

**LEASE AGREEMENT
(New Antenna Structure)**

THIS Lease Agreement ("Agreement"), is made this _____ day of _____, 20____, by and between the Maryland-National Capital Park and Planning Commission ("Commission"), a public body corporate and agency of the State of Maryland, and _____, a _____ company, ("Tenant"), or collectively ("Parties").

RECITALS

WHEREAS, the Commission has the authority pursuant to Article 28 of the Annotated Code of Maryland ("Code") to operate, maintain, regulate and control the use of certain land located in Montgomery County, Maryland, and

WHEREAS, the Commission owns _____ ± acres of property located at _____, in _____, Maryland, as shown on Montgomery County Tax Map _____, Grid _____, Parcel _____, and recorded in the Montgomery County land records in Liber _____, Folio _____ ("Property"), and

WHEREAS, the Tenant has submitted a request to the Commission to lease part of the Property to install and operate a [monopole] [lightpole/monopole] [monopole/flagpole] [monopole/treepole] [lattice tower] [antenna support structure] ("Antenna Support Structure") and related communications equipment (the "Communications Facility"), and

WHEREAS, Article 28, Section 5-110 of the Code authorizes the Commission to enter into lease agreements.

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereto covenant and agree as follows:

1. Premises and Use.

- (a) The Commission leases to Tenant a _____' x _____' compound area on the Property together with a _____' non-exclusive easement extending from the nearest public right-of-way, _____, to the compound area, for access and utilities. A description of the portion of the Property and easements leased to the Tenant are illustrated on the site plan, lease layout area, and partial site plan attached hereto and incorporated herein as Exhibit A ("Premises").
- (b) Premises shall be used by Tenant solely for the purposes of installing, operating, maintaining, repairing, and replacing the communications equipment described in Exhibit B attached hereto and incorporated herein ("Communications Equipment"). More specifically, the Premises shall be used by Tenant for the installation, maintenance, upgrade and operation of the Communications Equipment, including antennas, cabling and equipment cabinets, which will form part of a Communications Facility licensed by the Federal Communications Commission ("FCC"). A security fence in conformance with local law may be placed around the perimeter of the Premises (not including the access easement). Tenant shall not

leave any Communications Equipment, cables, conduits or pipes exposed where contact may be made by or with the general public.

- (c) Tenant hereby certifies that Tenant is an FCC license holder with authority to operate its wireless Communications Facility at the Premises.

2. Ingress, Egress and Utility Easement.

The Commission grants Tenant a ___' non-exclusive easement, at all times, for access on foot or by motor vehicle, including trucks, and utilities, as reflected in Exhibit A ("Easement"). More specifically, said Easement is for ingress and egress to the Premises for the construction, installation, maintenance, and repair and replacement of requisite wires, cables, conduits and pipes for the installation, operation and maintenance of the Communications Equipment. The Easement shall end upon termination or expiration of this Lease.

3. Term and Commencement Date.

- (a) This Lease shall be effective as of the date of execution by both Parties. The initial term of the Agreement shall be _____ (___) years ("Initial Term"). The commencement date for the Initial Term shall be the first (1st) day of the month following the month in which Tenant obtains its final permit to construct the Communications Facility, which permits include [the grant of a special exception,] a construction permit from Montgomery County, Maryland, and a Park Permit from the Montgomery County Department of Parks ("Commencement Date"). The Commission and Tenant agree that they shall execute a written acknowledgement confirming the Commencement Date. In the event that Tenant has not received all necessary approvals for use of the Premises within one (1) year from the effective date of this Lease, either party may terminate this Agreement immediately without further liability hereunder. The Commission may extend the time period for Tenant to obtain all necessary approvals upon Tenant providing evidence that it has been and is continuing to diligently pursue the required approvals.
- (b) This Agreement will automatically be extended at the end of the Initial Term for three (3) additional renewal terms of five (5) years each (individually, "Renewal Term"), unless i) Lessee is in default of the Lease at end of the then current term or at the commencement of the renewal term, ii) Lessee terminates it at the end of the then current term by giving the Commission written notice of the intent to terminate at least six (6) months prior to the end of the then current term, iii) the Lease is terminated earlier in accordance with the provisions of this Lease. Said notification must be received ninety (90) days prior to the expiration of the Initial Term or the expiration of any subsequent Renewal Term. Each Renewal Term shall be upon the same terms and conditions, which were in effect before the end of the last Renewal Term, with the appropriate rental rate increases defined in Paragraph 4. If the Lessee holds over after the expiration or termination of the Lease, the tenancy shall be a tenancy from month to month, at a monthly rent of 120% of the rent due for the last month under this Lease.

4. Rent.

- (a) Tenant shall pay the Commission, as annual rent, _____ Thousand Dollars, (\$_____.00) ("Fee"), payable each year in a single installment on the Commencement Date, and on each anniversary of that date thereafter, at the Commission's address specified in Section 18 below.
- (b) The Fee is subject to an annual increase of ____percent, such increase to take effect on each anniversary date of the Commencement Date.
- (c) The Fee shall be paid to the Commission prior to the installation of any of the Communications Equipment on, or disturbance to, the Premises. The Park Permit will not be issued until the Fee is received by the Commission, and if issued, will be deemed pending until the Fee is received.

5. Real Estate Taxes, Taxes and Operating Expenses.

- (a) At Tenant's sole cost and expense, Tenant shall have a separate electric meter installed to measure the electric consumption of its Communications Equipment. Tenant shall contract with and pay directly to the public utility company for the installation of the electric meter and for any electricity consumed by its Communications Equipment.
- (b) Any tax, assessment, levy, charge, fee, or license attributable to Tenant's use of the Premises shall be paid in full by Tenant within thirty (30) days of Tenant's receipt of any bill evidencing such Assessment, based on Tenant's proportionate use of the Premises. The Tenant shall provide the Commission with a copy of the payment thereof.

6. Permits and Approvals.

- (a) Upon request, the Commission agrees to cooperate with Tenant in obtaining, at Tenant's sole cost and expense, any licenses, permits and other approvals required by any federal, state or local authority for Tenant's use of the Premises and the installation and use of the Communications Equipment.
- (b) It is understood and agreed that Tenant's ability to use the Premises is contingent upon its obtaining 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 Tenant use of the Premises as set forth above, after the execution date of this Agreement. The Commission shall cooperate with Tenant in its effort to obtain such approvals and shall not make any changes to the Premises that would prevent the proposed use thereof by Tenant. In the event that (i) any of such applications for such Governmental Approvals should be finally rejected; (ii) any Governmental Approval issued to Tenant is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; (iii) Tenant determines that such Governmental Approvals may not be obtained in a timely manner; (iv) Tenant determines that any soil boring tests are unsatisfactory; (v) Tenant determines that

the Premises is no longer technically compatible for its use, or (vi) Tenant, in its sole discretion, determines that it will be unable to use the Premises for its intended purposes, Tenant shall have the right to terminate this Agreement. Notice of Tenant's exercise of its right to terminate shall be given to the Commission in writing by certified mail, return receipt requested, and shall be effective upon the mailing of such notice by Tenant, or upon such later date as designated by Tenant. All rentals paid to said termination date shall be retained by the Commission.

7. Indemnification.

- (a) Tenant shall defend, indemnify and save harmless the Commission from and against any and all claims and suits (and all reasonable costs and expense incidental thereto, including reasonable attorney's fees) for damages arising by reason of any injury or death to any person or persons, or damage to property, the Commission or other person or persons, where such injuries, losses or damage have been caused by any act or omission of Tenant, its agents, or employees at the Premises or Property due to the installation, maintenance and operation of its Communications Equipment.
- (b) The Commission shall not be responsible for any loss or damage to equipment owned by the Tenant; provided however, to the extent of the Commission's statutory liability, the Commission shall hold Tenant harmless from any liability for damages to any person or any property in or upon the Premises arising out of the misconduct or negligence of the Commission or any of the Commission's agents, servants, or employees to the extent such would not be limited or prohibited by the laws of the State of Maryland. The Commission shall not in any event be liable in damages for business loss, business interruption, or other consequential damages of whatever kind or nature, regardless of the cause of such damages, and the Tenant, and anyone claiming by or through Tenant, expressly waives all claims for such damages.

8. Compliance with Law.

Tenant shall, at its sole cost and expense, comply with all of the applicable requirements of the county, municipal, state, federal, and other applicable governmental, authorities, now in force, or which may hereinafter be in force. Further, the Tenant shall, defend, indemnify, and save harmless the Commission from any claims or suits arising by reason of Tenant's failure to comply with such requirements.

9. Interference.

- (a) Tenant warrants that the Communications Equipment shall not cause material interference to the use or enjoyment of the Property by the Commission or other third parties located at the Property as of the date of this Agreement or neighboring landowners, including, but not necessarily limited to interference with radio communications facilities. Material interference is measurable in accordance with the industry standards to any equipment existing at the time of such interference; provided however, if such interference causes a safety risk (i.e., interference with police frequencies), Tenant's equipment WILL be powered down until such

interference issue is resolved, and later powering up such equipment for intermittent testing. If such interference is not a safety risk, then the Tenant or the interfering licensee must correct such interference within ten (10) days of such knowledge or receipt of notice. If the interference caused by the Tenant or licensee is not corrected within ten (10) days, the Tenant shall remove the applicable equipment from the Tower or instruct such licensee to remove its equipment from the Tower, as applicable within ten (10) days after the expiration of the correction period. **Notwithstanding the opportunity to cure a default as set forth in Section 16(a), failure of Tenant to power down due to a safety risk shall be cause for immediate termination of this Agreement.**

- (b) The Commission shall not allow any third party use of the Property to cause interference with Tenant's use hereof. In the event of such interference, the Commission will take all reasonable action in a timely manner to ensure the party causing the interference takes appropriate action to correct and eliminate the interference.
- (c) The Parties acknowledge that there is 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.

10. Survey Period.

After the Commencement Date, Tenant shall have access to the Premises during business hours for the purpose of performing necessary engineering surveys, inspections and other reasonably necessary tests relating to Tenant's proposed use of the Premises. Within ten (10) days thereof, Tenant shall fully restore to its prior condition any portion of a Premises disturbed by Tenant. Tenant shall make copies of any surveys, inspections, and tests available to the Commission upon request.

11. Improvements.

- (a) Tenant shall submit to the Commission's Park Planning and Development Division for the County Department in which the Premises are located, construction or site plans and specifications for installation of the Communications Equipment ("Drawings") for review and approval. The Commission shall approve or provide reasons for disapproval of Tenant's Drawings within thirty (30) days of receipt of the Drawings. Tenant's improvements shall be made in accordance with the approved Drawings.
- (b) Installation and maintenance of Tenant's Communications Equipment shall be done at Tenant's sole expense, using contractors having the Commission's prior approval which approval shall not be unreasonably withheld, delayed, or conditioned. Further, said work shall be in accordance with Commission standards and requirements and shall be subject to the Commission's final written approval, which approval shall not be unreasonably withheld, delayed, or conditioned. The supervision, approval and other activities of the Commission under this Paragraph, however, shall not constitute a waiver of any term or condition of this Agreement.

Scheduling of any and all work shall be coordinated with the Commission and shall occur during a period of time which shall not interfere with the activities of the Commission.

- (c) Tenant agrees not to damage the Property, the Premises or any personal property or fixtures thereon in any way and agrees to repair any damage caused upon notice thereof. The liability for any such damage, if committed, shall be the liability of Tenant.
- (d) Tenant shall not place any fixtures, structures, signs, or other improvements on the Premises other than the Communications Equipment, without the prior written consent of the Commission.
- (e) It is understood and agreed by and between the Parties hereto that until the date that this Agreement expires by its terms or is terminated, the Communications Equipment remains the property of the Tenant and Tenant 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. Tenant shall, upon expiration of the Term, or within ninety (90) days after any earlier termination of the Agreement, remove its building(s), Antenna Support Structure (except footings) and Communications Facility, including equipment, conduits, fixtures and all personal property and restore the Premises to its original condition, reasonable wear and tear and casualty damage excepted. If such time for removal causes Tenant to remain on the Premises after termination of this Agreement, Tenant 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. Removal of said Communications Equipment shall not, however, except in accordance with Paragraph 16(b), entitle Tenant to reimbursement of the Fee paid to the Commission for the Initial Term or any Renewal Term, or any portion thereof. Tenant shall restore the Premises to as good a condition as they were in prior to the installation of the Communications Equipment, reasonable wear and tear excepted. Subject to the Commission's prior written approval, restoration shall include, but is not limited to (1) removal of any site improvements and structures, including but not limited to foundations, concrete, paving, gravel and vegetation, (2) restoration of grass and shrubbery, and (3) reforestation, if applicable. Commission may, after reasonable written notice of not more than sixty (60) days, remove such equipment and charge Tenant the reasonable costs of removal. The Commission shall not be responsible for the condition or storage of any of the Communications Equipment which Tenant did not timely remove.
- (f) Upon the expiration or termination of this Agreement, unless the Communications Equipment has been removed, clear and unencumbered title shall automatically vest in the Commission, without cost to the Commission, and without the necessity of any further documentation.

12. Security Instrument.

Tenant shall, prior to the commencement of construction, provide the Commission an unconditional and irrevocable bond, letter of credit or other security instrument or cash bond, as approved by the Commission's Office of General Counsel, in the amount of \$_____.00, for the purposes of securing Tenant's obligations pursuant to this Lease. The security instrument shall be renewed annually for the Term, and any Renewal Term, of this Lease. Tenant shall send proof of renewal of the security instrument to the Commission at least sixty (60) days prior to the expiration or termination of the security instrument. Upon notice of non-renewal of the security instrument, the Commission shall have the right to utilize or draw upon the security instrument if Tenant is not in compliance with the material requirements of this Lease. The Commission shall notify Tenant in writing of its intent to utilize or draw upon the security instrument. After termination or expiration of this Lease and confirmation by the Commission that Tenant's structures have been removed and the Premises restored to Premises' condition prior to commencement of this Lease, the Commission shall release the security instrument and return it to Tenant.

13. Maintenance.

- (a) Tenant shall maintain the Premises free of hazards and debris, and in good condition and state of repair and to avoid interference with the Commission's use of the Property. The Commission shall maintain the Property adjacent to the Premises in good condition and state of repair and to avoid interference with Tenant's use of the Premises and Easements.
- (b) The Communications Equipment shall, at the expense of Tenant, be kept and maintained at all times in a good state of repair and maintenance and in compliance with all laws, rules and regulations of any and all governmental authorities. Tenant shall defend, indemnify and save the Commission harmless from any claims or suits arising by reason of Tenant's failure to so keep and maintain the Communications Equipment or to comply with such laws, rules or regulations. The Commission assumes no responsibility for licensing, operation or maintenance of the Communications Equipment.

14. Insurance.

- (a) At Tenant's own expense during the term of this Agreement, including any Renewal Term thereof, Tenant shall maintain commercial general liability insurance and all-risk property insurance with respect to the Premises in which the Commission shall be named as an additional insured with limits of at least \$1,000,000 for injury or death to any one person and \$2,000,000 for any one accident and \$500,000 with respect to property damage. The insurance company must be licensed to do business in Maryland and rated at least "A-" by AM Best, shall be in a form reasonably satisfactory to the Commission, and will contain a provision for thirty (30) days notice to the Commission of any cancellation. Tenant shall provide a certificate extending such insurance to the Commission prior to the Commencement Date of this Agreement. All property insurance policies must waive all rights of subrogation against the Commission.

- (b) Tenant shall promptly notify Tenant's insurance carrier and the Commission of any damage or personal injury on or about the Premises, which occurs by any cause, including, but not limited to negligence, accident, fire, water, flood, wind, explosion, wrongful act and vandalism. Tenant shall notify the Park Police at 301-949-3010 and the [Commission at 301-495-2520/Commission's Property Management Office at 301-699-2574].

15. Access.

- (a) Tenant will provide to the Commission on or before the date of this Agreement, a list of all personnel authorized by Tenant to have access to its Communications Equipment, and will update such list as soon as reasonably practicable, upon a change in such personnel. In the alternative to maintaining such a list, however, Tenant may supply its employees with photographic identification that clearly and prominently identifies Tenant's employees, agents, or contractors, and the Commission agrees to allow Tenant's employees, agents, or contractors access to the Premises upon presentation of such identification.
- (b) Notwithstanding anything in this Agreement to the contrary, the Commission shall not be liable for any loss or damage to equipment owned by the Tenant and shall not be responsible for monitoring access to the Communications Equipment.
- (c) Commission shall have access to the Premises, which access shall not include the interior of Lessee's equipment building, for the purpose of: (a) inspecting, maintaining, and repairing the Premises, (b) enforcing the Lease, (c) accessing adjacent parkland, and (d) the safety, improvement or preservation of the Premises. The Commission shall provide 48 hours prior notice to the Lessee by phone to the Tenant at ___-___-___, except in an emergency whereby no notice will be required, but the Commission will provide notice as soon after as reasonably possible under the circumstances.

16. Default; Remedies.

- (a) Tenant Default. In the event there is a breach by Tenant with respect to any of the provisions of this Agreement or its obligations under it, including the payment of rent, The Commission shall give Tenant written notice of such breach. After receipt of such written notice, Tenant 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 Tenant 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 Tenant commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. The Commission may not maintain any action or effect any remedies for default against Tenant unless and until Tenant has failed to cure the breach within the time periods provided in this Paragraph.
- (b) Commission Default. In the event there is a breach by the Commission with respect to any of the provisions of this Agreement or its obligations under it, Tenant shall give the Commission written notice of such breach. After receipt of such

written notice, the Commission shall have thirty (30) days in which to cure any such breach, provided the Commission 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 the Commission commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. Tenant may not maintain any action or effect any remedies for default against the Commission unless and until the Commission has failed to cure the breach within the time periods provided in this Paragraph.

- (c) 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 therefore; provided however, the Commission's obligations in this Agreement, including the obligation to reimburse the Tenant as required in this Section, is subject to the appropriation of funds. However, Tenant may offset the full undisputed amount due against all fees due and owing to the Commission until the full undisputed amount is fully reimbursed to Tenant. 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 otherwise have under this Agreement, the non-defaulting Party may terminate the Agreement and/or pursue any remedy now or hereafter available by law.

17. Assignment/Additional Users.

- (a) Pursuant to Article 28, Section 5-110 of the MD Ann. Code, Tenant shall not assign this Agreement or allow any person or legal entity to use any part of the Leased Premises without the prior written consent of the Commission. Any such consent of the Commission shall be subject to the following conditions:
 - (i) Tenant is not then in default of this Agreement,
 - (ii) Tenant shall submit a written request for consent of any Assignment, including for name changes, and include with such request a payment to the Commission for administrative costs in the amount of \$1,500,
 - (iii) There is no change in the use of the Premises, and
 - (iv) The Assignment shall not release Tenant from any covenant, liability or obligation of Tenant under this Agreement unless Tenant's assignment to an assignee specifically provides for assignee's assumption of all obligations of this Agreement as of the date of the assignment, and the assignee shall provide the Commission evidence satisfactory to the Commission, of the assignee's adequate financial wherewithal and credit rating to fulfill the obligations under this Agreement.

- (v) Tenant shall not sublet or sublease the Premises to other carriers or any other legal entity.

- (b) Tenant shall have the right to allow other communication providers ("Additional Users") to mount antennae on the Antenna Support Structure in a manner substantially similar to that of Tenant and shall be entitled to retain all revenue derived therefrom. Both parties acknowledge the desire to make the Antenna Support Structure available for use by Additional Users, rather than the construction and installation of additional Antenna Support Structures. In connection therewith, such Additional Users will be required to secure any governmental approvals required to locate on the Antenna Support Structure and shall have a structural analysis performed by a licensed engineer showing that the Antenna Support Structure can accommodate such Additional Users' equipment. Tenant shall not have the right to allow Additional Users to use ground space, to use the Equipment within the Premises nor to ingress or egress the Premises. The Commission retains control of the ground and shall have the right, in its sole and absolute discretion, to enter into agreements with Additional Users for placement of their equipment outside of Tenant's Premises in the form of Groundlease approved by the Commission. The Commission shall retain all revenue derived from the Additional Users for the use of ground space. Tenant shall provide the Commission with a copy of all agreements upon its execution with Additional Users.

18. Notice.

Any and all notices or other written communications required or permitted hereunder shall be in writing, sent via courier or mailed postpaid via United States Registered Mail, Certified Mail or overnight Express Mail as follows:

The Maryland-National Capital Park and Planning Commission
[6600 Kenilworth Avenue, Suite 300/9500 Brunett Avenue]
[Riverdale, Maryland 20737/Silver Spring, Maryland 20901]
Attention: Chief, Park Planning and Development Division

with a copy to:

The Maryland-National Capital Park and Planning Commission
(1) Office of the General Counsel and (2) Secretary-Treasurer
6611 Kenilworth Avenue
Riverdale, Maryland 20737

with a copy to:

The date of receipt of the notice or other written communication shall be deemed to be three days after date of the postmark.

19. Successors and Assigns.

- (a) This Agreement shall not create for, nor give to, any third party any claim or right of action against either party to this Agreement that would not arise in the absence of this Agreement.
- (b) All rights and liabilities under this Agreement shall extend to the successors and assigns of the Parties hereto respectively including the Commission.

20. Title, Authority and Quiet Enjoyment.

- (a) The Commission hereby represents and warrants that it has full authority to enter into this Agreement and that the party executing this Agreement has the power and authority to bind the Commission.
- (b) The Tenant hereby represents and warrants that it has full authority to enter into this Agreement and that the party executing this Agreement has the power and authority to bind the Tenant.
- (c) The Commission hereby represents and warrants that, provided Tenant has made the Fee payment as required hereunder, and is otherwise in compliance under this Agreement, Tenant shall have quiet enjoyment of the Premises.
- (d) If the Property or any part thereof is taken by eminent domain or other governmental authority, this Agreement shall expire on the date when the Premises shall so be taken and the Fee shall be apportioned as of that date. Tenant shall have the right to make a separate claim with the condemning authority for the value of the Tenant's improvements and for moving and relocation expenses; provided, however, that such separate claim shall not reduce or adversely affect the amount of the Commission's award.

21. Entire Agreement.

This Agreement is the entire agreement between the parties on the subject matter to which it applies.

22. Time is of the Essence.

Time is of the essence in all terms of this Agreement.

23. Hazardous Substances.

- (a) The Tenant shall not use or store any asbestos, hazardous or toxic materials or substances, (hereinafter "hazardous material"), as defined in any Federal, State, Commission or local laws, regulations and rules. Notwithstanding the prior sentence, the storage of backup batteries in Tenant's equipment building, and/or the storage of fuel to

operate the backup electrical generator, is specifically excluded from the definition of Hazardous Materials as used in this paragraph so long as Tenant is in compliance with any applicable law or regulation.

- (b) If the Tenant causes or permits the release of any hazardous material, as defined above in this paragraph, in or on the Leased Premises, the Tenant shall indemnify, defend and hold the Commission harmless from any and all actions, claims, demands, costs, damages and expenses of any kind, including: (1) attorneys fees, (2) diminution in value of the Leased Premises, and (3) damages for the loss or restriction on use of the Leased Premises, which are made against or incurred by the Commission arising during or after the Term of this Lease. The Tenant is liable during the Term of this Lease and as long as Tenant has possession of the Leased Premises, whichever period is longer. The Tenant is not liable for the release of hazardous materials on the Premises prior to the commencement of this Lease.
- (c) The Tenant shall comply with any Commission law, regulation and practice, and any Federal, State, and local law and regulation governing the use of pesticides, including but not limited to storage, inventory, purchase and disposal, and application. Tenant shall not use any pesticide that is prohibited by any Commission law, regulation and practice, and any Federal, State, and local law or regulation. Tenant shall obtain prior written approval from the Director of Parks or the Director's designee before application of any pesticide on the Leased Premises.

24. Mechanics Liens.

The Tenant shall not cause any mechanic's or materialman's liens to be placed on the Premises. Tenant shall indemnify, defend, and hold harmless the Commission from any such lien from a party claiming by, through or under the Tenant, and to immediately remove any such lien upon receipt of notice of the lien or notice from the Commission or the party claiming lien rights.

25. Right to Record.

Upon request from Tenant and at Tenant's sole cost and expense, the Commission shall execute and deliver to the Tenant a Memorandum of Lease in recordable form setting forth the general terms of this Lease.

26. Governing Law.

This Agreement shall be deemed to have been executed in the State of Maryland, and the parties hereto agree that the terms and performances hereof shall be governed by and construed in accordance with the laws of the State of Maryland, and enforced in the courts of Montgomery County, Maryland.

27. Rights Upon Sale.

Should the Commission, at any time during the Term decide (i) to sell or transfer all or any part of the Property to a purchaser other than Tenant, 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 Tenant, 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 Tenant's rights hereunder under the terms of this Agreement.

28. Miscellaneous.

- a) No Partnership. The Commission is not a partner, joint venturer or associate of Lessee in the Lessee's use of the Leased Premises.
- b) Non-Discrimination. With regard to any activities of Lessee in connection with this Lease, Lessee shall not discriminate against any participant in or applicant for its programs, against any employee or applicant, or against any contractor because of age, sex, race, creed, color, national origin or disability. Lessee shall ensure that applicants, participants, employees and contractors are treated without regard to age, sex, race, creed, color, national origin or disability. If the Lessee is determined to be in violation of any Federal, State or County nondiscrimination law by the final order of an agency or court, the Commission may terminate or suspend this Lease in whole or in part.
- c) Waiver of Jury. The Lessee waives any right to a trial by jury in any legal action relating to this Lease.
- d) Obligations Surviving Lease. Any obligations and liabilities of the Lessee shall survive the expiration or termination of this Lease.
- e) Police Services. The Commission Park Police has primary jurisdiction over the Leased Premises.
- f) Headings. The headings of Paragraphs and Subparagraphs are for reference convenience only and shall not be deemed to limit, construe, affect, modify or alter the meaning of those Paragraphs or Subparagraphs.
- g) Remedies Cumulative. Any and all rights and remedies hereunder are cumulative and are in addition to such other rights and remedies as may be available at law or in equity.
- h) No Waiver. The failure of either party to enforce any terms or conditions of this Agreement shall not constitute a waiver of the same or other terms and conditions or otherwise prevent or preclude such party from exercising the rights or remedies hereunder, at law or in equity.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto, consenting to be legally bound, have placed their hands and seals below as of the date set forth hereinabove.

The Maryland-National Capital Park and
Planning Commission

Patricia Colihan Barney
Acting Executive Director

Date: _____

Attest:

Al Warfield
Acting Secretary-Treasurer

I hereby affirm that the above
named person is a corporate
officer and empowered to sign
leases for the Tenant.

Signed: _____

Printed: _____

Title: _____

Date: _____

By: _____

Date: _____

STATE OF MARYLAND

COUNTY OF MONTGOMERY

On the ____ day of _____, 20____, Patricia Colihan Barney, personally appeared before me, and personally acknowledged to be the Acting Executive Director of the Maryland National Capital Park and Planning Commission, a public body corporate of the State of Maryland, and that as such Acting Executive Director of the Maryland National Capital Park and Planning Commission, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing as Acting Executive Director of the Maryland National Capital Park and Planning Commission.

In witness whereof, I hereunto set my hand and official seal.

Notary Public

My commission expires _____

STATE OF _____)

COUNTY OF _____)

On the ____ day of _____, 20____, _____, personally appeared before me, and personally acknowledged himself to be the _____, and that he as such Director being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing as Director.

In witness whereof, I hereunto set my hand and official seal.

Notary Public

My commission expires _____

Exhibit A

Premises

Site Plan, Partial Site Plan, Lease Area Layout, Antenna Support Structure Elevation and Antenna Mounting Layout

See attached drawings dated _____

Commission's Initials: _____

Tenant's Initials: _____

Exhibit B

Communications Equipment

The following is to inform the Commission of the type of equipment that the Tenant plans to install on the Premises, which includes the manufacturers and model numbers. The Parties agree that this list does not exclude future changes that may be necessary from time to time for the operation of the PCS system upon written notice of such change to the Commission.

Up to ____' [monopole] [lightpole/monopole] [monopole/flagpole] [monopole/treepole] [lattice tower] [antenna support structure] ("Antenna Support Structure") and related communications equipment (the "Communications Facility") and _____ antennas

____' x ____' Shelter to house BTS equipment

Ice Bridge from shelter to Antenna Support Structure

Electric and telephone service

Commission's initials: _____

Tenant's initials: _____