

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

November 8, 2024

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

OAHU

Consent to License Agreement between Insite Towers Development, LLC, Licensor, and Hawaiian Electric Company, Inc., Licensee, over Portion of Leased Premises under General Lease No. S-4223, Mokuleia, Waialua, Oahu, Tax Map Key: (1) 6-7-003:024.

APPLICANT:

Insite Towers Development, LLC, a Delaware limited liability company, Licensor, to Hawaiian Electric Company, Inc., a Hawaii for profit corporation, as Licensee.

LEGAL REFERENCE:

Section 171-36(a)(6), Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government lands situated at Mokuleia, Waialua, Oahu, identified by Tax Map Key: (1) 6-7-003:024 por. as shown on the maps labeled **Exhibit 1A** and **1B**.

MASTER LEASE AREA:

0.211 acre, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act  
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

LEASE CHARACTER OF USE:

For a site for a microwave station and other radio communication facilities, together with appurtenant easement purposes.

LICENSE AGREEMENT CHARACTER OF USE:

Transmission and reception of wireless telecommunication services purposes.

TERM OF MASTER LEASE:

65 years, commencing on March 1, 1966 and expiring on February 28, 2031. Last rental reopening occurred on March 1, 2016. No further reopening is scheduled during the remaining lease term.

TERM OF LICENSE AGREEMENT:

The license agreement provided by the Licensor is attached as **Exhibit 2**. It describes the initial term of the license is to be coterminous with the master lease with the expiration date on February 28, 2031, further subject to three (3) additional renewal periods for five (5) years each. However, the current master lease will expire in less than seven (7) years.

Staff is recommending that the requested consent only be applicable up to February 28, 2031, i.e., the expiration date of the master lease.

ANNUAL MASTER LEASE RENTAL:

\$39,000.00.

LICENSE MONTHLY RENTAL:

\$4,620.00, further subject to an annual escalator of three (3) percent.

RECOMMENDED ADJUSTMENT TO MASTER LEASE RENTAL:

At its meeting of March 23, 2018, under agenda item, D-7, the Board approved the mediated settlement of rent reopening dispute in the subject master lease. The outcome of the Board approval determined the annual rent for the period of March 1, 2016 to the end of the lease term, February 28, 2031, at \$39,000, in addition to an advancement of \$39,000 to be paid in single lump-sum upon the full execution of the settlement agreement. (**Exhibit 3**)<sup>1</sup>

Exhibit D of the 2018 submittal was the agreement intended to be executed upon approval from the Board. Paragraph 2 on page 2 stipulated that “[t]he Parties agree and acknowledge that commencing on March 1, 2016 and continuing through and including the February 28, 2031 final expiration date of the Lease, the annual rental due thereunder shall be Thirty-Nine Thousand and 00/100’s Dollars (\$39,000.00), and that all percentage rent/revenue

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<sup>1</sup> Full version with all the exhibits of the 2018 submittal can be downloaded from the following link <https://dlnr.hawaii.gov/wp-content/uploads/2018/03/D-7-1.pdf>.

share provisions and references in the Lease (including without limitation, those referenced in Section 13 of the Lease and in the First Amendment thereto which incorrectly references the “Subletting” provision of the Lease Section 14, rather than Section 13) are null and void and no further force of effect”. A fully executed copy of the agreement is attached as **Exhibit 4**.

In short, the subject lease is not subject to any sublease rent participation.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rules ("HAR") § 11-200.1-15 and -16 and the Exemption List for the Department of Land and Natural Resources reviewed and concurred on by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an environmental assessment pursuant to General Exemption Type 1, that states, “Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features , involving negligible or no expansion or change of use beyond that previously existing”. Part 1, Item 40, that states, “Leases of state land involving negligible or no expansion or change of use beyond that previously existing.” The subject request is a de minimis action that will probably have minimal or no significant effect on the environmental and should be declared exempt from the preparation of an environmental assessment and the requirements of § 11-200.1-17, HAR, as a de minimis action.

DCCA VERIFICATION (for Licensor and Licensee)

Place of business registration confirmed:	YES	<u>  X  </u>	NO	<u>      </u>
Registered business name confirmed:	YES	<u>  X  </u>	NO	<u>      </u>
Good standing confirmed:	YES	<u>  X  </u>	NO	<u>      </u>

REMARKS:

In 1966, Hawaiian Telephone Company requested the Board issue a direct lease for radio communication facilities purposes, and General Lease No. S-4223 (GL 4233) was issued in 1969. Over the years, the local phone carrier was changed and the Licensor is the current lessee of GL 4223. The leased premises consist of the Kaala Radio Station and Kaala Passive Repeater Station. Pursuant to separate license agreement between the Licensor and Licensee, the latter is using portions of the space under the two locations.

Licensee plans to increase reliability and to contribute to the modernization of its grid that services the central plain and north shore of Oahu. Therefore, replacement of existing antenna, installation of new equipment and related support facilities at the subject location is necessary. The expansion plan also necessitates a new license agreement covering an additional antenna to be placed on the existing tower.

Office of Conservation and Coastal Lands has authorized the construction of the new

improvement pursuant to its Site Plan Approval OA 23-29 dated December 5, 2022.

Licensors are in compliance with all lease terms and conditions pursuant to GL 4223. There are no other pertinent issues or concerns, and staff recommends the Board consent to the subject license agreement.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1-15 and -16, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment as a de minimis action.
2. Consent to the License Agreement between Insite Tower Development, LLC, as Licensor, and Hawaiian Electric Company, Inc. as Licensee, over portion of leased premises under General Lease No. S-4223, subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to the following terms and conditions:
  - A. The standard terms and conditions of the most current consent form, as may be amended from time to time;
  - B. Review and approval by the Department of the Attorney General; and
  - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

*Barry Cheung*

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Barry Cheung  
District Land Agent

APPROVED FOR SUBMITTAL:

*[Signature]*

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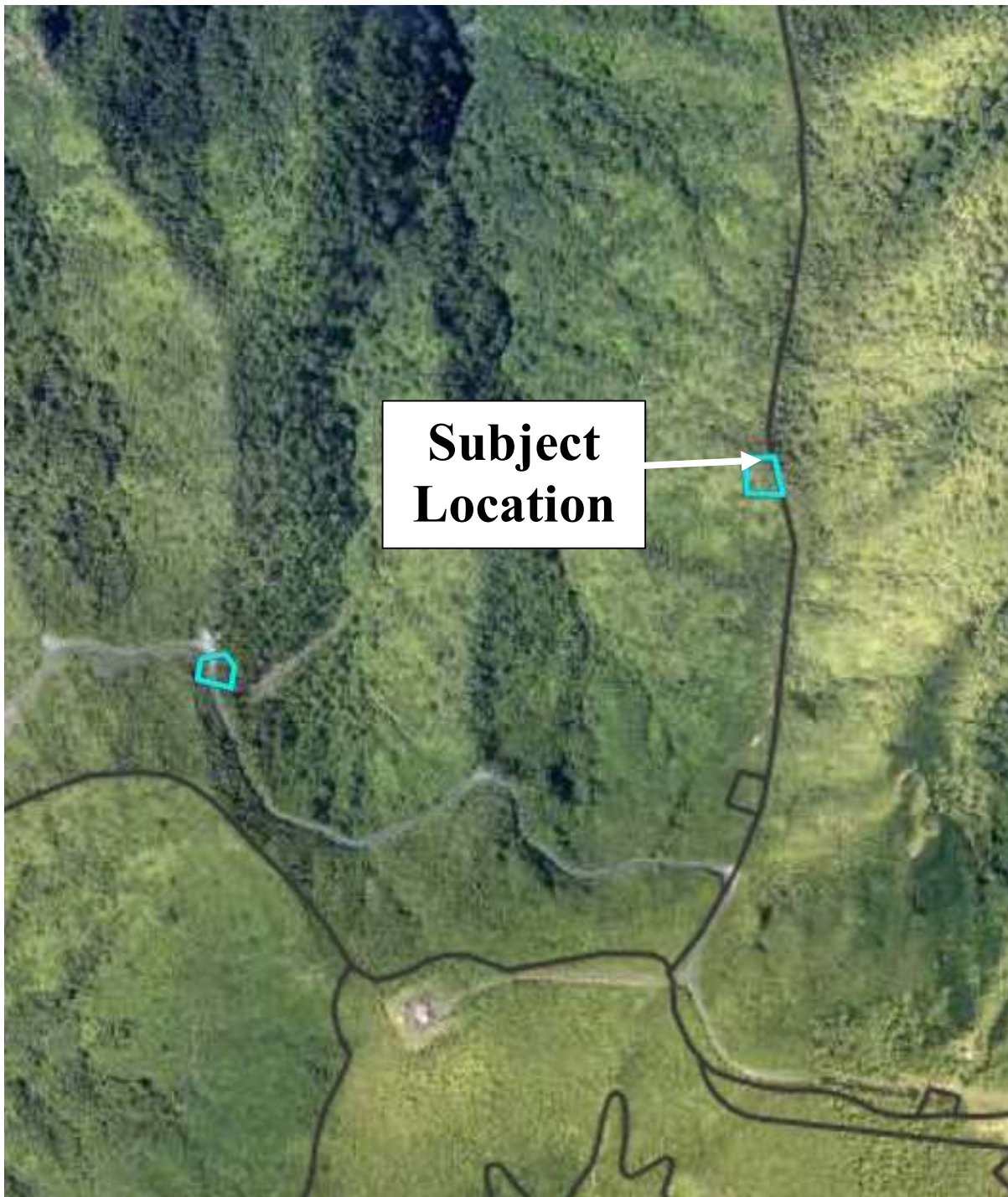
Dawn N. S. Chang, Chairperson

*KEM RT*



**TMK (1) 6-7-003:024**

**EXHIBIT 1A**



**TMK (1) 6-7-003:024**

**EXHIBIT 1B**

**LICENSE AGREEMENT**  
ATC Contract No: \_\_\_\_\_

This LICENSE AGREEMENT ("**Agreement**") is entered into as of the latter signature date hereof ("**Effective Date**") by and between InSite Towers Development LLC, a Delaware limited liability company, with a place of business at 10 Presidential Way, Woburn, MA 01801 ("**Licensor**") and Hawaiian Electric Company, Inc., a Hawaii corporation, with a place of business at P.O. Box 2750, Honolulu, HI 96803 ("**Licensee**").

**I. TOWER FACILITY INFORMATION:**

Site Name: Kaala PR 1  
Site Number: 208317  
Address and/or location of Tower Facility: 66-900 Farrington Highway, Waiialua, Hawaii 96791  
Tower Facility Coordinates: Lat. 21° 30' 45.371" N 21.51260300 Long. 158° 8' 43.339" W-158.14537200

**II. NOTICE & EMERGENCY CONTACTS:**

- Licensee's local emergency contact (name and number): Christopher Molineaux (808) 462-1585.
- Licensor's local emergency contact: Network Operations Communications Center (800) 830-3365.
- Notices to Licensee shall be sent to Licensee's address above to the attention of Christopher Molineaux.
- Notices to Licensor shall be sent to Licensor's address above to the attention of Contracts Manager.
- Licensor's Remittance Address: American Tower Corporation, 29637 Network Place, Chicago, IL 60673-1296; all payments shall include a reference to the Site Name and Site Number as identified above in Section I.

**III. PERMITTED USE OF TOWER FACILITY BY LICENSEE:**

Transmitting and Receiving frequencies: See Exhibit A for specific frequencies ("Permitted Frequencies")  
Antenna mount height on tower: See Exhibit A for specific location.  
All other permitted uses of the Tower Facility including Licensee's Approved Equipment, and the Licensed Space are further described in Section 4 of this Agreement and Exhibits A and B attached hereto.

**IV. FEES & TERM:**

Monthly License Fee: Four Thousand Six Hundred Twenty and 00/100 Dollars (\$4,620.00), increased by the Annual Escalator on the first anniversary of the Commencement Date of this Agreement and each anniversary of the Commencement Date thereafter during the Term (as defined in Appendix I).

Annual Escalator: Three percent (3%).

Application Fee: N/A. ("All references to "**Application**" made herein are to the then-current application form issued by Licensor")

Relocation Application Fee: N/A.

Site Inspection Fee: N/A.

Initial Term: A period of time beginning on the Commencement Date and expiring on February 28, 2031. The "**Commencement Date**" shall be the earlier of: (i) the date of Licensor's issuance of a **NTP** or (ii) November 1, 2024.

Renewal Terms: 3 additional periods of 5 years each.

Connection Fee (as described in Subsection 5(b)): N/A

**EXHIBIT 2**

Electricity for operation of Approved Equipment is to be provided by (check one):

- Licensor, with the cost of such electricity to be paid by Licensee at the initial rate of \$ \_\_\_\_\_ per month ("Utility Fee") subject to adjustment pursuant to Subsection 5(b), OR  
 Licensee, at its sole expense.

**V. TERMS & CONDITIONS:**

The attached terms and conditions are incorporated herein by this reference.

**VI. OTHER PROVISIONS:**

Other provisions: (check one):  None  As listed below

A. **PCN/PCN Retention Fee/Cross-Default.** Licensee, an Affiliate of Licensee or any entity or individual acting on behalf Licensee or an Affiliate of Licensee shall only issue Prior Coordination Notices ("PCNs") for the Permitted Frequencies set forth in Exhibit A and shall not issue PCNs for any other frequencies at this Tower Facility unless Licensee has submitted an Application for use of the subject frequencies to Licensor for which a partially executed License Agreement shall be signed by Licensee and returned to Licensor within sixty (60) days of the submittal of the Application. Licensee shall withdraw PCNs filed for any frequencies which are not licensed to Licensee by Licensor, no more than ten (10) days from the date of Licensee's withdrawal of an Application or Licensor's election to not process a Licensee-submitted Application. Failure to comply with the terms of this Subsection A shall constitute an event of default pursuant to Section 21 hereof (a "PCN Default") for which the cure period is set forth in Section 21. In the event Licensee fails to cure a PCN Default within the cure period set forth in Section 21, then, in addition to all other obligations of Licensee under this Agreement, Licensee shall pay Licensor Twenty Five Thousand and 00/100 Dollars (\$25,000.00) per month as liquidated damages for each tower facility wherein Licensee maintains an active PCN in breach of this Subsection A ("PCN Retention Fee"). Licensor and Licensee acknowledge that holding PCNs in violation of this Subsection A reduces Licensor's opportunity to license space at Licensor's tower facilities and since the actual amount of such lost revenue is difficult to determine, Licensor and Licensee agree that the PCN Retention Fee is a reasonable estimate of the damages that would accrue if a breach occurred. Licensor and Licensee agree that the PCN Retention Fee is fair and reasonable and would not act as a penalty to the breaching Party. The PCN Retention Fee shall be remitted by Licensee within ten (10) days of Licensor's written notice to Licensee of Licensee's uncured default of this Subsection A and Licensee shall continue to remit payment of the PCN Retention Fee on a monthly basis on or before the first day of each calendar month while such default of this Subsection A remains uncured. In the event that Licensor does not receive the PCN Retention Fee on or before the first day of each month, then Licensor may, at its option, declare a default of this Agreement and all agreements between Licensor and Licensee and the PCN Retention Fee shall continue to be due and payable as set forth herein until the time Licensee withdraws the subject PCNs.

B. Notwithstanding anything to the contrary in this Agreement, the offer expressed to Licensee in this Agreement shall automatically become null and void with no further obligation by either Party hereto if a structural analysis of the Tower Facility completed after the execution of this Agreement by Licensor but before the commencement of the installation of Licensee's Approved Equipment indicates that the Tower Facility is not suitable for Licensee's Approved Equipment unless Licensor and Licensee mutually agree that structural modifications or repairs shall be made to the Tower Facility on mutually agreeable terms.

C. Licensor and Licensee agree and acknowledge that this Agreement is contingent upon the ground lessor's consent.

D. Notwithstanding anything to the contrary contained herein, Licensee shall pay to Licensor a one-time non-refundable fee in the amount of Two Thousand and 00/100 Dollars (\$2,000.00) (the "Collocation Fee") payable concurrent with the submission of the Application (\$1,500.00 of which is



LICENSOR SITE NAME / NUMBER: Kaala PR 1 / 208317  
LICENSEE SITE NAME / NUMBER: Kaala Passive Repeater Station / N/A

attributable to Site Inspection Fee and SSIF Fees, and \$500.00 of which is attributable to Structural Analysis Fee (as defined herein). Notwithstanding the foregoing, any equipment design modification initiated by Licensee that occurs prior to the initial installation of Licensee's Approved Equipment or any subsequent modification thereto, shall result in an additional structural analysis fee of One Thousand Five Hundred and No/100 Dollars (\$1,500.00), per each design change.

[Signatures appear on next page]

LICENSOR SITE NAME / NUMBER: Kaala PR 1 / 208317  
LICENSEE SITE NAME / NUMBER: Kaala Passive Repeater Station / N/A

IN WITNESS WHEREOF, each Party in consideration of the mutual covenants contained herein, and for other good and valuable consideration, intending to be legally bound, has caused this Agreement to be executed by its duly authorized representative as of the day and year written below; *provided, however,* that this Agreement shall not become effective as to either Party until executed by both Parties.

**LICENSOR:**

InSite Towers Development LLC, a Delaware limited liability company

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

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

Title: \_\_\_\_\_

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

**LICENSEE:**

Hawaiian Electric Company, Inc., a Hawaii corporation

DocuSigned by:

By: Edward S. Tavares  
DE7P0708698F4E1...

Name: Edward S. Tavares

Title: Acting CIO & VP, Cybersecurity

Date: 8/9/2024 | 9:03:24 AM HAST

## TERMS AND CONDITIONS

### 1. DEFINITIONS.

Capitalized terms defined in the body of this Agreement are indexed by location in Appendix I attached hereto. Capitalized terms used in Agreement but not defined herein are defined in Appendix I.

### 2. GRANT OF LICENSE.

Subject to the terms of this Agreement, Licensor hereby grants Licensee a non-exclusive license to install, maintain and operate the Approved Equipment at the Licensed Space. All Approved Equipment shall be and remain Licensee's personal property throughout the Term of this Agreement. Licensor shall maintain the Tower Facility in safe condition, and in good order and repair, reasonable wear and tear, damage by fire, the elements or other casualty excepted. In no event shall Licensee's license as granted herein include rights to use the air space above the Approved Equipment, and Licensor reserves the right to install, construct and/or operate additional improvements or equipment of Licensor or others above Licensee's Approved Equipment, including Licensee's shelter (commonly referred to as "stacking"), provided that such additional improvements or equipment do not materially and adversely interfere with the access to or operation of the Approved Equipment, including Licensee's shelter. Licensee is not required to utilize a stackable shelter, provided that, if Licensee opts to install a shelter that is not stackable and if Licensor receives an offer to license the air space above Licensee's non-stackable shelter by a proposed subsequent user, Licensor may, at its election, upon thirty (30) days' prior written notice require Licensee to replace such non-stackable shelter with a stackable shelter of a comparable size, provided that the proposed subsequent user agrees in writing to be wholly responsible for the cost of Licensee's shelter replacement. Subject to any limitations contained in the Ground Lease, Licensor grants Licensee a right of access to the Tower Facility 24 hours per day, 7 days per week during the Term. Licensor grants Licensee a designated location for the installation of Licensee's utilities over, under or across the Tower Facility (collectively, "**Easement**"). Licensee shall be responsible for any and all Damage or loss that results from the installation of any cables or utility wires by Licensee or any company or person retained by Licensee (including a public utility company), including, without limitation, any damage or loss that results from the accidental cutting of utility wires or cables of any other party operating at the Tower Facility. Licensor shall provide Licensee with one set of keys and/or codes to access the Tower Facility. Licensee shall be responsible for ensuring that Licensor has, at all times, a complete and accurate written list of all employees and agents of Licensee who have been provided the keys or access codes to the Tower Facility. Licensor shall have the right to continue to occupy the Tower Facility and to grant rights to others to the Tower Facility in its sole discretion. Licensee shall have no property rights or interest in the Tower Facility or the Easement by virtue of this Agreement. If Licensor's right to license space on the Tower Facility to Licensee is subject to a right of first refusal for the benefit of a third party and if such third party exercises its right of first refusal prior to the Commencement Date, Licensor may terminate this Agreement upon written notice to Licensee.

### 3. EXHIBITS.

Within forty-five (45) days following the Commencement Date, Licensee shall provide Licensor with as-built or construction drawings showing the Approved Equipment as installed in both hard copy and electronic form ("**Construction Drawings**"); such Construction Drawings shall include the location of any shelters, cabinets, grounding rings, cables, and utility lines associated with Licensee's use of the Tower Facility. Upon receipt, Licensor shall attach the Construction Drawings as Exhibit C hereto. In the event that Licensee fails to deliver the Construction Drawings as required by this Section, Licensor may cause such Construction Drawings to be prepared on behalf of Licensee and Licensor shall assess a fee for such Construction Drawings in an amount equal to one hundred twenty percent (120%) of the actual cost of obtaining the Construction Drawings including in-house labor, which upon invoicing shall become immediately due and payable by Licensee. In the event of inconsistency or discrepancy between (a) Exhibit A and Exhibit B hereto, Exhibit A shall govern, and (b) between Exhibit A (with respect to Approved Equipment and antenna locations) together with Exhibit B (with respect to Ground Space installation locations) and Exhibit C hereto, Exhibits A and B shall govern, notwithstanding any approval or signature by Licensor or its agents. Licensee hereby acknowledges and agrees that installation of the Approved

Equipment must be in strict accordance with the approved Construction Drawings and Exhibits A and B. Notwithstanding the forgoing, Licensee shall not infer nor shall acceptance of the Construction Drawings by Licensor be deemed to be a representation by Licensor that (i) such Construction Drawings or the plans and specifications described therein are in compliance with federal, state or local laws, ordinances, rules or regulations, (ii) that such installation shall not cause impermissible or unlawful interference, or (iii) that such installation is consistent with Licensee's permitted installation as specifically set forth in Exhibits A and B hereto.

#### **4. USE.**

Subject to the terms of any Ground Lease, Licensee shall be permitted the non-exclusive right to install, maintain, operate, service, modify and/or replace its Approved Equipment at the Licensed Space, which Approved Equipment shall be utilized for the transmission and reception of wireless voice and data communications signals (such transmission and reception to be solely within the Permitted Frequencies, and, if the Permitted Frequencies include licensed spectrum, within the spectrum licensed to Licensee by the FCC). If as of the Effective Date, Licensee's wireless business consists of a one-way network which requires only that signals be transmitted from the Tower Facility, then notwithstanding the foregoing sentence, Licensee's use of the Tower Facility under this Agreement shall be limited to the transmission of wireless voice and data communications signals from the Tower Facility. Licensee's permitted use with respect to the Licensed Space shall be limited solely to that enumerated in Section III and this Section, and, except pursuant to a separate agreement with Licensor, no person or entity other than Licensee shall have the right to install, maintain or operate its equipment or transmit or receive communications at, or otherwise use, the Licensed Space.

#### **5. LICENSE FEES; TAXES; ASSESSMENTS.**

(a) **Monthly License Fee.** The Monthly License Fee as adjusted by the Annual Escalator, shall be payable in advance on the first day of each calendar month during the Term beginning upon the Commencement Date. If the Commencement Date is not the first day of a calendar month, the Monthly License Fee for any partial month shall be prorated on a daily basis.

(b) **Utilities.**

(i) All utility services installed on the Tower Facility for the use or benefit of Licensee shall be made at the sole cost and expense of Licensee and shall be separately metered from Licensor's utilities. Licensee shall be solely responsible for extending utilities to the Tower Facility as necessary for the operation of the Approved Equipment and for the payment of utility charges including connection charges and security deposits incurred by Licensee. Licensee shall obtain and pay the cost of telephone connections, the installation of which shall be in compliance with the procedures for installation and maintenance of Approved Equipment set forth herein.

(ii) **Interruptions in Service.** Licensor shall not be liable in any respect for damages to either person or property nor shall Licensee be relieved from fulfilling any covenant or agreement hereof as a result of any temporary or permanent interruption of electrical service or of any common heating, ventilation and air conditioning system to the extent provided by Licensor. Licensor shall use reasonable diligence to restore any interruption as promptly as practicable to the extent that Licensor can reasonably effect such restoration, but Licensee shall have no claim for damages, consequential or otherwise, on account of any interruption. Licensor has no obligation or responsibility to provide emergency or "backup" power to Licensee.

(c) **Taxes.**

(i) **Property Taxes.** Licensee shall be responsible for the reporting and payment when due of any tax directly related to Licensee's ownership or operation of the Approved Equipment and such reporting and payment shall be made directly to the appropriate tax authorities. Licensee shall

reimburse Licensor in full for any taxes assessed against Licensor but attributed to the Approved Equipment within thirty (30) days of Licensor's request for such reimbursement. Licensor shall pay all property taxes directly assessed against Licensor's property or for which Licensor is obligated to pay under the Ground Lease, provided, however, Licensee shall reimburse Licensee's pro-rata share of such taxes. Licensee's pro rata share shall be determined by dividing such taxes evenly among all users Licensor has permitted to utilize any portion of the Tower Facility. Licensee shall reimburse Licensor for such taxes within thirty (30) days of Licensor's request for such reimbursement.

(ii) **Sales; Use and Other Taxes.** Licensor shall be responsible for billing, collecting, reporting, and remitting sales, use and other taxes directly related to any Monthly License Fee or other payments received pursuant to this Agreement. Licensee shall be responsible for reimbursing Licensor for all such sales, use and other taxes billed related to any payments received pursuant to this Agreement. Licensor shall add to the Monthly License Fee or any other payment then due and payable any associated sales, use or other tax, which shall be paid by Licensee at the same time and in the same manner as the Monthly License Fee or other payment due and payable under this Agreement.

(d) **Federal Use Fees & Assessments.** In the event that a particular Licensed Space is at a Tower Facility located on property which is owned by the Bureau of Land Management ("BLM") or the United States Forest Service ("USFS"), Licensee shall reimburse Licensor for any and all fees or assessments attributable to this Agreement or Licensee's use of the Licensed Space paid by Licensor to the BLM or USFS related to such Tower Facility within thirty (30) days of Licensor's request for such reimbursement.

(e) **Restrictions on Reimbursement.** Solely for the purposes of determining Licensee's portion of such taxes, fees, assessments or similar expenses as contemplated in this Section 5 or anywhere else in this Agreement, if any such amounts are determined in whole or in part on the income or profits (aside from gross revenues) of any person or entity, Licensor and Licensee shall agree on a fixed amount (subject to the Annual Escalator, which shall be applied in the same manner as it is applied to the Monthly License Fee), that shall be treated as such tax, fee, assessment or similar expense in lieu of the actual amount, which agreed to amount shall be set forth in an amendment to this Agreement.

(f) **Payment Address.** All payments due under this Agreement shall be made to Licensor at Licensor's Remittance Address shown on page 1 of this Agreement or such other address as Licensor may notify Licensee of in writing.

(g) **No Set-Off.** All payments due under this Agreement shall be due without set-off, notice, counterclaim or demand from Licensor to Licensee.

(h) **Effect of Partial Payment.** No endorsement or statement on any check or letter accompanying a check for payment of any monies due and payable under the terms of this Agreement shall be deemed an accord and satisfaction, and Licensor may accept such check or payment without prejudice to its right to recover the balance of such monies or to pursue any other remedy provided by law or in this Agreement.

## 6. TERM.

(a) **Initial Term.** The Initial Term of this Agreement shall be as specified in Section IV.

(b) **Renewal Term.** The Term of this Agreement may be extended for each of the Renewal Terms as specified in Section IV of this Agreement, provided that at the time of each such renewal, (i) the Ground Lease remains in effect and has not expired or been terminated, (ii) Licensee is not in default hereunder and no condition exists which if left uncured would with the passage of time or the giving of notice result in a default by Licensee hereunder and (iii) the original Licensee identified in the Preamble of this Agreement has not assigned, sublicensed, subleased or otherwise transferred any of its rights hereunder. Provided that the foregoing conditions are satisfied, this Agreement shall automatically renew

for each successive Renewal Term unless either Party notifies the other in writing of its intention not to renew this Agreement at least ninety (90) days prior to the end of the then existing Term.

(c) **Holdover Term.** If Licensee fails to remove the Approved Equipment at the expiration of the Term, such failure shall be deemed to extend the Term of this Agreement on a month-to-month basis under the same terms and conditions herein except that (i) a monthly license fee shall be due on or before the first day of every calendar month during such month-to-month term in an amount equal to one hundred twenty-five percent (125%) of the Monthly License Fee in effect for the last month of the Term prior to the commencement of such month-to-month term ("**Holdover Fee**"), such Holdover Fee to escalate annually on the anniversary of the Commencement Date by an amount equal to six percent (6%) of the Holdover Fee in effect for the month immediately prior to the month in which such escalation takes place, and (ii) the month-to-month extension shall be terminable upon fifteen (15) days' prior written notice from either Licensor or Licensee to the other; provided, however, nothing contained herein shall grant Licensee the unilateral right to extend the Term of this Agreement after the expiration of the Term. In addition to the monthly license fee payable to Licensor in the event of an extension under this Subsection 6(c), Licensee agrees to indemnify and hold Licensor harmless from any Damages arising out of or in connection with the extension, the operation of the Approved Equipment at the Tower Facility and Licensee's failure to perform all of its obligations under this Agreement at the termination or earlier expiration of this Agreement.

## 7. COMMON EXPENSES.

Licensee shall reimburse Licensor for Licensee's pro-rata share of all common expenses (the "**Common Expenses**") incurred by Licensor in the installation, operation, maintenance and repair of the Tower Facility, including, but not limited to, the construction, maintenance and repair of a common septic system and field, insurance, common utilities and any and all other costs of operating and maintaining the Tower Facility. Notwithstanding the foregoing, the cost and expenses associated with any Damage which is directly attributable to the acts or omissions of Licensee or Licensee's contractors shall be borne solely by Licensee. Licensee shall not be required to pay any share of costs or expenses (1) incurred to replace the Tower or (2) associated with any Damage which is attributable to the acts or omissions of a third party who is not affiliated with Licensee. In the event that Licensee also licenses space within a building or shelter owned by Licensor on the Tower Facility, Licensee shall also reimburse Licensor for its pro-rata share of all Common Expenses incurred for the operation, maintenance, repair and replacement associated with such building or shelter, including, without limitation, the physical structure of the building, HVAC system, and common utility expenses. In the event that Licensee is connected to a generator or back-up power supply owned by Licensor, Licensee shall also reimburse Licensor for its pro-rata share of all expenses incurred for the operation, maintenance, repair and replacement associated with such generator, including, without limitation, fuel expenses. For the purposes of this Section, a "pro-rata share" of costs and expenses shall be determined based on the number of licensees using the Tower Facility (or with respect to a shared shelter or building, the number of licensees using Licensor's shelter or building) on the first day of the month in which an invoice is mailed to Licensee. Licensee shall reimburse Licensor for Common Expenses within thirty (30) days following receipt of an invoice from Licensor.

## 8. SITE INSPECTION.

On or before the date of any subsequent modification to or installation of additional Approved Equipment, Licensee shall pay Licensor a Site Inspection Fee of \$1,500.00. Licensee acknowledges that any site inspection performed by Licensor of Licensee's installation is for the sole purpose and benefit of Licensor and its affiliates, and Licensee shall not infer from or rely on any inspection by Licensor as assuring Licensee's installation complies with any Applicable Laws, that the installation was performed in a good, workmanlike manner or that such installation will not cause impermissible or unlawful interference.

## 9. LABELING.

Licensee shall identify its Approved Equipment, including its equipment cabinets and coaxial cable (at the top and bottom of the Tower) (unless such cabinet is located in a building or cabinet owned by Licensee) by labels with Licensee's name, contact phone number and date of installation. In the event that Licensee

fails to comply with this provision and fails to cure such deficiency within ten (10) days of Licensor's written notice of such failure, Licensor may, but is not obligated to, in addition to any other rights it may have hereunder, label the Approved Equipment and assessed against Licensee a fee of \$500 ("Labeling Fee") which shall be payable to Licensor upon receipt of an invoice therefor. Licensor shall not be responsible to Licensee for any expenses or Damages incurred by Licensee arising from Licensor being unable to identify the Approved Equipment as belonging to Licensee as a result of Licensee's failure to label such Approved Equipment.

## 10. IMPROVEMENTS BY LICENSEE.

(a) **Installation and Approved Vendors.** Prior to the commencement of Licensee's initial installation, and again prior to any installation of any additional equipment, Licensee shall submit to Licensor (or any duly appointed delegee of Licensor after sufficient written notice to Licensee) for review and approval, detailed plans and specifications accurately describing all aspects of the proposed work relating to the construction, installation, relocation and reconfiguration of Licensee's Approved Equipment on the Tower. Licensee shall provide notice to Licensor no less than 5 days prior to the date upon which Licensee intends to commence Work at the Tower Facility, together with a construction schedule, so Licensor has the opportunity to be present during any such Work. Licensee shall not commence Work on the Tower Facility until Licensor issues to Licensee a NTP. Licensor shall issue a NTP only upon request from Licensee and receipt of the following complete and accurate documentation: (1) evidence that any contingencies set forth in the approval of Licensee's Application have been satisfied; (2) evidence that Licensee has obtained all required governmental approvals including, but not limited to, zoning approvals, building permits, and any applicable environmental approvals including copies of the same; (3) a copy of the plans and specifications that have been approved by Licensor for the proposed equipment installation; (4) evidence that any party, other than Licensor but including Licensee, that will be performing the Work are on Licensor's approved vendor list, with valid and current worker's compensation and general liability insurance certificates on file with Licensor naming Licensor as an additional insured and which otherwise satisfy the insurance coverage requirements set forth in Subsection 15(d) of this Agreement; and (5) a construction schedule. In no event will a NTP be issued prior to the payment by Licensee of a Relocation Application Fee when required pursuant to Subsection 10(c) of this Agreement. Notwithstanding anything to the contrary in this Agreement, Licensor reserves the right, in its reasonable discretion, to refuse to permit any person or company to climb the Tower.

(b) **Structural Analysis/Interference Analysis.** Prior to the commencement of any Work on the Tower Facility by or for the benefit of Licensee, Licensor may, in its reasonable discretion, perform or cause to be performed a structural analysis or require a professional engineer's certified letter to determine the availability of capacity at the Tower Facility for the installation or modification of any Approved Equipment and/or additional equipment at the Licensed Space by Licensee. Licensee agrees to remit payment to Licensor for all reasonable costs and expenses incurred by Licensor for such structural analysis or professional engineer's certified letter ("**Structural Analysis Fee**") within thirty (30) days following receipt of an invoice from Licensor. The foregoing charge shall be at Licensor's prevailing rates for the performance of same or the amount Licensor's vendor is then charging Licensor, as applicable. In the event a structural analysis is performed after the execution of this Agreement but prior to the initial installation of the Approved Equipment, and such analysis indicates that the existing Tower cannot accommodate the proposed installation of Licensee's Approved Equipment thereon, Licensor shall notify Licensee that modification of the Tower is required and inform Licensee of the fee Licensor will charge Licensee to complete such modification (which fee shall be a reasonable estimate of Licensor's actual cost of making such modifications). Such modification shall become part of the Tower Facility and be Licensor's sole property. If Licensee elects not to pay such fee, and Licensee and Licensor do not otherwise reach an agreement regarding the costs of such modification, Licensee may terminate this Agreement upon written notice to Licensor. Prior to the commencement of any initial or subsequent construction or installation on the Tower Facility by or for the benefit of Licensee and/or the modification of Licensee's Permitted Frequencies propagated from the Licensed Space, Licensor may elect to perform a shared site interference study ("**SSIS**") and Licensee shall pay Licensor a fee of \$1,600.00 per study ("**SSIS Fee**"), as adjusted annually on the anniversary of the Commencement Date by a percentage rate equal to the Annual Escalator. This fee shall be payable at the time Licensee pays the Relocation Application Fee where required pursuant to

Subsection 10(c) of this Agreement, or immediately upon receipt of notice from Licensor that Licensor has determined that a SSIS is required. In the event a SSIS is performed after the execution of this Agreement by Licensor but prior to the installation of Licensee's Approved Equipment, and such SSIS indicates that the proposed installation of Licensee's Approved Equipment on the Tower is acceptable, such an indication in no way relieves Licensee of its obligations under Section 11 herein.

(c) **Equipment; Relocation, Modification, Removal.** Licensor hereby grants Licensee reasonable access to the Licensed Space for the purpose of installing and maintaining the Approved Equipment and its appurtenances. Except as otherwise provided, Licensee shall be responsible for all site Work to be done on the Licensed Space or the Easement pursuant to this Agreement. Licensee shall provide all materials and shall pay for all labor for the construction, installation, operation, maintenance and repair of the Approved Equipment. Licensee shall not construct, install or operate any equipment or improvements on the Tower Facility other than those which are described on Exhibit A, alter the Permitted Frequencies, or alter the operation of the Approved Equipment, unless Licensor agrees to such replacements or modifications in the manner described herein. For any requested replacements or modifications to the Approved Equipment, Licensee shall submit an Application, utilizing Licensor's then current form, to request the right to replace or modify its Approved Equipment, alter the Permitted Frequencies or increase the Ground Space, which Application shall be accompanied by a Relocation Application Fee. Licensor shall evaluate for approval the feasibility of Licensee's request, which approval shall be in Licensor's sole, but reasonable, discretion. Licensee acknowledges that any such relocation or modification of the Approved Equipment may result in an increase in the Monthly License Fee. An amendment to this Agreement shall be prepared to reflect each addition or modification to Licensee's Approved Equipment to which Licensor has given its written consent and the resulting increase in the Monthly License Fee, if any. Licensee shall have the right to remove all Approved Equipment at Licensee's sole expense on or before the expiration or earlier termination of the License provided Licensee repairs any damage to the Tower Facility or the Tower caused by such removal. Within thirty (30) days of the expiration or termination of this Agreement for any reason, Licensee shall: (i) remove the Approved Equipment and any other property of Licensee at the Tower Facility at Licensee's sole risk, cost, and expense; (ii) deliver the Licensed Space in substantially the same and in as good a condition as received (ordinary wear and tear excepted); and (iii) repair any damage caused by the removal of the Approved Equipment within ten (10) days of the occurrence of such damage. If Licensee fails to timely pay the Holdover Fee or does not remove its Approved Equipment within thirty (30) days after the expiration or termination of this Agreement, (i) the Approved Equipment shall be deemed conclusively and absolutely abandoned by Licensee and anyone claiming by, through, or under Licensee except for Hazardous Substances and waste and Approved Equipment containing Hazardous Substances and waste; and (ii) Licensor shall have the right to remove the Approved Equipment at Licensee's sole expense and dispose of such Approved Equipment in any manner Licensor so elects, and Licensee shall reimburse Licensor for its expenses upon demand without off-set.

## 11. RF INTERFERENCE/ USER PRIORITY.

(a) **Definitions.** For purposes of this Section 11, the following capitalized terms shall have the meanings set forth herein:

(i) **Interference** includes any performance degradation, misinterpretation, or loss of information to a radio communications system caused by unwanted energy emissions, radiations, or inductions, but shall not include permissible interference as defined by the FCC, and in addition, with regard to Unlicensed Frequencies, congestion.

(ii) **Licensed Frequencies** are those certain channels or frequencies of the radio frequency spectrum that are licensed by the FCC in the geographic area where the Tower Facility is located.

(iii) A **Licensed User** is any user of the Tower Facility, including Licensee, which transmits and/or receives Licensed Frequencies at the Tower Facility, but only with respect to such Licensed Frequencies.



(iv) A **Priority User** is any Licensed User of the Tower Facility that holds a priority position in relationship to Licensee for protection from Interference, as determined in this Section 11, which status is subject to change as set forth herein.

(v) A **Subsequent User** is any user of the Tower Facility that holds a subordinate position in relationship to Licensee for protection from Interference, as determined in this Section 11, which status is subject to change as set forth herein.

(vi) **Unlicensed Frequencies** are those certain channels or frequencies of the radio frequency spectrum that are not licensed by the FCC and are available for use by the general public in the geographic area where the Tower Facility is located.

(vii) An **Unlicensed User** is any user of the Tower Facility, including Licensee, which transmits and/or receives Unlicensed Frequencies at the Tower Facility, but only with respect to such Unlicensed Frequencies.

(b) **Information.** Licensee shall cooperate with Licensor and with other lessees, licensees or occupants of the Tower Facility for purposes of avoiding Interference and/or investigating claims of Interference. Upon request, Licensee, within ten (10) days of Licensor's request, shall provide Licensor with a list of Licensee's transmit and receive frequencies and Approved Equipment specifications necessary to resolve or investigate claims of Interference.

(c) **Unlicensed Frequencies.** Notwithstanding any other provision contained herein, as among Licensor, Licensee and other users of the Tower or Tower Facility, (i) an Unlicensed User shall have no priority with respect to any other FCC Unlicensed Users with respect to Interference; and (ii) an Unlicensed User's rights and obligations with respect to such Interference shall be determined and governed by FCC Rules and Regulations and any other Applicable Law. Licensor expressly disclaims any and all warranties and accepts no responsibility for management, mediation, mitigation or resolution of Interference among FCC Unlicensed Users operating at the Tower Facility and shall have no liability therefor.

(d) **Licensed Frequencies.** Subject to FCC Rules and Regulations and other Applicable Law, the Parties acknowledge and agree that the accepted industry standard for priority protection from Interference between multiple Licensed Users has been based on the priority of occupancy of each user to another user of the Tower or Tower Facility, which priority has been based on the order of submittal of its collocation Application by each user of the Tower or Tower Facility. Should the application of FCC Rules and Regulations and other Applicable Law not resolve any claims of Interference consistent with Subsections 11(e), 11(f) and 11(g) below, as among Licensor, Licensee and other users of the Tower Facility, (i) each Licensed User's priority shall be maintained so long as the Licensed User does not change the equipment and/or frequency that it is entitled to use at the Tower Facility at the time of its initial occupancy; and (ii) Licensee acknowledges and agrees that if Licensee replaces its Approved Equipment or alters the radio frequency of the Approved Equipment to a frequency range other than as described on page 1 of this Agreement, Licensee will lose its priority position for protection from Interference with regard to Approved Equipment operating at the new frequency in its relationship to other Licensed Users which are in place as of the date Licensee replaces its Approved Equipment or alters its radio frequency, consistent with this Section 11.

(e) **Correction.**

(i) **Licensee.** Licensee agrees not to cause Interference with the operations of any other user of the Tower or Tower Facility and to comply with all other terms and provisions of this Section 11 imposed upon Licensee. If Licensor determines, in its reasonable discretion based on standard and accepted engineering practices, that Licensee's Approved Equipment is causing Interference to the installations of Licensor or a Priority User, Licensee shall, within seventy-two (72) hours of notification from Licensor, take such actions as are necessary to mitigate or eliminate the Interference, with the exception of ceasing Licensee's operations. If Licensee cannot mitigate or eliminate such Interference within the

seventy-two (72) hour period, Licensor may file a complaint with the FCC (currently the FCC's Enforcement Bureau, Spectrum Enforcement Division) or if such other user of the Tower Facility which is subject to Interference from Licensee's Approved Equipment is a Priority User, then upon the request of such Priority User consistent with Licensor's contractual obligations owed to the Priority User, Licensor may require that Licensee turn off or power down its interfering Approved Equipment and only power up or use such Approved Equipment during off-peak hours specified by Licensor in order to test whether such Interference continues or has been satisfactorily eliminated. If Licensee is unable to resolve or eliminate, to the satisfaction of Licensor, such Interference within thirty (30) days from Licensee's initial notification thereof, Licensee will immediately remove or cease operations of the interfering Approved Equipment.

(ii) **Licensor.** Upon the request of Licensee, Licensor hereby covenants to take commercially reasonable efforts to prohibit a Subsequent User from causing Interference with the operations of Licensee to the extent Licensee is a Priority User pursuant this Section 11. If Licensor determines, in its reasonable discretion based on standard and accepted engineering practices, that a Subsequent User's equipment is causing Interference to the installations of Licensee, upon Licensee's request, Licensor shall, within 48 hours of request, commence such actions as are necessary to mitigate or eliminate the Interference, with the exception of ceasing Subsequent User's operations.

(iii) **Government Users.** Notwithstanding the foregoing, if another user of the Tower or Tower Facility is a governmental entity, Licensor shall give such governmental entity written notice of the Interference within 5 Business Days of Licensor's determination that such action is reasonably necessary. Licensor shall have the right to give the governmental entity 5 Business Days, or more as specified in the governmental site or occupancy agreement or as required by Applicable Law, from the receipt of such notice prior to Licensor being required to take any actions required by this Subsection 11(e) to cure such Interference.

(f) **FCC Requirements Regarding Interference.** Nothing herein shall prejudice, limit or impair Licensee's rights under Applicable Law, including, but not limited to, FCC Rules and Regulations to redress any Interference independently of the terms of this Section 11. Notwithstanding anything herein to the contrary, the provisions set forth in this Section 11 shall be interpreted in a manner so as not to be inconsistent with Applicable Law, including, but not limited to, FCC Rules and Regulations and nothing herein relieves Licensee from complying with all Applicable Laws governing the propagation of radio frequencies and/or radio frequency interference. The Parties acknowledge that currently FCC Rules and Regulations govern the obligations of wireless telecommunication service providers with respect to the operation of equipment and use of frequencies. Consequently, the provisions set forth in this Section 11 are expressly subject to CFR, Title 47, including but not limited to Part 15, et seq, governing Radio Frequency Devices; Part 20, et seq, governing commercial mobile radio services; Part 24, et seq, governing personal communications services; Part 90, et seq, governing private land mobile radio services; Part 96, et seq, governing Citizens Broadband Radio Service, and Part 101, et seq, governing Fixed Microwave Services. In addition, in accordance with good engineering practice and standard industry protocols, licensees employ a wide range of techniques and practices, including those involving the use of proper types of equipment as well those related to the adjustment of operating parameters, in a mutually cooperative effort to identify and mitigate sources of Interference. The obligation of Part 20 licensees, including, but not limited to, private paging, specialized mobile radio services, cellular radiotelephone service and personal communications services, to avoid Interference is set forth in 47 CFR Part 90, Subpart N – Operating Requirements, §90.403(e). Claims of Interference are ultimately cognizable before the FCC's Enforcement Bureau, Spectrum Enforcement Division. Licensee shall observe good engineering practice and standard industry protocols, applying such commercially reasonable techniques as constitute best practices among licensees, in the deployment of their frequencies and the operation of the Approved Equipment. If Licensee deploys its frequencies or operates the Approved Equipment in a manner which prevents any other user of the Tower or Tower Facility from decoding signal imbedded in their licensed frequencies such that the Spectrum Enforcement Division makes a determination that Licensee is the cause of the Interference and Licensee fails or refuses to mitigate or eliminate the Interference within the time and in the manner prescribed by the Spectrum Enforcement Division, Licensee shall be default of this Agreement and the remedies set forth in Section 22 shall apply.

(g) **Public Safety Interference.** As of the Commencement Date, Licensor and Licensee are aware of the publication of FCC Final Rule, Private Land Mobile Services; 800 MHz Public Safety Interference Proceeding, *Federal Register*, November 22, 2004 (Volume 69, Number 224), Rules and Regulations, Page 67823-67853 ("**Final Rule**"). Claims of Interference made by or against users which are public safety entities shall be in compliance with the Final Rule as and when effective, or otherwise in accordance with FCC Rules and Regulations.

(h) **AM Detuning.** The parties acknowledge that the FCC Rules and Regulations govern the obligations of Licensee with respect to the operation of the Approved Equipment. Consequently, the provisions set forth in this Agreement are expressly subject to the FCC Rules and Regulations, including, but not limited to 47 C.F.R. §§ 27.63, 22.371 and 73.1692. Licensee agrees, at Licensee's sole cost, to comply with the foregoing as well as any and all other FCC Rules, Regulations and public guidance relating to AM detuning as such provisions currently exist or are hereafter modified. Licensee shall be fully responsible for any pre and/or post installation testing for AM interference at the Tower Facility and for the installation of any new detuning apparatus or the adjustment of any existing detuning apparatus that may be necessary to prevent adverse effects on the radiation pattern of any AM station caused by the installation of the Approved Equipment. Licensee shall provide Licensor with written proof of such compliance. In the event that Licensee determines that pre or post-installation testing for AM interference is not required at the Tower Facility, such a determination shall be at Licensee's sole risk. If Licensee or Licensor receives a complaint of interference from an AM broadcast station after the Approved Equipment is added to a Tower or a Tower is modified to accommodate Licensee, Licensee shall eliminate such interference within thirty (30) calendar days of the receipt of such complaint. Licensee's failure to eliminate such interference within such thirty (30) day period shall constitute a default under this Agreement and Licensor shall have the right to eliminate such interference at Licensee's expense. Licensee further agrees to indemnify Licensor in the event that Licensee's failure to comply with the FCC Rules and Regulations prior to installation/modification of the Approved Equipment results in any administrative investigation, proceeding or adjudication with respect to Licensor.

## 12. SITE RULES AND REGULATIONS.

Licensee agrees to comply with the Licensor's reasonable rules and operational guidelines, established and/or modified from time to time for use at the Tower Facility, and after reasonable notice to Licensee. Such rules and operational guidelines will not (a) unreasonably interfere with Licensee's use of the Licensed Space under this Agreement or (b) require Licensee to incur unreasonable costs or expenses to comply.

## 13. DESTRUCTION; CONDEMNATION.

(a) **Destruction.** If the Tower or other portions of the improvements at the Tower Facility owned by Licensor are destroyed or so damaged as to materially interfere with Licensee's use and benefits from the Licensed Space, Licensor or Licensee shall be entitled to elect to cancel and terminate this Agreement on the date of such casualty and any unearned Monthly License Fee paid in advance of such date shall be refunded by Licensor to Licensee within thirty (30) days of such termination date. Notwithstanding the foregoing, Licensor may elect, in its sole discretion, to restore the damaged improvements, in which case Licensee and Licensor shall remain bound to the terms of this Agreement but Licensee shall be entitled to an abatement of the Monthly License Fee during the loss of use. If the Tower is so damaged that reconstruction or repair cannot reasonably be undertaken without removing the Approved Equipment, then (i) Licensor may, upon giving written notice to Licensee, remove any of the Approved Equipment and interrupt the signal activity of Licensee, (ii) Licensee may, at Licensee's sole cost and expense, install temporary facilities pending such reconstruction or repair, provided such temporary facilities do not interfere with the construction, rebuilding or operation of the Tower, (iii) Licensor agrees to provide Licensee alternative space, if available, on the Tower or at the Tower Facility during such reconstruction/repair period and (iv) should Licensor not substantially restore or replace the Tower in a fashion sufficient to allow Licensee to resume operations thereon within 6 months of the date of casualty, provided that such 6 month period shall be automatically extended for so long as Licensor has commenced and diligently continues to restore or replace such Tower. and Licensee's operation has been materially

disrupted for sixty (60) or more consecutive days, then Licensee, upon thirty (30) days' prior written notice to Licensor, may terminate this Agreement.

(b) **Condemnation.** If the whole or any substantial part of the Tower Facility shall be taken by any public authority under the power of eminent domain or in deed or conveyance in lieu of condemnation so as to materially interfere with Licensee's use thereof and benefits from the Licensed Space, then this Agreement shall terminate on the part so taken on the date of possession by such authority of that part, and Licensor or Licensee shall have the right to terminate this Agreement and any unearned Monthly License Fee paid in advance of such termination shall be refunded by Licensor to Licensee within thirty (30) days following such termination. Notwithstanding the foregoing, Licensor may elect to rebuild the Tower or other improvements affected by such condemnation at an alternate location or property owned, leased or managed by Licensor, in which case Licensee and Licensor shall remain bound hereby. Upon such relocation of the Tower or improvements, the Licensed Space shall be modified to include the new Tower or improvements and the property on which the same are located and this Agreement shall be amended accordingly to clarify the rights of Licensor and Licensee with respect to the Licensed Space. Licensee agrees not to make a claim to the condemning authority for any condemnation award to the extent such claim shall diminish or affect the award made to Licensor with regard to such condemnation.

(c) **License Fee Abatement.** The Monthly License Fee with respect to the affected Tower Facility shall be abated during any period that the Tower has not been restored following an event described in Subsections (a) or (b) above so long as Licensee is unable to continue to operate from a temporary location at the Tower Facility during any period of restoration.

#### 14. COMPLIANCE WITH LAWS.

Licensor shall be responsible for compliance with any marking and lighting requirements of the FAA and the FCC applicable to the Tower Facility, provided that if the requirement for compliance results from the presence of the Approved Equipment on the Tower, Licensee shall pay the costs and expenses therefor (including any lighting automated alarm system so required). Licensee has the responsibility of carrying out the terms of Licensee's FCC license with respect to tower light observation and notification to the FAA if those requirements imposed on Licensee are in excess of those required of Licensor. Notwithstanding anything to the contrary in this Agreement, Licensee shall at all times comply with all applicable laws and ordinances and all rules and regulations of municipal, state and federal governmental authorities relating to the installation, maintenance, location, use, operation, and removal of the Approved Equipment and other alterations or improvements authorized pursuant to the provisions of this Agreement.

#### 15. INDEMNIFICATION; INSURANCE.

(a) **Mutual Indemnity.** Subject to the mutual waiver of subrogation set forth in Section 27, Licensee and Licensor each indemnifies the other against and holds the other harmless from any and all costs, demands, Damages, suits, expenses, or causes of action (including reasonable attorneys fees and court costs) which arise out of the Indemnifying Party's failure to perform its obligations under this Agreement in connection with the, use and/or occupancy of the Licensed Space by the Indemnifying Party. This indemnity does not apply to any Claims to the extent arising from the gross negligence or intentional misconduct of the Indemnified Party.

(b) **Limits on Indemnification.** Neither Party shall be responsible or liable to any of the foregoing Indemnified Parties for any Damages arising from any claim to the extent attributable to any acts or omissions of other licensees or users occupying the Tower Facility or for any structural or power failures or destruction or damage to the Tower Facility except to the extent caused by the sole, joint, or concurrent gross negligence or willful misconduct of such Party.

(c) **Survival.** The provisions of this Section 15 shall survive the expiration or earlier termination of this Agreement with respect to any events occurring on or before expiration or termination of same whether or not Claims relating thereto are asserted before or after such expiration or termination.

(d) **Insurance.** Licensor and Licensee shall keep in full force and effect, during the Term of this Agreement, insurance coverage in accordance with Appendix II attached hereto.

**16. LIMITATION OF PARTIES' LIABILITY.**

NEITHER LICENSOR NOR LICENSEE SHALL BE RESPONSIBLE FOR, AND HEREBY WAIVES ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES INCURRED RESULTING FROM (i) LICENSEE'S USE OR LICENSEE'S INABILITY TO USE THE TOWER FACILITY, OR (ii) DAMAGE TO THE OTHER'S EQUIPMENT. If Licensor shall fail to perform or observe any term, condition, covenant or obligation required to be performed or observed by it under this Agreement or is charged with an indemnity obligation hereunder, and if Licensee shall, as a consequence thereof, recover a money judgment against Licensor (whether compensatory or punitive in nature), Licensee agrees that it shall look solely to Licensor's right, title and interest in and to the Tower Facility and the Tower for the collection of such judgment, and Licensee further agrees that no other assets of Licensor shall be subject to levy, execution or other process for the satisfaction of Licensee's judgment, and that Licensor shall not be personally liable for any deficiency.

**17. DISCLAIMER OF WARRANTY.**

LICENSOR HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ASSOCIATED WITH THE TOWER FACILITY OR THE TOWER. LICENSEE HEREBY ACCEPTS THE TOWER FACILITY "AS IS, WHERE IS, WITH ALL FAULTS."

**18. NOTICES.**

All notices, demands, approvals, requests and other communications shall be in writing to such Party at the address listed in the introductory paragraph of this Agreement (and in each case, in the event of notice to Licensor, with a copy of such notice to American Towers LLC, 116 Huntington Avenue, Boston, MA 02116, Attention: General Counsel) or at such other address as such Party shall designate by notice to the other Party hereto in accordance with this Section 18 (the "**Notice Address**") and may be personally delivered; mailed, via United States certified mail, return receipt requested; or transmitted by overnight courier for next Business Day delivery, and, if not delivered personally, shall be deemed to be duly given or made 2 Business Days after deposit with the applicable carrier or courier. Notices will be deemed to have been given upon either receipt or rejection. Notwithstanding the foregoing, (i) any notice that is given by a Party may be given by the attorneys for that Party and shall be deemed effective for all purposes herein, and (iii) only notices, letters, documents, or instruments threatening to declare or declaring such addressee or recipient in default under this Agreement shall be required to be sent to the attorneys representing such addressee or recipient, if the name and address of such attorney is provided for herein.

**19. ASSIGNMENT; SUBLEASING.**

Licensee may not, directly or indirectly, assign this Agreement as a whole, or any portion of Licensee's rights, title and interests hereunder without Licensor's prior written consent. In no event may Licensee sublet, sublease, or permit any use of the Tower Facility or Licensed Space by any other party. Any permitted assignee shall expressly assume, and become bound by, all of Licensee's obligations under this Agreement. Licensor may freely assign, transfer, or sublease this Agreement and, in such event, Licensor shall be relieved of all of its obligations under this Agreement from and after the date of such assignment or transfer. Licensee shall pay Licensor a fee of \$500.00 (which fee shall increase annually on each anniversary of the Commencement Date by a percentage rate increase equal to the Annual Escalator) in each instance in which Licensee requests Licensor to consent to an assignment of this Agreement or in which Licensee seeks an estoppel certificate, non-disturbance agreement, subordination agreement or other similar agreement to defray the administrative cost incurred by Licensor to process such requests, prepare and process any necessary documentation, and modify its database and other information systems to reflect any such agreement. Such fee is due upon submission of Licensor's request and is hereby deemed fully earned by Licensor upon receipt. Notwithstanding anything to the contrary, Licensor may condition its consent to any assignment, on among other things, (i) requiring that the assignee execute a

new form of license agreement so long as the Monthly License Fee and Initial and Renewal Terms of such agreement are consistent with those set forth in this Agreement, and (ii) requiring the assignee to demonstrate that it maintains at the time of such assignment, as evidenced by current financial statements provided to Licensor, a financial position reasonably demonstrating the ability of such assignee to meet and perform the obligations of Licensee hereunder through the unexpired balance of the then current Initial Term or Renewal Term. Any purported assignment by Licensee in violation of the terms of this Agreement shall be void. This Agreement shall be binding upon the successors and permitted assigns of both Parties.

## 20. SUBORDINATION TO GROUND LEASE.

The Parties acknowledge and agree that in the event Licensor's rights in the Licensed Space and/or any part of the Tower Facility is derived in whole or part pursuant to an underlying lease, sublease, permit, easement or other right of use agreement (a "**Ground Lease**"), all terms, conditions and covenants contained in this Agreement shall be specifically subject to and subordinate to the terms and conditions of the applicable Ground Lease. In the event that any of the provisions of the Ground Lease are in conflict with any of the provisions of this Agreement (other than those provisions relating to the length of term, termination rights or financial consideration), the terms of the Ground Lease shall control. Further, Licensee agrees to comply with the terms of such Ground Lease as applicable to the access and occupancy of the Licensed Space. Notwithstanding anything contained in this Agreement to the contrary, if the Ground Lease expires or is terminated for any reason, this Agreement shall terminate on the effective date of such termination and Licensor shall have no liability to Licensee as a result of the termination of this Agreement. Licensor is under no obligation to extend the term of or renew the Ground Lease. Licensor shall give Licensee written notice of such termination or expiration of this Agreement as a result of the termination or expiration of the Ground Lease as soon as practicable. Unless prohibited by the terms of such Ground Lease, upon Licensee's written request, Licensor shall provide a copy of any applicable Ground Lease with the economic terms and other terms that Licensor deems reasonably confidential redacted.

## 21. DEFAULT.

The occurrence of any of the following instances shall be considered to be a default or a breach of this Agreement by Licensee: (i) any failure of Licensee to pay the Monthly License Fee, or any other charge for which Licensee has the responsibility of payment under this Agreement, within ten (10) Business Days of the date following written notice to Licensee from Licensor, or its designee, of such delinquency, it being understood, however, that Licensor is obligated to provide such notice only two times in each calendar year, and the third instance of the failure to pay the Monthly License Fee or any other charge shall be an immediate default without notice to Licensee if not paid within ten (10) Business Days of the date when due; (ii) except for a PCN Default for which the cure period is set forth in clause (iv) below, any failure of Licensee to perform or observe any term, covenant, provision or condition of this Agreement which failure is not corrected or cured by Licensee within thirty (30) days of receipt by Licensee of written notice from Licensor, or its designee, of the existence of such a default; except such thirty (30) day cure period shall be extended as reasonably necessary to permit Licensee to complete a cure so long as Licensee commences the cure within such thirty (30) day cure period and thereafter continuously and diligently pursues and completes such cure; (iii) failure of Licensee to abide by the Interference provisions as set forth in Section 11; (iv) a PCN Default occurs that Licensee fails to cure within ten (10) days of Licensor's written notice to Licensee, or its designee of the existence of such default; (v) Licensee shall become bankrupt, insolvent or file a voluntary petition in bankruptcy, have an involuntary petition in bankruptcy filed against Licensee which cannot be or is not dismissed by Licensee within sixty (60) days of the date of the filing of the involuntary petition, file for reorganization or arrange for the appointment of a receiver or trustee in bankruptcy or reorganization of all or a substantial portion of Licensee's assets, or Licensee makes an assignment for such purposes for the benefit of creditors; (vi) this Agreement or Licensee's interest herein or Licensee's interest in the Tower Facility are executed upon or attached; (vii) Licensee commits or fails to perform an act which results in a default under or nonconformance with the Ground Lease by Licensor and the same shall not be cured within 5 Business Days (or such shorter time as permitted under the Ground Lease to cure) of the date following written notice to Licensee from Licensor, or its designee, of such default; or (viii) the imposition of any lien on the Approved Equipment except as may be expressly authorized by this Agreement, or an attempt by Licensee or anyone claiming through Licensee to encumber

Licensor's interest in the Tower Facility, and the same shall not be dismissed or otherwise removed within ten (10) Business Days of written notice from Licensor to Licensee.

Any failure of Licensor to perform or observe any term, covenant, provision or condition of this Agreement which failure is not corrected or cured by Licensor within thirty (30) days of receipt by Licensor of written notice from Licensee, or its designee, of the existence of such a default shall be considered to be a default or a breach of this Agreement by Licensor; except such thirty (30) day cure period shall be extended as reasonably necessary to permit Licensor to complete a cure so long as Licensor commences the cure within such thirty (30) day cure period and thereafter continuously and diligently pursues and completes such cure.

## **22. REMEDIES.**

In the event of a default or a breach of this Agreement by Licensee and after Licensee's failure to cure the same within the time allowed Licensee to cure such default, if applicable, then Licensor may, in addition to all other rights or remedies Licensor may have hereunder at law or in equity, (i) terminate this Agreement by giving written notice to Licensee, stating the date upon which such termination shall be effective, accelerating and declaring to be immediately due and payable the then present value of all Monthly License Fees and other charges or fees which would have otherwise been due Licensor absent a breach of this Agreement by Licensee, discounted by an annual percentage rate equal to five percent (5%), (ii) terminate electrical power to the Approved Equipment, and/or (iii) remove the Approved Equipment without being deemed liable for trespass or conversion and store the same at Licensee's sole cost and expense for a period of thirty (30) days after which the Approved Equipment, other than Hazardous Substances, will be deemed conclusively abandoned if not claimed by Licensee. Licensee shall pay all reasonable attorney's fees, court costs, removal and storage fees (including any damage caused thereby), and other items of cost reasonably incurred by Licensor in recovering the Monthly License Fee or other fee or charge. Licensee shall not be permitted to claim the Approved Equipment until Licensor has been reimbursed for removal and storage fees. Past due amounts under this Agreement will bear interest from the date upon which the past due amount was due until the date paid at a rate equal to eighteen percent (18%) per annum, or at a lower rate if required by law in the state in which this Agreement is to be performed. In addition, Licensee shall be assessed a late payment fee equal to twenty-five percent (25%) of the then-current Monthly License Fee for any payment or reimbursement due to Licensor under this Agreement which is overdue by ten (10) days or more and such fee shall be assessed for each thirty (30) day period thereafter that any such amount (or portion thereof) remains unpaid. In the event of a default or a breach of this Agreement by Licensor and after Licensor's failure to cure the same within the time allowed Licensor to cure such default, if applicable, then Licensee may, in addition to all other rights or remedies Licensee may have hereunder at law or in equity, terminate this Agreement by giving written notice to Licensor, stating the date upon which such termination shall be effective.

## **23. GOVERNMENTAL APPROVALS; PERMITS.**

In the event that any governmental permit, approval or authorization required for Licensor's use of, operation of, or right to license space to Licensee at the Tower Facility is terminated or withdrawn by any governmental authority or third party as part of any governmental, regulatory, or legal proceeding, Licensor may terminate this Agreement. Licensee hereby agrees that in the event of a governmental or legal order requiring the removal of the Approved Equipment from the Tower, the modification of the Tower, or the removal of the Tower, Licensee shall remove the Approved Equipment promptly, but in no event later than the date required by such order, at Licensee's sole cost and expense. Licensor shall cooperate with Licensee in Licensee's efforts to obtain any permits or other approvals that may be necessary for Licensee's installation and operation of the Approved Equipment, provided that Licensor shall not be required to expend any funds or undertake any liability or obligation in connection with such cooperation. Licensor may elect to obtain such required approvals or permits on Licensee's behalf, at Licensee's sole cost and expense. In no event may Licensee encourage, suggest, participate in or permit the imposition of any restrictions or additional obligations whatsoever on the Tower Facility or Licensor's current or future use or ability to license space at the Tower Facility as part of or in exchange for obtaining any such approval or permit. In the event that Licensee's shelter or cabinets are installed above a third-party or Licensor-owned

shelter or building, Licensee shall be solely responsible for obtaining any required approvals, or permits in connection with such shelter or cabinet installation, excepting the consent of other users at the Tower Facility and/or the ground landlord which shall remain the sole responsibility of Licensor where required.

#### 24. REPLACEMENT OF TOWER/RELOCATION OF APPROVED EQUIPMENT.

(a) **Replacement of Tower.** Licensor may, at its election, replace or rebuild the Tower or a portion thereof. Such replacement will (i) be at Licensor's sole cost and (ii) not result in an interruption of Licensee's communications services beyond that which is necessary to replace the existing Tower. If Licensee, in Licensee's reasonable discretion, cannot operate the Approved Equipment from the existing Tower during such replacement or rebuild of the Tower, Licensee may establish, at Licensee's sole cost, a temporary facility on the Tower Facility to provide such services as Licensee deems necessary during any such construction by Licensor so long as adequate space is then available. The location of such temporary facilities shall be subject to Licensor's approval. The Monthly License Fee due hereunder shall be abated for any period during which Licensee is prevented from broadcasting from the existing Tower due to such replacement or relocation. At the request of either Party, Licensor and Licensee shall enter into an amendment to this Agreement to clarify the rights of Licensor and Licensee to the new Tower Facility.

(b) **Relocation of Approved Equipment.** In the event another Paying Carrier (as hereinafter defined) desires to occupy the space on the Tower (which includes any necessary vertical separation as determined by Licensor) where Licensee's Approved Equipment is then located (the "**Trigger Condition**"), Licensor reserves the right to require Licensee to decide whether to (i) terminate this Agreement, (ii) relocate Licensee's Approved Equipment located at the Tower Facility, at Licensee's sole cost and expense, to another antenna mount height on the Tower, or (iii) increase the Monthly License Fee to that which would initially be paid by the Paying Carrier ("**Paying Carrier Rate**"), all in accordance with the terms and provisions provided in this Subsection 24(b). Upon the Trigger Condition occurring, Licensor may notify Licensee in writing ("**Relocation Notice**") that the Trigger Condition has occurred and if other spaces or antenna mount heights are available to accommodate Licensee's Approved Equipment on the Tower (without the requirement of any improvements to the Tower by Licensor), indicate which other spaces or antenna mount heights are so available and, also, indicate the Paying Carrier Rate. Within thirty (30) days of Licensee's receipt of the Relocation Notice, Licensee will be required to inform Licensor in writing of its election either to (A) increase the Monthly License Fee to the Paying Carrier Rate (which would thereafter be subject to escalation of the Monthly License Fee generally as otherwise provided in this Agreement) and continue to occupy the same space or antenna mount height on the Tower; (B) provided other spaces or antenna mount height are available on the Tower, relocate Licensee's Approved Equipment to one of the other such spaces or antenna mount height as specified in the Relocation Notice; or (C) remove Licensee's Approved Equipment from Tower and terminate this Agreement. If Licensee elects option (A), then such election shall be effective and the Monthly License Fee shall increase effective upon the eleventh Business Day after Licensee's receipt of the Relocation Notice without further act or deed. If Licensee elects option (B), if such option is available, and notifies Licensor that it elects to relocate its Approved Equipment to a particular antenna mount height or space specified in the Relocation Notice, Licensee shall have forty-five (45) days of Licensee's receipt of the Relocation Notice to relocate its Approved Equipment on the Tower to such elected space or antenna mount height at Licensee's sole cost and expense, such relocation to be subject to all of the terms and conditions of this Agreement otherwise imposed. If Licensee elects or is deemed to elect option (C), Licensee will remove its Approved Equipment from the Tower Facility within forty-five (45) days of Licensee's receipt of the Relocation Notice, such removal to be subject to all terms and conditions of this Agreement otherwise imposed. If Licensor fails to receive notice from Licensee within such thirty (30) day period as to whether Licensee elects option (A), (B) or (C), then Licensee shall be deemed conclusively to have elected option (C). If Licensee elects option (B) or elects or is deemed to elect option (C), if Licensee fails to relocate or remove the Approved Equipment within such time period as required above, TIME BEING OF THE ESSENCE, then the Approved Equipment shall be deemed conclusively and absolutely abandoned by Licensee and anyone claiming by, through, or under Licensee except for Hazardous Substances and waste and equipment containing Hazardous Substances and waste, which shall be removed by Licensee from the Tower Facility immediately; and Licensor shall have the right to remove the Approved Equipment at Licensee's sole expense and dispose of such Approved Equipment in any manner Licensor so elects, and Licensee shall reimburse Licensor for its expenses upon demand



without off-set. For purposes of this Subsection, a "**Paying Carrier**" is a paying carrier or potential licensee of Licensor which, through a written Application or offer, offers to monetarily compensate Licensor for the right to use the space on the Tower included in the Licensed Space.

(c) **Tower Removal:** If during the term of this Agreement Licensor determines based on engineering structural standards generally applied to communications towers that the Tower is or has become structurally unsound such that pursuant to generally accepted industry safety standards the Tower or a portion thereof must be removed, then, upon ninety (90) days' prior written notice to Licensee, Licensor may, in its sole discretion either (i) remove the Tower and terminate this Agreement effective as of the date of such removal, or (ii) modify the Tower and relocate Licensee's Approved Equipment to an alternative location on the modified Tower. If Licensee and Licensor are not able to agree on an alternative location on the modified Tower for the installation of Licensee's Approved Equipment within the foregoing ninety (90) day notice period, then Licensee or Licensor may elect to terminate this Agreement.

## 25. EMISSIONS.

If antenna power output ("**RF Emissions**") is presently or hereafter becomes subject to any restrictions imposed by the FCC or other governmental agency for RF Emissions standards on Maximum Permissible Exposure ("**MPE**") limits, or if the Tower Facility otherwise becomes subject to federal, state or local rules, regulations, restrictions or ordinances, Licensee shall comply with Licensor's reasonable requests for modifications to the Approved Equipment which are reasonably necessary for Licensor to comply with such limits, rules, regulations, restrictions or ordinances and Licensor shall use commercially reasonable efforts to cause all other licensees of the Tower Facility to promptly comply. If Licensor requires an engineering evaluation or other power density study be performed to evaluate RF Emissions compliance with MPE limits, then all reasonable costs of such an evaluation or study shall be paid proportionately by Licensee and all other licensees of the Tower within thirty (30) days of Licensor's request therefor. If said study or a study sponsored by any governmental agency indicates that RF Emissions at the Tower Facility do not comply with MPE limits, then Licensee and Licensor, each for itself, shall immediately take any and all steps necessary to ensure that it is individually in compliance with such limits, up to and including cessation of operation, until a maintenance program or other mitigating measures can be implemented to comply with MPE and in addition, Licensor shall use commercially reasonable efforts to cause all other licensees of the Tower to take similar steps necessary to ensure that they are individually in compliance with such limits.

## 26. ENVIRONMENTAL.

Licensee covenants that it will not use, store, dispose, or release any Hazardous Substances on the Tower Facility in violation of Applicable Law. Licensee agrees to indemnify and save harmless Licensor against any and all Claims, liabilities, causes of action, Damages, orders, judgments, and clean-up costs arising from Licensee's breach of any of the covenants contained in this Section 26. The obligations of Licensee to indemnify Licensor pursuant to this Section 26 shall survive the termination or expiration of this Agreement.

## 27. SUBROGATION.

(a) **Waiver.** Licensor and Licensee waive all rights against each other and any of their respective consultants and contractors, agents and employees, for Damages caused by perils to the extent covered by the proceeds of the insurance provided herein, except such rights as they may have to the insurance proceeds. All insurance policies required under this Agreement shall contain a waiver of subrogation provision under the terms of which the insurance carrier of a Party waives all of such carrier's rights to proceed against the other Party. Licensee's Certificate of Insurance shall evidence such waivers of subrogation. Licensee shall require by appropriate agreements, written where legally required for validity, similar waivers from its contractors and subcontractors. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

(b) **Mutual Release.** Notwithstanding anything in this Agreement to the contrary, Licensor and Licensee each release the other and its respective affiliates, employees and representatives from any Claims by them or any one claiming through or under them by way of subrogation or otherwise for Damage to any person or to the Tower Facility and to the fixtures, personal property, improvements and alterations in or on the Tower Facility that are caused by or result from risks insured against under any insurance policy carried by each and required by this Agreement, provided that such releases shall be effective only if and to the extent that the same do not diminish or adversely affect the coverage under such insurance policies and only to the extent of the proceeds received from such policy.

## **28. GOVERNING LAW.**

This Agreement shall be governed by the laws of the state in which the Tower Facility is located, with the exception of its choice of laws provisions. If any provision of this Agreement is found invalid or unenforceable under judicial decree or decision, the remaining provisions of this Agreement shall remain in full force and effect. Any approval, consent, decision, or election to be made or given by a Party may be made or given in such Party's sole judgment and discretion, unless a different standard (such as reasonableness or good faith) is provided for explicitly.

## **29. MISCELLANEOUS.**

Upon Licensor's written request, Licensee shall promptly furnish Licensor with complete and accurate information in response to any reasonable request by Licensor for information about any of the Approved Equipment or utilities utilized by Licensee at the Tower Facility or any of the channels and frequencies utilized by Licensee thereon. In the event that this Agreement is executed by Licensor, its Affiliates or any trade name utilized by Licensor or its Affiliates and such signatory does not hold the real Tower Facility or leasehold interest in the affected Tower Facility, the execution of this Agreement shall be deemed to have been properly executed by Licensor or Licensor's Affiliate which properly holds such interest in the affected Tower Facility. Upon the termination or expiration of this Agreement, Licensee shall immediately upon the request of Licensor deliver a release of any instruments of record evidencing such Agreement. Notwithstanding the expiration or earlier termination of this Agreement, Sections 15, 16, 17, and 26 shall survive the expiration or earlier termination of this Agreement. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision herein (whether or not similar), nor shall such waiver constitute a continuing waiver unless expressly agreed to in writing by the affected Party. This Agreement constitutes the entire agreement of the Parties hereto concerning the subject matter herein and shall supersede all prior offers, negotiations and agreements, whether written or oral. No revision of this Agreement shall be valid unless made in writing and signed by authorized representatives of both Parties. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute but one instrument. The Parties agree that a scanned or electronically reproduced copy or image of this Agreement shall be deemed an original and may be introduced or submitted in any action or proceeding as a competent evidence of the execution, terms and existence of this Agreement notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Agreement and without the requirement that the unavailability of such original, executed counterpart of this first be proven.

## **30. CONFIDENTIALITY.**

Neither Party shall use the other's name, service mark or trademark in any public announcement or advertisement without the prior written consent of the other Party, which may be withheld in such Party's sole and absolute discretion.

**The submission of this Agreement for examination and negotiation does not constitute an offer to license, or a reservation of, or option for, any portion of the Tower Facility, and Licensee shall have no right to use or occupy any portion of the Tower Facility or any appurtenant easement area hereunder until the execution and delivery of this Agreement by both Licensor and Licensee.**

**ATTACHED EXHIBITS:**

LICENSOR SITE NAME / NUMBER: Kaala PR 1 / 208317  
LICENSEE SITE NAME / NUMBER: Kaala Passive Repeater Station / N/A

- Exhibit A: List of Approved Equipment and location of the Licensed Space
- Exhibit B: Site Drawings indicating the location of Ground Space for Licensee's equipment shelter or space in Licensor's building (as applicable)
- Exhibit C: As-Built Drawings or Construction Drawings to be attached within forty-five (45) days after the Commencement Date in accordance with Section 3
- Appendix I: Definitions
- Appendix II: Insurance

LICENSOR SITE NAME / NUMBER: Kaala PR 1 / 208317  
LICENSEE SITE NAME / NUMBER: Kaala Passive Repeater Station / N/A

**Exhibit A**

**List of Approved Equipment and location of the Licensed Space**

**Exhibit A**

<b>Customer Name:</b> HAWAIIAN ELECTRIC COMPANY, INC.		<b>ATC Asset Name:</b> Kaala PR 1		<b>ATC Asset #:</b> 208317		
		<b>Customer Site Name:</b> Kaala Passive Repeater Station		<b>Customer Site #:</b> N/A		
<b>GROUND SPACE REQUIREMENTS</b>						
<b>Total Lease Area Sq.Ft:</b> 0.00	<b>Primary Contiguous Lease Area</b>	<b>L:</b>	<b>W:</b>	<b>H:</b>	<b>Sq.Ft:</b>	
	<b>Outside Primary Lease Area</b>	N/A	N/A	N/A	N/A	
<b>BACKUP POWER REQUIREMENTS</b>						
<b>Generator:</b> N/A	<b>Fuel Tank Size (gal):</b> N/A	<b>Fuel Type:</b> N/A	<b>Fuel Tank Setback (radius):</b> N/A			
<b>UTILITY REQUIREMENTS</b>						
<b>Power Provided By:</b> Utility Company Direct						
<b>Telco/Interconnect:</b> N/A						
<b>TRANSMITTER &amp; RECEIVER SPECIFICATIONS</b>						
<b>Type:</b> N/A	<b>Quantity:</b> N/A	<b>TX Power (watts):</b> N/A		<b>ERP Power (watts):</b> N/A		
<b>EQUIPMENT SPECIFICATIONS</b>						
<b>Type</b>	DISH-HP	N/A	N/A	N/A	N/A	N/A
<b>Manufacturer</b>	Commscope	N/A	N/A	N/A	N/A	N/A
<b>Model #</b>	HX8-6W	N/A	N/A	N/A	N/A	N/A
<b>Dimensions HxWxD</b>	7.92' x 7.92' x 3.53'	N/A	N/A	N/A	N/A	N/A
<b>Weight (lbs.)</b>	412.0	N/A	N/A	N/A	N/A	N/A
<b>Location</b>	Tower	N/A	N/A	N/A	N/A	N/A
<b>RAD Center AGL</b>	11.0'	N/A	N/A	N/A	N/A	N/A
<b>Tip Height</b>	15.0'	N/A	N/A	N/A	N/A	N/A
<b>Base Height</b>	7.0'	N/A	N/A	N/A	N/A	N/A
<b>Mount Type</b>	Pole Mount	N/A	N/A	N/A	N/A	N/A
<b>Quantity</b>	3	N/A	N/A	N/A	N/A	N/A
<b>Azimuths/Dir. of Radiation</b>	99.84/112.41/246.20	N/A	N/A	N/A	N/A	N/A
<b>Quant. Per Azimuth/Sector</b>	1/1/1	N/A	N/A	N/A	N/A	N/A
<b>TX/RX Frequency Units</b>	MHz	N/A	N/A	N/A	N/A	N/A
<b>TX Frequency</b>	5974-6034,6004-6063,6226-6286,6256-6315	N/A	N/A	N/A	N/A	N/A
<b>RX Frequency</b>	5974-6034,6004-6063,6226-6286,6256-6315	N/A	N/A	N/A	N/A	N/A
<b>Using Unlicensed Frequencies?</b>	No	N/A	N/A	N/A	N/A	N/A
<b>Antenna Gain</b>	38.7 / 39.5 / 40.3	N/A	N/A	N/A	N/A	N/A
<b>Total # of Lines</b>	4	N/A	N/A	N/A	N/A	N/A
<b>Individual Line Configuration</b>	Qty: 4 Type: Elliptical Diameter: EW63 Azimuth/Sector: 1/1/2	N/A	N/A	N/A	N/A	N/A
<b>Conduit Configuration</b>	N/A	N/A	N/A	N/A	N/A	N/A

LICENSOR SITE NAME / NUMBER: Kaala PR 1 / 208317  
LICENSEE SITE NAME / NUMBER: Kaala Passive Repeater Station / N/A

**Exhibit B**

**Site Drawing indicating the location of Ground Space for Licensee's equipment shelter  
or space in Licensor's building (as applicable)**

Licensee shall not commence installation until Licensor has approved in writing said drawing and attached it hereto.

LICENSOR SITE NAME / NUMBER: Kaala PR 1 / 208317  
LICENSEE SITE NAME / NUMBER: Kaala Passive Repeater Station / N/A

**Exhibit C**

**As Built Drawings or Construction Drawings**

To be attached hereto within forty-five (45) days after the Commencement Date.

## Appendix I

### Defined Terms

**Affiliate(s):** Any corporation, partnership, limited liability company or other entity that (i) is controlled directly or indirectly (through one or more subsidiaries) by Licensee, (ii) is the successor or surviving entity by a merger or consolidation of Licensee pursuant to Applicable Law, or (iii) purchases all or substantially all of the assets of Licensee. For purposes of this definition, "control" means the possession of the right through the ownership of fifty percent (50%) or more of the shares with voting rights to effectively direct the business decisions of the subject entity.

**Agreement:** defined in the introductory paragraph.

**Annual Escalator:** defined in Section IV.

**Applicable Law:** All applicable statutes, ordinances, laws, regulations and directives of any federal, state or local governmental unit, authority or agency having jurisdiction over a Licensed Space or affecting the rights and obligations of Licensor or Licensee under this Agreement, including without limitation, the Communications Act of 1934, as amended from time to time, FCC Rules and Regulations, and the rules, regulations and written policies and decisions of the FAA.

**Application:** defined in Section IV.

**Application Fee:** defined in Section IV.

**Approved Equipment:** the communications system, including antennas, radio equipment, cabling and conduits, shelter and/or cabinets and other personal property owned or operated by Licensee at the Licensed Space, as defined in Exhibit A or B to this Agreement.

**BLM:** defined in Subsection 5(d).

**Business Day:** a day other than a Saturday, Sunday or legal holiday for commercial banks under the laws of the United States or the state in which the Tower Facility is located.

**Claims:** demands, claims, suits, actions, proceedings or investigations brought against a Party by an unrelated or unaffiliated person or entity.

**Commencement Date:** defined in Section IV.

**Common Expenses:** defined in Section 7.

**Connection Fee:** defined in Section IV.

**Construction Drawings:** defined in Section 3.

**Damages:** debts, liabilities, obligations, losses, damages, excluding consequential or punitive damages, costs and expenses, interest (including, without limitation, prejudgment interest), penalties, reasonable legal fees, court costs, disbursements and costs of investigations, deficiencies, levies, duties and imposts.

**Easement:** defined in Section 2.

**Effective Date:** defined in the introductory paragraph.

**FAA:** the United States Federal Aviation Administration or any successor federal agency established for the same or similar purpose.



**FCC:** the United States Federal Communications Commission or any successor federal agency established for the same or similar purpose.

**FCC Rules and Regulations:** All of the rules, regulations, public guidance, written policies and decisions governing telecommunications generally and wireless telecommunications specifically as promulgated and administered by the FCC, which on the Effective Date includes, but is not limited to, those administered by the Wireless Telecommunications Bureau of the FCC and more specifically referenced as the Code of Federal Regulations, title 47, parts 0 through 101, as amended.

**Final Rule:** defined in Subsection 11(g).

**Ground Lease:** defined in Section 20.

**Ground Space:** The portion of the Tower Facility licensed for use by Licensee to locate a portion of the Approved Equipment thereon, in the square footage amount depicted on Exhibit B of this Agreement. In no event shall the Ground Space include the air space or rights above the Approved Equipment located in the Ground Space.

**Hazardous Substances:** Any hazardous material or substance which is or becomes defined as a hazardous substance, pollutant or contaminant subject to reporting, investigation or remediation pursuant to Applicable Law; any substance which is or becomes regulated by any federal, state or local governmental authority; and any oil, petroleum products and their by-products.

**Holdover Fee:** defined in Subsection 6(c).

**Indemnified Party:** any person or entity entitled to indemnification under Section 15 hereof.

**Indemnifying Party:** any person or entity obligated to provide indemnification under Section 15 hereof.

**Initial Term:** defined in Section IV and referenced in Subsection 6(c).

**Interference:** defined in Subsection 11(a)(i).

**Labeling Fee:** defined in Section 9.

**Licensed Frequencies:** defined in Subsection 11(a)(ii).

**Licensed Space:** Location of the Approved Equipment on the Tower and at the Ground Space as more specifically described in Exhibits A and B attached hereto.

**Licensed User:** defined in Subsection 11(a)(iii).

**Licensee:** defined in the introductory paragraph.

**Licensor:** defined in the introductory paragraph.

**Monthly License Fee:** defined in Section IV and referenced in Subsection 5(a).

**MPE:** defined in Section 25.

**Notice Address:** defined in Section 18.

**NTP (Notice to Proceed):** Written notice from Licensor to Licensee acknowledging that all required documentation for the construction and installation of the Approved Equipment has been received and

approved by Licensor and Licensee is authorized to commence its installation of the Approved Equipment at the Licensed Space, as more particularly set forth in Subsection 10(a) of this Agreement.

**Paying Carrier:** defined in Subsection 24(b).

**Paying Carrier Rate:** defined in Subsection 24(b).

**Party(ies):** Licensor or Licensee.

**PCN Default:** defined in Subsection VI.A.

**PCN Retention Fee:** defined in Subsection VI.A.

**PCNs:** defined in Subsection VI.A.

**Permitted Frequencies:** defined in Section III and as shown in Exhibit A.

**Priority User:** defined in Subsection 11(a)(iv).

**Relocation Application Fee:** defined in Section IV.

**Relocation Notice:** defined in Subsection 24(b).

**Remittance Address:** defined in Section II.

**Renewal Term(s):** defined in Section IV and referenced in Subsection 6(b).

**RF Emissions:** defined in Section 25.

**Site Inspection Fee:** defined in Section IV.

**SSIS:** defined in Subsection 10(b).

**SSIS Fee:** defined in Subsection 10(b).

**Structural Analysis Fee:** defined in Subsection 10(b).

**Subsequent User:** defined in Subsection 11(a)(v).

**Term:** Initial Term and each Renewal Term which is effected pursuant to Section 6 of this Agreement.

**Tower:** A communications or broadcast tower owned and operated by Licensor and located at the Tower Facility.

**Tower Facility:** Certain real property owned, leased, subleased, licensed or managed by Licensor shown in Section I of this Agreement, on which a Tower owned, leased, licensed or managed by Licensor is located.

**Trigger Condition:** defined in Section 24(b).

**Unlicensed Frequencies:** defined in Subsection 11(a)(vi).

**Unlicensed User:** defined in Subsection 11(a)(vii).

**Utility Change Event:** defined in Subsection 5(b).

LICENSOR SITE NAME / NUMBER: Kaala PR 1 / 208317  
LICENSEE SITE NAME / NUMBER: Kaala Passive Repeater Station / N/A

**Utility Fee:** defined in Section IV.

**USFS:** defined in Section 5(d).

**Work:** all work relating to the construction, installation, relocation and reconfiguration of Licensee's Approved Equipment on the Tower, including without limitation, construction management, construction of an equipment pad, installation or modification of lines, antennas, shelters and equipment cabinets.

## Appendix II

### Insurance

A. Licensor shall maintain in full force during the Term of this Agreement the following insurance:

1. Worker's Compensation Insurance and Employers' Liability Insurance with limits of \$1,000,000.00 per accident/occurrence, as required by Hawaii State law.
2. Commercial General Liability Insurance (Bodily Injury and Tower Facility Damage), the limits of liability of which shall be \$1,000,000.00 per occurrence.
3. An umbrella policy of not less than Five Million Dollars (\$5,000,000.00) to apply in excess of the General Liability and Employers Liability underlying policies as specified above.

The above insurance shall provide that Licensor will provide written notice as soon as reasonably practicable should any of the insurance policies required herein be cancelled or not renewed upon expiration. The insurance specified in this Item A shall contain a waiver of subrogation against Licensee and shall include Licensee as an additional insured, and shall be primary over any insurance coverage in favor of Licensee but only with respect to and to the extent of the insured liabilities assumed by Licensor under this Agreement and shall contain a standard cross-liability.

B. Licensee shall maintain in full force during the Term of this Agreement and shall cause all contractors or subcontractors performing Work on any Licensed Space prior to the commencement of any such Work on behalf of Licensee to maintain the following insurance:

1. Worker's Compensation Insurance and Employers' Liability Insurance with limits of \$1,000,000.00 per accident/occurrence, as required by Hawaii State law. Hawaii State authorized self-insurance is acceptable.
2. Commercial General Liability Insurance (Bodily Injury and Tower Facility Damage), the limits of liability shall be \$1,000,000.00 per occurrence.
3. An umbrella policy of Five Million Dollars (\$5,000,000.00) to apply in excess of the General Liability and Employers Liability underlying policies as specified above.

The above insurance shall provide that Licensor will receive written notice as soon as reasonably practicable should any of the insurance policies required herein be cancelled or not renewed upon expiration. The insurance specified in this Item B shall contain a waiver of subrogation against Licensor and shall include Licensor as additional insured, and shall be primary over any insurance coverage in favor of Licensor but only with respect to and to the extent of the insured liabilities assumed by Licensee under this Agreement and shall contain a standard cross-liability.

Self-insurance will be acceptable subject to Licensee providing, upon Licensor's written request, appropriate governmental authorization and qualification which shall include written documentation communicating its self-insurance program has coverages that meet or exceed the policies set forth herein and the steps Licensor would need to take to file a claim.

C. Notwithstanding the foregoing insurance requirements, (a) the insolvency, bankruptcy, or failure of any insurance company carrying insurance for either Party, or failure of any such insurance company to pay Claims accruing, shall not be held to waive any of the provisions of this Agreement or relieve either Party from any obligations under this Agreement, and (b) Licensor reserves the right, from time to time, to increase the required liability limits described above in Items A and/or B in accordance with then-current customary insurance requirements in the tower industry nationally, in which event Licensor and Licensee shall mutually agree with the modified requirements.

**AMENDED**

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

March 23, 2018

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

GL S-4223  
OAHU

Approve Mediated Settlement of Rent Reopening Dispute in General Lease No. S-4223, InSite Towers Development, LLC; Mt. Kaala, Mokuleia, Waialua, Oahu, Hawaii; Tax Map Key: (1) 6-7-003: Portions

APPLICANT:

InSite Towers Development, LLC, ("InSite")

LEGAL REFERENCE:

Sections 171-6, 7, and 17 Hawaii Revised Statutes, as amended.

LOCATION:

66-900 Farrington Highway, Mount Kaala, Mokuleia, Waialua, Oahu, Hawaii; Tax Map Key: (1) 6-7-003: Portions. See Exhibit A.

Part 1: Being a portion of the Government Land of Mokuleia. Being also a portion of Mokuleia Forest Reserve covered by Governor's Proclamation dated December 31, 1918.

Part 2: Being a portion of the Government Land of Mokuleia. Being also a portion of Mount Kaala Access Road covered by General Lease No. S-3748 to United States of America (Federal Aviation Agency) within the Mokuleia Forest Reserve covered by Governor's Proclamation dated December 31, 1918.

AREA:

9,200 sq. ft. total

*as amended*  
APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON  
March 23, 2018 *Co*

**EXHIBIT 3**

ZONING:

State Land Use Commission: Conservation District  
County Zoning: Restrictive Preservation District

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act  
DHHL 30 entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Microwave Station and other Radio Communication Facilities

TERM OF LEASE:

Original term of sixty-five (65) years, commencing on March 1, 1966 and expiring on February 28, 2031.

The lease was amended, as approved by the Board at its meeting on October 24, 2014 and by document dated March 11, 2016, to provide for sharing of gross revenue from subleases and licenses. The amendment provides 50 percent of revenue for the first sublease/license, 40 percent for the second sublease/license and 50 percent for the third and subsequent subleases/licenses be paid by lessee to the lessor.

ANNUAL RENTAL UNDER LEASE:

Rent for the first 10 years was set at \$300 per year and renegotiates at 10-year intervals.

March 1, 1966 to February 28, 1976 - \$300/year  
March 1, 1976 to February 28, 1986 - \$966/year  
March 1, 1986 to February 28, 1996 - \$1,270/year  
March 1, 1996 to February 28, 2006 - \$27,600/year  
March 1, 2006 to February 28, 2016 - \$31,400/year  
March 1, 2016 to February 28, 2026 - Renegotiates  
March 1, 2026 to February 28, 2031 - Renegotiates

RENTAL REOPENINGS:

Rental reopenings in the original term are at the end of the 10<sup>th</sup>, 20<sup>th</sup>, 30<sup>th</sup>, 40<sup>th</sup>, 50<sup>th</sup> and 60<sup>th</sup> years of the term. The instant rental reopening occurred on March 1, 2016 and ends February 28, 2026.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Staff did not solicit comments from other agencies as the request does not trigger any change of its existing use at the location.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>  x  </u>	NO <u>    </u>
Registered business name confirmed:	YES <u>  x  </u>	NO <u>    </u>
Good standing confirmed:	YES <u>  x  </u>	NO <u>    </u>

HISTORY

The subject site is located near the top of Mount Kaala, in Mokuleia, on the island of Oahu. In 1966, the State leased the land by direct negotiation to Hawaiian Telephone Company for a term of 65 years to be used as a microwave station and radio communication facility. Hawaiian Telephone Company had a number of name changes over the years and is now known as Hawaiian Telcom, Inc. (“HTI”).

Around April/May 2010, pursuant to Staff’s recommendation, the Chairperson gave consent to a License Agreement dated April 15, 2010 between HTI and Kahuku Wind Power, LLC (“KWP”). The consent document had been executed without the State receiving a share of the sublease/license rent.

On February 22, 2011, the Chairperson gave another consent to transfer KWP’s interest under the License Agreement to Hawaiian Electric Company, Inc. (“HECO”). At the time, HTI was collecting more from its license rental with KWP (\$33,153.57) than it was paying in ground rent (\$31,400) to the State. HTI’s equipment on the subject property was constructed and installed decades earlier and was likely fully amortized by then. Moreover, with the exception of 80 square feet within the existing tower which was used for storage, KWP had paid for the cost of the improvement and equipment it required for its operation which included three (3) new antennas, a new generator and an underground fuel storage. Thus, Staff concluded, the sublease rent payable by KWP to HTI was primarily from the value of the location of the subject site itself and not from any improvements made by HTI.

On July 22, 2011, the Department sought to obtain a percentage share of HTI’s sublease rent. The Staff recommended an amendment to the February 22, 2011 consent to reflect a conditional approval of KWP’s interest to HECO subject to an annual sandwich rent payment equivalent to 50% of the sublease rents. In clarifying, the Staff explained, “Currently, KWP is paying \$33,153.57 annually, and 50% of the rent equates to \$16,577 (rounded).” (Brackets in original.) See Exhibit B.

The Board deferred its decision until August 26, 2011, to allow HTI and HECO additional time to review the July 22, 2011 submittal, then deferred the matter once more to October 28, 2011.

During the course of the deferment, HECO researched and concluded that the Department's proposed 50% sharing of the sublease rent by the State was "not out of line with market practice." On October 28, 2011, the Board approved amending the February 22, 2011 submittal to reflect an annual additional rent payment, equivalent to 50% of the rent collected by HTI. See Exhibit C.

In the fall of 2014, HTI sought to assign the subject lease to InSite. The assignment was part of a larger transfer of HTI tower facilities to InSite. HTI had recently emerged from bankruptcy and made an economical business decision to transfer five (5) State leases to InSite who would then sublease the facilities back to HTI.

On October 24, 2014, the Department recommended approval of HTI's request to assign the subject general lease to InSite, with the understanding that once consummated, HTI would take a sublease back from InSite. Staff further recommended the Lease be updated to reflect that all subleases require prior written approval of the Board, and that the State share in the gross revenues from the subleases at the rate of 50% for the first sublease, 40% for the second sublease, and 50% for the third and subsequent subleases.

HTI and InSite entered into an Assignment and Assumption of Ground Lease made effective as of December 30, 2014.

Memorializing the October 24, 2014 approval, an Amendment of General Lease No. S-4223 and Consent to Assignment of General Lease No. S-4223 were entered into between the State and HTI on March 11, 2016.

REMARKS:

The Lease rent for the subject property renegotiated on March 1, 2016. An appraisal of rental value for the lease was completed by the Department's appraiser. InSite did not agree with the appraised value and had its own appraiser prepare an appraisal report. While the two appraisers were nearly identical on the fair market value of the ground lease, (\$39,500 pursuant to the Department's appraiser and \$38,500 pursuant to InSite's appraiser) InSite's appraiser based his ground lease valuation on the assumption that the revenues from the subleases applied only to the extent that the revenue share calculation exceeded the base rent. The Department disagreed.

Disputes in rent reopenings for leases for public lands are governed by Hawaii Revised Statutes (HRS), section 171-17, as amended. Prior to July 1, 2014, rent disputes were generally arbitrated by a three-member arbitration panel. However, the Legislature



amended HRS section 171-17, effective as of July 1, 2014, to require non-binding mediation by a single mediator prior to undergoing binding arbitration.

Section 171-17(d), HRS, states in part: “If the board’s and lessee’s appraisers do not agree upon the lease rental, the lessee and the board shall in good faith attempt to resolve the dispute by nonbinding mediation by a single mediator mutually agreed upon by the parties.” This resolution is in effect a settlement of the dispute because the mediation is nonbinding and both parties, Department and InSite, have to agree on the rent, as opposed to an arbitration of rent determined by a third party that is final and binding on the parties. In mediation, the parties take many considerations into account, including the cost of an arbitration with one arbitrator if mediation fails.

The parties agreed to have real estate appraiser James Hallstrom, Jr., MAI, CRE, FRICS serve as the mediator. Mediation between the parties was conducted on January 31, 2018 in Honolulu. InSite was represented by its in-house general counsel, Roni Jackson, Esq., and by its Honolulu counsel, Rosemary Fazio, Esq. Participants from the Department were Russell Tsuji, Land Administrator, Blue Kaanehe, Appraisal and Real Estate Specialist, and Daniel Morris, Deputy Attorney General.

During the mediation InSite shared that the rent the subleases generated was far less than the expenses incurred to maintain the subject site. Thus, unlike its predecessor-in-interest, HTI, InSite was taking a marked loss on the leasing of the subject property. InSite explained that since the subject lease was assigned as part of a larger transfer from HTI, it expected to address the appropriateness of the additional rent provision at the March 2016 rent reopening.

The Department, on the other hand, maintained that the additional rent provision was not subject to the rent reopening. Moreover, the provision was not against the base rent but *in addition* to the base rent as clarified by the Staff in its July 22, 2011 Board submittal. However, the fact that InSite was taking a sizeable loss, and the Department’s need to use good and flexible land management practices and standards when analyzing a sublease rent proposition, weighed heavily on the final outcome of the mediated settlement.

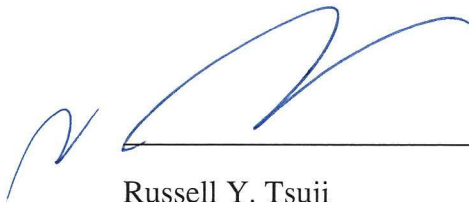
Ultimately, the parties agreed that the ground rent commencing March 1, 2016 through February 28, 2026 would be \$39,000 per annum. The rent for the last reopening period, commencing March 1, 2026 through February 28, 2031 would also be \$39,000. Lastly, an advancement of \$39,000 would be paid in a single lump-sum upon the full execution of the agreement. The specificities are within the attached Second Amendment of General Lease No. S-4223 which is marked as Exhibit D.

The Board may go into Executive Session pursuant to Section 92-5(a) (4), Hawai‘i Revised Statutes, in order to consult with counsel on questions and issues pertaining to the Board’s powers, duties, privileges, immunities, and liabilities.

RECOMMENDATION:

That the Board approve the mediated settlement for the rent reopening in General Lease No. S-4223 for the period of March 1, 2016 through February 28, 2026, and March 1, 2026 through, to the end of the term, February 28, 2031 at \$39,000 per year together with an advancement of \$39,000 to be paid in a single lump-sum upon the full execution of the agreement.

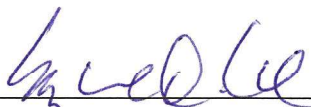
Respectfully Submitted,



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Russell Y. Tsuji  
Land Division Administrator

APPROVED FOR SUBMITTAL:



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Suzanne D. Case, Chairperson

Land Board Meeting: March 23, 2018; D-7: Approved as amended.

Approved as amended. See attached page.

Land Board Meeting: March 23, 2018; D-7: Approved as amended.

**Approved as amended.** The Board amended the title of the item to read as follows (new language underscored):

Approve Mediated Settlement of Rent Reopening Dispute and Amendment of Lease Pursuant to Settlement in General Lease No. S-4223, InSite Towers Development, LLC; Mt. Kaala, Mokuleia, Waialua, Oahu, Hawaii; Tax Map Key: (1) 6-7-003: Portions.

Similarly, the Board amended the Recommendation section to read:

That the Board approve the mediated settlement for the rent reopening and amendment of lease pursuant to settlement in General Lease No. S-4223 for the period of March 1, 2016 through February 28, 2026, and March 1, 2026 through, to the end of the term, February 28, 2031 at \$39,000 per year together with an advancement of \$39,000 to be paid in a single lump-sum upon the full execution of the agreement.



**NOW, THEREFORE**, in consideration of the mutual promises herein set forth and other good and valuable consideration, LESSOR and LESSEE hereby agree as follows:

1. Unless otherwise defined herein, any capitalized term used in this Second Amendment shall have the meaning ascribed to such term in the Lease.
2. The Parties agree and acknowledge that commencing on March 1, 2016 and continuing through and including the February 28, 2031 final expiration date of the Lease, the annual rental due thereunder shall be Thirty-Nine Thousand and 00/100's Dollars (\$39,000.00), and that all percentage rent/revenue share provisions and references in the Lease (including, without limitation, those referenced in Section 13 of the Lease and in the First Amendment thereto which incorrectly references the "Subletting" provision of the Lease as Section 14, rather than Section 13) are null and void and of no further force or effect. Notwithstanding the foregoing, the Parties agree and acknowledge that there shall be no look back or true up with respect to rents and other amounts actually paid by LESSEE to LESSOR during the period March 1, 2016 through February 28, 2018.
3. The Parties further agree and acknowledge that notwithstanding anything to the contrary in the Lease, including, without limitation, Paragraph B (page 2) and Section 1 (page 4) of the Lease, no further rent adjustment(s) of any kind or nature shall occur through the remainder of the Lease term.
4. Not later than five (5) business days following the full execution of this Second Amendment by the Parties, LESSEE shall tender to LESSOR a single lump sum payment in the amount of Thirty-Nine Thousand and 00/100's (\$39,000.00) (the "Lump-Sum Payment"), which Lump-Sum Payment shall be made by the wire transfer of immediately available funds or, if requested by LESSOR, by LESSEE's check.
5. LESSOR and LESSEE respectively hereby covenant and warrant that the person executing this Second Amendment on its behalf is duly authorized to do so, and that this Second Amendment constitutes a binding obligation of the entity on whose behalf (s)he has signed. This Second Amendment may be executed in duplicate counterparts, each of which shall be deemed an original. The parties agree that, except as amended hereby, the terms and conditions of the Lease shall remain in full force and effect; provided, however, that in the event of a conflict between the terms of the Lease and the terms of this Second Amendment, the terms of this Second Amendment shall control.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, the undersigned have executed this Second Amendment of General Lease Agreement No. S-4223 as of the Execution Date set forth above.

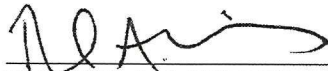
**LESSOR:**

**STATE OF HAWAII**

Approved by the Board of  
Land and Natural Resources  
at its meeting held on  
\_\_\_\_\_, 2018.

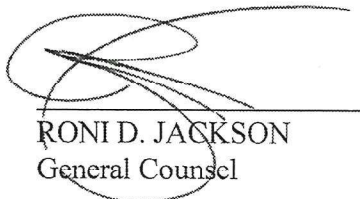
By: \_\_\_\_\_  
SUZANNE D. CASE  
Chairperson  
Board of Land and  
Natural Resources

APPROVED AS TO FORM:

  
\_\_\_\_\_  
DANIEL A. MORRIS  
Deputy Attorney General  
Dated: \_\_\_\_\_

**LESSEE:**

**INSITE TOWERS DEVELOPMENT, LLC**

By:   
\_\_\_\_\_  
RONI D. JACKSON  
General Counsel



**NOW, THEREFORE**, in consideration of the mutual promises herein set forth and other good and valuable consideration, LESSOR and LESSEE hereby agree as follows:

1. Unless otherwise defined herein, any capitalized term used in this Second Amendment shall have the meaning ascribed to such term in the Lease.
2. The Parties agree and acknowledge that commencing on March 1, 2016 and continuing through and including the February 28, 2031 final expiration date of the Lease, the annual rental due thereunder shall be Thirty-Nine Thousand and 00/100's Dollars (\$39,000.00), and that all percentage rent/revenue share provisions and references in the Lease (including, without limitation, those referenced in Section 13 of the Lease and in the First Amendment thereto which incorrectly references the "Subletting" provision of the Lease as Section 14, rather than Section 13) are null and void and of no further force or effect. Notwithstanding the foregoing, the Parties agree and acknowledge that there shall be no look back or true up with respect to rents and other amounts actually paid by LESSEE to LESSOR during the period March 1, 2016 through February 28, 2018.
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[SIGNATURE PAGE FOLLOWS]

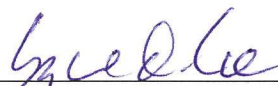


IN WITNESS WHEREOF, the undersigned have executed this Second Amendment of General Lease Agreement No. S-4223 as of the Execution Date set forth above.

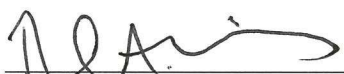
**LESSOR:**

**STATE OF HAWAII**

Approved by the Board of  
Land and Natural Resources  
at its meeting held on  
3/23, 2018.

By:   
\_\_\_\_\_  
SUZANNE D. CASE  
Chairperson  
Board of Land and  
Natural Resources

APPROVED AS TO FORM:

  
\_\_\_\_\_  
DANIEL A. MORRIS  
Deputy Attorney General  
Dated: 3/23/2018

**LESSEE:**

**INSITE TOWERS DEVELOPMENT, LLC**

By:   
\_\_\_\_\_  
RONI D. JACKSON  
General Counsel