

SITE NAME: Windham W ME  
MDG LOC ID: 5000086759

## COMMUNICATIONS TOWER LEASE AGREEMENT

This Agreement, effective as of the later of the dates on which it is signed below (the "Effective Date"), is made by and between **Town of Windham**, whose mailing address is **375 Gray Road, Windham, ME, 04062**, hereinafter designated LESSOR, and **Bell Atlantic Mobile Systems LLC, d/b/a Verizon Wireless**, with its principal office located at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920, hereinafter designated LESSEE. The LESSOR and LESSEE are at times collectively referred to hereinafter as the "Parties" or individually as a "Party". The Parties make this Agreement with reference to the following facts, which are incorporated herein and made a part hereof by reference:

A. LESSOR is the owner of a public safety complex on a certain parcel of property (the entirety of LESSOR's property is referred to hereinafter as the "Property"), located at 375 Gray Road, Windham, Maine. The Property is more particularly described in Exhibit A attached to this Agreement. LESSOR desires to demolish and remove an existing telecommunications tower located on the Property, and install a new telecommunications tower at the Property in order to support police, fire and other public safety operations.

B. LESSEE is a wireless telecommunications carrier that desires to expand and strengthen its coverage and service in the vicinity of the Property.

C. LESSOR and LESSEE have agreed that it would further their respective interests if LESSOR were to permit LESSEE to (i) arrange and initially pay to demolish and remove the existing tower located on the Property, and construct and install on the Property a new communications tower (the "Tower") to be owned by LESSOR, (ii) lease space on and adjacent to the Tower for LESSEE's own wireless communications facility, and (iii) be reimbursed for the costs of the project through a rent abatement mechanism, all in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the Parties, intending to be legally bound hereby, agree as follows:

### A. Construction Phase

The Parties intend for this Agreement to cover both the short term period of LESSEE's construction of the Tower as well as the long term period during which LESSEE will lease a portion of the Tower, and related rights required for LESSEE's wireless communications facility. For ease of reference and the convenience of the Parties, the Agreement is divided into two parts: the Construction Phase and the Operational Phase. The Construction Phase shall begin as soon as practicable after the Effective Date of this Agreement and the Operational Phase will begin on the Commencement Date (as defined in Section 3.a. of the Operational Phase portion of this Agreement). During the Construction Phase, the Parties undertake as follows:

1.. Design and Engineering. LESSEE shall commission and arrange for the design, engineering, construction, and installation of the Tower, by its approved vendors. The Tower

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shall be designed and engineered to support, at a minimum, industry-standard (as of the Effective Date) equipment of up to four (4) commercial wireless carriers similar to LESSEE, plus the known, and reasonably foreseeable (as of the Effective Date) equipment requirements of LESSOR.

2. Location. The Tower shall be erected on that area of the Property described or depicted on Exhibit B attached to this Agreement.

3. Approvals. The Parties agree that they shall cooperate reasonably together to apply for and obtain any and all permits or approvals as may be required in connection with construction and operation of the Tower.

4. Selection and Use of Third Party Contractors. LESSEE's construction manager shall coordinate activities related to the design, engineering, installation, and construction of the Tower. Where commercially appropriate or required by law, LESSEE shall utilize a competitive bidding process to select contractors, agents, vendors, or other third parties to complete the project. Since LESSOR is the owner of the Property and will be the owner of the Tower, LESSEE will, to the greatest extent practicable, arrange for all third-party work product – including engineering drawings, plans, specifications, warranties, and the like – to run directly in favor of LESSOR.

**Commented [A1]:** Does Town have a say as to the design, engineering, etc.? Ability to review plans?

5. Diligence Required; Timeframe. The Construction Phase shall be considered completed upon the Commencement Date of the Lease Term (defined below in the Operational Phase section of this Agreement.) During the Construction Phase, LESSEE shall diligently undertake and pursue the tasks assigned to it with regard to the design, engineering, construction, and installation of the Tower so that the Tower is completed and ready for installation of communications equipment and related appurtenances as expeditiously as possible.

**Commented [A2]:** Does the Town want to include an actual time frame within which the work must be complete?

6. Ownership. At all times and for all purposes the Tower, and all related materials – including, but not limited to, surveys, plans, engineering specifications, drawings, warranties, and the like – shall be the property of LESSOR and not of LESSEE. LESSEE shall prepare and deliver to LESSOR any and all documents of transfer, title, or the like, as may be required or convenient to document and evidence the forgoing. Accordingly, any lessee of the Tower or the Property shall be a tenant of LESSOR and any rent or payments from such lessees shall be fully payable to LESSOR, rather than LESSEE.

7. Transfer of Town Equipment and Removal of Existing Tower. Following construction of the Tower, LESSOR and LESSEE shall coordinate and arrange for the installation of LESSOR's equipment on the Tower. In coordination with LESSEE, LESSOR shall arrange a cutover of LESSOR's equipment from LESSOR's existing tower to the Tower, provided LESSOR's equipment is prepared and available for cutover and installation at the same time LESSEE is installing its equipment on the Tower. Upon LESSOR's satisfaction with the installation and operation of its equipment on the Tower and at the direction of LESSOR, LESSEE shall demolish and remove the existing tower.

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8. **Financing for Tower.** LESSEE shall, in the first instance, pay for all costs and expenses associated with the design, engineering, permitting, construction, and installation of the Tower, including the compound surrounding the Tower; removal of the existing tower; related site work, foundation design and installation; utilities to the compound; the security fence surrounding the compound; and all ancillary and related work. In consideration of LESSEE's costs incurred in the design, engineering, permitting, construction, and installation purchase and installation of the Tower, LESSEE shall be entitled to a partial reimbursement of such costs in the form of a free rent period for the first [five (5) years] of the Operational Phase of this Agreement, beginning on the Commencement Date of the Lease and ending on the last day of the [fifth (5<sup>th</sup>)] Lease Year of the Operational Phase. LESSEE shall begin paying rent as provided in the Operational Phase of this Agreement, beginning with the first rental payment due on the first day of the [sixth (6<sup>th</sup>)] Lease Year and continuing during the Term. If LESSEE terminates this Agreement before the end of the [fifth (5<sup>th</sup>)] Lease Year, it shall forfeit its right to recover any project costs remaining unreimbursed as of that time.

**Commented [A3]:** What if Lessor (Town) terminates before 5 years?

9. **Transition to Operational Phase.** As soon as practicable after completion of the Tower, the compound surrounding the Tower, including the availability of utilities within the compound, and the cutover of LESSOR's equipment and removal of existing tower, LESSEE shall submit is-an application for a building permit for its shelter and antennas. The date of the issuance of the building permit to LESSEE for its shelter and antennas shall trigger the Commencement Date of the Lease (by the mechanism described in Section B.3 below), and the Commencement Date shall mark both the end of the Construction Phase and the beginning of the Operational Phase, at which time the following provisions shall apply:

## **B. Operational Phase**

1. **PREMISES.** LESSOR hereby leases to LESSEE a portion of that certain space (the "Tower Space") on the LESSOR's Tower located at 375 Gray Road, Windham, ME, 04062 Cumberland 36 Main Street, Town of York, York County, State of Maine, as shown on the Tax Maps of the Town of Windham as Map 9, Block 71, Lot 0, and being further described in the deed recorded in the CumberlandYork County Registry of Deeds at Book       , Page       , a copy of which is attached hereto as Exhibit A (the entirety of LESSOR's property is referred to hereinafter as the "Property"), together with a parcel of land (the "Land Space") sufficient for the installation of LESSEE's equipment building; together with the non-exclusive right ("the Right of Way") for ingress and egress, seven (7) days a week, twenty-four (24) hours a day, on foot or motor vehicle, including trucks, and for the installation and maintenance of utility wires, poles, cables, conduits, and pipes over, under, or along a twelve foot (12') wide right-of-way extending from the nearest public right-of-way to the Land Space; and together with any further rights of way (the "Further Rights of Way") over and through the Property between the Land Space and the Tower Space for the installation and maintenance of utility wires, poles, cables, conduits, and pipes. The Tower Space, Land Space, Right of Way and Further Rights of Way, if any, are substantially described in Exhibit B, attached hereto and made a part hereof and are collectively referred to hereinafter as the "Premises".

In the event any public utility or similar service provider is unable to use the Right of Way or Further Rights of Way, the LESSOR hereby agrees to grant an additional right-of-way(s) either

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to the LESSEE or to the public utility or service provider at no cost to the LESSEE, provided that the location of an additional right-of-way on the Property is deemed feasible by LESSOR.

LESSOR hereby grants permission to LESSEE to install, maintain and operate the radio communications equipment, antennas, and appurtenances on LESSOR's Tower described in Exhibit B attached hereto. LESSEE reserves the right to replace the aforementioned equipment with similar and comparable equipment provided said replacement does not increase tower loading of said Tower or unreasonably interfere with LESSOR's use of the Tower.

The lease provided to LESSEE under this Agreement shall be non-exclusive.

2. **SURVEY.** LESSOR also hereby grants to LESSEE the right to survey the Property and the Premises, and said survey shall then become Exhibit C 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 B. 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 lease term shall be for five (5) years and shall commence on the Commencement Date (as hereinafter defined). Rent shall be abated during the first five (5) years of the Term, as described in Section 8 of the Construction Phase of this Agreement. Beginning on the first day of the sixth (6<sup>th</sup>) Lease Year, rental payments shall commence and be due at a total annual rental of [twenty-four thousand dollars (\$24,000.00)], to be paid in equal monthly installments on the first day of the month, in advance, to LESSOR 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 25 below. The lease term shall commence on the first day of the month immediately following the date LESSEE begins construction of the Tower (the "Commencement Date").

**Commented [A4]:** Is this a negotiated term?

b. 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.

c. 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 25.

**Commented [A5]:** We should find out what other documentation is anticipated, since this is a prerequisite to payment of rent.

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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.

d. 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.

e. Notwithstanding the forgoing, the Parties acknowledge and agree that LESSEE's obligation to pay rent shall be abated until such time as the amount of rent abated equals the final total Project Costs, defined above.

4. EXTENSIONS. This Agreement shall automatically be extended for four (4) 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. EXTENSION RENTALS. During the initial term and all subsequent extensions under Paragraph 4 above, or Paragraph 6 below, the annual rental will increase on each yearly anniversary of the Commencement Date in an amount equal to two percent (2.0%) of the previous year's annual rent.

6. ADDITIONAL EXTENSIONS. If at the end of the fourth (4th) 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. 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

**Commented [A6]:** Is the abated rent supposed to be the project costs, or \$24K x 5 years?

**Commented [A7]:** As drafted, the Town has no ability to stop the automatic renewals.

**Commented [A8]:** Is this a negotiated term? Currently below inflation rate...

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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 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 and shall do so prior to the imposition of any lien on the Property.

**Commented [A9]:** Not applicable.

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. 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.

**USE: GOVERNMENTAL APPROVALS.** LESSEE shall use the Premises for the purpose of constructing, maintaining, repairing, and operating a communications facility and uses incidental thereto. All improvements, equipment, antennas, and conduits of LESSEE 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, with no increase in rent, 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 and structural analysis 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 or structural analysis is unsatisfactory; (v) LESSEE determines that the Premises is no longer technically or structurally compatible for its use, or (vi) LESSEE, in its sole discretion, determines that the use the Premises is obsolete or unnecessary, 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. If LESSEE terminates this Agreement before full reimbursement of the Project Costs, it shall forfeit its right to recover the balance of the Project Costs remaining unreimbursed as of that time.

LESSEE's use of the Property shall be nonexclusive and shall at all times comply with and conform to all laws and regulations applicable thereto. Following the Construction Phase, LESSEE shall not make any alterations in, or additions to, the Property without written consent of LESSOR. LESSEE covenants and agrees that the use of the Property shall be confined strictly to the business activities of the LESSEE and shall at all times be in strict compliance with all applicable laws, rules, and regulations of any governmental body, including without limitation the Federal Communications Commission. LESSEE agrees that its equipment will be installed in such manner that it will not interfere with, impair or distort the signal or efficient operation of any other antenna or any other communications equipment located at or on the Property at the time of the execution hereof, which is installed after the date hereof as necessary to LESSOR's use or operation of the Property for public safety purposes, or which otherwise interferes with LESSOR's use or operation of the Property in any way.

#### 8. INDEMNIFICATION.

a. To the extent permitted by law, LESSEE agrees to defend, indemnify and save harmless LESSOR from and against all claims, losses, costs, expenses, or damages (including attorney's fees) from a third party, arising out of bodily injury or property damage to, or the death of, any person, including, but not limited to, any subcontractor, supplier, employee, agent, representative or invitee of LESSOR, LESSEE, or any subcontractors or suppliers, to the extent such injury, damage or death arises out of or results in any manner from:

- i. LESSEE possession, use, occupancy or control of the Premises;
- ii. The fault of, or any negligence or willful misconduct of LESSEE, or its agents, employees, or contractors, or anyone acting under its or their direction or control, or on its or their behalf in connection with or incidental to the performance of this Agreement; or
- iii. Any material breach by LESSEE of any provision of this Lease.

This indemnity and hold harmless agreement will include indemnity against all reasonable costs, expenses, and liabilities incurred in or in connection with any such claim, and the defense thereof, including attorney's fees. Notwithstanding the foregoing, LESSEE will have no liability to LESSOR to the extent any claims, losses, costs, expenses, or damages arise out of or result from any act, omission, or negligence of LESSOR, or of LESSOR's agents, employees or contractors. Any indemnification of LESSOR and any limitation of LESSOR's liability shall to the same extent apply to LESSOR's directors,

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officers, employees, agents, contractors, and affiliated companies, and the directors, officers, employees, agents and contractors thereof.

b. To the extent permitted by law, LESSOR agrees to defend, indemnify and save harmless LESSEE from and against all claims, losses, costs, expenses, or damages from a third party, arising from:

- i. The negligence or willful misconduct of LESSOR or its agents, employees, or contractors; or
- ii. Any material breach by LESSOR of any provision of this Lease. This indemnity and hold harmless agreement will include indemnity against all reasonable costs, expenses, and liabilities incurred in or in connection with any such claim, and the defense thereof. Notwithstanding the foregoing, LESSOR will have no liability to LESSEE to the extent any claims, losses, costs, expenses, or damages arise out of or result from any act, omission, or negligence of LESSEE, or of LESSEE's, agents, employees or contractors.

The foregoing indemnification provisions shall not be deemed a waiver of immunity under the Maine Tort Claims Act or any other applicable law and shall be subject to the limitations of the Maine Tort Claims Act where applicable.

8.9. 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. Nothing herein shall, nor is intended to, waive any defense, immunity or limitation of liability which may be available to the Town or their respective officers, agents and employees, under the Maine Tort Claims Act or any other privileges and/or immunities provided by law.

#### 9-10. INSURANCE.

a. 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 Premises or to the Property, resulting from any fire, or other casualty of the kind covered by fire insurance policies carried by the Parties. 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 Premises or the Property shall waive the insurer's right of subrogation against the other Party.

b. LESSEE agrees that at its own cost and expense, it will maintain commercial general liability insurance with limits not less than \$2,500,000 for injury to or death of one or more persons in any one occurrence and \$1,000,000 for damage or destruction to

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property in any one occurrence; or \$3,000,000 combined single limit coverage for bodily injury and property damage. LESSEE agrees that it will include the LESSOR as an additional insured on said commercial general liability policy.

**10.11. LIMITATION OF LIABILITY.** Except for indemnification pursuant to Paragraphs 9 and 31, 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.

**11.12. ANNUAL TERMINATION.** Notwithstanding anything to the contrary contained herein, provided LESSEE is not in default hereunder beyond applicable notice and cure periods, LESSEE shall have the right to terminate this Agreement upon the annual anniversary of the Commencement Date provided that three (3) months prior notice is given to LESSOR. If LESSEE terminates this Agreement before full reimbursement of the Project Costs, it shall forfeit its right to recover the balance of the Project Costs remaining unreimbursed as of that time.

**12.13. ACCESS TO TOWER.** LESSOR agrees the LESSEE shall have free access to the Tower at all times for the purpose of installing and maintaining its equipment. LESSOR shall furnish LESSEE with necessary means of access for the purpose of ingress and egress to this site and Tower location. It is agreed, however, that only authorized engineers, employees, or properly authorized contractors of LESSEE or persons under their direct supervision will be permitted to enter said premises.

**13.14. TOWER COMPLIANCE.** LESSOR covenants that it will keep the Tower in good repair as required by all Laws (as defined in Paragraph 35 below). 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. If the LESSOR fails to make such repairs, including maintenance, the LESSEE may make the repairs and the costs thereof shall be payable to the LESSEE by the LESSOR on demand together with interest thereon from the date of payment at the greater of (i) ten percent (10%) per annum, or (ii) the highest rate permitted by applicable Laws. If the LESSOR does not make payment to the LESSEE within ten (10) days after such demand, the LESSEE shall have the right to deduct the costs of the repairs from the succeeding monthly rental amounts normally due from the LESSEE to the LESSOR.

No materials may be used in the installation of the antennas or transmission lines that will cause corrosion or rust or deterioration of the Tower structure or its appurtenances.

All antenna(s) 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.

Throughout the Term, LESSOR shall supply to LESSEE copies of all structural analysis reports that are done with respect to the Tower promptly after the completion of the same.

**Commented [A10]:** Again, no ability for the Town to get out of the agreement.

**Commented [A11]:** Is this OK with the Town?

**Commented [A12]:** Note that this is the Town's obligation, not the Lessee.

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Upon request of the LESSOR, and at the sole cost and expense of solely LESSEE, LESSEE agrees to 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 or similar work at the Property or on the Tower provided:

- a. The Temporary Relocation is similar to LESSEE's existing location in size and is fully compatible for LESSEE's use, in LESSEE's reasonable determination;
- b. LESSOR gives LESSEE at least ninety (90) days written notice prior to requiring LESSEE to relocate, except in the event of an emergency;
- c. LESSEE's use at the Premises is not interrupted or diminished during the relocation and LESSEE is allowed, if necessary, in LESSEE's reasonable determination, to place a temporary installation on the Property during any such relocation; and
- d. 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 LESSOR.

**14.15. 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. 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.

**Commented [A13]:** Set a time frame here?

Notwithstanding, and in addition to, any provision herein concerning a LESSEE default, LESSOR shall have the right to terminate this Lease immediately, by providing written notice to LESSEE, in the event:

(1) The Equipment or any part of the Equipment or its operation is reasonably determined by LESSOR, upon written notice to LESSEE, to be causing interference with the use or operation of LESSOR's Property, and LESSEE has failed to immediately correct the interference or cease

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operation, and then permanently remedy such interference within thirty (30) days of such written notification from LESSOR of such interference;

(2) LESSEE's insurance coverage as required herein is terminated for any reason and such insurance has not been reinstated or LESSEE shall have failed to secure comparable replacement insurance within seven (7) days of such termination of insurance; or

(3) Either of the foregoing occurs after any of the foregoing has occurred and been cured three (3) or more times during the Initial Term or three (3) or more times during any Renewal Term.

**45.16. REMOVAL AT END OF TERM.** LESSEE shall, upon expiration of the Term, or within ninety (90) days after any earlier termination of the Agreement, remove its building(s), antenna(s), equipment, conduits, fixtures, and all personal property and restore the Premises to its original condition, reasonable wear and tear and casualty damage excepted. LESSOR agrees and acknowledges that all of the equipment, conduits, fixtures, and personal 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 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(s), fixtures and all personal property are completed.

**46.17. 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 16 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 16 and this Paragraph 17, then the rent then in effect payable from and after the time of the expiration or earlier removal period set forth in Paragraph 16 shall equal to the rent applicable during the month immediately preceding such expiration or earlier termination.

**47.18. OMITTED.**

**48.19. 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.

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**19.20. 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.

**20.21. TITLE.** LESSOR represents and warrants to LESSEE as of the Effective 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.

**21.22. 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. 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.

**22.23. GOVERNING LAW.** This Agreement and the performance thereof shall be governed, interpreted, construed, and regulated by the Laws of the State of Maine.

**23.24. 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.

**Commented [A14]:** Is the Town okay with this provision?

**24.25. 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):

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LESSOR: Town of WindhamYork  
8 School \_\_\_\_\_ 186 York Street  
WindhamYork, Maine 040623900

LESSEE: Cellco Partnership  
d/b/a Verizon Wireless  
180 Washington Valley Road  
Bedminster, New Jersey 07921  
Attention: Network Real Estate

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

**25.26. SUCCESSORS.** This Agreement shall extend to and bind the heirs, personal representativess, successors and assigns of the Parties hereto.

**26.27. 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

**Commented [A15]:** I assume this is not applicable?

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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.

27-28. 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.

28-29. 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) business 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) business 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) business day period and thereafter diligently pursued to completion.

**Commented [A16]:** I don't understand the two-tiered default provision.

29-30. 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

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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. If either Party so performs any of the other Party's obligations hereunder, the full amount of the reasonable and actual cost and expense incurred by the performing Party shall immediately be owing by the other party, and shall be paid upon demand the full undisputed amount thereof with interest thereon from the date of payment at the greater of (i) ten percent (10%) per annum, or (ii) the highest rate permitted by applicable Laws. Notwithstanding the foregoing, if the other Party does not pay the performing Party the full undisputed amount within thirty (30) days of its receipt of an invoice setting forth the amount due, ~~said amount due may~~ be offset against or added to ~~all~~ fees due and owing to LESSOR until the full undisputed amount, including all accrued interest, is fully reimbursed to the performing Party.

### 30.31. 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. Nothing herein shall, nor is intended to, waive any defense, immunity or limitation of liability which may be available to the Town or their respective officers, agents and employees, under the Maine Tort Claims Act or any other privileges and/or immunities provided by law.

31.32. 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 fifteen (15) days prior written notice to LESSOR. Any such

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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 impaired.

**Commented [A17]:** Who makes this determination?

**32.33. 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 against the condemning authority 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, if any.

**33.34. 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.

**34.35. 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

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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.

**Commented [A18]:** Lessee also needs to comply with all applicable laws related to the construction of the Tower.

**35.36. 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.

**37. 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.

**36.38. Exoneration of LESSOR.** All personal property of LESSEE upon the Premises shall be at the sole risk of LESSEE. LESSEE agrees that LESSOR shall not be liable to LESSEE or anyone claiming under LESSEE for (i) any damage to property or injury (including death) to any person on or near the Property, or (ii) the action, whether direct or indirect, of the elements, or (iii) any theft, fire, vandalism, or (iv) any other cause whatsoever (including, but not limited to, the negligence of LESSOR or its agents) except to the extent that the same shall be caused by, or result from, the gross negligence of LESSOR or its agents.

(Signature page follows)

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IN WITNESS WHEREOF, the Parties hereto have signed below on the dates indicated,  
to be effective as set forth in the opening paragraph of this Agreement.

**LESSOR:**

**TOWN OF WINDHAM**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

**LESSEE:**

**Bell Atlantic Mobile Systems LLC  
d/b/a Verizon Wireless**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

The following Exhibits are attached hereto and incorporated by reference:

- “A” Property Description
- “B” Sketch of Premises within Property and location of the Tower
- “C” Survey (LESSEE’s option)

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Exhibit "A"

(LESSOR's Deed to Property)

98194\12408363  
4858-0850-9385, v. 24858-0850-9385, v. 24858-0850-9385, v. 2

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Exhibit "B"

(Sketch of Premises within Property and location of the Tower)

98194\12408363  
4858-0850-9385, v. 24858-0850-9385, v. 24858-0850-9385, v. 2

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Exhibit "C"

(Survey, at LESSEE's option)

98194\12408363  
4858-0850-9385, v. 24858-0850-9385, v. 24858-0850-9385, v. 2