# CELL TOWER LEASES FROM THE LANDLORD PERSPECTIVE

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## Biographical Information

Patrick Rouse is a shareholder in the real estate and corporate sections of Langley & Banack, Inc. Mr. Rouse's real estate experience includes representation of both landlords and tenants in the negotiation of commercial leases and involvement with the purchase and sale of commercial property, including farms and ranches. He also has significant experience in asset-based and mortgage lending transactions, including the representation of state banks. Mr. Rouse's corporate practice focuses on all aspects of a business from entity formation through termination and dissolution. As part of his corporate practice, Mr. Rouse assists clients in their operations including the drafting and negotiation of various contracts and agreements, asset and stock purchase transactions, loan transactions, and other business-related matters.

In 2015, Mr. Rouse was selected as a member of the prestigious Leadership San Antonio. He was selected in 2014 as the winner of the San Antonio Young Lawyers Association's Outstanding Young Lawyer Award. Additionally, he has been named on multiple occasions as one of *SA Scene's* Outstanding Lawyers for Real Estate Transactions, Business & Corporate and Banking.

**Education**:

Johns Hopkins University – 2005, B.A., Economics
St. Mary's University School of Law – 2008, J.D., *Magna Cum Laude*

**Professional and Community Activities**:

American Bar Association, San Antonio Bar Association, Texas Bar Foundation, San Antonio Bar Foundation

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## I. INTRODUCTION

### A. Overview

Cell towers are a comparatively recent real estate development and we all rely on the connectivity they provide. As a result of the importance of these towers and their increasing numbers, real estate attorneys should understand cell tower development and leasing in order to advise a client involved in such a transaction and appreciate how cell towers impact real estate acquisition and operation or a financing transaction. At their core, cell tower transactions are real property transactions and, for the most part, involve concepts that are familiar to real estate practitioners. However, these transactions have certain features that are unique which must be considered in order to ensure a successful relationship among the parties. This article explains key aspects of cell tower transactions to serve as a reference to real estate practitioners who represent clients involved in them.

### B. Background

As a starting point, a unique aspect of cell tower transactions is that they typically involve ***three*** parties in ***two*** separate transactions. First, a ***real property owner*** allows a ***cell tower company*** to construct a tower on a portion of its property. Then, the cell tower company allows ***multiple end-users*** to install equipment on the tower and on the subject property to facilitate the end-user's needs or service the end-user's customers. The needs and requirements of the end-users who install equipment on the tower and on the subject property drive the transaction terms. Regardless of whom he or she represents, the practitioner must consider the end-users' needs and requirements when negotiating on behalf of any of the three parties to the transaction. This is true even as to the real property owner because if a cell tower company is unable to meet the needs and requirements of its end-users, the real property owner's property will not be useful to a cell tower company.

### C. Article Structure

Because end-user needs and requirements drive cell tower transactions, this article will first discuss specific terms of the agreement between the cell tower company and a typical end-user (i.e. cell phone company). Next, it will review the terms of the agreement between the cell tower company and real property owner authorizing the cell tower company to construct the cell tower and allowing end-users to access the tower and premises. Finally, this article will highlight a few considerations for real estate practitioners to discuss with his or her client as part of an engagement involving the representation of a real property owner in a cell tower lease transaction. The article will provide an overview of issues for the practitioner's identification, consideration and, ultimately, application to specific facts. By the end of this article, the practitioner should have a base level of understanding of the entire cell tower transaction structure and particular issues to consider when representing a real property owner.

## II. CELL TOWER COMPANY TO END-USER

### A. Agreement

A cell tower company must authorize a third party to (i) use the cell tower company's tower and a portion of real property to install necessary equipment; (ii) gain access to the premises and tower; and (iii) install any necessary utilities. Subject to conformance with the agreement between the real property owner and the cell tower company, described in detail later in this article, this agreement could take the form of a sublease or a sublicense. It also could take the form of an easement. No matter what form of agreement is used, the agreement should define the terms and conditions of use and preserve the right of the cell tower company to terminate for the end-user's breach of the agreement.

### B. Premises

End-users typically will require each of the following in order to make use of the cell tower: (i) an access easement from a public right-of-way; (ii) a utility easement; (iii) the right to use a portion of the ground to install ground based equipment (think generators and conduit from the ground based equipment to the tower); and (iv) space on the tower for the installation of tower mounted equipment. Depending on the end-user, access and utility easements will need to be defined by metes and bounds but are usually non-exclusive with all other end-users. Access will need to be permitted 24 hours a day, 7 days a week. The ground space is usually depicted on a site plan attached as an exhibit to the agreement allowing for approximately 200-300 square feet of space for installation of ground based equipment. Space on the tower for installation of tower mounted equipment is usually defined at a certain height on the tower with specific equipment descriptions and is also typically identified on a site plan attached as an exhibit to the agreement. Typically, site plans are more specific than in other leasing contexts and can be a number of pages in length.

### C. Term

One of the unique aspects to cell tower agreements is the term of the end-user agreement. Because of technology advancements, regulatory issues, service demands, industry consolidation (*see* proposed T-Mobile and Sprint merger) and a host of other factors, end-users require flexibility to the term of their agreements. A summary of some end-user timing requirements is as follows:

1. Effective Date to Rent Commencement Date

The first condition of most end-user agreements involves the period between the effective date (when the agreement is executed by all parties) and the "rent commencement date" (i.e. when the end-user must start paying the cell tower company). Notwithstanding pre-development work typically handled by site acquisition firms, following execution of the agreement, the end-user typically has a number of additional due diligence items it must satisfy before installing equipment on the tower, including, but not limited to, local and federal permits and licenses. Additionally, the end-user may desire to perform title review and certain structural investigations of the premises and tower and will desire to initiate installation of its equipment on the premises and tower prior to commencement of its rent obligations. Notwithstanding the additional due diligence an end-user intends to perform prior to installation of its equipment on the premises, outside rent commencement dates typically are included to require rent to commence a few months after execution of the agreement in any event.

2. Rent Commencement Date to Expiration of Initial Term

Initial terms of end-user agreements are typically 5 or 10 years following the rent commencement date but could be negotiated to any length.

3. Renewal Terms

End-user agreements typically provide multiple renewal options. It is not uncommon to find an end-user agreement that could extend for 50 years or more. Many end-user agreements include automatic renewal unless the end-user sends written notice of non-renewal a certain period in advance of the expiration of then-current term of the agreement. As one can imagine, many end-users operate hundreds or even thousands of sites so automatic renewal is the preferred method of preserving these use agreements.

**D. Early Termination**

As noted above, there are a number of factors impacting the term of end-user agreements. Industry consolidation is a large factor as are regulatory issues, technology advancements and service demands, each of which changes the need for the number of towers upon which an end-user installs equipment. While end-users make material investments in each location from the perspective of due diligence costs, site improvement costs, and equipment installation and maintenance, end-users will desire to preserve a right to terminate their use of a site prior to the expiration of the then-current term; therefore, negotiation of the circumstances allowing for early termination is an area for attention. Many agreements allow for early termination by an end-user if governmental approvals are not obtainable or are terminated or if the site becomes obsolete or unnecessary; however, cell tower companies will seek to incorporate an early termination fee into their agreements to protect against early termination, compensate for lost leasing opportunities, and preserve the benefit of their bargain. These fees can take many different forms, but a few months of rent up to 1 year of rent is not unusual.

**E. Rent**

Obviously, dependent upon a number of market factors such as total space needed, tower height, location, title matters, and end-user financial capabilities, rent typically is payable monthly or annually for a fixed sum and could range from a few hundred dollars per month to a few thousand dollars a month. Rents typically escalate by a few percentage points either on an annual basis or with each renewal period.

> ***PRACTICAL NOTE***: While a few hundred dollars per month to a few thousand dollars per month does not sound like a lot of money, recall that cell towers typically have multiple end-users such that a successful tower could generate revenues in favor of a cell tower company in excess of $10,000 per month.

**F. Interference**

As many tower sites will have multiple end-users, signal interference is an issue that must be considered. Typically, end-user agreements provide that the end-user will not interfere with any existing user on the tower, but that the cell tower company will not allow, or will exercise commercially reasonable efforts not to allow, a subsequent user to interfere with the end-user's frequency. Essentially, it is a first-in-time, first-in-right arrangement. To the extent interference exists or develops, the party responsible bears the obligation to remedy. Cell tower agreements should preserve the right of the cell tower company to require the end-user to turn off the interfering equipment during such time as the interference exists until the interference is corrected.

**G. Tower Loading and Equipment**

While the technical aspects of tower loading exceed the scope of this article, all parties should be cognizant of tower loading limitations as the towers have inherent structural limitations. While cell towers are typically structurally sound, high winds and other events (i.e. earthquakes and fires) with multiple installations at varying heights need to be considered by a structural engineer and any equipment approved for installation. Because of the sensitivity to tower loading limits, the agreement between the cell tower company and end-user typically will incorporate an exhibit identifying the specific equipment the end-user intends to install on the tower and require the cell tower company's approval to any amendments or modifications to such equipment.

> ***PRACTICAL NOTE***: As one could reasonably anticipate given the rate of technology advances, requests to modify equipment with more powerful or efficient equipment are fairly routine. There is some movement in the industry to move away from consent to frequent and time-consuming equipment modification requests to a system of pre-approval so long as tower and wind loading limits are not increased.

### H. Timing

Tower leasing not a model of efficiency. It is not unusual for a cell tower agreement to take upwards of six (6) months or more to negotiate. One reason for this is the number of parties involved on the end-user side of a transaction could include layers of outside consultants, in-house and outside counsel and corporate approval processes and an end-user may be negotiating multiple use agreements simultaneously.

> ***PRACTICAL NOTE***: The practitioner would be advised to maintain good notes of discussions with his or her client and the counterparty.

### I. Amendments

Cell tower agreements are frequently amended to address a number of items, but amendments typically focus on equipment modifications and address changes. With an end-user's request to modify equipment installations on the tower, cell tower companies sometimes will use the amendment process as an opportunity to extend the term of the agreement or increase rent.

> ***PRACTICE NOTE***: Practitioners would be well advised to create a "standard" amendment form to reference for consistency. From the cell tower company advisor's perspective, three provisions the author likes to incorporate are: (i) counterpart and electronic execution; (ii) estoppel and waiver protections relating to the cell tower company's compliance with the terms of the underlying agreement; and (iii) a disclaimer of plan review when equipment modifications are requested. Attached hereto as **Exhibit "1"** is the author's base form amendment. This amendment could be easily revised for use between a real property owner and a cell tower company to be utilized in the event of an amendment of the "master" agreement.

### J. Similar Transactions

While this article relates to cell tower leases, it should be noted that leasing of other structures such as rooftops, water towers or other large structures allows an end-user to operate their equipment in a manner which serves their needs. If an end-user intends to install equipment on a pre-existing structure, it is likely that a cell tower company will not be involved in the transaction and the end-user will be negotiating directly with the real property owner. In such instances, the real property owner would be well advised to consider the foregoing issues, as well as the items discussed in Article III, below, in negotiations with the end-user.

## III. REAL PROPERTY OWNER TO CELL TOWER COMPANY

As was mentioned at the beginning of this article, cell tower transactions are integrated meaning that, to avoid disputes or unforeseen consequences, the transaction from real property owner to cell tower company to end-user must work together as a unified whole. As such, the issues raised in the foregoing section relating to the cell tower company and end-user agreement are all pertinent to the negotiation of the agreement between the real property owner and the cell tower company. Unfortunately, many real property owners do not have experience with cell tower agreements and therefore, some education may be necessary by the cell tower company to explain end-user needs and the corresponding justification for the provisions in the real property owner agreement with the cell tower company.

### A. AGREEMENT

As with the end-user agreement, will the parties enter into a lease, license, easement or some other agreement? From a real property owner's perspective, a lease or license would appear to be the more favored approach as easements have certain legal limitations with respect to enforcement and termination and, if not carefully drafted to limit duration, could result in a perpetual interest in real property in favor of the cell tower company. Cell tower companies will likely present their preferred form of agreement to the real property owner and, while there may be some negotiation on whether the agreement will be in the form of a lease or a license, practically speaking, there is not much difference.

***PRACTICE NOTE***: If the "master" agreement is a lease, the corresponding agreement between the cell tower company and end-user would be a sublease. If the "master" agreement is a license, the corresponding agreement between the cell tower company and end-user would be a sublicense. The terms of the "master" agreement will be incorporated into the end-user agreement and will either be disclosed prior to execution of, or attached to, the end-user agreement and incorporated therein.

***PRACTICAL NOTE***: Notwithstanding that a real property owner will likely be presented with the cell tower company's form of use agreement, attached as **Exhibit "2"** is an example of an Option and Ground Lease Agreement to allow real estate practitioners to familiarize themselves with a use agreement. Your client may be presented with a use agreement that is much more exhaustive than the attached form. The author received this form agreement from his client (a cell tower company) who has authorized the inclusion of the form in this paper. As the agreement is a cell tower company's form document, it is drafted from that perspective. The author did not draft the agreement; however, the author has made revisions to the agreement over time. If you are the author of the original form of the attached agreement and would like credit, please contact the author so that appropriate credit can be given to the original drafter.

**B. Premises**

The cell tower company will require each of the following in order to make use of the real property for purposes of a cell tower: (i) an access easement from a public right-of-way; (ii) a utility easement; (iii) an area within which to construct the tower and related improvements large enough to facilitate end-user installation of their equipment; (iv) occasionally, a temporary construction easement; and (v) the ability to grant end-users the right to enter the premises and install their equipment (i.e. through a sublease or sublicense), typically without real property owner consent. As with all easements, clearly defining the location of access and utility easements by metes and bounds descriptions is preferable. From the cell tower company's perspective, defining these access and utility easements by metes and bounds is also preferable from a marketing perspective as some end-users will require it as part of due diligence and site consideration. Access will need to be 24 hours a day, 7 days a week.

**C. Term**

Similar to end-user agreements, agreements between the real property owner and cell tower company will contain an initial term of 5 or 10 years followed by multiple renewal options for upwards of 50 years or more. Usually, renewal terms are automatic unless the cell tower company delivers written notice of non-renewal a certain period in advance of the expiration of then-current term of the agreement. From the cell tower company's perspective, it is imperative that the underlying agreement between the real property owner and cell tower company have a term that extends at least as long as the agreements between the cell tower company and its end-users.

**D. Early Termination**

Because end-users will almost always demand the option of terminating their use of a site (even with the payment of an early termination fee) and the fact that a cell tower company may therefore find their previously desirable location as uneconomical or unnecessary, agreements with real property owners typically will include an early termination option in favor of the cell tower company. The terms of an early termination right are subject to negotiation but, at a minimum, will involve advance written notice and the cell tower company's continued payment of rent until expiration of the agreement.

**E. Rent**

As a cell tower lease provides a real property owner with an opportunity to monetize a relatively small portion of its property (as small as 50' x 50'), rent is almost always the single most important issue to real property owners. Unlike rent between the cell tower company and end-users, rent from a cell tower company to a real property owner can be fixed, a percentage of tower revenues, or a blend of the two.

1. <u>Fixed Rent</u>

The obvious benefit of fixed rent is that it will be owed every month regardless of end-user use of, or access to, the premises. Fixed rents will vary by location, premises size, cell tower company needs and a host of other factors but could be as low as a few hundred dollars a month to thousands of dollars per month.

2. <u>Percentage Rent</u>

Percentage rents can be negotiated between the real property owner and cell tower company in lieu of fixed rent. Percentage rents can range from a few percentage points up to 20-25% of tower revenue. Similar to retail leasing, considerations need to be given to what constitutes revenue for purposes of percentage rent determination as well as audit rights. While percentage rents can result in significant income to the real property owner if the tower is successful, the ability of end-users to unilaterally terminate their leases can result in uncertain revenue streams.

3. Blended

Another rent option is a blend of fixed and percentage rent. This can come in the form of a fixed base rent with a percentage rent above and beyond a threshold or could also be negotiated as the greater of a fixed rent or percentage rent. Either option provides the real property owner with potential upside if the cell tower is successful while securing a minimum revenue stream.

## F. Additional Considerations

1. Due Diligence

All cell tower companies will need to conduct extensive due diligence including, but not limited to, survey and title review, environmental investigations, engineering studies, and ultimately permit approval. Cell tower companies will perform their due diligence either in advance of lease execution or during an option period. Typically, the cell tower company's option is part of the proposed lease agreement such that, if the cell tower company exercises their option to lease the subject property, the agreement effectively converts to a lease as of the date of exercise of the option. Counsel for a real property owner should review any proposed option agreement to determine whether it is an option, only, or an option that converts to a lease agreement as more attention needs to be given to an option that converts to a lease since it will govern the relationship of the real property owner and cell tower company for the duration of the lease.

2. Further Encumbrances

As a cell tower company will be making a significant capital commitment in the premises and will itself have contractual obligations to allow end-users to use the premises, the cell tower company will seek to limit the real property owner's ability to rezone the premises to prohibit the use of a cell tower, to further encumber the premises or to modify use of the premises in a manner which interferes with the cell tower, cell tower company's rights thereto or end-users' use thereof. Real property owners will need to be cognizant of any limitation in a cell tower agreement on their future use of the premises and counsel to real property owners should review the terms of the cell tower agreement prior to redevelopment or encumbrance of any property to avoid an unintentional breach of the cell tower agreement.

3. Assistance with Governmental Entities

Cell tower companies will need a number of local, state and federal permits to lawfully construct and operate a cell tower. As such, a real property owner will need to provide assistance to the cell tower company in obtaining permits attributed to the real property, presumably all at the cell tower company's sole cost and expense. Permits could include building permits, TxDOT driveway permits, and FCC and FAA authorizations.

4. Rental Stream Offer

The cell tower industry has a secondary market for rental streams. Specifically, real property owners will be approached by third parties willing to acquire the rental income attributed to the cell tower lease at a discounted present value determination. This can be an attractive option to some real property owners, but somewhat problematic to the cell tower companies as it bifurcates the lease between revenue rights and lease obligations. As such, it is not unusual for a cell tower company to include a right of first refusal in their agreement with respect to real property owner's proposed transfer of the rental stream attributed to the cell tower. A sample rental stream offer is as follows:

> **If Lessor receives a bona fide written offer from a third party seeking an assignment or transfer of Rent payments associated with this Lease which Lessor intends to accept ("*Rental Stream Offer*"), Lessor shall immediately furnish Lessee with a copy of the Rental Stream Offer and any documents submitted in connection therewith. Lessee shall have the right within twenty (20) days after it receives such notice to match the Rental Stream Offer and agree in writing to match the terms of the Rental Stream Offer. Such writing shall be in the form of a contract substantially similar to the Rental Stream Offer. If Lessee chooses not to exercise this right or fails to provide written notice to Lessor within the twenty (20) day period, then Lessor may assign the right to receive Rent payments pursuant to the Rental Stream Offer, subject to the terms of this Lease. If Lessor attempts to assign or transfer Rent payments without complying with this Section, then the assignment or transfer shall be void.**

5. Ownership of Towers and Consent to Pledge of Interest to Secure Financing

Typically, an agreement between a real property owner and cell tower company will provide that all improvements made by the cell tower company shall remain the property of the cell tower company with an obligation imposed upon the cell tower company to remove their equipment following expiration or termination of the use agreement. Furthermore, because some cell tower companies will require third party financing to construct a new cell tower at a cost of $250,000 or more, cell tower companies may require the ability to pledge their interest in the improvements and premises to secure one or more credit facilities. As such, real property owners, and their lenders, will need to consent to the pledge of the cell tower company's interest and recognize the cell tower company lender's interest following foreclosure similar to tenant ground lease financings.

## IV. COUNSELING REAL PROPERTY OWNERS

With the benefit of the foregoing, what should real estate practitioners focus on when their client asks for assistance in reviewing a proposal to utilize a portion of the client's property for the construction of a cell tower? While each client has different concerns and interests, from the author's perspective, a real estate practitioner would be well advised to consider the following matters with their client:

### A. Use

Does your client want to allow their property to be utilized for a cell tower? Sounds simple enough, but remember, your client does not have to allow a third party to use their premises to construct a cell tower; however, the client needs to determine whether they want to maximize the income generated by their property at the expense of creating a new layer of restrictions and limitations on use of their property.

### B. Leverage

Assuming your client wants to allow a cell tower company to construct a cell tower on its property, client and counsel should consider what leverage they will have in the transaction. Unlike office or retail transactions where real property owners typically maintain considerable leverage, in the cell tower context, real property owners may be at a disadvantage with respect to both information and demand.

With respect to information, it is possible your client has never negotiated a cell tower lease and that counsel has not negotiated any or enough cell tower leases (*or otherwise found this article wholly unhelpful*) to understand cell tower leasing dynamics or have a sense of market terms and conditions. As such, the cell tower company is at a considerable information advantage relating to not only the underlying transaction but also with respect to the revenue they expect to generate from the cell tower. To help offset this discrepancy, a real property owner or their counsel should perform their own due diligence which may include discussions with other property owners with towers on their property or the client's property manager, broker, investor(s), asset manager, and/or lender to determine what information those parties may be able to provide to help offset this information disadvantage. The client or counsel could also consult trade publications or public filings in an effort narrow this information gap especially as it relates to market rental rates.

With respect to demand, cell tower leasing is different than other forms of leasing because the tenant (cell tower company) only needs a comparatively small area of land in which to operate. In the office and retail context, there is only so much supply that satisfies a tenant's demands. With cell towers, a cell tower company does not require Class A space and could have a mile radius within which to identify a 50' x 50' (2,500 square foot) area in which to erect its tower. As such, a cell tower company may have a large supply of available premises to meet their demands thereby giving the tenant more leverage than in other forms of leasing transactions.

Notwithstanding that your client may be starting at a comparative disadvantage with respect to both information and demand, rest assured that your client is not the first real property owner to be contacted by the cell tower company or site acquisition firm. It is likely another party either did not respond to, or otherwise rejected, a request to us their property for the construction of a cell tower.

### C. Site Specific Considerations

Next, client and counsel should consider whether there is anything unusual or specific about the property that could shift negotiating leverage and therefore make the property particularly valuable to a cell tower company. In rural areas, are adjoining properties encumbered by conservation easements prohibiting further development or does your client's property have utilities and access otherwise unavailable nearby? In an urban area, your client's commercial property may be surrounded by residential properties which don't allow cell towers or may be the only property with space to permit construction of a tower with ancillary utility and access easements thereby enhancing the value of the property. Alternatively, your client's property may be surrounded by large buildings or structures that could interfere with a proposed tower or which could be used for direct leasing between end-users and the adjoining property owners thereby reducing the value of your client's property from the perspective of a cell tower company.

**D. Future Development**

Clients must understand that once the tower is erected, the tower will not be easily relocated and will likely remain for the duration of the term. Since there are site specific permits and utilities and technical aspects associated with the equipment installed on the tower that make moving a tower very expensive and difficult, it is impractical to consider relocating a tower once it is installed. As such, and because the term of cell tower agreements is so long, your client must give serious thought as to the location of the proposed tower and potential future development of the property to be certain the tower will not interfere with either current or potential future uses. Similarly, if your client's property is undeveloped or underdeveloped at the time the tower is installed, future development may be limited by the terms of the use agreement thereby decreasing marketability and overall value. In an effort to preserve future development of the client's property, counsel should consider including a provision in the use agreement reserving the landowner's right to make or permit changes to the real estate which do not unreasonably interfere with the cell tower company's use and, to the extent of any change to the real estate, the cell tower company will not be entitled to any compensation or abatement of rent.

**E. Defining the Premises; Utilities**

Counsel should encourage, if not require, that the leased premises, including any guy wire anchor locations, and all easements be clearly defined by metes and bounds descriptions. Since this work will likely need to be performed by the cell tower company for one reason or another, real property owners should seek to push this cost to the cell tower company. If possible, utilities should be separately metered to avoid disputes relating to prorations and reimbursements.

**F. Estoppels and Subordinations**

Whether as part of a financing or disposition, at some point, your client will need an estoppel from the cell tower company confirming various matters. As such, counsel should include an estoppel requirement in the use agreement mandating delivery within a certain period of time. Additionally, current or future lenders may require the tower use agreement be made expressly subordinate to any lien and a provision requiring delivery of a subordination, non-disturbance and attornment agreement within a certain period of time should also be included.

**G. Acceptance of Rental Stream Offers**

Because cell towers are difficult to relocate and because they can remain profitable with only a small number of end-users, it is unlikely that a tower company will terminate their agreement prior to the expiration of the maximum term despite what rental stream companies may suggest. Additionally, accepting a rental stream offer will make the tower lease particularly unattractive to future purchasers and lenders since the owner of the real estate will be burdened with all of the lease obligations with no income to offset those obligations.

**H. Core Real Estate Considerations**

As mentioned in the first paragraph of this article, at their core, cell tower transactions are real property transactions. As such, from a real property owner's perspective, all of the following "traditional" real property leasing concepts apply to cell tower transactions:

- acceptance of the premises in present "as is, where is, with all faults" condition and disclaimer of warranties;
- insurance requirements (consider $1,000,000 / $2,000,000 general liability with an umbrella policy and the right for the landowner to adjust the insurance requirements after a certain period of time);
- ad valorem tax payment obligations (owner as to real property taxes and cell tower company as to increase in taxes attributed to cell tower company improvements);
- compliance with all local, state and federal laws, rules, ordinances, statutes, and regulations, including environmental matters;
- cell tower company maintenance of premises and equipment;
- cell tower company responsible for securing its premises;
- indemnification;
- condemnation and casualty;
- default, cure rights and remedies; and
- removal of improvements and repair of damage caused thereby within a specified period following expiration or earlier termination of the agreement

With that said, end-user requirements must always be considered as their use of the tower will make or break the transaction and to the extent a real property owner exceeds its negotiating leverage, the cell tower company may pursue alternative locations. Therefore, practitioners will need to use their professional judgment in advising clients on what additional protections are advisable and which are unnecessary given client demands and market considerations.

## V. CONCLUSION

Cell towers can be profitable for all parties to the transaction. Understanding the interrelationship between the real property owner, cell tower company and end-user will help the practitioner in their representation of their client and help secure a successful transaction for all parties.

**EXHIBIT "1"**

**AMENDMENT TO TOWER SUBLEASE AGREEMENT**

This Amendment to Tower Sublease Agreement (the "***Amendment***") is made effective the __________________, 20____ (the "***Effective Date***"), by and between __________________ (the "***Sublessor***"), a ___________________________, and ____________________ (the "***Sublessee***"), a ____________________________.

WHEREAS, Sublessor and Sublessee entered into that one certain Tower Sublease Agreement dated __________________ (together with this Amendment and all prior amendments thereto, the "***Agreement***") whereby Sublessee leased from Sublessor the Subleased Property; and

WHEREAS, Sublessor and Sublessee desire to amend the Agreement in certain respects as provided in this Amendment.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, the sum of $10.00, and other good and valuable consideration, each to the other, the receipt and sufficiency of which are hereby acknowledged, Sublessor and Sublessee do hereby agree as follows:

1. Incorporation of Recitals. The foregoing recitals are incorporated in and made a part of this Amendment. To the extent a term is not defined herein, it shall have the meaning provided in the Agreement.

2. Rent. As of the Effective Date and as an amendment to Section ____ of the Agreement, annual rent shall be ___________________ and 00/100 Dollars ($_______________.00) per year ("***Annual Rent***" and collectively with all other amounts owing under the Agreement, "***Rent***"), to be paid in equal monthly installments on the first day of each month. Subject to the terms and conditions of Section _____ of the Agreement, on each anniversary of the Effective Date, Annual Rent shall increase by _____ percent (___.00%) over the Annual Rent payable during the immediately preceding lease year.

3. Modification to the Communications Facilities. Exhibits __ and ___ to the Agreement are hereby amended as identified on Exhibits ___-1 and ___-1, a copy of which is attached and made a part hereof. Exhibits ___-1and ___-1 replace Exhibits ___ and ___ to the Agreement and supersede Exhibits ___ and ____, respectively, for all purposes. Upon full execution of this Amendment, Sublessee is permitted to do all work reasonably necessary to install or otherwise modify the Communications Facilities, all as more fully described and contemplated in Exhibits ___-1 and ___-1. Sublessor's consent to the location and description of the Communications Facilities shall not be construed as a representation or warranty by Sublessor that the Communications Facilities, or the plans therefor, comply with sound architectural and/or engineering practices or with all applicable laws, rules or regulations, nor shall Sublessor's consent to the location and description of the Communications Facilities be construed as an acceptance or waiver of the terms, conditions, covenants, or agreements contained in the Agreement, including, but not limited to the load and interference provisions set forth therein, or Sublessor's right to enforce the same as set forth therein.

4. Notice Address. The notice addresses of Sublessor and Sublessee in Section ____ of the Agreement are amended as follows:

To Sublessor: ______________________
______________________
______________________

w/ a copy to: ______________________
______________________
______________________

To Sublessee: ______________________
______________________
______________________

w/ a copy to: ______________________
______________________
______________________

5. Master Lease. The terms of the Master Lease control in the event of a conflict with the terms of the Agreement, as amended. Specifically, to the extent the term of the Master Lease expires for any reason, the Agreement shall terminate automatically and without further act or deed except with respect to those matters that expressly survive termination.

6. Termination Fee. Notwithstanding any term of the Agreement to the contrary, if Sublessee terminates the Agreement prior to the _______ anniversary of the Effective Date for any reason other than a default by Sublessor in Sublessor's performance of its obligations under the Agreement, then Sublessee shall pay Sublessor a termination fee equal to the amount of Rent owed for the remaining months up to and including the _____ anniversary of the Effective Date.

7. Ratification. Except as modified herein, in all other respects, the Agreement is ratified and confirmed.

8. Estoppel and Release. In consideration of Sublessor's agreement to enter into this Amendment, Sublessee warrants and represents to Sublessor that Sublessor is not currently in default under the terms of the Agreement and Sublessee knows of no event or condition which, but for notice and opportunity to cure, would be an event of default under the Agreement. Furthermore, Sublessee confirms that Sublessor has complied fully and completely with all of the terms of the Agreement to the date hereof. By execution hereof, Sublessee waives, releases, discharges and acquits Sublessor and Sublessor's officers, directors, partners, members, managers, employees, agents, representatives, heirs, successors and assigns of and from any and all claims, causes of action, known or unknown, real or spurious, whether based in tort, contract or common law, in law or in equity, arising out of or in any way related to the Agreement or Sublessee's use or occupancy of the Subleased Property from the beginning of time until the date hereof.

9. Binding Effect. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

10. Authority. Each person executing this Amendment represents and warrants that he or she has been duly authorized to do so by all requisite actions on the part of the party on whose behalf he or she is signing, and that in so doing he or she binds such party to all of the terms and provisions hereof.

11. Counterparts. This Amendment may be executed in any number of counterparts with the same effect as if all signing parties had signed the same document. All counterparts shall be construed together and constitute the same instrument. This Amendment may be executed by facsimile or scanned and emailed signature and facsimile or scanned and emailed signatures shall be considered to be the same as original signatures for all purposes.

This Amendment is executed to be effective as of the Effective Date.

| **SUBLESSOR**: | **SUBLESSEE**: |
|---|---|
| ______________________________ | ______________________________ |
| By:___________________________ | By:___________________________ |
| Name: ________________________ | Name: ________________________ |
| Title:__________________________ | Title:__________________________ |

**Exhibit "      -1"**

**Description of Subleased Property**

An approximately ___ x ____ tract of land, together with easements for ingress, egress and utilities legally described as follows:

**EXHIBIT "      -1"**

**Description of Sublessee's Communications Equipment**

**Attached hereto**

# EXHIBIT "2"

## OPTION AND GROUND LEASE AGREEMENT

THIS OPTION AND GROUND LEASE AGREEMENT ("***Agreement***") is made this _______ day of _______, _______, by and between ______________________________, a ____________________ ("***Optionor***") and ______________________________, a __________________________ ("***Optionee***").

### I. OPTION TO LEASE

1. Grant of Option. Optionor is the owner of a parcel or parcels of real property located at ____________________ in the city of ________, State of ____________, as more particularly described in **Exhibit "A"** attached hereto and incorporated herein for all purposes (the "***Parent Parcel***"). For good and valuable consideration and the mutual promises herein set forth, Optionor hereby gives and grants unto Optionee and its assigns, an exclusive and irrevocable option (the "***Option***") to lease a certain portion or portions of the Parent Parcel (the "***Property***"), together with easements for ingress, egress and utilities for the duration of this Agreement (collectively, the "***Easement***"). The Property together with the Easement are collectively the "***Premises***" and are more particularly described and/or depicted on **Exhibit "B"** attached hereto and incorporated herein for all purposes. Optionor agrees and acknowledges that Optionee may at Optionee's sole cost and expense have a metes and bounds survey prepared of the Premises and that the legal description of the Premises as shown on the survey shall thereafter become the legal description of the Premises.

2. Option Initial Term. The initial term of this Option shall be for _________ (__) months from the date this Agreement is executed and acknowledged by the last to sign of Optionor and Optionee ("***Option Initial Term***").

3. Consideration for Option. Consideration for the Option granted hereunder shall be ___________ and No/100 Dollars ($_____________) ("***Option Consideration***").

4. Extension of Option. The Option can be extended at the discretion of Optionee for _________ (__) additional period(s) of _________ (__) months each ("***Option Renewal Term(s)***") by Optionee paying to Optionor the additional consideration of ____________ and No/100 Dollars ($_____________) ("***Option Extension Consideration***") prior to the expiration of the then existing term of the Option.

5. Optionor's Representations and Warranties. As an inducement for Optionee to enter into and be bound by the terms of this Agreement, Optionor represents and warrants to Optionee and Optionee's successors and assigns that:

(a) Optionor has good and indefeasible title to the Premises free and clear of all liens and encumbrances other than those liens and encumbrances set forth in **Exhibit "C"** attached hereto and incorporated herein for all purposes. Optionee may, at Optionee's sole cost and expense, procure an abstract of title or a commitment to issue a policy of title insurance on the Premises. In the event that Optionee objects to any defect or cloud on title to the Premises, Optionee may declare this Agreement to be void and of no further force or effect whereupon there shall be no further liability of Optionee to Optionor;

(b) Optionor has the authority to enter into and be bound by the terms of this Agreement;

(c) There are no pending or threatened judicial or administrative actions, suits, claims or causes of action, including bankruptcy or insolvency proceedings under state or federal law, against Optionor or which may otherwise affect the Parent Parcel or the Premises; and

(d) The Premises are not presently subject to an option, lease or other contract which may adversely affect Optionor's ability to fulfill its obligations under this Agreement and Optionor covenants that it shall not grant an option or enter into any contract or agreement which will affect the Premises or Optionee's, its successors',

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assigns', sublessees', licensees', or any of the foregoing parties' respective agents', contractors' and employees', use of the Premises until this Agreement expires or is terminated by Optionee.

These representations and warranties of Optionor shall survive the exercise of the Option.

6. Taxes. Any ad valorem taxes or other special assessment taxes attributable to the Premises during the Option Initial Term and any Option Renewal Term shall be paid by Optionor.

7. Inspections and Investigations. Optionor hereby grants to Optionee, its officers, agents, employees and independent contractors the right and privilege to enter upon the Premises at any time after the date of this Option, to perform or cause to be performed such investigations and inspections of the Premises as Optionee deems appropriate or necessary in its sole and absolute discretion, including, but not limited to, test borings of the soil, environmental audits, engineering studies and to conduct a survey of the Premises. Optionor shall provide Optionee with any necessary keys or access codes to the Premises if needed for ingress and egress, and Optionee shall not unreasonably interfere with Optionor's use of the Premises in conducting these activities.

8. Further Acts. Optionor shall cooperate with Optionee in executing any documents necessary to protect Optionee's rights under this Option or Optionee's use of the Premises and to take such action as Optionee may reasonably require to affect the intent of this Agreement. Optionor hereby irrevocably appoints Optionee or Optionee's agent as Optionor's agent to file applications on behalf of Optionor with federal, state and local governmental authorities which applications relate to Optionee's intended use of the Premises including but not limited to land use and zoning applications.

**II. LEASE AGREEMENT**

9. Exercise of Option. Upon the tender of written notice of Optionee's intent to exercise the Option, the terms of this Agreement applying to the lease of the Premises shall govern the relationship of the parties and this Agreement shall thereafter be referred to as the "***Lease***," Optionor shall thereafter be referred to as "***Lessor***" and Optionee shall thereafter be referred to as "***Lessee***." The date of the written notice to exercise the Option shall constitute the commencement date of the Lease ("***Commencement Date***").

10. Use. The Premises may be used by Lessee, its successors, assigns, licensees, and sublesssees for the transmission and receipt of wireless communication signals in any and all frequencies and the construction and maintenance of towers, antennas, and/or buildings, and related facilities and activities ("***Intended Use***"). Lessor agrees to cooperate with Lessee in obtaining, at Lessee's expense, all licenses and permits required for the Intended Use of the Premises (the "***Governmental Approvals***"). Lessee, its successors, assigns, licensees, and sublesssees may construct additional improvements, demolish and reconstruct improvements, or restore, replace and reconfigure improvements at any time during the Initial Term or any Renewal Term of this Lease.

11. Initial Term. The term of this Lease shall be _______ (____) years commencing on the Commencement Date and terminating on the ______ anniversary of the Commencement Date ("***Initial Term***").

12. Renewal Terms. Lessee shall have the right to extend this Lease for ______ (____) additional ______ (___) year terms (collectively, the "***Renewal Terms***" and individually, a "***Renewal Term***"; the Initial Term and each Renewal Term, collectively, the "***Term***"). Each Renewal Term shall be on the same terms and conditions as set forth in this Lease except that Rent shall increase as provided in Paragraph 13(c), below. This Lease shall automatically be renewed for each successive Renewal Term unless Lessee notifies Lessor in writing of Lessee's intention not to renew the Lease at least thirty (30) days prior to the expiration of the Initial Term or the Renewal Term which is then in effect.

13. Consideration.

(a) During the Initial Term, Lessee shall pay Lessor the sum of _____________________ and ____ /100 Dollars ($__________) per annum to be paid in equal monthly installments of _________________ and ____/100 ($__________) as rental ("***Rent***"). Rent shall be payable on the first day of each month in advance to Lessor at Lessor's

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address as specified in Paragraph 33, below;

(b) If this Lease is terminated at a time other than on the anniversary of the Commencement Date, Rent shall be prorated as of the date of termination ("***Termination Date***"), and in the event of termination for any reason other than nonpayment of Rent, all Rent paid in advance of the Termination Date for that period after the Termination Date shall be refunded to Lessee; and

(c) In the event that Lessee elects to renew this Lease as provided in Paragraph 12, Rent during each Renewal Term shall increase by _________ (__%) over the Rent payable during the immediately preceding term.

14. Lessor's Representations and Warranties. Lessor represents and warrants that (i) the Intended Use of the Premises as a site for the transmission and receipt of wireless communication signals; for the construction and maintenance of towers, antennas and buildings; and related facilities is not prohibited by any covenants, restrictions, reciprocal easements, servitudes, subdivision rules or regulations; (ii) there are no easements, licenses, rights of use or other encumbrances on the Premises which will interfere with or constructively prohibit the Intended Use of the Premises; and (iii) this Lease will not cause a breach or an event of default of any other agreement to which Lessor is a party.

15. Conditions Subsequent. In the event that the Intended Use of the Premises is actually or constructively prohibited through no fault of Lessee then, without limiting any other remedy in law or equity, Lessee shall have the option to terminate this Lease and Lessee shall be entitled to a refund from Lessor of Rent paid in advance to Lessor which sums were paid prior to the date upon which Lessee gives Lessor notice of its intent to terminate this Lease pursuant to this paragraph.

16. Interference. Lessor shall not use, nor shall Lessor permit its lessees, licensees, invitees, successors, assigns or agents to use, any portion of adjacent real property owned by Lessor, including, but not limited to, the Parent Parcel, in any way which interferes with the Intended Use of the Premises. Such interference shall be deemed a material breach of this Lease by Lessor and Lessor shall have the responsibility to terminate said interference immediately upon demand by Lessee. In the event any such interference does not cease or is not promptly rectified, Lessor acknowledges that continuing interference will cause irreparable injury to Lessee, and Lessee shall have the right, in addition to any other rights that it may have at law or in equity, to bring action to enjoin such interference or to terminate this Lease immediately upon notice to Lessor. Lessor covenants that it shall not enter into any agreement which will affect the Premises or the Intended Use of the Premises by Lessee, its successors, assigns, sublessees, licensees, or any of the foregoing parties' respective agents, contractors and employees.

17. Improvements; Utilities; Access.

(a) Lessee, its successors, assigns, licensees, and sublesssees shall have the right, at the respective parties' sole cost and expense, to erect and maintain on the Premises improvements, personal property and facilities, including without limitation, towers, structural tower base(s), radio transmitting and receiving antennas, communications equipment, equipment cabinets or shelters, generators, pads, conduits, guy wires, utility lines, security devices, and related facilities (collectively the "***Tower Facilities***"). The Tower Facilities shall remain the exclusive property of the party installing said Tower Facilities throughout the term and upon termination of this Lease, Lessee shall remove, or cause to be removed, all of the above-ground portions of the Tower Facilities. Lessor grants Lessee, its successors, assigns, sublessees, licensees, and each of the foregoing parties' respective agents, contractors and employees the right to clear all trees, undergrowth, or other obstructions and to trim, cut, and keep trimmed and cut all tree limbs which may interfere with or fall upon the Tower Facilities or Premises. Lessor grants Lessee, its successors, assigns, sublessees, licensees, and each of the foregoing parties' respective agents, contractors and employees a non-exclusive ingress, egress, access, construction, and utility easement in, on, over, under, across and through other real property owned by Lessor, including, but not limited to, the Parent Parcel, as reasonably required for construction, installation, maintenance, and operation of the Tower Facilities. In the event that the tower to be constructed by Lessee on the Premises is a guyed tower, Lessor also grants Lessee an easement in, on, over, under, across and through Lessor's real property, including, but not limited to, the Parent Parcel, during the Initial Term and any Renewal Term of this Lease for the installation and maintenance of and reasonable access to the guy wires and guy wire anchors.

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(b) Lessee, its successors, assigns, licensees, and sublesssees shall have the right to install utilities, at their expense, and to improve present utilities on the Premises (including but not limited to the installation of emergency power generators). Lessee, its successors, assigns, licensees, and sublesssees shall have the right to permanently place utilities on (or to bring utilities across or under) the Premises, Parent Parcel, and the Tower Facilities. In the event that utilities necessary to serve the equipment of Lessee or its successors, assigns, licensees, and sublesssees cannot be located within the Premises, Lessor covenants and agrees to cooperate with Lessee and its successors, assigns, licensees, and sublesssees and to act reasonably in allowing the location of utilities on the Parent Parcel or other real property owned by Lessor without requiring additional compensation from Lessee or Lessee's successors, assigns, licensees, and sublesssees. Lessor shall, upon Lessee's request, execute a separate written easement to the utility company providing the service to Lessee, its successors, assigns, licensees, and/or sublesssees in a form which may be filed of record evidencing this right.

(c) Lessor represents and warrants to Lessee that Lessee, its sublessees, licensees, successors and assigns and each of the foregoing parties' respective agents, contractors and employees shall at all times during this Lease enjoy ingress, egress, and access to the Premises from an open and improved public road which presently exists and which shall be adequate to service the Premises and the Tower Facilities and Lessor hereby grants to Lessee its sublessees, licenssees, successors, assigns, and each of the foregoing parties' respective agents, contractors and employees an ingress, egress and access easement over, on and across those existing driveways and reasonable portions of the Parent Parcel as is reasonably necessary for Lessee, its sublessees, licenssees, successors, assigns, and each of the foregoing parties' respective agents, contractors and employees to access the Premises and Tower Facilities for the construction, installation, maintenance, replacement, and operation of the Tower Facilities and any utilities serving the Premises. If no such public road exists or ceases to exist in the future, Lessor will grant an appropriate easement to Lessee, Lessee's sublessees, licensees, successors and assigns and each of the foregoing parties' respective agents, contractors and employees so that Lessee may, at its own expense, construct a suitable private access drive to the Premises and the Tower Facilities from a public street. To the degree such access is across other property owned by Lessor, Lessor shall execute an easement evidencing this right and Lessor shall maintain access to the Easement in a free and open condition so that no interference is caused to Lessee, its sublessees, licensees, successors and assigns and each of the foregoing parties' respective agents, contractors and employees by other lessees, licensees, invitees or agents of the Lessor which may utilize the Easement.

18. Termination. Except as otherwise provided herein, this Lease may be terminated, without any penalty or further liability upon written notice as follows:

(a) By either party upon a default of any covenant or term hereof by the other party which default is not cured within sixty (60) days of receipt of written notice of default (without, however, limiting any other rights available to the parties pursuant to any other provisions hereof); provided, that if the defaulting party commences efforts to cure the default within such period and diligently pursues the default to remedy, the non-defaulting party shall no longer be entitled to declare a default;

(b) Upon thirty (30) days' written notice by Lessee to Lessor if Lessee is unable to obtain or maintain through no fault of Lessee any license, permit or other Governmental Approval necessary to the construction and operation of the Tower Facilities or Lessee's business; or

(c) By Lessee for any reason upon written notice from Lessee to Lessor.

19. Subleases. Lessee at its sole discretion shall have the right, without any need to obtain the consent of Lessor, to license or sublease all or a portion of the Premises and the Tower Facilities to others whose business includes the provision of wireless communication services. Lessee's licensee(s) and sublessee(s) shall be entitled to modify the Tower Facilities and to erect additional improvements on the Premises including but not limited to antennas, dishes, conduits, cabling, additional storage buildings or equipment shelters as are reasonably required for the operation and maintenance of the communications equipment to be installed on the Premises by said licensee(s) and sublessee(s). Lessee's licensee(s) and sublessee(s) shall be entitled to all rights of ingress and egress to the Premises and the right to install utilities in, on, over, under, across and through the Premises as if said licensee or sublessee were the Lessee

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under this Lease.

20. Taxes. Lessee shall pay any personal property taxes assessed on, or any portion of such taxes attributable to, the Tower Facilities. Lessor shall pay when due all real property taxes and all other fees and assessments attributable to the Premises. Lessee shall pay as additional Rent any increase in real property taxes levied against Premises which are directly attributable to Lessee's use of the Premises (but not, however, taxes attributable to periods prior to the Commencement Date such as roll-back assessments) if Lessor furnishes proof of such increase to Lessee. In the event that Lessor fails to pay when due any taxes affecting the Premises, Lessee shall have the right but not the obligation to pay such taxes and deduct the full amount of the taxes paid by Lessee on Lessor's behalf from future installments of Rent.

21. Damage or Destruction. If the Premises or the Tower Facilities are destroyed or damaged so as to hinder the effective use of the Tower Facilities in Lessee's judgment, Lessee may elect to terminate this Lease as of the date of the damage or destruction by so notifying the Lessor. In such event, all rights and obligations of Lessee to Lessor shall cease as of the date of the damage or destruction and Lessee shall be entitled to the reimbursement of any Rent prepaid by Lessee.

22. Condemnation. If a condemning authority takes all of the Premises, or a portion sufficient in Lessee's determination, to render the Premises in the opinion of Lessee unsuitable for the use which Lessee was then making of the Premises, this Lease shall terminate as of the date the title vests in the condemning authority. Lessor and Lessee shall share in the condemnation proceeds in proportion to the values of their respective interests in the Premises (which for Lessee shall include, where applicable, the value of its Tower Facilities, moving expenses, prepaid rent and business dislocation expenses). A sale of all or part of the Premises to a purchaser with the power of eminent domain in the face of the exercise of eminent domain power shall be treated as a taking by condemnation for the purposes of this paragraph.

23. Insurance. Lessee shall purchase and maintain in full force and effect throughout the Initial Term and any Renewal Term such public liability and property damage policies as Lessee may deem necessary. Said policy of general liability insurance shall provide a combined single limit of One Million and No/100 Dollars ($1,000,000).

24. Environmental Compliance. Lessor represents, warrants and agrees (1) that neither Lessor nor, to Lessor's knowledge, any third party has used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any contaminants, oils, asbestos, PCB's, hazardous substances or wastes as defined by federal, state or local environmental laws, regulations or administrative orders or other materials the removal of which is required or the maintenance of which is prohibited, regulated or penalized by any federal, state or local government authority ("***Hazardous Materials***") on, under, about or within the Parent Parcel in violation of any law or regulation, and (2) that Lessor will not, and will not permit any third party to use, generate, store or dispose of any Hazardous Materials on, under, about or within the Parent Parcel in violation of any law or regulation. Lessee agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within the Premises in violation of any law or regulation. This Lease shall at the option of Lessee terminate and be of no further force or effect if Hazardous Materials are discovered to exist on the Parent Parcel through no fault of Lessee after Lessee takes possession of the Premises and Lessee shall be entitled to a refund of all the consideration paid in advance to Lessor under this Lease.

25. Indemnification.

(a) **General. Lessor shall hold harmless, indemnify, and defend Lessee from any claims, obligations, liabilities, costs, demands, damages, expenses, suits or causes of action, including costs and reasonable attorney's fees, which may arise out of: (i) any injury to or death of any person caused by Lessor, or Lessor's principals, employees, agents or independent contractors; (ii) any damage to property, if such injury, death or damage arises out of or is attributable to or results from the acts or omissions of Lessor, or Lessor's principals, employees, agents or independent contractors; and (iii) Lessor's breach of this Agreement. Lessee shall hold harmless, indemnify, and defend Lessor from any claims, obligations, liabilities, costs, demands, damages, expenses, suits or causes of action, including costs and reasonable attorney's fees, which may arise out of (a) any injury to or death of any person cause by Lessee; (b) any damage to property, if such injury, death or**

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**damage arises out of or is attributable to or results from the acts or omissions of Lessee, or Lessee's employees, agents or independent contractors; and (c) Lessee's breach of this Agreement.**

**(b) Environmental Matters. Lessor, its heirs, grantees, successors, and assigns shall indemnify, defend, and hold harmless Lessee from and against any and all environmental damages arising from the presence of Hazardous Materials upon, about or beneath the Parent Parcel or migrating to or from the Parent Parcel or arising in any manner whatsoever out of the violation of any environmental requirements pertaining to the Parent Parcel and any activities thereon, which conditions exist or existed prior to or at the time of the execution of this Lease or which may occur at any time in the future through no fault of Lessee. Lessee, its heirs, grantees, successors, and assigns shall indemnify, defend, and hold harmless Lessor from and against environmental damages caused by the presence of Hazardous Materials on the Premises arising solely as the result of Lessee's activities after the execution of this Lease. Notwithstanding the obligation of Lessor to indemnify Lessee pursuant to this Lease, Lessor shall, upon demand of Lessee, and at Lessor's sole cost and expense, promptly take all actions to remediate the Parent Parcel which are required by any federal, state or local governmental agency or political subdivision or which are reasonably necessary to mitigate environmental damages or to allow full economic use of the Premises, which remediation is necessitated from the presence upon, about or beneath the Parent Parcel of a Hazardous Material. Such actions shall include but not be limited to the investigation of the environmental condition of the Parent Parcel, the preparation of any feasibility studies, reports or remedial plans, and the performance of any cleanup, remediation, containment, operation, maintenance, monitoring, reporting, or actions necessary to restore the Parent Parcel to the condition existing prior to the introduction of Hazardous Material upon, about or beneath the Parent Parcel notwithstanding any lesser standard of remediation allowable under applicable law or governmental policies.**

26. Right of First Refusal. During the Term of this Lease, Lessor shall, prior to selling the Premises or any real property of which the Premises is a part, notify Lessee in writing of the sale price and terms offered by a third party, together with a copy of the third party's offer. Lessee shall have the right of first refusal to purchase the real property being sold by Lessor on the same terms and conditions. Lessee shall give Lessor notice of its intention to purchase the same within thirty (30) days of receipt of Lessor's notice. If Lessee gives no such notice of its intention to purchase the real property, Lessor may sell the real property to the third party on the stated terms and price, as long as such sale is made subject to the terms of this Lease. Notwithstanding the foregoing, Lessee shall not have a right of first refusal to purchase the Premises in those instances in which Lessor is an individual and Lessor proposes to convey the real property to another member of Lessor's family; however, the Premises shall be conveyed subject to this Lease.

27. Title and Quiet Enjoyment. Lessor warrants and represents that (i) it has the full right, power, and authority to execute this Lease; (ii) it has good and indefeasible fee simple title to the Premises free and clear of any liens and encumbrances or mortgages except as set forth on **Exhibit "C"** attached hereto; and (iii) the Premises constitutes a legal lot that may be leased without the need for any subdivision or platting approval. Lessor covenants that Lessee shall have the quiet enjoyment of the Premises during the Term of this Lease. Lessor shall indemnify Lessee from and against any loss, cost, expense or damage including attorneys' fees associated with a breach of the foregoing covenant of quiet enjoyment. In the event that Lessor fails keep the Premises free and clear of any liens and encumbrances, Lessee shall have the right but not the obligation to satisfy such lien or encumbrance and deduct the full amount paid by Lessee on Lessor's behalf from future installments of Rent.

28. Assignment. Any sublease, license or assignment of this Lease that is entered into by Lessor or Lessee shall be subject to the provisions of this Lease. Lessee may assign this Lease without the consent of Lessor. Additionally, Lessee may mortgage or grant a security interest in this Lease and the Tower Facilities, and may assign this Lease and the Tower Facilities to any such mortgagees or holders of security interests including their successors and assigns (hereinafter collectively referred to as "***Secured Parties***" and individually a "***Secured Party***"). If requested, Lessor shall execute such consent to leasehold financing as may reasonably be required by Secured Parties and shall return it to Lessee within five (5) days of Lessee's delivery thereof to Lessor. Lessor agrees to notify Lessee and Lessee's Secured Parties simultaneously of any default by Lessee and to give Secured Parties the same right to cure any default as Lessee except that the cure period for any Secured Party shall not be less than ten (10) days after the receipt of the default notice If a termination, disaffirmance or rejection of the Lease pursuant to any laws (including

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any bankruptcy or insolvency laws) by Lessee shall occur, or if Lessor shall terminate this Lease for any reason, Lessor will give to the Secured Parties prompt notice thereof, will provide Secured Parties with a lease upon the same terms and conditions as this Lease for the remaining term hereof, and Lessor will give the Secured Parties the right to enter upon the Premises during a thirty (30)-day period commencing upon the Secured Parties' receipt of such notice for the purpose of operating and/or removing any Tower Facilities. Lessor acknowledges that the Secured Parties shall be third-party beneficiaries of this Lease.

29. Successors and Assigns. This Lease shall run with the Premises and shall be binding upon and inure to the benefit of the parties, their respective heirs, successors, personal representatives and assigns.

30. Waiver of Lessor's Lien. Lessor hereby waives any and all lien rights it may have, statutory or otherwise, in and to the Tower Facilities or any portion thereof, regardless of whether or not same is deemed real or personal property under applicable laws.

31. Waiver of Incidental and Consequential Damages. Lessor will not assert any claim whatsoever against Lessee for loss of anticipatory profits or any other indirect, special, incidental, punitive or consequential damages incurred by Lessor as a result of the construction, maintenance, operation or use of the Premises by Lessee or its agents, licensees or sublessees.

32. Rental Stream Offer. If at any time during the Term of this Lease Lessor receives a bona fide written offer from a third party seeking an assignment or transfer of Rent payments associated with this Lease ("***Rental Stream Offer***"), Lessor shall immediately furnish Lessee with a copy of the Rental Stream Offer and any documents submitted in connection therewith. Lessee shall have the right within twenty (20) days after it receives such copy to match the Rental Stream Offer and agree in writing to match the terms of the Rental Stream Offer. Such writing shall be in the form of a contract substantially similar to the Rental Stream Offer. If Lessee chooses not to exercise this right or fails to provide written notice to Lessor within the twenty (20) day period, Lessor may assign the right to receive Rent payments pursuant to the Rental Stream Offer, subject to the terms of this Lease. If Lessor attempts to assign or transfer Rent payments without complying with this Section, the assignment or transfer shall be void. Lessee shall not be responsible for any failure to make payments under this Lease and reserves the right to hold payments due under this Lease until Lessor complies with this Section.

**III. GENERAL PROVISIONS**

33. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or via a nationally recognized overnight delivery service to the following addresses or to such other addresses as may be specified in writing at any time during the term of this Agreement:

If to Lessor, to:

Name: ___________________________

Address: ___________________________

___________________________

___________________________

Attention: ___________________________

Phone: (____) _____-_______

Fax: (____) _____-_______

Federal I.D. or Social Security No.: __________________________

If to Lessee, to:

Site #: ______________________

Name: ___________________________

Address: ___________________________

___________________________

___________________________

Attention: ___________________________

Phone: (____) _____-_______

Fax: (____) _____-_______

34. Miscellaneous.

(a) The substantially prevailing party in any litigation arising hereunder shall be entitled to its reasonable attorneys' fees and court costs, including appeals, if any.

(b) Each party agrees to furnish to the other, within ten (10) days after request, such truthful estoppel information as the other may reasonably request.

(c) This Agreement constitutes the entire agreement and understanding of parties hereto with respect to the subject matter hereof, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Agreement must be in writing and executed by each of the parties hereto.

(d) If either party hereto is represented by a real estate broker in this transaction, that party shall be fully responsible for any fees due such broker and shall hold the other party harmless from any claims for commission by such broker.

(e) Optionor agrees to cooperate with Optionee in executing any documents necessary to protect Optionee's rights under this Agreement or Optionee's use of the Premises, including but not limited to affidavits relating to title curative measures and subordination and non-disturbance agreements and to take any further action which Optionee may reasonably require as to effect the intent of this Agreement.

(f) This Agreement shall be construed in accordance with the laws of the state in which the Premises is situated.

(g) If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.

(h) Simultaneous with the Optionee's exercise of the Option, Lessor shall execute and deliver to Lessee a Memorandum of Lease, which Lessee may file of record in the property records in the county in which the Premises are located, which sets forth the names and addresses of Lessor and Lessee, the legal description of the Parent Parcel and the Premises, the duration of the Initial Term and the quantity and duration of the Renewal Terms.

(i) In the event the Premises is encumbered by a mortgage or deed of trust, Lessor agrees to obtain and furnish, within thirty (30) days written request by Lessee, a non-disturbance agreement to the effect that Lessee and Lessee's sublessees or licensees will not be disturbed in the occupancy of the Premises by any foreclosure; provided that the rights and interests of Lessee under the Lease shall be subject and subordinate to such mortgage or deed of trust.

(j) Lessee may obtain title insurance on its interest in the Premises, and Lessor shall cooperate by executing documentation required by the title insurance company.

(k) This Agreement may be executed in two or more counterparts, all of which shall be considered

Site #: ________________________

one and the same agreement and shall become effective when one or more counterparts have been signed by the each of the parties, it being understood that all parties need not sign the same counterpart. This Agreement may be executed by facsimile or scanned and emailed signature and such facsimile or scanned and emailed signature shall be deemed an original for all purposes; provided however, to the extent either party hereto requests an original signature, the other party shall deliver an original signature to this Agreement within ten (10) days of the request therefore.

(l) Optionor will not, during the term of this Agreement together with any extensions thereof, enter into any other option, lease, license, or other agreement for a similar purpose as set forth herein, on or adjacent to the Parent Parcel.

(m) As a condition precedent to payment, Optionor agrees to provide Optionee with a completed IRS Form W-9, or its equivalent, upon execution of this Agreement and at such other times as may be reasonably requested by Optionee, including, any change in Optionor's name or address.

35. Confidentiality. Optionor shall not disclose to any third party the Option Consideration or Rent payable by Optionee under this Agreement and shall treat such information as confidential, except that Optionor may disclose such information to prospective buyers, prospective or existing lenders, to Optionor's affiliates and attorneys, or as may be required by law or as may be necessary for the enforcement of Optionor's rights under this Agreement. Optionor acknowledges that the disclosure of such information to any other parties may cause Optionee irreparable harm, and in the event of such disclosure, as an additional remedy, Optionee shall have the right to terminate this Agreement upon giving thirty (30) days written notice thereof to Optionor.

36. Consent to Pledge of Lease Interest. Lessor acknowledges and agrees that Lessee may pledge its leasehold interest in and to the Premises and Lease, as well as Lessee's personal property located on the Premises, to one or more Secured Parties. Lessor agrees to execute, and cause its lender with a lien against the Parent Parcel, if any, to execute, such commercially reasonable documents as are requested by any Secured Party or Lessee, including, but not limited to, a consent to leasehold deed of trust and subordination, non-disturbance and attornment agreement as to both Lessee and said Secured Parties' interests in or to the Premises and/or lien subordination agreement, and return said documents to Lessee and Secured Parties within ten (10) days after delivery of such documents to Lessor.

[Remainder of Page Intentionally Left Blank]

Site #: ______________________

IN WITNESS WHEREOF, Optionor and Optionee have executed this Agreement to be effective as of the date the last to sign of Optionor and Optionee as acknowledged as set forth below.

**OPTIONOR/LESSOR:**

______________________________

**By:** ________________________

**Name:** ________________________

**Title:** ________________________

**Date:**__________________________

**[INDIVIDUAL(S)]**

______________________________

**Print Name:** _________________

______________________________

**Print Name:** _________________

**Date:**__________________________

**[Insert Acknowledgment]**

**Site #:** ________________________

**-Optionee/Lessee Signature Page-**

OPTIONEE/LESSEE**:**

________________________________

By: __________________________

Name: __________________________

Title: __________________________

Date: __________________________

**[Insert Acknowledgment]**

Site #: _________________________

## EXHIBIT "A"

DESCRIPTION OF

PARENT PARCEL

**The Parent Parcel is described and/or depicted as follows:**

**Site #: ________________________**

# EXHIBIT "B"

DESCRIPTION OR DEPICTION OF PREMISES

**An approximately ______’ x _____’ tract of land, together with easements for ingress, egress and utilities described or depicted as follows:**

Notes:

1. This Exhibit may be replaced by a land survey of the Premises once it is received by Lessee.
2. Width and locality of access road shall be the width required by the applicable governmental authorities and utility providers, including police and fire departments.

**Site #: ______________________**

# EXHIBIT "C"

LIENS AND ENCUMBRANCES

[To Be Inserted]

**Site #: ________________________**