J.A.C. 17:27-5.2, or a binding determination of the applicable county employment goals determined by the Division pursuant to N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of

age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable federal law and applicable federal court decisions.

In conforming with the applicable employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable federal law and applicable federal court decisions.

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Contract Compliance & EEO as may be requested by the Division from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Contract Compliance & EEO for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code at N.J.A.C. 17:27.

AFFIRMATIVE ACTION AFFIDAVIT

STATE OF NEW JERSEY)
)
COUNTY OF _____) SS:

Re: Borough of Carteret
 Cell Tower Lease

I. _____, of _____, in the State of New Jersey, being of full age, duly sworn, and duly authorized, hereby duly swear according to law, on my oath depose and say:

1. I am employed by _____ (“Contractor”), the successful bidder for the construction of a telecommunications facility (cell tower and related improvements at _____, Borough Carteret, New Jersey.

2. This Affidavit is submitted in support of and as part of the contract with the Borough of Carteret.

3. During the performance of the contract, the Contractor agrees to the terms and conditions set forth herein.

4. The Contractor will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. The Contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Office setting forth provisions of this nondiscrimination clause.

5. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation.

6. The Contractor will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the Contractor's commitments under this Act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

7. The Contractor agrees to comply with the regulations promulgated by the Treasurer pursuant to P.L. 1975, C. 127, as amended and supplemented from time to time and the Americans with Disabilities Act.

8. The Contractor agrees to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, C. 127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the Affirmative Action Office pursuant to N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, C. 127, as amended and supplemented from time to time.

9. The Contractor agrees to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

10. The Contractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established

by the statutes and Court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal Court decisions.

11. The Contractor agrees to review all procedures relating to transfer, upgrading, downgrading, and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and confirm with the applicable employment goals, consistent with the statutes, Court decisions of the State of New Jersey, and applicable Federal law and applicable Federal Court decisions.

12. The Contractor shall furnish such reports or other documents to the Affirmative Action Office as may be requested by the Office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Affirmative Action Office for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code, (N.J.A.C. 17:27).

By: _____

Print Name and Title

Sworn and Subscribed to before me this
_____ day of _____, 2008.

Notary Public of _____
My Commission Expires _____

