Council Meeting of
November 23, 2010

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the Council:

SUBJECT: City Manager – Authorize a Option to License and form of License Agreement with Clearwire Wireless, LLC for use of a portion of the tower located on the City Hall Complex at 3031 Torrance Boulevard

Expenditure: None

RECOMMENDATION

Recommendation of the City Manager that City Council approve an Option to License and form of License Agreement with Clearwire Wireless, LLC a Nevada limited liability company for location of support equipment at ground level and antenna equipment on portion of the City Hall Communication Tower located north of the City Hall Complex at 3031 Torrance Boulevard.

Funding

The City will receive annual revenue of $36,000 plus 3% annual increases.

BACKGROUND/ANALYSIS

The communications tower located behind City Hall was constructed to enhance communication capability for the City, specifically in the area of public safety. The tower was constructed with excess capacity and has been the subject of potential use as a revenue stream utilizing the excess capacity.

The Option to License and License Agreement before you this evening is with Clearwire Wireless (Clearwire). Clearwire is constructing a network to provide high speed internet access and desires to use the tower as part of their network. Clearwire has approached the City on use of a portion of the existing tower.

The tower is used by the City for safety communications as well as other types of communication for city purposes. Prior to bringing this License forward, staff worked with Clearwire to guarantee that no existing or future City uses would be compromised from their proposed use. The Agreement before you this evening provides for current and future City requirements to have priority over Clearwire and if there is ever any sort of interference it is Clearwire's immediate responsibility to correct the problem or terminate use until a solution is found. It should be noted that the City's Communication and Information Technology Department has reviewed Clearwire's specifications and broadcast frequency and has determined that their use and the City's are compatible.

The Agreement before you is for an Option to License that will allow Clearwire a period of time to complete their due diligence prior to the execution of a License Agreement. The Option provides for a fee of $3,000 to the City. If the License is executed the annual rent is $36,000 with an annual inflator of 3%. The actual License is an attachment to the Option; approval tonight also approves the execution of the License should Clearwire move forward. The License gives Clearwire the right to use a portion of the tower as well as a ground area of 8 feet by 14 feet for support equipment. All construction and permit costs are the responsibility of Clearwire. The License term is for an initial 5 years with five additional 5-year options making the potential term 30 years.

Respectfully submitted,

by Brian K. Sunshine
Assistant to the City Manager

CONCUR:

Rick Shigaki
Communications and
Information Technology Director

LeRoy J. Jackson
City Manager

Attachment:
A. Option to License

OPTION TO LICENSE

This Option to LICENSE (this "Agreement") is made this 23rd day of November, 2010, between the CITY OF TORRANCE, a municipal corporation, with its principal offices located at 3031 Torrance Boulevard, Tax ID # 95-6000803 hereinafter designated Owner and Clearwireless LLC, a Nevada limited liability company designated LICENSEE. The OWNER and LICENSEE are at times collectively referred to hereinafter as the "Parties" or individually as the "Party".

OWNER is the owner of that certain real property located in the City of Torrance, Los Angeles County, State of California, as more particularly described in Exhibit "A" (the entirety of OWNER's property is referred to hereinafter as the "OWNER's Property"). OWNER's Property is a part of the Civic Center Complex located at 3031 Torrance Boulevard. LICENSEE desires to obtain an option to LICENSE a portion of said OWNER's Property, with a right-of-way for access thereto, as more fully described in the LICENSE, the "Premises".

NOW THEREFORE, in consideration of the sum of Three Thousand Dollars ($3,000.00), hereinafter referred to as "Option Money", to be paid in good and immediately available funds by LICENSEE to the OWNER within thirty (30) days of the Parties' full execution of this Agreement (the "Effective Date"), the OWNER hereby grants to LICENSEE the option to LICENSE the Premises (the "Option"), for the rent, term, and in accordance with the covenants and conditions set forth in the LICENSE, the form of which is attached hereto as Exhibit "B". The Option shall commence on the Effective Date and shall continue until 4:00 p.m. on the date that is twelve (12) calendar months following the Effective Date (the "Initial Option Period"). At LICENSEE's election, LICENSEE may extend the Initial Option Period for two additional periods of six (6) calendar months (each, an "Extended Option Period"), so long as (i) LICENSEE is not in default hereunder (after the giving of written notice and beyond the expiration of all applicable cure periods), (ii) prior to the expiration of the Initial Option Period or the first Extended Option Period, as applicable, LICENSEE has delivered to OWNER, (a) written notice that LICENSEE intends to extend the applicable option period, together with (b) an additional payment in good and immediately available funds in the amount of Three Thousand Dollars ($3,000.00) for each applicable extension. The time during which the Option may be exercised may be further extended by mutual agreement by the Parties in writing.

In the event that LICENSEE desires to exercise the License Agreement (Exhibit B) and has performed all acts in the time and manner as required by the terms hereof and is not in default under any provision of this Agreement (after the giving of written notice and beyond the expiration of all applicable cure periods), LICENSEE may exercise its Option by delivering to OWNER on or before 4:00 p.m. on the date which the Option or any extension granted hereunder would otherwise expire, the following:

(a) written notice of such exercise; and

(b) a certified check or other immediately available funds in the amount of Three Thousand Dollars ($3,000.00), in payment of the first month's rent, as required by Section 4 of the License.

On the date of LICENSEE's delivery of the foregoing to OWNER, the LICENSE shall automatically take effect..

Should LICENSEE fail to exercise the Option or any extension thereof within the time herein limited, all rights and privileges granted hereunder shall be deemed completely surrendered, this Option automatically terminated, without necessity of any action by either Party, and OWNER shall retain all money paid for the Option, and, except as expressly set forth herein, no additional money shall be payable or other obligation required to be satisfied by either Party to the other.

If during the Option period, the OWNER decides to subdivide, sell or change the status of the OWNER's Property or its property contiguous thereto OWNER shall immediately notify LICENSEE in writing so that LICENSEE can take steps necessary to protect LICENSEE's interest in the Premises.

Except as hereinafter set forth, LICENSEE may not sell, transfer, assign or hypothecate this Option, or its interest therein, in whole or in part, without the prior written consent of OWNER in each instance having first been obtained, which such consent will not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing the Option may be transferred or assigned by the LICENSEE with prior written notice to OWNER, but without any approval or consent of the OWNER to (a) the LICENSEE's principal or subsidiaries of LICENSEE's principal, (b) to any entity which acquires all or substantially all of LICENSEE's assets in the market (as defined by the Federal Communications Commission) in which the OWNER's Property is located by reason of a merger, acquisition or other business reorganization, or (c) to any entity which acquires or receives an interest in the majority of communication towers of the LICENSEE in the market (defined by the Federal Communications Commission) in which the OWNER's Property is located (collectively, "Permitted Assignees"), provided that any such Permitted Assignee shall (i) have a net worth of at least Twenty-Five Million Dollars ($25,000,000) (calculated in accordance with generally accepted accounting principles) as of the date of such proposed assignment, and (ii) in OWNER'S reasonable judgment, does not have a reputation which would embarrass the OWNER or disparage its reputation - e.g., a reputation for connections with or control by criminal elements, past criminal violations or prosecutions, or a reputation for disreputable practices. In addition, for the purposes of this Section, the term "principal" shall mean, as of the date hereof, any entity holding, directly or indirectly, an interest in LICENSEE of fifty-one percent (51%) of greater.

OWNER shall reasonably cooperate, at no expense to OWNER, with LICENSEE in its effort to (and prior to LICENSEE'S exercise of the Option, LICENSEE shall) obtain all certificates, permits and other approvals that may be required by any Federal, State or Local authorities which will permit LICENSEE'S proposed use of the Premises (as described in the LICENSE). OWNER shall take no action which would adversely affect the status of the OWNER's Property with respect to the proposed use by LICENSEE. As a condition precedent to LICENSEE'S exercise and OWNER'S acceptance of the exercise of the Option, LICENSEE, at LICENSEE'S sole cost and expense, shall obtain any and all governmental approvals required for LICENSEE'S intended use of the Premises, approved by OWNER in OWNER'S sole and absolute discretion.

It is understood and agreed that LICENSEE's ability to use the Premises is contingent upon LICENSEE's obtaining, at LICENSEE's sole cost and expense, after the execution date of this Agreement (a) all of the certificates, permits and other approvals that may be required by any Federal, State or Local authorities, (collectively, the "Governmental Approvals"), as well as (b) a satisfactory building structural analysis and/or soil boring tests (collectively, "Environmental Analysis") (which Environmental Analysis is subject to the provisions of the next paragraph) which will permit LICENSEE use of the Premises as set forth herein. OWNER, at not cost to OWNER, shall cooperate with LICENSEE in LICENSEE's effort to obtain the Governmental Approvals and the Environmental Analysis and shall take no action which would adversely affect the status of the Premises with respect to the proposed use thereof by LICENSEE.

OWNER shall permit LICENSEE with prior notice, during the Option period, free ingress and egress to the Premises to conduct such surveys, inspections, structural strength analysis, subsurface soil tests, and other activities of a similar nature as LICENSEE may deem necessary, at the sole cost of LICENSEE; provided, however, that any invasive testing shall be subject to the prior written approval of OWNER, which shall not be unreasonably withheld, conditioned or delayed. Any and all testing shall be done pursuant to a work plan approved by OWNER in advance of such testing, which approval shall not be unreasonably withheld, conditioned or delayed. All tests completed on the Premises shall be undertaken in a safe, workmanlike and reasonable manner. LICENSEE shall keep the Premises and the OWNER's Property free and clear of any liens and will indemnify, defend and hold OWNER and the OWNER's Property harmless from all claims and liabilities asserted against OWNER or the OWNER's Property and/or the Premises as a result of any such entry by LICENSEE, its agents, employees or representatives, excepting, however, any such claims that are due to or caused by the gross negligence or willful misconduct of the OWNER. The provisions of this paragraph relating to LICENSEE'S indemnity shall expressly survive the termination of the Option.

All notices, demands, or other communications under this Option will be in writing. Notice will be sufficiently given for all purposes as follows:

A. Personal delivery. When personally delivered to the recipient: notice is effective on delivery.

B. First Class mail. When mailed first class to the last address of the recipient known to the Party giving notice: notice is effective three mail delivery days after deposit in a United States Postal Service office or mailbox.

C. Certified mail. When mailed certified mail, return receipt requested: notice is effective on receipt, if delivery is confirmed by a return receipt.

D. Overnight delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account: notice is effective on delivery, if delivery is confirmed by the delivery service.

Addresses for purposes of giving notice are as follows:

LICENSEE	Clear Wireless LLC Attn: Network Property Manager 4400 Carillon Point Kirkland, WA 98033 Telephone: 425-216-7600 Fax: 425-216-7900
	Clear Wireless LLC Attention: Legal Department 4400 Carillon Point Kirkland, WA 98033 Telephone: 425-216-7600 Fax: 425-216-7900
OWNER	City of Torrance 3031 Torrance Boulevard Torrance, California 90509-2970 Attention: City Clerk Copy To: City Attorney and City Manager Telephone 310-618-2870 Fax: 310-618-2931

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the Party to be notified, will be deemed effective as of the first date the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messenger or overnight delivery service.

Either Party may change its notice information by giving the other Party notice of the change in any matter permitted by this Agreement.

This Option shall not be amended or modified in any way, and no purported amendment or modification shall be effective, unless same has been (i) approved by the City Council and set forth in a written instrument, expressly purporting to amend this Option, executed by the City Manager or the Mayor for the City; and (ii) executed by LICENSEE.

Time is of the essence of this Option.

The waiver by either LICENSEE or the OWNER of any breach of any of the covenants, agreements, obligations, conditions or provisions of this Agreement must be in writing and shall not be construed to be a waiver of such covenant, agreement, obligation, condition, term or provision upon any subsequent breach of the same or of any other covenant, agreement, obligation, condition, term or provision herein contained.

In the event any provision under this Option shall require or anticipate that either Party hereto make a judgment, give consent or approval, or exercise discretion, that Party agrees to do so reasonably and in good faith, with due diligence, communicated to the other Party in writing

except in those instances where a provision of this Agreement specifically sets forth a different standard of approval, in which case the specific standard of that Option provision shall govern.

Exhibits "A", "B", each as attached to this Option, are incorporated herein and made a part hereof.

If any provision of this Option is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

This Option incorporates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations and previous agreements between the Parties with respect to all or part of the subject matter hereof.

Each Party acknowledges and agrees that it has had the opportunity to thoroughly review the terms contained herein, to obtain the advice of independent legal counsel in connection therewith, and that this Option is the product of negotiations between the Parties. Consequently, the Parties agree that in the event of any dispute arising out of this Agreement, this instrument shall not be construed against one Party, and in favor of another, based upon the fact that one Party may have drafted this Option, or a particular provision thereof.

This Agreement is made under and shall be construed pursuant to the laws of the State of California. Any suit hereon or hereunder shall be brought only in a state or federal court sitting in the City of Los Angeles, State of California, and all Parties hereto hereby agree that venue shall lie therein.

[THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK.
SIGNATURES FOLLOW.]

IN WITNESS WHEREOF, the Parties hereto have executed this Option the date and year first above written.

OWNER:

City of Torrance, a municipal corporation

By:_____
Name: Frank Scotto
Title: Mayor, City of Torrance

Date: _____

ATTEST:

By:_____

Sue Herbers

Title: City Clerk, City of Torrance

Date:
_____

APPROVED AS TO FORM:

John L. Fellows III

By:_____
Patrick Q. Sullivan, Assistant City Attorney

Date: _____

LICENSEE:

Clear Wireless LLC, aNevada limited liability company

By:

By:_____

Name:
Title

Date:_____

EXHIBIT "A"

Depiction of Premises

****Note that the legal description of OWNER'S Property will not be a comprehensive description of all of the Property in the area owned by the City. We intend to only describe that portion of the City's property in which this LICENSE would have an effect (e.g.: within the immediate vicinity).**

Premises are located within Real property in the City of Torrance, County of Los Angeles, State of California, known as APN: 7353-001-903 and more specifically depicted below as a ground area for equipment in an area of approximately eight feet (8) by fourteen (14) feet and a portion of the existing tower final location to be approved by Licensor.

EXHIBIT "B"

FORM OF LICENSE

EXHIBIT "B"

FORM OF LICENSE

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LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this "License") is entered into as of _____, 2010 by and between the CITY OF TORRANCE, a municipal corporation ("Owner"), and Clear Wireless LLC, a Nevada limited liability company ("Licensee").

RECITALS

A. Owner is the fee title owner of certain real property located in the City of Torrance, County of Los Angeles, State of California more particularly described on Exhibit "A", attached hereto and incorporated herein by reference (the "Real Property").

B. Owner has constructed certain improvements on the Real Property, which improvements are comprised of, without limitation, certain City owned and operated communications facilities, consisting of, without limitation, a communications tower and ground facilities (collectively, the "Tower Improvements"). The Tower Improvements are currently used by governmental authorities, including the police and fire departments (collectively, the "Governmental Communications Facilities").

C. Licensee is licensed by the Federal Communications Commission to construct and operate one or more wireless communication systems throughout the United States.

D. Licensee desires to license, on a non-exclusive basis, certain portions of the Real Property and the Tower Improvements for the purpose of constructing, operating and maintaining wireless communications facilities and equipment thereon. Owner is willing to grant Licensee a license with respect to certain specifically identified portions of the Real Property and Tower Improvements, subject to the terms and conditions contained herein.

NOW, THEREFORE, in consideration of mutual covenants contained in this License and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Definitions. As used in this License, the following terms shall have the meanings set forth below.

1.1 "Antenna Area" shall mean that portion of the Premises more particularly identified in Schedule 1 attached hereto and incorporated herein upon which Licensee will install the communications antennae, if any.

1.2 "Commencement Date" shall mean the date the License is executed by Licensee or twelve (12) months from the date the Option is executed, whichever comes first.

1.3 "Communication Facility(ies)" shall mean Licensee's wireless communications facility to be placed on the Premises by Licensee consisting of antennae, communications equipment and appurtenances as more particularly identified on Schedule 1, Schedule 2 and Schedule 3 attached hereto and incorporated herein.

1.4 "Equipment Area" shall mean that portion of the Premises more particularly identified in Schedule 2 upon which Licensee will place its equipment, if any, as necessary for the operation of the Communication Facilities.

1.5 "FCC" shall mean the Federal Communications Commission.

1.6 "Governmental Approvals" shall mean any licenses, permits, approvals or other consents required from any federal, state, county or municipal governmental entity, agency or regulatory authority for the operation by Licensee of its Communication Facilities on the Premises.

1.7 "Licensee" shall have the meaning given in the preamble to this License.

1.8 "Owner" shall have the meaning given in the preamble to this License.

1.9 "Premises" shall have the meaning set forth in Section 2.1 below.

1.10 "System" shall mean the wireless communication systems owned and operated by Licensee throughout the United States or within one or more regions within the United States of which the Communication Facilities are a part.

1.11 "Tower Improvements" or "Tower" shall mean Owner's communications tower on the Real Property.

2. License.

2.1 Grant of License for Premises. Subject to the terms and conditions set forth herein, Owner hereby grants to Licensee an irrevocable non-exclusive license to use that portion of the Equipment Area and the Antenna Area, which areas are a part of the Tower Improvements, and those incidental areas to be used for the connection of cables and utilities, all as specifically identified and described in Schedules 1, 2 and 3 (collectively the "Premises"). Licensee's right to use the Premises shall be non-exclusive and in common with Owner's and Owner's existing and future permittees' use of the Premises and the Tower. Upon the termination of this License for any reason, upon request of Owner, Licensee will execute in recordable form a notice of termination of this License or any other document reasonably requested by Owner to clear title to the Premises.

2.2 Access to Premises. The License granted herein shall include access to the Premises in accordance with and subject to the restrictions and qualifications in this Section. Licensee may have the right of ingress and egress to the Premises and the Tower and to the Real Property, to the extent necessary, for vehicular access for the purpose of construction, routine maintenance, repair and service of the Communication Facilities; provided that all such access shall be by the same means available to Owner, and provided further that Owner reserves the right to require that Licensee, and Licensee's employees, agents and contractors, be escorted by Owner or a representative of Owner. All such access shall be during regular business hours and, except for emergencies, shall be coordinated through Owner's representative with not less than 24

hours prior notice. In the event of an emergency, Licensee may access the Premises at any time provided that Licensee shall immediately provide notice of such emergency to Owner's representative.

3. Term.

3.1 Initial Term. The initial term of this License (the "Initial Term") shall be five (5) years commencing on the Commencement Date, and will terminate on the date which is five (5) years from the Commencement Date, unless earlier terminated as provided in this License.

3.2 Options to Extend. Licensee shall have the option to extend the term of this License for up to five (5) additional five (5) year periods (each hereinafter referred to as a "Renewal Term"), provided that: (i) this License is then in full force and effect; and (ii) Licensee is not currently in default of the terms and conditions of this License, and no event has occurred which, with the giving of notice or the passage of time, would constitute such a default. In the event Licensee desires to exercise an option for a Renewal Term, Licensee shall deliver written notice of such extension not less than sixty (60) days and not more than one (1) year prior to the expiration of the previous term of this License. The Renewal Term shall be on the same terms and conditions as set forth in this License, except that the License Fee shall continue to be adjusted as set forth in Section 4 below. The Initial Term and all Renewal Terms shall be referred to herein collectively as the "Term" of this License.

4. Consideration.

4.1 License Fee. No more than fifteen days (15) after the Commencement Date, Licensee shall pay to Owner a monthly license fee (the "License Fee") in the amount of Three Thousand Dollars ($3,000.00) during the first year of this License. Such License Fee shall be payable in advance, without demand or set off, on or before the first day of each month during the Term. Subsequently, such License Fee for any partial month shall be prorated on the basis of a thirty (30) day month, actual days elapsed, and shall be payable in advance. The License Fee shall be payable in legal tender of the United States of America and shall be payable at Owner's address specified in Section 20.12 below.

4.2 Annual Rent Adjustment On the date that is one (1) calendar year after the Commencement Date and yearly thereafter (each, an "Adjustment Date"), the rent will be adjusted by increasing the then-current annual rent by three percent (3%). The annual rent adjustments on each subsequent Adjustment Date shall continue for any applicable extension period (as described in Section 3.2 above).

4.3 Interest. Any License Fee, or portion thereof, or other charge, fee or amount payable by Licensee hereunder which is not paid within five (5) days of the date due shall bear interest until paid at the lesser of the following rates (the "Past Due Interest Rate"):

(a) The rate of interest then being quoted by Bank of America (or its successor) as its prime rate of interest, plus four (4) percentage points; or

(b) The maximum rate of interest allowed as a default rate of interest under the laws of the state of California.

4.4 Late Fee. In the event Licensee fails to pay any License Fee within five (5) days of the date such License Fee is due, Licensee shall pay to Owner an amount equal to the greater of five percent (5%) of such overdue payment or One Hundred Fifty Dollars ($150.00), such late fee to be in addition to the interest to be assessed pursuant to Section 4.3 above. Licensee hereby acknowledges and agrees that it would be impracticable or extremely difficult to fix the actual damages resulting from such late payment and agrees that the late charge provided for herein is reasonable under the circumstances existing at the time this License is made to compensate Owner for its additional costs, expenses and losses incurred in relation to such failure to pay any amount when due hereunder.

4.5 Other Amounts. Any sums due Owner under this License which are not specifically defined as "License Fees" are deemed to be additional License Fees and are subject to the interest charges and late fees specified in Sections 4.3 and 4.4 above, and to any other provisions of this License which relate to fees to be paid to Owner.

4.6 Automatic Reformation. Notwithstanding any other provision contained in Section 4, the total amount paid as interest on the late payment of License Fees and late fees shall not exceed any limitations now imposed by the applicable laws of the state of California. In the event it is determined by a court of competent jurisdiction that such limitations have been exceeded, then the provisions of Sections 4.3 and 4.4 above shall be deemed automatically and retroactively reformed to provide for payment of interest and late fees at the highest rate allowed by the laws of such jurisdiction.

5. Use.

5.1 Permitted Uses. The Premises may be used by Licensee only for the installation, operation, maintenance and replacement of only those unmanned radio communications equipment, antennae, cables and accessories for the provision of wireless internet access for business and residential use services as specifically identified in this License and for no other purpose.

5.2 Non-Exclusive Use. Licensee acknowledges that the License granted herein and Licensee's rights with respect to the Premises are non-exclusive. Additionally, Licensee acknowledges that Owner may have granted and may grant similar rights to use portions of some or all of the Premises to governmental entities and/or other wireless communication providers for the installation and use of facilities which may compete with the facilities and services of Licensee. Additionally, Owner reserves the right to grant similar rights of use and access to the Premises for use by other wireless communication providers; provided, however, Owner agrees that subsequent

rights granted to other wireless communication providers shall not unreasonably interfere with Licensee's Communication Facilities, as originally installed at the Premises.

5.3 Compliance with Laws. Licensee shall obtain, at its sole cost and expense, all necessary Governmental Approvals for the installation, use and operation of its Communication Facilities on the Premises, prior to Licensee's installation or operation of such Communication Facilities. Owner agrees to reasonably cooperate with Licensee, at Licensee's sole cost and expense, in executing any documents or applications required by an applicable governmental agency having jurisdiction thereover for Licensee to obtain any Governmental Approvals necessary for Licensee's permitted use of the Premises. Licensee shall at all times, at its sole cost and expense, install, maintain and operate the Communication Facilities in compliance with all laws, orders, ordinances, codes, rules and regulations of any applicable federal, state, county and municipal governmental authorities or regulatory agencies, including without limitation, the FCC (collectively, "Laws"), and shall at all times be in compliance with all Governmental Approvals. Licensee's obligation to comply with all Laws shall include, without limitation, the requirement to make any alterations, at Licensee's sole cost and expense, necessary to comply with any Laws, existing or future, with respect to Licensee's use, operation and maintenance of the Communication Facilities and all activities of Licensee on or about the Premises. In no event shall the activities of Licensee or the installation, maintenance, use or operation of the Communication Facilities on the Premises cause the Tower or the Property to be in violation of any applicable Laws. In the event Licensee's use causes any such violation by Owner or with respect to Owner's property, Licensee, at its sole cost and expense shall immediately cure such violation and shall indemnify, defend (with counsel approved by Owner) and hold Owner and City Parties harmless from all damages, actions, claims, penalties, fines, obligations and liabilities, including attorneys' fees and costs, arising therefrom.

Not by way of limitation of the foregoing, Licensee shall, at Licensee's sole cost and expense, comply with all building and fire codes relating to the improvement of the Premises and the installation of the Communication Facilities, including the compliance with any fire alarms and fire sprinkler requirements. Licensee may, at its cost and expense, tie into Owner's fire alarm and/or sprinkler system, if any; provided, however, that such systems shall continue to meet all requirements relating to such systems, such modifications shall not cause the violation of any applicable code or ordinance, and Owner has approved the manner of such modification with respect to the Premises.

Not by way of limitation of the foregoing, Licensee shall, at Licensee's sole cost and expense, comply with any and all requirements under any federal, state or local law regarding the marking and lighting of its antenna facilities on the Premises, including, without limitation, any requirements of the Communications Act. Licensee shall indemnify, defend (with counsel approved by Owner) and hold Owner and City Parties harmless from all damages, actions, claims, penalties, fines, obligations and liabilities, including attorneys' fees and costs, arising from any violation of any such law, rule, regulation or ordinance.

5.4 Non-Interference with Governmental Communication Facilities. Licensee specifically acknowledges the existing and potential future Governmental Communication Facilities located at the Premises. Notwithstanding any provision to the contrary set forth herein, including, without limitation the permitted uses hereunder, Licensee's use of and access to of the Premises shall in no event interfere with the current or future Governmental Communications Facilities now or hereafter located at the Premises, which Licensee acknowledges may vary from time to time and is subject to change during the Term. In the event of any such interference, Licensee shall, at Licensee's sole cost and expense and within 24 hours of receipt of written notice from Owner, cease or modify any use of the Premises that is in violation of the foregoing and Licensee shall indemnify, defend (with counsel approved by Owner) and hold Owner and City Parties harmless from all damages, actions, claims, penalties, fines, obligations and liabilities, including attorneys' fees and costs, arising from any interference with such Governmental Communications Facilities now or hereafter located at the Premises.

6. Acceptance of Premises. Owner makes no representation or warranty to Licensee as to the physical, environmental, geotechnical or other condition of the Premises, or as to the suitability of the Premises for the installation, use, or operation of Licensee's Communication Facilities thereon. By Licensee's execution of this License, Licensee is conclusively deemed to: (i) accept the Premises as suitable for the uses permitted hereunder and for the operation of its Communication Facilities therefrom; (ii) accepts the Premises and any structures and improvements which are appurtenant to, or are a part of, the Premises in their AS IS, WHERE IS, WITH ALL FAULTS condition; and (iii) have waived, released and relinquished any claims, defenses and offsets against Owner with respect to any patent or latent defects in the Premises and its appurtenances, the Premises' habitability or suitability for any permitted purpose, and any and all other matters relating to the physical or environmental condition of the Premises or the Tower. It is expressly acknowledged and agreed: (a) that Licensee is acquiring this License based upon its own investigation and inspection of the Premises; (b) that Licensee has or will be afforded an adequate opportunity to inspect, investigate and test the condition of the Premises and the suitability thereof for its intended use and purpose; and (c) that Licensee is in no manner relying upon any representation, warranty, statement or other inducement by Owner or any of Owner's officers, employees, representatives or agents. It is acknowledged that Licensee is in the business of wireless telecommunications and is in a better position to assess the suitability of the Premises for use as a Communication Facility, and on that basis, the parties have allocated to Licensee all responsibility and risk associated with the assessment of the physical, environmental, geotechnical or other condition of the Premises and the Tower, and the suitability thereof for the permitted uses.

7. Improvements; Alterations; and Maintenance.

7.1 Improvements. Licensee may, at its sole cost and expense, install and erect the Communication Facilities on the Premises as follows: (i) the antennae and/or dishes, if any, described on Schedule 1 on the Antenna Area; (ii) the equipment, if any, described on Schedule 2 on the Equipment Area; and (iii) such cables and incidental appurtenances necessary to connect the antenna facilities to the equipment and to obtain utility services to Licensee's facilities in the manner and in the location described in Schedule 3, or as approved by Owner pursuant to this Section. Licensee shall obtain the

prior written approval of Owner of all plans and specifications for the installation of the Communication Facilities and their precise location on the Premises prior to the installation or construction of any of the Communication Facilities on or about the Premises. Licensee shall provide Owner with detailed plans and specifications for all improvement and construction work to be performed on the Premises, including, without limitation, engineering specifications and plans for any structural work and specifications for any proposed modification of any existing improvements or structures located on the Premises. To the extent that Owner approves of any proposed structural alterations or modifications to the Tower Improvements, or any buildings or improvements located on the Premises, such structural alterations shall be designed by a licensed structural engineer and the plans and specifications therefor shall be prepared by such licensed engineer at Licensee's sole cost and expense. Notwithstanding anything in this License to the contrary, Owner shall have no obligation to approve any structural alterations or modifications to the Tower or any building or improvement located on the Premises. Owner shall review such plans and specifications and endeavor to approve or disapprove in writing such plans and specifications within thirty (30) days from its receipt of same. Owner's failure to deliver written approval or disapproval of plans and specifications within such thirty (30) day period shall be deemed to be disapproval. In the event of the disapproval of any plans and specifications, Owner and Licensee shall consult in good faith to address Owner's objections and Licensee shall modify the plans and specifications accordingly. All Communication Facilities placed on the Premises by Licensee shall remain Licensee's personal property despite being affixed or attached to the Tower, and, at Licensee's option, may be removed by Licensee at any time during the Term subject to the requirements of Section 16 below. Any installation, repair, maintenance, replacement, removal or other work done with respect to the Communication Facilities on or about the Premises and/or the Tower shall be performed in accordance with the following requirements:

(a) All work of any nature shall be performed at Licensee's sole cost and expense;

(b) All work shall be performed in a good and workmanlike manner;

(c) All work shall be performed in compliance and accordance with all applicable Laws;

(d) All work shall be performed in a manner consistent with the use of the Tower by Owner and Owner's existing and future permitees and in a manner which is consistent with the architectural elements of the Tower and the improvements located on the Tower, which is aesthetically complimentary to such improvements as determined by Owner in Owner's sole and absolute discretion, and which shall not adversely affect the marketability of the Tower and the improvements located thereon;

(e) All work shall meet Owner's construction standards and no work shall adversely affect the structural integrity, maintenance or value of the Tower or the improvements located thereon;

(f) Licensee shall, at its sole cost and expense, repair or replace any damage to any structure, improvement or property of Owner located on the Tower or the Property caused by Licensee's construction, alteration, modification or other work on or about the Premises, or Licensee's use, operation and maintenance of the Communication Facilities; and

(g) Licensee shall provide to Owner as built plans for the Communication Facilities and the Premises upon completion of construction.

7.2 Alterations and Additions. Subsequent to the initial construction of the improvements by Licensee on the Premises, Licensee may, with Owner's prior written consent, which consent shall not be unreasonably withheld or delayed, make such alterations and modifications to its Communication Facilities and the Premises as is reasonably necessary for Licensee's use and operation of the Communication Facilities, except in cases of emergency repairs and equipment swap-outs of like kind and size, whereupon Owner's prior written consent is not required but in which case Licensee will provide written notice prior to commencing repair(s). Upon receipt of written approval of the plans and specifications for the alteration or modification of the Communication Facilities, such approved plans shall be considered incorporated into this License and shall be attached hereto. Any alteration or modification work shall be performed in accordance with the construction requirements and standards set forth in Section 7.1 above.

7.3 Liens. Licensee shall keep the Premises free and clear from any mechanic's, materialmen's or other lien arising from or relating to any work or construction performed, materials furnished or obligations incurred by, under or at the request of Licensee (collectively a "Lien"). Licensee hereby agrees to indemnify, defend (with counsel approved by Owner) and hold Owner harmless from and against any and all claims, actions, damages and liabilities arising from or in any way relating to any such Liens. In the event any Lien is filed against the Premises, Licensee shall discharge the Lien or remove such Lien by bond or other method allowed under the laws of the state of California within thirty (30) days of the filing of such Lien. In the event Licensee fails to discharge or otherwise remove such Lien by bond or other method allowed by law within such period, then, in addition to any other right or remedy of Owner, Owner may, without obligation, discharge the Lien by paying the amount claimed to be due, bonding the Lien or obtaining the discharge by deposit of funds with a court, title company or other method allowed by law. Licensee shall pay within five (5) days of demand any amount paid by Owner for the discharge, satisfaction, bonding or other method of removing such Lien, together with any and all attorneys' fees and other expenses of Owner incurred in defending or taking action with respect to such Lien and obtaining the discharge of such Lien.

Licensee shall give Owner ten (10) days' written notice prior to its commencement of construction or performance of any work on or about the Premises so that Owner shall have the opportunity to post notices of non-responsibility or other notices which may prevent a Lien from attaching to Owner's interest in the Premises or the Tower.

7.4 Relocation. In the event Owner desires to repair, redevelop, modify, remodel or any way alter the improvements on the Tower (collectively, "Redevelopment"), Owner shall use commercially reasonable efforts to accommodate Licensee's continuing use of the Premises. Licensee agrees to reasonably cooperate with Owner with regard to such Redevelopment. If any proposed Redevelopment necessitates the relocation of the Communication Facilities, Owner shall give Licensee at least thirty (30) business days prior written notice and Licensee shall relocate the Communication Facilities to another location on the Tower at Licensee's sole cost and expense unless deemed an emergency, then within ten (10) days of Notice. Such determination of an emergency is at the sole discretion of the Owner. The Premises shall thereupon be deemed modified to conform to the new location of the Communication Facilities and this License shall be modified to reflect such relocation.

7.5 Maintenance. Licensee shall, at Licensee's sole cost and expense, keep and maintain the Premises, the Communication Facilities and all of Licensee's utility installations in a structurally safe and sound condition and in good and clean condition and repair at all times during the Term of the License.

8. Termination.

8.1 Termination by Owner. In addition to any other rights or remedies involving the termination of this License contained herein or available at law or in equity, Owner shall have the right to terminate this License, including all of Licensee's rights with respect to the Premises subject thereto, as follows:

(a) Upon three (3) business days' prior written notice in the event Owner determines, in its sole judgment, that Licensee's Communication Facilities placed on the Premises interfere with existing or future Governmental Communications Facilities and such violation has not been cured in accordance with Section 5.4 above or that Licensee's Communication Facilities placed on the Premises violate any applicable Laws and/or Governmental Approvals and such violation has not been cured in accordance with Section 5.3 above; and

(b) Upon three (3) business days' prior written notice in the event that Licensee's Communication Facilities interfere with any equipment located on the Premises or the Tower and Licensee fails to resolve such problem as provided in Section 12 below.

8.2 Termination by Licensee. In the event that (a) any Governmental Approval issued to Licensee, through no fault of Licensee, is canceled or is otherwise withdrawn or terminated by the applicable governmental authority or (b) Licensee reasonably and in good faith otherwise determines that the Premises are no longer technically compatible for Licensee's use, as permitted hereunder (the circumstances described in (a) and (b) above being referred to herein as a "Termination Event"), then, so long as Licensee is not then in default hereunder beyond any applicable notice and cure period, Licensee shall have the right to terminate this License by (i) giving Owner written notice of Licensee's election to terminate ("Termination Notice") no later than the date

which is the thirtieth (30th) calendar day following the date that Licensee obtains actual or constructive notice of the Termination Event, which Termination Notice shall describe the Termination Event, shall be delivered by certified mail, return receipt requested, and shall be effective upon Owner's receipt thereof; and (ii) by concurrently paying Owner a termination fee equal to one (1) calendar year of the then-current License Fee under this License (the "Termination Fee"). If Licensee timely delivers the Termination Notice and pays the Termination Fee in accordance with this Section, the Term of this License shall expire sixty (60) days after the effective date of the Termination Notice (as used in this Section, the "Termination Date"). Licensee shall be required to pay the License Fee through the Termination Date. If Licensee does not timely and properly exercise its termination right hereunder, then such right shall irrevocably and automatically expire without further notice. Licensee shall within thirty (30) days of written request from Owner, execute documentation confirming that the right of termination hereunder has expired.

8.3 Removal Upon Termination. Licensee, upon termination of the License, shall, within fifteen (15) days, remove its antenna structure(s) (except footings), communication facilities, fixtures and all personal property and otherwise restore the Tower and the Property to their original condition, reasonable wear and tear excepted If such time for removal causes Licensee to remain on the Tower or the Property after termination of this License, Licensee shall pay the License Fee at the then existing monthly rate, or applicable portion thereof, until such time as the removal of the antenna structure, communication facilities, fixtures and all personal property are completed.

9. Utilities. In addition to the Licensee Fees hereunder, Licensee shall pay, prior to any delinquency, every charge lien or expense accruing or payable during the Term of this License in connection with the use or occupancy of the Premises, including, but not by way of limitation, water, electricity, gas, telephone, utilities and other services used by Licensee on the Premises. Furthermore, Licensee shall, at its sole cost and expense, obtain any necessary electrical, telephone and other utility services from any utility company providing services to the Premises. Not by way of limitation of the foregoing, Licensee shall arrange and provide for the installation of separate utility meters and lines to the Communication Facilities, subject to Owner's rights to approve the location and manner of installation of same pursuant to Section 7.1 above and Licensee shall maintain separate contracts and billings with all utility companies. The location of any utility lines, boxes or facilities shall not interfere with Owner's use of the Premises, the Tower or any of the structures or improvements located on the Tower or the Property.

10. Taxes.

10.1 Real Property Taxes. In addition to the License Fees to be paid hereunder, to the extent applicable, Licensee agrees to pay directly to the appropriate taxing authority at least ten (10) days prior to delinquency all taxes which shall be levied against its interest in the Premises or its property thereon, or against any buildings, structures or any improvements erected or constructed by the Licensee on the Premises during the Term of this Lease. Licensee shall provide to Owner proof of its payment of such taxes prior to any such taxes becoming delinquent.

10.2 Personal Property Taxes. In addition to the License Fees to be paid hereunder, Licensee shall pay directly to the appropriate taxing authority at least ten (10) days prior to delinquency, any and all personal property taxes and taxes and exactions of every kind and nature levied or assessed with respect to the Communication Facilities located on the Premises, and shall pay any other use taxes, permitting fees or other governmental charges of any nature arising from or relating to Licensee's use of the Premises or the existence or operation of the Communication Facilities thereon. Licensee shall provide to Owner proof of its payment of such taxes prior to any such taxes becoming delinquent.

11. Assignment; Subletting.

11.1 Permitted Assignees. Except as hereinafter set forth, Licensee may not sell, transfer, assign, sub-license or hypothecate this License, or its interest therein, in whole or in part, without the prior written consent of Owner in each instance having first been obtained, which consent may be granted or withheld in Owner's sole and absolute discretion. Notwithstanding the foregoing the License may be transferred or assigned by the Licensee with prior written notice to Owner, but without any approval or consent of the Owner to (a) any entity which acquires all or substantially all of Licensee's assets in the market (as defined by the Federal Communications Commission) in which the Tower is located by reason of a merger, acquisition or other business reorganization, or (b) to any entity which acquires or receives an interest in the majority of communication towers of Licensee in the market (defined by the Federal Communications Commission) in which the Tower is located (collectively, "Permitted Assignees"), provided that any such Permitted Assignee shall (i) have a net worth of at least Twenty-Five Million Dollars ($25,000,000) (calculated in accordance with generally accepted accounting principles, consistently applied) as of the date of such proposed assignment, and (ii) in Owner's reasonable judgment, does not have a reputation which would embarrass Owner or disparage its reputation – e.g., a reputation for connections with or control by criminal elements, past criminal violations or prosecutions, or a reputation for disreputable practices.

11.2 Transfer by Owner. Owner may make any sale, lease, license, encumbrance, hypothecation or other transfer of the Premises without notice to, or consent from, Licensee.

12. Interference.

12.1 Licensee's Operation. Prior to the Commencement Date, Licensee shall have evaluated the possibility of any interference to its Communication Facilities at the Premises based upon the current use of the Tower and from adjoining properties in the surrounding area. Licensee's execution of this License shall be deemed Licensee's acceptance that the current uses of the Tower (including, without limitation the Governmental Communication Facilities), and the Premises and uses of property in the surrounding area will not interfere with Licensee's intended use of the Premises. Licensee's operation of the Communication Facilities and its use and operation of the Premises shall not disturb or interfere with the communications, configurations,

equipment and frequencies which (i) exist as of the Commencement Date and (ii) with respect to Governmental Communications Facilities, as may exist in the future. Licensee agrees to have installed radio equipment of the type and frequency which will not cause material interference to Owner, or other current licensees of the Tower or any other property owned by Owner in the area. Licensee's Communication Facilities shall comply with all rules of the FCC.

12.2 Termination. In the event Licensee's use of the Premises and operation of the Communication Facilities thereon during the Term interferes with the Owner's communications, equipment, frequency and configurations on the Tower or the existing or future Governmental Communications Facilities, and after Owner has notified Licensee of such interference pursuant to this License, Licensee will take all steps necessary to correct and eliminate the interference within fifteen (15) days of said notice. Owner acknowledges that interference may come from different sources, and Licensee shall only be responsible to correct interference caused by Licensee's equipment. If Licensee fails to so correct such interference after said notice and time period, then Licensee shall be in default under this License. In the event that Licensee fails or is unable to correct and eliminate such interference, Owner may terminate this License pursuant to Section 8 above.

13. Insurance.

13.1 Liability.

(a) Licensee agrees that at all times during the Term of this License and any renewal or extension thereof, it will maintain in full force and effect at Licensee's expense a comprehensive (commercial) general liability insurance with the broad form comprehensive liability endorsement and automobile liability insurance policy which will insure Licensee and, as an additional insured, Owner, the City Council and each member thereof, and every officer and employee of Owner against liability or financial loss resulting from any suits, claims, or actions brought by any person or persons and from all costs and expenses of litigation brought against Owner in the amount of $10,000,000 combined single limit for any injury to persons and/or damages to property (i) in or about said Premises and any improvements or equipment constructed thereon, or (ii) by reason of the use and occupation by Licensee or by any other person or persons of said Premises. Owner, the City Council, and every officer and employee of Owner, acting in due course of his employment or his official capacity, shall be named as an additional insured on said policy.

(b) It is understood that the type of insurance and minimum limits of liability insurance required herein may become inadequate for such purposes during the Term of this License, and Licensee agrees that it will add such insurance coverage and increase such minimum limits at its sole expense by such amounts as may be reasonably required by Owner.

13.2 Property Damage.

(a) Licensee agrees that at all times during the Term of this License and any renewal or extension thereof, it will maintain in full force and effect at Licensee's expense an insurance policy which will insure Owner (as an additional insured) from loss occurring to improvements (excluding grading and fill but including foundations) located on the Premises and the Tower, by reason of fire, extended coverage perils, and "all risk" perils, including but not by way of limitation flood, demolition, and increased cost of construction and contingent liability arising out of the operation of building codes.

(b) The amount of such insurance shall be at least eighty percent (80%) of the full replacement cost of the improvements located on the Premises with an agreed amount endorsement. Owner shall be named as an additional insured on said policy.

13.3 Carrier Rating and Cancellation. All policies enumerated in this Section 13 shall be issued by an insurer admitted to do business in California, which qualifies as a member of the California Insurance Guaranty Fund, and which is rated in Best's Insurance Guide with a financial rating of A:XII or better, or as may be accepted in writing by Owner Manager. Said policies shall provide that the insurance coverage shall not be cancelled or reduced by the insurance carrier without Owner having been given thirty (30) days prior written notice thereof by such carrier or insurance broker. Licensee agrees that it will not cancel or reduce said insurance coverage and will replace any insurance cancelled, reduced or non-renewed by the insurance company during the Term of this License.

13.4 Certificate of Insurance. Upon the commencement of the License and at all times during the Term of this License, Licensee shall maintain on file with the City Clerk a certificate of insurance as proof of the insurance required hereunder.

13.5 Failure to Provide. Licensee agrees that if it does not keep the aforesaid insurance in full force and effect, Owner may, after thirty (30) days notice to Licensee, obtain the necessary insurance and pay the premium thereon, and the repayment thereof shall be deemed to be an additional License Fee and payable as such on the next day after notice of the payment by Owner for the said insurance.

13.6 Licensee's Insurance Primary. The insurance provided in the policies of insurance required hereunder to be maintained by Licensee shall be primary and non-contributing with respect to Licensee's negligence, with any insurance that may be carried by Owner.

13.7 Subrogation. Licensee and Owner agree that all policies of insurance obtained by either party with respect to the Premises shall waive any right of subrogation against the other party.

13.8 Cross Liability. It is agreed that claims for personal injury or property damage made by an insured hereunder against another insured hereunder shall be covered in the same manner as if separate policies had been issued to each insured. Nothing

contained herein shall operate to increase the insurance company's limit of liability as provided under such policy.

13.9 Waiver of Subrogation. Licensee and Owner each release and relieve the other, and waive their entire right of recovery against the other for loss or damage to a person or to the Premises that are caused by or resulting from the risks insured against under the insurance policies carried as required pursuant to this Section 13, whether due to the negligence of Owner or Licensee or their agents, employees, contractors and/or invitees. Licensee shall, upon obtaining the policies of insurance required hereunder, give notice to the insurance carrier or carriers of the foregoing mutual waiver of subrogation and releases contained in this License.

14. Environmental.

14.1 Hazardous Material. Licensee agrees that during the term of the License it shall not generate, store, transport, use, release, discharge or permit to exist any Hazardous Materials (as hereinafter defined) in, on, under or about the Premises or the Tower, except for those contained in its back-up power batteries (lead-acid batteries) and other common materials used in telecommunication operations (for example, cleaning solvents) the presence and use of which does not violate any environmental law, rule or regulation. Licensee shall comply with all environmental laws, rules and regulations in its use of the Premises.Upon the commencement date, Owner represents to the best of it's knowledge hazardous materials are not on nor being used on the Premises.

14.2 Indemnity. Licensee shall defend, indemnify and hold harmless Owner and all City Parties (collectively, the "Indemnified Parties") from and against any and all Environmental Claims, Environmental Cleanup Liability, Environmental Compliance Costs, and any other claims, actions, suits, legal or administrative orders or proceedings, demands or other liabilities (collectively, "Claims") resulting at any time from the physical and/or environmental conditions of the Premises occurring or arising from the acts or omissions of Licensee, including, but not limited to, all foreseeable and unforeseeable damages, fees, costs, losses and expenses, including any and all reasonable attorneys' fees and reasonable environmental consultant fees and investigation costs and expenses, directly or indirectly arising therefrom, and including fines and penalties of any nature whatsoever, assessed, levied or asserted against any Indemnified Parties to the extent that the Claims are not caused by the negligence or willful misconduct of Owner. Owner shall indemnify, release, defend, hold harmless, and covenants not to sue, Licensee from and against all Losses not directly caused by Licensee. Licensee shall indemnify, release, defend, hold harmless, and covenants not to sue, Owner from and against all Losses not directly caused by Owner. Licensee agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within the Premises in violation of any law or regulation. Owner agrees that (i) it has no knowledge of the presence of any Hazardous Materials in, on, under, upon or affecting the Premises in violation of any law or regulation; (ii) it has not received any notice claiming a violation thereof; and (iii) it will not use, generate, handle, store or dispose of any Hazardous Material in, on, under, upon, or affecting the Premises in violation of law or regulation. Each party shall be responsible for all claims, losses and liabilities arising from Hazardous Materials to the extent caused by such party, and Owner shall be responsible for all claims, losses and liabilities arising from Hazardous Materials existing on,

under, about or within the Property as of the date of this Agreement. Each party releases the other and agrees not to sue the other in connection with all claims, losses and liabilities for which the releasing party is responsible. Neither party shall be liable for any claims, losses or liabilities caused or permitted by the other party. As used in this paragraph, "Hazardous Material" shall mean petroleum or any petroleum product, asbestos, any substance known by the state in which the Premises is located to cause cancer and/or reproductive toxicity, and/or any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. This paragraph shall survive the termination of this Agreement For purposes of this section, the following terms shall have the following meanings:

(a) "Environmental Claim" means any claim for personal injury, death and/or property damage made, asserted or prosecuted by or on behalf of any third Party, including, without limitation, any governmental entity, relating to the Premises or its operations and arising or alleged to arise under any Environmental Law.

(b) "Environmental Cleanup Liability" means any cost or expense of any nature whatsoever incurred to contain, remove, remedy, clean up, or abate any contamination or any Hazardous Materials on or under all or any part of the Premises, including the ground water thereunder, including, without limitation, (A) any direct costs or expenses for investigation, study, assessment, legal representation, cost recovery by governmental agencies, or ongoing monitoring in connection therewith and (B) any cost, expense, loss or damage incurred with respect to the Premises or its operation as a result of actions or measures necessary to implement or effectuate any such containment, removal, remediation, treatment, cleanup or abatement.

(c) "Environmental Compliance Cost" means any cost or expense of any nature whatsoever necessary to enable the Premises to comply with all applicable Environmental Laws in effect. "Environmental Compliance Cost" shall include all costs necessary to demonstrate that the Premises is capable of such compliance.

(d) "Environmental Law" means any federal, state or local statute, ordinance, rule, regulation, order, consent decree, judgment or common-law doctrine, and provisions and conditions of permits, licenses and other operating authorizations relating to (A) pollution or protection of the environment, including natural resources, (B) exposure of persons, including employees, to Hazardous Materials or other products, raw materials, chemicals or other substances, (C) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical sub-stances from industrial or commercial activities, or (D) regulation of the manufacture, use or introduction into commerce of chemical substances, including, without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal.

(e) "Hazardous Material" is defined to include any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is: (A) petroleum or oil or gas or any direct or derivate product or byproduct thereof; (B) defined as a "hazardous waste," "extremely hazardous waste" or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division

20, Chapter 6.5 (Hazardous Waste Control Law); (C) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (D) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Sections 25501(j) and (k) and 25501.1 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (E) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (F) "used oil" as defined under Section 25250.1 of the California Health and Safety Code; (G) asbestos; (H) listed under Chapter 11 of Division 4.5 of Title 22 of the California Code of Regulations, or defined as hazardous or extremely hazardous pursuant to Chapter 10 of Division 4.5 of Title 22 of the California Code of Regulations; (I) defined as waste or a hazardous substance pursuant to the Porter-Cologne Act, Section 13050 of the California Water Code; (J) designated as a "toxic pollutant" pursuant to the Federal Water Pollution Control Act, 33 U.S.C. § 1317; (K) defined as a "hazardous waste" pursuant to the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. (42 U.S.C. § 6903); (L) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. (42 U.S.C. § 9601); (M) defined as "Hazardous Material" pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; or (N) defined as such or regulated by any "Superfund" or "Superlien" law, or any other federal, state or local law, statute, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning Hazardous Materials and/or underground storage tanks, as now, or at any time here-after, in effect.

Notwithstanding any other provision of this License, Licensee's indemnification as set forth in the provisions of this Section, as well as all provisions of this Section shall survive the termination of this License and shall continue in perpetuity.

15. Indemnification; Non-Liability of Owner.

15.1 Indemnity. To the fullest extent permitted by law, Licensee shall indemnify, defend and hold harmless Owner and the Mayor, the City Council and its members, City's boards and commissions and their respective members, and City's officers, employees and agents (collectively, "City Parties") from and against any and all claims, injuries, losses, damages, actions, proceedings, costs, expenses, fines, penalties and liabilities, including, without limitation, attorneys' fees and costs, arising from, in connection with or in any way relating to: (i) the installation, construction, use, operation and existence of the Communication Facilities and any other property of Licensee on the Premises or on or about the Tower; (ii) the conduct of Licensee's business, or from any activity, work or thing done, permitted, caused or suffered by Licensee or any of Licensee's employees, agents, contractors, materialmen, suppliers or invitees in or about the Premises or the Tower; (iii) any claims of third parties for personal injury or property damage arising from the use and operation of the Communication Facilities and from any transmissions, currents, frequencies or electromagnetic fields emanating from the Communication Facilities; (iv) any breach or default in the performance of any obligation of Licensee under the terms of this License; (v) any acts or omissions of Licensee or any of its employees, contractors, agents or invitees; (vi) any breach of the environmental covenants set forth in Section 14 above or from the violation of any environmental law

regulating any Hazardous Materials, or from the generation, transportation, use, storage, release or discharge of any Hazardous Materials on, under or about the Premises or the Tower by Licensee or its employees, agents or contractors, and (vii) the violation of any existing or future Law with respect to the installation, use and operation of the Communication Facilities or applicable to Licensee or Licensee's employees, agents, contractors, materialmen, suppliers, invitees, concessionaires or customers actual use of or presence upon the Premises or the Tower except to the extent such claims arise from the active negligence or willful misconduct of Owner and City Parties.

15.2 Non-Liability of Owner. Licensee hereby agrees that Owner shall have no liability or obligation for damage, injury or loss to Licensee's business or any loss of income therefrom or for damages to the Communication Facilities or other property of Licensee, nor shall Owner be liable for injury to Licensee's employees, agents, or contractors, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain or from the breakage, leakage, construction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether said damage or injury results from conditions arising upon the Premises or the Tower or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Licensee except to the extent such claims arise from the active negligence or willful misconduct of Owner and City Parties. Owner shall not be liable for any damages arising from any act, conduct or neglect of any other licensee, if any, of the Tower.

16. Casualty; Condemnation.

16.1 Damage or Destruction. In the event the Premises or the Tower is damaged or destroyed (other than as a result of the presence, use or operation of the Communication Facilities or if caused by Licensee or its employees, agents or contractors, in which event Licensee shall be responsible for all costs of rebuilding the Premises and the Tower) such that in Licensee's reasonable judgment it is unable to use the Communication Facilities within its System, Licensee shall notify Owner in writing of Licensee's determination. Owner shall notify Licensee within thirty (30) days of receipt of Licensee's notice as to whether Owner intends to rebuild or replace the damaged Premises and/or the Tower. In the event that Owner elects not to repair or rebuild the Premises and/or the Tower, either Owner or Licensee may terminate this License by delivery of written notice to the other party. In the event Owner elects to repair or rebuild the Premises and/or the Tower, Owner shall repair or replace the Premises as soon as reasonably possible; provided, however, that in the event the Premises have not been repaired or replaced within one hundred eighty (180) days from the date of such casualty, Licensee shall have the right to terminate the License at any time thereafter by delivery of written notice to Owner, and neither Owner or Licensee shall have any further obligation or liability to each other with respect to the Premises. In no event shall Owner repair or replace the Communications Facilities or any property or improvements of Licensee.

16.2 Condemnation. In the event the entirety of the Tower and/or the Property is taken under the power of eminent domain, or sold under the threat of the exercise of said power (all of which are herein called "Condemnation"), this License shall terminate effective upon the date the condemning authority takes title or possession of the Tower and/or the Property, whichever first occurs. In the event of a partial condemnation of the Tower which does not include any portion of the Premises, and Owner elects to continue the License, in its sole discretion, this License shall continue unaffected with respect to the Premises; provided, however, if Owner elects to discontinue the License, the License shall terminate effective upon delivery of title or possession to such condemning authority. In the event of a partial condemnation of the Tower which includes all of the Premises, this License shall terminate effective upon the date the condemning authority takes title or possession thereof, whichever first occurs. In the event of a partial condemnation which results in a taking of only a portion of the Premises, Licensee may terminate this License if in Licensee's reasonable judgment, such condemnation will render the Premises unsuitable for Licensee's continued use, such termination to be effective upon the first to occur of the transfer of title or possession to the condemning authority. In no event shall Licensee be entitled to receive or to share in any condemnation proceeds from any condemnation with respect to the Tower or the Premises, all of which shall be the property of Owner, whether such award shall be made as compensation for diminution in value of the License, the taking of the fee, the taking of the Premises, severance damages or the taking of the License. In the event this License continues subsequent to any condemnation, there shall be no abatement or reduction of the License Fees as a result of such condemnation.

17. Surrender of Premises; Holding Over. Upon the expiration or other termination of this License for any cause whatsoever, Licensee shall peacefully vacate the Premises and surrender the Premises in as good order and condition as the same were at the beginning of this License, ordinary wear and tear excepted. Upon Licensee's removal of any of the Communication Facilities from the Premises, Licensee shall repair or replace any damage caused to the Tower, the Property and any structure or improvement located on the Property, or to the Premises itself, occasioned by the existence of such Communication Facilities, or the removal thereof, and the Tower, the Property and all improvements and structures located thereon, shall be returned to the same or better condition as existed immediately prior to the installation of such Communication Facilities.

If Licensee continues to hold the Premises after the termination of the License with the consent of Owner, whether the termination occurs by lapse of time or otherwise, such holding over will, unless otherwise agreed to by Owner in writing, constitute and be construed as a month-to-month license at a monthly License Fee equal to 1/12th of 150% of the License Fee and subject to all of the other terms set forth in this License.

18. Default and Remedies.

18.1 Licensee's Events of Default. The occurrence of any one or more of the following events shall constitute an "event of default" by Licensee under this License.

(a) If Licensee fails to pay any License Fee or portion thereof or other sums payable by Licensee for the Premises within five (5) business days of the date when due hereunder;

(b) If Licensee fails to perform or observe any other term of this License and, unless the timing for cure is otherwise specifically set forth herein, such failure continues for thirty (30) days after written notice from Owner; except that the thirty (30) day cure period will be extended as reasonably necessary (but in no event more than sixty (60) days total) to permit Licensee to complete such cure so long as Licensee commences the cure within such initial thirty (30) day period and thereafter continuously and diligently pursues and completes such cure;

(c) If any petition is filed by or against Licensee under any section or chapter of the present or any future federal Bankruptcy Code or under any similar law or statute of the United States or any state thereof (and with respect to any petition filed against Licensee, such petition is not dismissed within ninety (90) days after the filing thereof), or Licensee is adjudged bankrupt or insolvent in proceedings filed under any section or chapter of the present or any future federal Bankruptcy Code or under any similar law or statute of the United States or any state thereof;

(d) If a receiver, custodian, or trustee is appointed for Licensee or for any of the assets of Licensee and such appointment is not vacated within sixty (60) days of the date of the appointment; or

(e) If Licensee becomes insolvent or makes a transfer in fraud of creditors.

18.2 Remedies. If an event of default occurs, Owner may pursue all rights and remedies available at law or in equity with respect to such default, including, without limitation, the right to: (a) continue the License and seek damages for such breach or default, including the payment of License Fees as they become due; and (b) terminate this License (without notice or demand except as expressly required pursuant to Section 18.1 above) in which event Licensee will immediately surrender the Premises to Owner. Upon such termination, Licensee will become liable for all damages caused by Licensee's breach, including, without limitation, the following:

(a) The actual costs of recovering the Premises, including all attorneys fees and costs;

(b) The License Fee earned as of the date of termination, plus interest thereon at the Past Due Interest Rate from the date due until paid;

(c) The amount by which the License Fee and other benefits that Owner would have received under the License for the remainder of the Term thereof after the time of award exceeds the amount of the fair market rental value for the remainder of the Term of the License that Licensee proves could be

reasonably avoided, discounted, at the per annum discount rate at the time of award of the Federal Reserve Bank of the federal reserve district where the Premises is located plus one percent (1%); and

(d) All other sums of money, damages and equitable remedies available at law or in equity, including, without limitation, consequential damages.

In addition to all other remedies Owner may have hereunder, in the event that Licensee fails to cure any event of default within the applicable cure period therefor, Owner shall have the right to take any action necessary to cure such event of default and charge Licensee the cost thereof. Licensee shall pay Owner all amounts incurred by Owner in curing any such event of default immediately upon written demand therefor by Owner. All amounts incurred by Owner in the cure of any event of default shall bear interest at the Past Due Interest Rate. Owner's actions shall not relieve Licensee from any liability hereunder for such event of default.

The foregoing remedies shall not be exclusive and Owner may elect any one or more of the foregoing remedies with respect to the Premises.

18.3 Owner's Default. Owner shall not be in default hereunder unless Owner fails to perform or observe any term of this License and such failure continues for more than sixty (60) days after receipt from Licensee of written notice specifying such default; provided, however, such sixty (60) day cure period will be extended as reasonably necessary to permit Owner to complete such cure so long as Owner commences the cure within such initial sixty (60) day period and thereafter continuously and diligently pursues and completes such cure. Licensee's sole remedy in the event of a default by Owner as provided above, shall be to terminate this License by delivery of written notice to Owner.

19. Subordination Agreement. Licensee agrees that this License is subject and subordinate at all times to the lien of all mortgages and deeds of trust securing any amount or amounts whatsoever which may now exist or hereafter be placed on or against the Tower or the Property or on or against Owner's interest or estate therein. This License shall be subject and subordinate at all times to any future deed of trust, mortgage or other financing vehicle, all without the necessity of having further instruments executed by Licensee to effect such subordination.

20. Miscellaneous.

20.1 Successors and Assigns. Subject to the restrictions on transfer contained in Section 11 above, this License shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

20.2 Time Is of the Essence. Time is hereby expressly made of the essence of this License and each and every term and condition contained herein.

20.3 Integration. This License and other documents expressly incorporated herein by reference contain the entire and exclusive understanding and agreement between the parties relating to the matters contemplated hereby and all prior or contemporaneous negotiations, agreements, understandings, representations and statements, oral or written, are merged herein and shall be of no further force or effect.

20.4 Modifications. Any alteration, change or modification of or to this License, in order to become effective, shall be made by written instrument or endorsement thereon and in each such instance executed on behalf of each party hereto.

20.5 Severability. If any term, provision, condition or covenant of this License or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this instrument, or the application of such term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this License shall be valid and enforceable to the fullest extent permitted by law.

20.6 Interpretation. This License shall be construed according to its fair meaning and as if prepared by both parties hereto. Titles and captions are for convenience only and shall not constitute a portion of this License. As used in this License, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.

20.7 Governing Law. This License shall be construed in accordance with the laws of the State of California.

20.8 Venue. Any action brought in connection with this License shall be brought in a court of competent jurisdiction located in Los Angeles, California.

20.9 Estoppel Certificates. Licensee shall at any time and from time to time upon not less than thirty (30) days prior written request by Owner, deliver to Owner an executed and acknowledged written statement certifying that (a) this License is unmodified and in full force and effect (or if this License has been modified or if this License is not in full force or effect, stating the nature of the modification or the basis on which this License had been terminated, whichever is applicable); (b) to its knowledge, Owner is not in default under this License (or if any such default exists, stating the specific nature and extent of the default); and (c) the dates to which the License Fee and other monetary obligations under this License have been paid in advance. Each certificate delivered pursuant to this Section may be relied upon by any prospective purchaser or transferee of Owner's interest in the Premises.

20.10 Attorneys' and Other Fees. All sums reasonably incurred by either party in connection with an event of default under this License, or holding over of possession by Licensee after the expiration or termination of this License (and following the additional time period afforded Licensee for removing its equipment, pursuant to Section 8.3 herein), including, but not limited to, all costs, expenses and actual accountants',

appraisers', attorneys' and other professional fees, and any collection agency or other collection charges, shall be due and payable by the other party on demand. In addition, in the event that any action shall be instituted by either of the parties hereto for the enforcement of any of its rights in and under this License, the party in whose favor judgment shall be rendered shall be entitled to recover from the other party all expenses reasonably incurred by the prevailing party in such action, including actual costs and reasonable attorneys' fees.

20.11 No Waiver. No delay or omission by either party hereto in exercising any right or power accruing upon the compliance or failure of performance by the other party hereto under the provisions of this License shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party hereto of a breach of any of the covenants, conditions or agreements hereof to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions hereof.

20.12 Notices. All notices, demands, or other communications under this License will be in writing. Notice will be sufficiently given for all purposes as follows:

(a) Personal delivery. When personally delivered to the recipient: notice is effective on delivery.

(b) First Class mail. When mailed first class to the last address of the recipient known to the Party giving notice: notice is effective three mail delivery days after deposit in a United States Postal Service office or mailbox.

(c) Certified mail. When mailed certified mail, return receipt requested: notice is effective on receipt, if delivery is confirmed by a return receipt.

(d) Overnight delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account: notice is effective on delivery, if delivery is confirmed by the delivery service.

Addresses for purposes of giving notice are as follows:

To Owner: City of Torrance
3031 Torrance Boulevard
Torrance, California 90509-2970
Attention: City Clerk

Copy To: City Attorney

To Licensee: Clear Wireless LLC
ATTN: Site Leasing
4400 Carillon Point
Kirkland, WA 98033

Copy To: Clear Wireless LLC
ATTN: Legal Department
4400 Carillon Point
Kirkland, WA 98033

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified, will be deemed effective as of the first date the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messenger or overnight delivery service.

Either party may change its notice information by giving the other party notice of the change in any matter permitted by this License.

20.13 Approvals by Owner; Owner Acting in its Proprietary Capacity. No consent, approval or satisfaction of Owner provided for hereunder, and no waiver by Owner of any provisions hereof, shall be effective unless given in writing specifically referring to this License and executed by the City Manager or the Mayor for Owner; no such consent, approval, satisfaction or waiver under or with respect to this License shall be inferred or implied from any other act or omission of Owner or any agent or employee thereof. Unless otherwise expressly provided therein, no approval, consent or other action taken by Owner under or pursuant to this License shall be deemed to waive any other rights or authority of Owner in any capacity other than as the licensor under this License.

Although Owner is a city of the State of California having regulatory powers, the execution of this License and the License of the Premises as contemplated by this License is undertaken by Owner in its proprietary capacity and not its regulatory capacity. Licensee agrees that Owner retains all of its regulatory powers and any development contemplated is subject to the applicable laws and regulations of Owner and other governmental agencies having jurisdiction. Nothing contained in this License shall in any way restrict or diminish the rights, powers or jurisdiction of Owner, its City Council, Planning Commission and other agencies with respect to the governance of the Premises and all improvements and activities located on or conducted thereon. Licensee acknowledges that it will have to apply for land use entitlements and building permits and to comply with applicable laws and ordinances in order to implement any development of the Premises. This License does not and the License will not constitute any agreement, promise or assurance by Owner to grant any such land use entitlements or issue building permits, or that Owner is obligated to obtain the agreement or assurance from such agencies that such agencies will do so, nor is Owner obligated to amend any of its laws or regulations regarding land use entitlements or building permits, or to grant any entitlements or building permits.

20.14 Continuing Obligations. Notwithstanding anything contained in this License to the contrary, the termination or expiration of this License shall not release either party of its obligations hereunder, including, without limitation, obligations of indemnity, with respect to acts occurring prior to such termination, nor Licensee from

Licensee's obligations to remove its Communication Facilities and other personal property or improvements from the Premises and to repair any damage to the Premises, the Tower or the Property resulting therefrom.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this License as of the date and year first above written.

OWNER:

CITY OF TORRANCE, a municipal corporation

By:_____
Name: Frank Scotto
Title: Honorable Mayor, City of Torrance

Date: _____

ATTEST:

By:_____
Name: Sue Herbers
Title: City Clerk, City of Torrance

Date: _____

APPROVED AS TO FORM:

John L. Fellows III

By:_____
Patrick Q. Sullivan, Assistant City Attorney

Date: _____

LICENSEE

Clear Wireless LLC, a Nevada limited liability company

By:_____
Name:
Title:

Date: _____

EXHIBIT "A"

Depiction of Premises

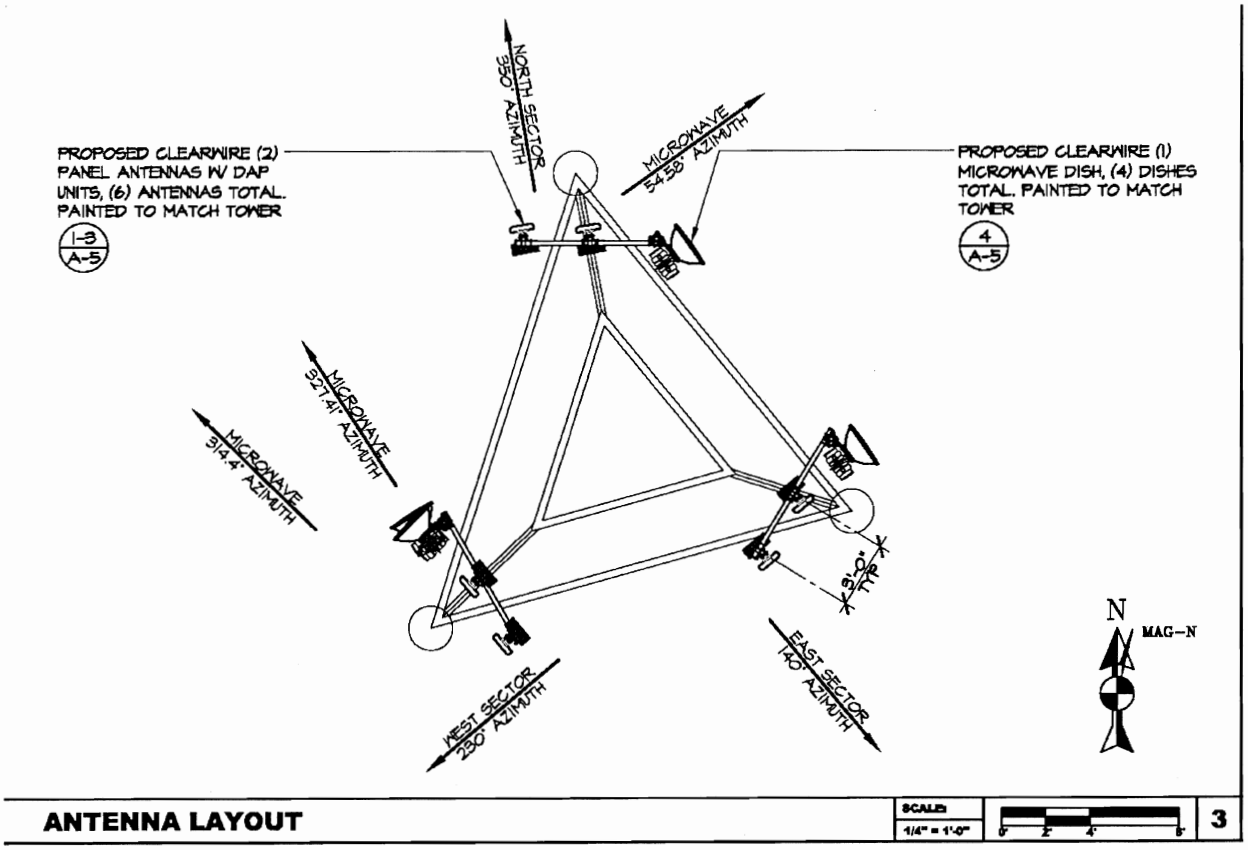
****Note that the legal description of OWNER'S Property will not be a comprehensive description of all of the Property in the area owned by the City. We intend to only describe that portion of the City's property in which this LICENSE would have an effect (e.g.: within the immediate vicinity).**

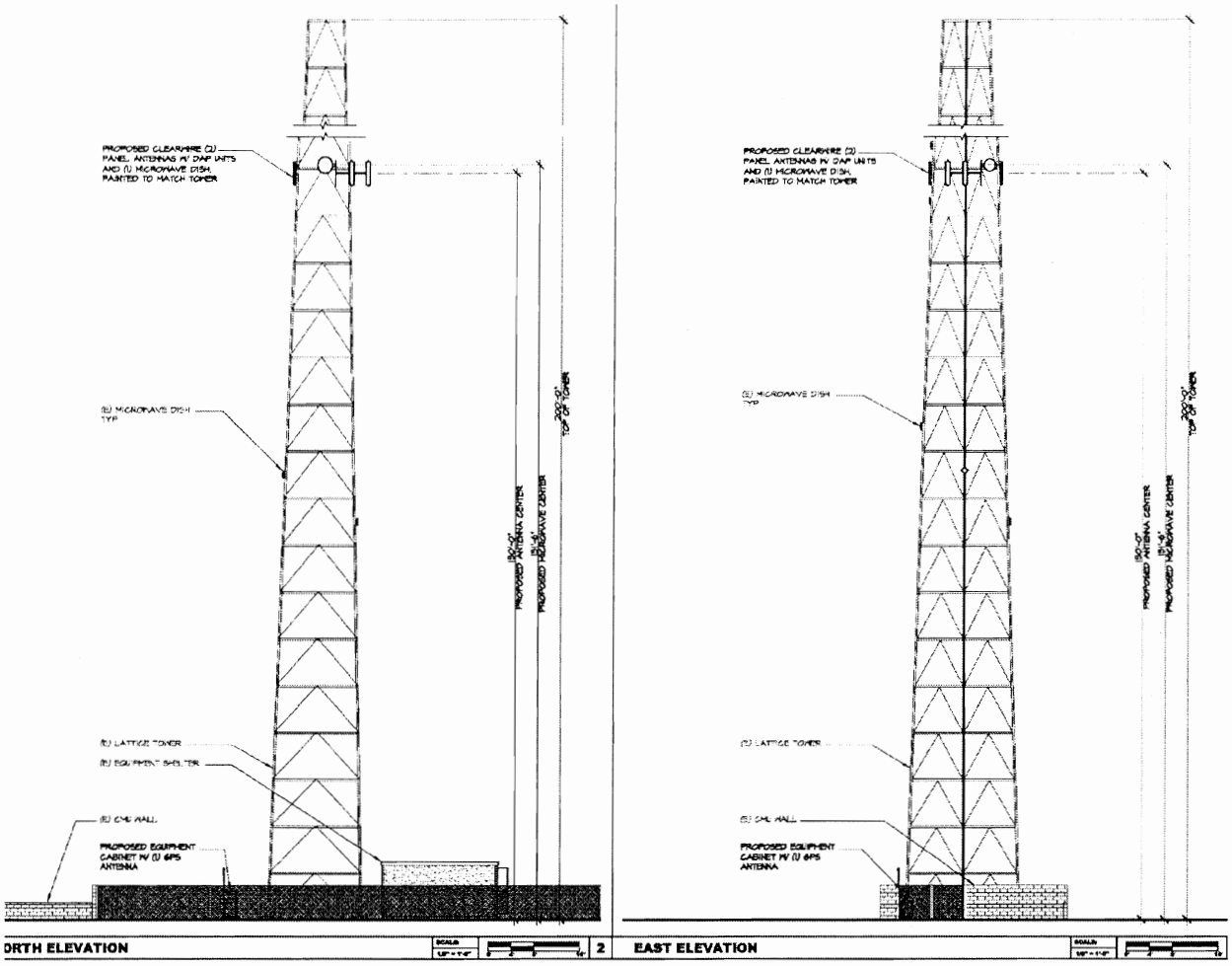
Premises are located within Real property in the City of Torrance, County of Los Angeles, State of California, known as APN: 7353-001-903 and more specifically depicted below as a ground area for equipment in an area of approximately eight feet (8) by fourteen (14) feet and a portion of the existing tower final location to be approved by Licensor.

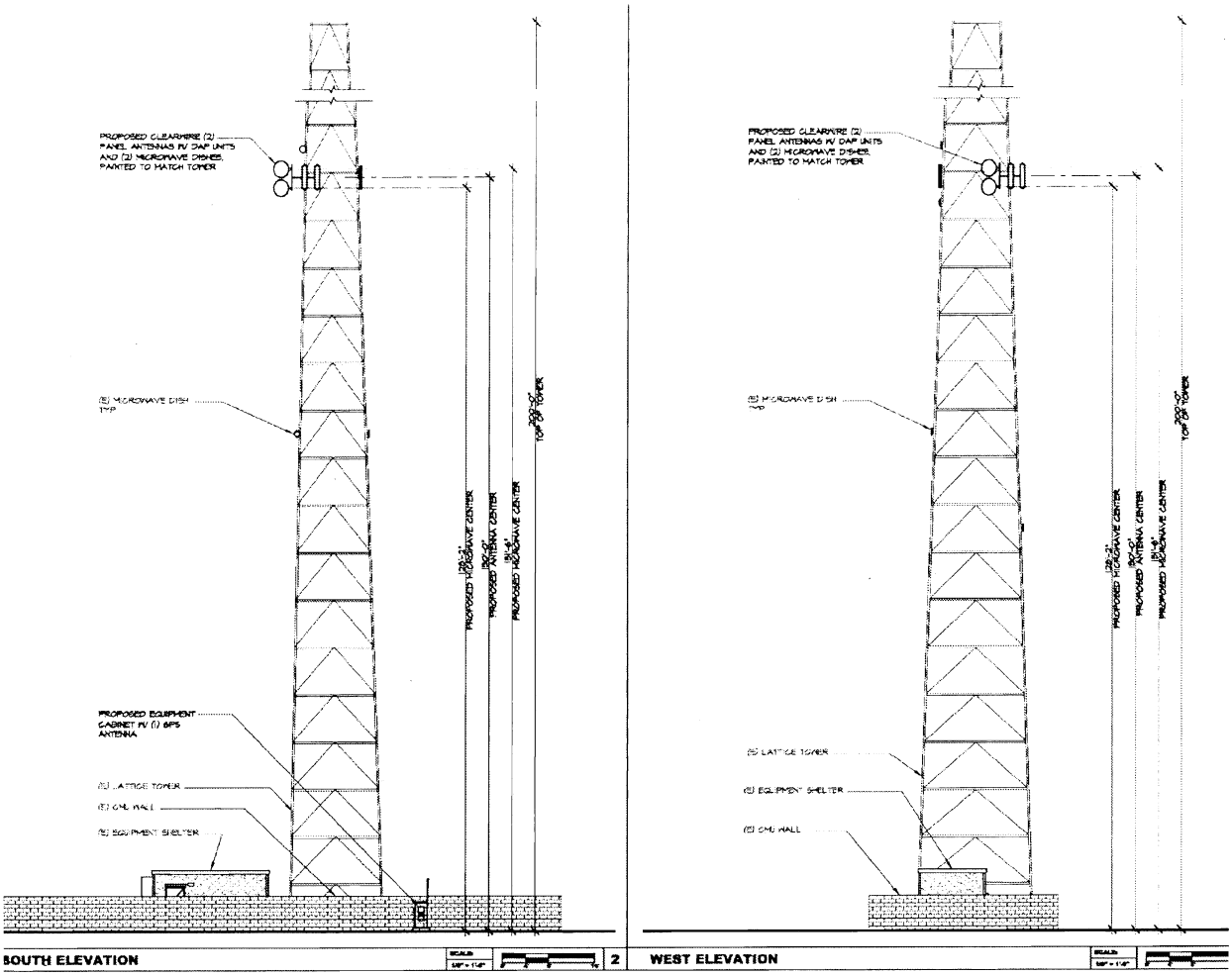
SCHEDULE 1

Antenna Area

(See Attached)



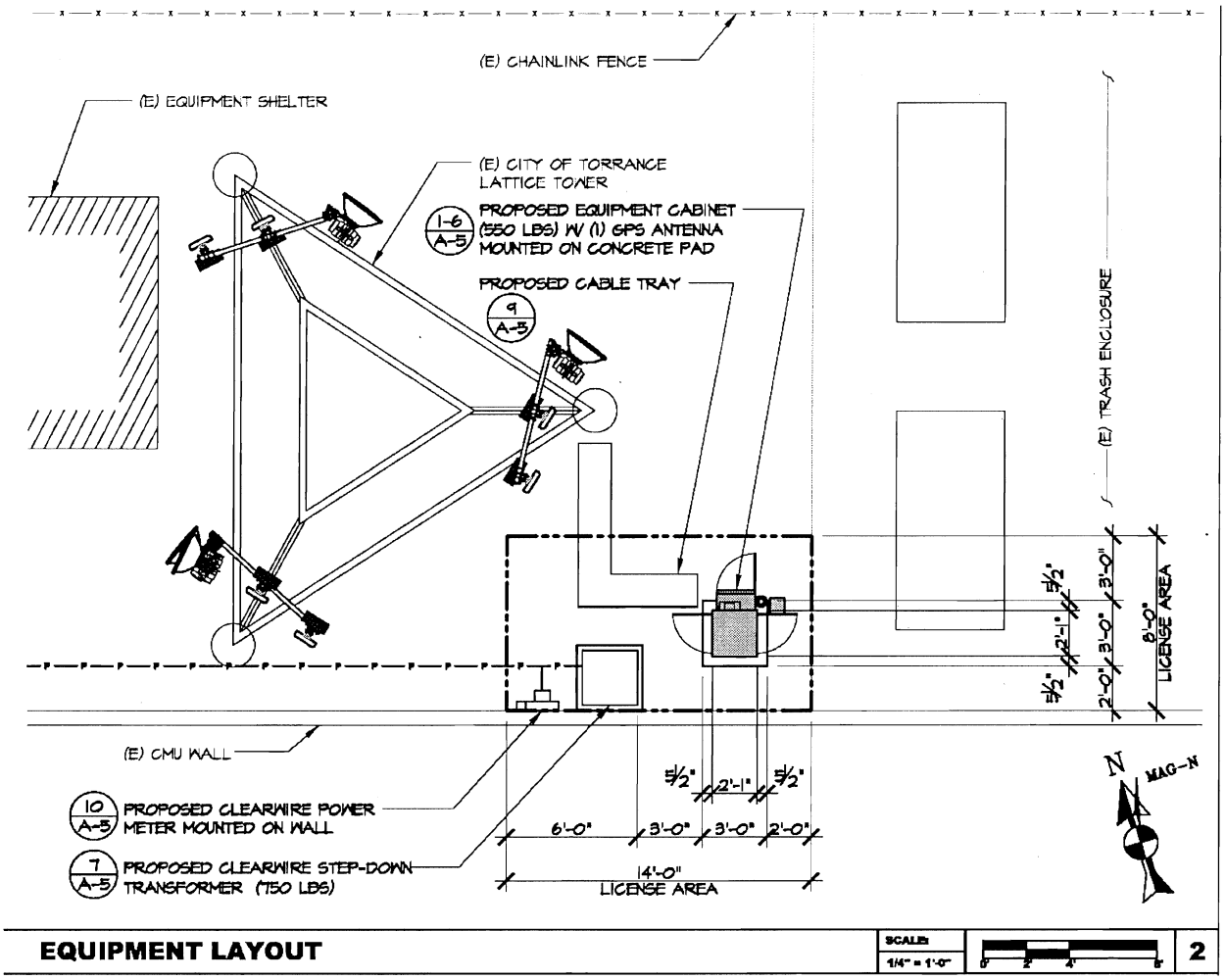

PROPOSED CLEARWIRE (2) PANEL ANTENNAS W/ DAP UNITS AND (1) MICROWAVE DISH, PAINTED TO MATCH TOWER
(E) MICROWAVE DISH TYP
(E) LATTICE TOWER
(E) EQUIPMENT SHELTER
(E) CMU WALL
PROPOSED EQUIPMENT CABINET W/ (1) 6FT5 ANTENNA
PROPOSED ANTENNA CENTER
PROPOSED MICROWAVE CENTER
TOP OF TOWER
ORTH ELEVATION
2
EAST ELEVATION


PROPOSED CLEARWIRE (2) PANEL ANTENNAS W/ DAP UNITS AND (2) MICROWAVE DISHES, PAINTED TO MATCH TOWER
(E) MICROWAVE DISH TYP
PROPOSED EQUIPMENT CABINET W/ (1) GPS ANTENNA
(E) LATTICE TOWER
(E) CMU WALL
(E) EQUIPMENT SHELTER
PROPOSED MICROWAVE CENTER
PROPOSED ANTENNA CENTER
PROPOSED MICROWAVE CENTER
TOP OF TOWER
SOUTH ELEVATION
2
PROPOSED CLEARWIRE (2) PANEL ANTENNAS W/ DAP UNITS AND (2) MICROWAVE DISHES, PAINTED TO MATCH TOWER
(E) MICROWAVE DISH TYP
(E) LATTICE TOWER
(E) EQUIPMENT SHELTER
(E) CMU WALL
PROPOSED MICROWAVE CENTER
PROPOSED ANTENNA CENTER
PROPOSED MICROWAVE CENTER
TOP OF TOWER
WEST ELEVATION

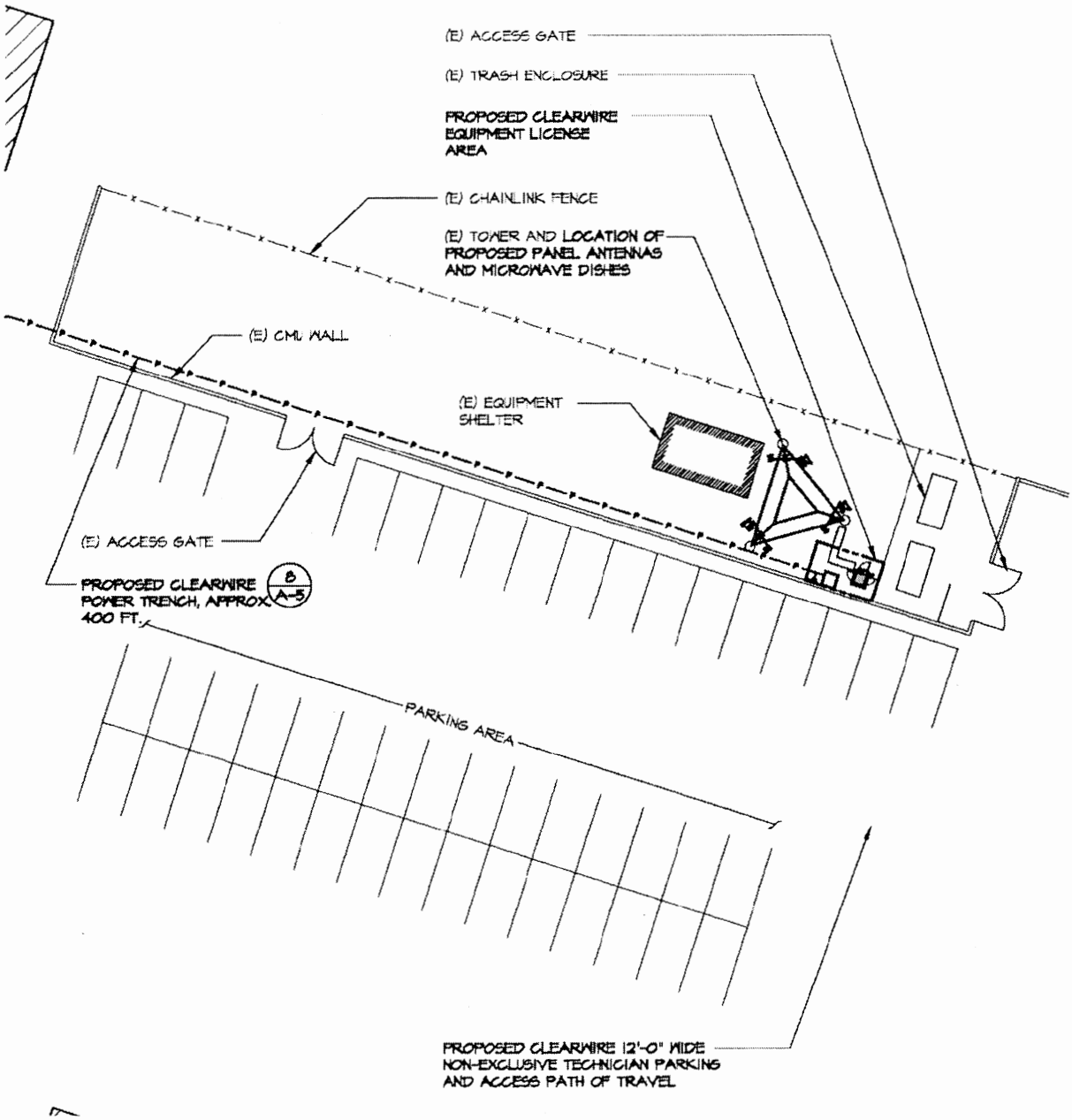
SCHEDULE 2

Equipment Area

(See Attached)



SCHEDULE 3

Licensee's Facilities

(See Attached)