

SITE NO.: NY061  
SITE NAME: Mohansic 2  
LESSOR: Town of Yorktown  
LEASE NO.: I

### OPTION AND GROUND LEASE AGREEMENT

THIS OPTION AND GROUND LEASE AGREEMENT ("Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ (the "Effective Date") by and among Town of Yorktown ("LESSOR") and **HOMELAND TOWERS, LLC**, a New York limited liability company, ("LESSEE").

#### Recitals

- A. WHEREAS, LESSOR is the owner of the following described property located at 3101 Quinlan, Town of Yorktown, Westchester County, State of New York, Tax Parcel No. 27.05-1-16, a legal description of which is set forth in Exhibit "A" hereto (the "Property"); and
- B. WHEREAS, LESSEE desires to lease certain ground space on the Property for the placement of LESSEE's equipment, building(s) and tower(s) for the purpose of constructing, establishing, and maintaining a radio transmission tower facility for LESSEE's use and that of its subtenants, licensees and customers (collectively, "Customers"), which facility includes tower(s), building(s), radio transmitting and receiving antennas, communications equipment, and related cables, wires, conduits, air conditioning equipment and other appurtenances (the "Telecommunications Facilities"); and
- C. WHEREAS, LESSOR understands and accepts that LESSEE's primary business is the leasing, subleasing, and licensing portions of the Telecommunications Facilities to its Customers.

#### Agreement

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, LESSOR and LESSEE agree as follows.

**1. Option to Lease.** (a) In consideration of the payment of Five Hundred and 00/100 Dollars (\$500.00) (the "Option Fee") by LESSEE to LESSOR, LESSOR hereby grants to LESSEE an option to lease the Leased Premises (as defined in Section 2 below), on the terms and conditions set forth herein (the "Option"). The Option shall be for a term of twelve (12) months, commencing upon the date of mutual execution of this Agreement and ending twelve (12) months from such date (the "Initial Option Period"). LESSEE shall have the right to extend the Option for two (2) additional twelve (12) month periods (each, an "Extension Period") by giving written notice to LESSOR prior to the end of the then-current Option Period, which notice shall be accompanied by an additional option fee payment of Five Hundred and 00/100 Dollars (\$ 500.00) (the "Additional Option Fee"). As used herein, "Option Period" means the Initial Option Period and any applicable Extension Period(s).

(b) During the Option Period and any applicable extension thereof, LESSEE may exercise the Option by so notifying LESSOR in writing.

(c) The provisions of Sections 3(b) and 3(c) of this Agreement shall apply with equal force during the Option Period and, to the extent that LESSEE exercises the Option, the Term of this Agreement.

**2. Premises.** Subject to the following terms and conditions, LESSOR leases to LESSEE and LESSEE leases from LESSOR certain ground space located on the Property sufficient for the construction, operation and maintenance of LESSEE's Telecommunications Facilities, together with all necessary easements for access, egress and utilities, as generally described in this Agreement and depicted on the site plan/drawing attached hereto as Exhibit "B" (collectively referred to hereinafter as the "Leased Premises"). The Leased Premises, located at 3101 Quinlan St, Yorktown Heights, NY, is comprised of approximately Three Thousand Five and Twenty Hundred (3,520) square feet of ground space.

**3. Permitted Use.** (a) The Leased Premises may be used by LESSEE for, among other things, the construction, operation, maintenance, repair and/or replacement of related facilities, towers, buildings, antennas, equipment, and related activities for the transmission and reception of radio communication signals by LESSEE and its Customers (the "Permitted Use").

(b) LESSEE shall, at its expense, obtain any and all certifications, licenses, variances, permits, conditional use permits or authorizations required for LESSEE's use of the Leased Premises from all applicable federal, state, local government and/or regulatory entities (the "Governmental Approvals"). LESSOR agrees to cooperate with LESSEE, at LESSEE's expense, in obtaining Governmental Approvals by: (i) allowing LESSEE to obtain Governmental Approvals and file such applications, letters and/or documents for zoning and/or building permits as are deemed necessary or appropriate by LESSEE in connection with its use of the Leased Premises; (ii) promptly executing any documents or applications as requested by LESSEE to apply for permits for the use of the Property and Leased Premises; (iii) appointing LESSEE as its agent for all conditional use permit and variance applications, including executing any documents or applications reasonably necessary thereto; (iv) authorizing LESSEE as its agent with respect to signing any zoning or building permit applications for LESSEE's use of the Property; and (v) undertaking any other steps reasonably necessary to obtain any Governmental Approval(s) deemed necessary or appropriate by LESSEE. LESSOR shall take no action during the Option Period or, in the event that the Option is exercised, during the Term of this Agreement (as defined in Section 4 below) that would adversely affect the status of the Leased Premises with respect to the proposed use thereof by LESSEE, including, without limitation, initiating, imposing, or consenting to (A) any change in the zoning of the Property, or (B) the placement of any restriction(s) or limitation(s) on the Property that would restrict, limit, or prevent LESSEE's ability to use the Property in the manner set forth in this Section 3.

(c) LESSEE shall perform, at LESSEE's expense, title reports, RF engineering studies, surveys, soil tests, engineering procedures, environmental investigations and such other tests and reports as deemed necessary by LESSEE to determine that LESSEE's use of the Leased Premises will be compatible with LESSEE's engineering specifications, permitted use, system design, operations and Government Approvals (the "Investigations"). LESSOR agrees to cooperate with LESSEE, at LESSEE's expense, with respect to the Investigations by: (i) granting LESSEE a license to enter the Property and conduct the Investigations on, under and over the Property; (ii) allowing LESSEE to perform the Investigations; and (iii) undertaking any other steps as are reasonably necessary in support of such Investigations.

(d) In addition to the provisions of Section 10 below, prior to LESSEE's construction of the Telecommunications Facilities, LESSEE shall have the right to immediately terminate this Agreement upon written notice to LESSOR if LESSEE deems the results of any of the studies, reports, and/or Governmental Approvals referenced in this Section 3 to be unacceptable to LESSEE in its sole discretion.

**4. Term.** (a) The initial term of this Agreement ("Initial Term") shall be ten (10) years, commencing on the date of LESSEE's exercise of the Option (the "Commencement Date"). LESSEE shall have the right to extend this Agreement (including all terms and conditions set forth herein) for nine (9) additional five (5) year renewal terms (each, a "Renewal Term"), and collectively, the "Renewal Terms"). Each such renewal shall occur automatically unless LESSEE sends written notice to LESSOR of its intent not to renew this Agreement at least thirty (30) days prior to the expiration of the Initial Term or then-applicable Renewal Term, as the case may be. As used herein, "Term" means the Initial Term and any applicable Renewal Term(s).

(b) In the event that LESSEE exercises all of the Renewal Terms set forth in the preceding paragraph, LESSEE shall have the exclusive right for the period commencing on the last day of the final Renewal Term through the date which is six (6) months thereafter, to negotiate with LESSOR for a new lease at then-current fair market rental rates ("LESSEE's Limited First Right To Negotiate"). If, at the end of such six (6) month period, the parties have not reached agreement as to all of the material terms of such new lease (including, without limitation, the rent payable thereunder), then LESSEE's Limited First Right To Negotiate shall be of no further force or effect.

**5. Rent.** (a) Commencing on the Rent Commencement Date, as defined in this paragraph, LESSEE shall pay LESSOR as monthly "Rent" an amount equal to Two Thousand and 00/100 Dollars (\$2,000.00) (the "Minimum Rent") or (b) Thirty Five Percent (35 %) (the "Percentage Rent") of Gross Income (as defined below) derived by LESSEE from its subtenants, licensees and customers using the Telecommunications Facilities on the Leased Premises (collectively, the "Authorized Users"), whichever is greater. The Rent shall be payable in equal monthly installments in advance on the first day of each month to LESSOR; rent for any partial month will be prorated. Rent shall be sent to LESSOR at the following address, which address may be changed from time to time during the Term by written notice to LESSEE given pursuant to Section 17: Town of Yorktown, 363 Underhill Ave, Yorktown Heights, NY 10598. As used herein, "Rent Commencement Date" means the earlier of (i) the six (6) months after the Commencement Date, and (ii) the date on which LESSEE completes construction at the Leased Premises.

(b) Commencing on the first (1<sup>st</sup>) day of the first Renewal Term (if any), the Rent due hereunder shall be increased by an amount equal to ten percent (10%) over the Rent applicable during the Initial Term. On the first day of each follow-on Renewal Term thereafter (if any), the Rent due hereunder shall be increased by an amount equal to ten percent (10%) of the Rent applicable during the immediately preceding Renewal Term.

(c) As used herein, "Gross Income" means the income actually received by LESSEE from the Authorized Users during the applicable month or portion thereof in connection with their occupancy of the Telecommunications Facilities on the Leased Premises. The parties agree and acknowledge that the following fees, reimbursements, taxes, and pass-throughs paid to LESSEE by the Authorized Users are expressly excluded from the definition of Gross Income: (i) installation and maintenance fees for services provided by LESSEE on behalf of the Authorized Users; (ii) operating expense, common area cost, and tenant improvement fees and reimbursements; (iii) utility charges; (iv) damage awards, indemnification payments, and related reimbursements; (v) any and all insurance proceeds (with the limited exception of business interruption insurance, to the extent applicable); (vi) all sums collected from Authorized Users for taxes (including, to the extent applicable, sales and use taxes, excise taxes, and similar taxes) for which LESSEE is responsible; (vii) un-forfeited security deposits; and (viii) any proceeds applicable to LESSEE's assignment of the Lease Agreement. If this Agreement expires or is otherwise terminated prior to the last day of the month, the Percentage Rent due hereunder shall be prorated. All Percentage Rent payments shall be payable as set forth in Section 5(a).

(d) Effective on each anniversary of the Commencement Date, LESSEE shall provide LESSOR a statement ("Annual Statement") of LESSEE's Gross Income during the applicable calendar year period (or portion thereof). Such statement will be accompanied by the certification of LESSEE's Chief Financial Officer (or his/her designee) confirming that the statement and the Percentage Rent payments were calculated in accordance with this Section 5. Notwithstanding the preceding sentence, in the event that the Agreement expires or is terminated prior to the Commencement Date, LESSEE shall remit a statement and certification referenced in the preceding sentence, to LESSOR not later than 90 days after the date of expiration or termination.

**6. Interference.** Subject to LESSEE's rights under this Agreement including, without limitation, non-interference, LESSEE shall not use the Leased Premises in any way which interferes with the use of the Property by LESSOR or its lessees or licensees with rights in the Property prior in time to LESSEE's initial use thereof as a telecommunications facility. LESSOR shall not use, nor shall LESSOR permit its tenants, licensees, employees, invitees or agents to use, any portion of the Property in any way that interferes with the operations of LESSEE. Any interference prohibited by this paragraph shall be deemed to constitute a material breach of this Agreement, and the offending party shall, upon written notice from the other, promptly cause such interference to be terminated. In the event that any such interference is not so terminated, the injured party shall have the right, in addition to any other rights that it may have at law or in equity, to bring a court action to enjoin such interference or to terminate this Agreement immediately upon written notice to the other party.

**7. Construction of Improvements.** (a) From time to time during the Term hereof, LESSEE shall have the right, in its sole judgment and at its sole cost and expense, to construct, install, operate, maintain, replace, remove, modify, add to, upgrade, rebuild, and/or relocate any or all of the Telecommunications Facilities. Notwithstanding the fact that certain such equipment and appurtenances that are a part of the Telecommunications Facilities may be classified as fixtures under applicable law, the parties agree and acknowledge that all such equipment and appurtenances are, and shall at all times remain, the sole property of LESSEE or its Customers, as the case may be, and that LESSEE shall have the right, but not the obligation, to remove any or all of the same during the Term of this Agreement and/or at the expiration or earlier termination hereof.

(b) The Telecommunication Facilities shall be initially configured as generally set forth in **Exhibit "C,"** hereto (the "**Site Plan**"). LESSEE shall have the right to modify, replace, add to, upgrade, rebuild, and/or relocate the Telecommunication Facilities at any time during the Term.

(c) LESSEE shall be solely responsible for the operation, maintenance, repair of, and the insurance for, the Telecommunications Facilities.

(d) LESSOR shall have the right to request the relocation of the Telecommunications Facility and the Leased Premises in the event LESSOR constructs an additional water tank at the Property. LESSOR shall exercise its relocation right by delivering written notice pursuant to Section 17 to LESSEE not less than twelve (12) months prior to the proposed relocation date (the "Relocation Date"). In the event LESSOR requests such relocation, LESSEE shall relocate its Telecommunications Facilities as generally depicted on the

site plan/drawing attached hereto as **Exhibit "E"** (the "Relocation Site"). Upon relocation of the Telecommunications Facilities any access, egress and utility easements provided to LESSEE shall be relocated consistent with this Agreement.

(e) Upon relocation of the Telecommunications Facility to the Relocation Site, all references to the Leased Premises, Premises, or Telecommunications Facility shall be deemed to be references to the Relocation Site. LESSOR and LESSEE agree that the Relocation Site (including the access and utility easements) may be surveyed by a licensed surveyor at LESSEE's sole expense. The survey will then replace Exhibits B, C and E and will become a part of this Agreement and will control as description of the Leased Premises. Except as expressly provided herein, LESSOR and LESSEE agree that the relocation of the Telecommunications Facility shall in no event affect, alter, modify or otherwise change any of the terms and conditions of this Agreement.

(f) Upon completion of the relocation of the Telecommunications Facility, LESSEE shall certify to LESSOR the total cost of the relocation, including without limitation the cost of installing, operating and maintaining any temporary or new antenna support facilities and all site improvement costs to LESSOR and LESSOR shall reimburse LESSEE for all costs it incurred as a result of the relocation, by accepting an abatement of the Rent and any other payments due LESSOR under this Agreement until LESSEE has recouped its certified relocation costs. However, the amount to be reimbursed by LESSOR shall not exceed a maximum of one (1) year's Rent due at the time LESSOR delivers notice to LESSEE under paragraph (d).

(g) At all times for the duration of this Agreement LESSEE shall post a removal bond to the benefit of LESSOR substantially conforming to the draft bond attached hereto as shown in **Exhibit "F"**. LESSEE's failure to relocate its Telecommunications Facility and Leased Premises by the Relocation Date shall constitute a default under this Agreement and LESSOR shall so notify the Surety in writing.

**8. Access.** (a) As partial consideration for the Rent paid by LESSEE pursuant to this Agreement, LESSEE shall have, throughout the Term hereof, the right to access the Leased Premises over and across the Property twenty-four (24) hours per day, seven (7) days a week for the purpose of ingress, egress, operation, maintenance, replacement, and repair of the Telecommunications Facilities (LESSEE's "**Access Rights**"). The Access Rights granted herein (i) include the nonexclusive right to enter the Property from the nearest public street and driveway, parking rights, and (ii) extend to LESSEE, its Customers, their contractors, subcontractors, equipment and service providers, governmental agencies of appropriate jurisdiction, and the duly-authorized employees, inspectors, representatives, and agents of each of them.

(b) In addition to the Access Rights set forth in the preceding paragraph, during the period that the Telecommunications Facilities are being constructed, LESSOR grants to LESSEE and its Customers the right to use such portions of the Property and the Adjacent Property as are reasonably required for the construction and installation of the Telecommunications Facilities, including, but not necessarily limited to, (i) the right of ingress to and egress from the Property and, to the extent reasonably required, the Adjacent Property for construction machinery and related equipment, and (ii) the right to use such portions of the Property and/or Adjacent Property as are reasonably necessary for the storage of construction materials and equipment. As used herein, "**Adjacent Property**" means other real property owned by LESSOR that is contiguous to, surrounds, or in the immediate vicinity of the Property.

**9. Utilities.** (a) LESSOR hereby grants to LESSEE, at LESSEE's sole cost and expense, the right to install, and, to the extent applicable, improve, upgrade, and modify utilities at the Leased Premises (including, without limitation, telephone service, telecommunications lines (including, fiber) and electricity). LESSEE shall, to the extent reasonably practicable, install separate meters or sub-meters, as the case may be, for utilities used in the operation of the Telecommunications Facilities on the Leased Premises.

(b) As partial consideration for the Rent paid by LESSEE under this Agreement, LESSOR hereby grants to LESSEE and the servicing utility companies a nonexclusive right of way over and across the Property as necessary for the construction, installation, running, servicing and maintenance of electrical power and other utilities necessary to serve the Telecommunication Facilities. Upon LESSEE's request, LESSOR agrees to promptly execute any and all documents necessary to evidence the rights granted to LESSEE pursuant to this paragraph including, without limitation, right-of-way and easement documents, and further grants to LESSEE an irrevocable power of attorney to execute, on LESSOR's behalf, any and all such documents.

**10. Default and Termination.** (a) In addition to other events or circumstances permitting the termination of this Agreement, this Agreement may be terminated, without any penalty or further liability, as follows: (i) by either party, upon a breach or default of any covenant or term hereof by the other party, which breach or default is not cured within thirty (30) days of the breaching party's receipt of written notice thereof from the non-breaching party; provided, however, that if efforts to cure such breach are commenced within such thirty (30) day period and are thereafter diligently prosecuted to completion, such period shall be extended for a period of time not

to exceed six (6) months; and further provided that the cure period for any monetary default shall be thirty (30) days from the defaulting party's receipt of the other party's written notice of payment delinquency; (ii) by LESSEE, upon thirty (30) days prior written notice to LESSOR, in the event that the Leased Premises become technologically unsuitable, in LESSEE's opinion, for LESSEE's Telecommunications Facilities for reasons including, but not limited to, unacceptable radio signal interference and any addition, alteration, or new construction on, adjacent to, or in the vicinity of the Leased Premises and/or the Property that blocks, either partially or totally, transmission or receiving paths; (iii) by LESSEE, upon thirty (30) days prior written notice to LESSOR, in the event that any Governmental Approval that LESSEE considers to be necessary or convenient for the construction, operation, maintenance, reconstruction, modification, addition to, or removal of the Telecommunications Facilities is not, in LESSEE's sole discretion, reasonably obtainable or maintainable in the future; (iv) by LESSEE, upon thirty (30) days prior written notice to LESSOR, in the event that the Leased Premises cease to be economically viable as a telecommunications site (as determined by LESSEE in its sole business judgment); and (v) by LESSEE, upon thirty (30) days prior written notice to LESSOR, if any Hazardous Substance (as defined in Section 13 below) is or becomes present on the Property in violation of any Environmental Laws (as also defined in Section 13 below) to the extent that such is not caused by LESSEE.

(b) Except as expressly limited by this Agreement, a party's termination hereof as the result of a breach thereof by the other party that is not cured within the applicable period set forth in Section 10(a) shall be in addition to, and not in lieu of, any and all remedies available to the terminating party, whether at law or in equity.

**11. Condemnation.** If all or any part of the Leased Premises, or if all or any part of the Property underlying the Telecommunication Facilities or providing access to the Premises is taken by eminent domain or other action by governmental authority(s) of appropriate jurisdiction (each, an "Act of Condemnation"), and if, in LESSEE's sole discretion, such an Act(s) of Condemnation renders the Premises unusable for the Permitted Use set forth in Section 3 hereof, then LESSEE shall have the right to immediately terminate this Agreement upon written notice to Lessor, and all Rent obligations (except those that accrued prior to the effective date of termination) shall cease. If LESSEE elects not to terminate this Agreement following an Act of Condemnation, then this Agreement shall continue unaffected, except that the Rent shall be reduced or abated in proportion to the actual reduction or abatement of LESSEE's use of the Leased Premises as a result of such Act of Condemnation. In the event of an Act of Condemnation (whether in whole or in part), LESSEE shall be entitled to pursue and receive the award related to the Telecommunication Facilities and any equipment and/or infrastructure owned or constructed by LESSEE that is related thereto. The terms set forth in this Section 11 shall survive the expiration or earlier termination of this Agreement.

**12. Indemnification.** Subject to the provisions of Section 14 below, LESSEE shall defend (with counsel reasonably acceptable to LESSOR), indemnify, and hold LESSOR harmless from and against any claims (including reasonable attorneys' fees, costs and expenses incurred in defending against such claims), losses, damages, and liabilities (collectively, "Claims") resulting from the negligence or willful misconduct of LESSEE and LESSEE's agents, licensees, invitees, and contractors, and the shareholders, directors, officers, and employees of each of them (the "LESSEE Parties") occurring in or about the Premises or the Property. LESSOR shall defend (with counsel reasonably acceptable to LESSEE), indemnify, and hold LESSEE harmless from all Claims arising from the negligence or willful misconduct of LESSOR and LESSOR's agents, lessees, licensees, invitees, and contractors, and the shareholders, directors, officers, and employees of each of them (the "LESSOR Parties") occurring in or about the Premises or the Property. The terms set forth in this Section 12 shall survive the expiration or earlier termination of this Agreement.

**13. Hazardous Substances.** LESSOR represents and warrants to LESSEE that LESSOR (a) is not presently, nor at any time in the past did LESSOR engage in or permit, and (b) has no knowledge of any other person or entity's engaging (whether past or present) or permitting (whether past or present) any operations or activities upon, or any use or occupancy of any portion of the Property (including, without limitation, the Leased Premises), for the purpose of or in any way involving the handling, manufacturing, treatment, storage, use, transportation, spillage, leakage, dumping, discharge or disposal (whether legal or illegal), accidental or intentional, of any hazardous substances, materials or wastes (individually, a "Hazardous Substance" and collectively, "Hazardous Substances") regulated under any federal, state, or local law, rule, or regulation pertaining to the environment, public health or safety, or the handling, manufacturing, treatment storage, use, transportation, spillage, leakage, dumping, discharge or disposal of Hazardous Substances (collectively, "Environmental Laws"). LESSOR and LESSEE each agree that they will not use, generate, store, or dispose of any Hazardous Material on, under, about or within the Property or the Leased Premises in violation of any Environmental Law. LESSOR shall indemnify, defend, and hold harmless LESSEE and the LESSEE Parties (as defined in Section 12 above), and LESSEE shall indemnify, defend, and hold harmless LESSOR and the LESSOR Parties (as defined in Section 12 above), from and against any and all Claims (as also defined in Section 12) arising from the indemnifying party's breach of any obligation, representation, or warranty contained in this paragraph, except for Claims arising in whole or in any part out of the indemnified party's use or occupancy of the Property or the Leased Premises. The indemnification provisions set forth in this Section 13 shall survive the expiration or earlier termination of this Agreement.

**14. Insurance.** a) During the Term of this Agreement, LESSEE shall, at its sole cost and expense, procure and maintain the following insurance with customary exceptions and exclusions: (i) Bodily Injury: \$1,000,000.00 for injury to any one (1) person, and \$2,000,000.00 for injury(s) sustained by more than one (1) person in any one (1) occurrence; and (ii) Property Damage: replacement cost for all of LESSEE's equipment located at the Leased Premises (collectively, the "LESSEE Policies"). LESSEE covenants and agrees that LESSOR shall be named as an additional insured under the LESSEE Policies. In the event of LESSOR's written request therefore, LESSEE shall provide LESSOR with a certificate of insurance evidencing the coverage required hereby not later than thirty (30) days following its receipt of LESSOR's request.

(b) LESSEE hereby releases and holds harmless LESSOR and the LESSOR Parties, and LESSOR hereby releases and holds harmless LESSEE and the LESSEE Parties, from and against any personal injury/death occurring at the Premises and/or the Property that results from risks insured against under any insurance policy(s) carried by such party that are in force at the time of any such injury or damage. LESSOR and LESSEE shall use commercially reasonable efforts to cause all insurance policies referenced in this Section 14 to include a waiver of subrogation against the other party with respect to any injury or damage covered under such policy. The waivers and releases in this paragraph shall not only apply as between the parties, but shall also apply to any claims under or through either party as a result of any asserted right of subrogation.

(c) Notwithstanding the foregoing insurance requirements, the insolvency, bankruptcy, or failure of any insurance company carrying or writing any of the policies referenced in this Section 14 shall not be construed as a waiver of any of the provisions of this Agreement, nor shall any such insolvency, bankruptcy, or failure relieve either party from its obligations hereunder. The terms set forth in this Section 14(c) shall survive the expiration or earlier termination of this Agreement.

**15. Taxes.** LESSOR shall be responsible for all real and personal property taxes, assessments, and similar charges assessed against the Property and LESSOR's property thereon, and LESSEE shall be responsible, to the extent applicable, for any and all personal property taxes, assessments, and similar charges attributable to LESSEE's equipment and other property owned by LESSEE located at the Leased Premises.

**16. Quiet Enjoyment, Title and Authority.** (a) During the Term of this Agreement, LESSEE may, provided that it is not in default hereunder beyond any applicable notice and cure period, peaceably and quietly hold and enjoy the Premises, free from disturbance from any person claiming by, through, or under LESSOR.

(b) LESSOR covenants and warrants to LESSEE that: (i) LESSOR has full right, power, and authority to execute this Agreement; (ii) LESSOR has good and unencumbered title to the Property, free and clear of any liens or mortgages, except those disclosed to LESSEE and of record as of the date of this Agreement; and (iii) LESSOR's execution and performance of this Agreement will not violate the covenants, provisions, representations, or warranties of any mortgage, deed of trust, lease, or other agreement to which LESSOR is a party or by which LESSOR is otherwise bound.

(c) LESSOR agrees that, during the Term of this Agreement, LESSEE will have the exclusive right to use the Property or any portion thereof for use as telecommunications facilities providing transmission and/or receiving facilities for wireless providers and/or users, and that that LESSOR shall not itself operate wireless telecommunications facilities on the Property, or any portion thereof, nor will LESSOR grant a lease, sublease, license, or other right to use the Property, any portion thereof, or any property that is adjacent thereto that may be owned by LESSOR, to any other person or entity for the operation of antenna and/or telecommunications facilities.

**17. Notices.** All notices, demands, requests, or other communications which are required to be given, served, or sent by one party to the other pursuant to this Agreement shall be in writing and shall be mailed, postage prepaid, by registered or certified mail, or forwarded by a reliable overnight courier service with delivery verification, to the following addresses for LESSOR and LESSEE, or to such address as may be designated in writing by either party pursuant to this Section 17:

If to LESSEE, to:  
Homeland Towers, LLC  
9 Harmony St, 2<sup>nd</sup> Floor  
Danbury, CT 06810  
Telephone: (203) 297-6345  
Facsimile:

With a copy to:  
InSite Wireless Group, LLC  
Attn: General Counsel  
260 Newport Center Drive, Suite 421  
Newport Beach, CA 92660  
Attn: Legal Department  
Telephone: (949) 999-3319  
Facsimile: (949) 999-3359

If to LESSOR, to:  
Town of Yorktown  
363 Underhill Ave  
Yorktown Heights, NY 10598  
Attn: Supervisor  
Telephone:  
Facsimile:

With a copy to:  
  
  
Attn:  
Telephone:  
Facsimile:

Notice given by certified or registered mail or by reliable overnight courier shall be deemed to have been delivered on the date of receipt (or on the date receipt is refused, as the case may be) as shown on the certification of receipt or on the records or manifest of the U.S. Postal Service or courier service.

**18. Estoppel, Non-Disturbance and Attornment.** (a) From time to time during the Term of this Agreement, LESSOR agrees, upon not less than ten (10) days prior written notice from LESSEE, to execute, acknowledge and deliver to LESSEE a written estoppel certificate (the "Lessor Estoppel") certifying that as of the date of the certification: (i) the Agreement is a valid and enforceable Agreement and is in full force and effect; (ii) that LESSEE is not in default under any of the terms, conditions, or covenants of the Agreement beyond or any applicable cure period or, if applicable, truthfully specifying any default by LESSEE hereunder and the cure period applicable thereto; (iii) the commencement and expiration dates of the then-current term hereof together with any remaining Renewal Term(s); (iv) the amount of the then-current rent payable under the Agreement; and (v) a true and correct copy of the Agreement and all amendments thereto shall be attached to the Lessor Estoppel.

(b) LESSOR shall use good faith efforts to obtain for LESSEE from the holder of any mortgage and/or deed of trust now or hereafter encumbering the Property a non-disturbance and attornment agreement in a form reasonably satisfactory to LESSEE, which agreement shall provide that as long as LESSEE is not in default of any of its material obligations under this Agreement beyond any applicable cure period, its rights as LESSEE hereunder shall not be terminated and its access to and possession of the Leased Premises shall not be disturbed by the mortgagee or trustee, as the case may be, or by any proceedings on the debt which any such mortgage or deed of trust secures, and that any sale at foreclosure shall be subject to this Agreement.

(c) For purposes of allowing LESSEE to satisfy its lender's continuing rights with respect to LESSEE'S property on the Leased Premises, and with respect to LESSEE's rights and interests under this Agreement, LESSOR agrees as follows:

(i) LESSOR shall recognize the subleases and/or licenses of all Customers of LESSEE on the Leased Premises, and, notwithstanding any default hereunder by LESSEE, will permit such Customers to remain in occupancy thereof so long as such Customer is not in default of any material obligation under its sublease/license with LESSEE beyond any applicable notice and cure period;

(ii) LESSOR consents to the granting by LESSEE of a lien and security interest in and/or mortgaging of LESSEE's interest in this Agreement and all of LESSEE's personal property and fixtures located on or attached to the Property, and furthermore consents to the exercise by LESSEE's mortgagee of its rights of foreclosure with respect to such mortgagee's lien and/or security interest. LESSOR agrees to recognize LESSEE's mortgagee as LESSEE hereunder upon any such exercise by LESSEE's mortgagee of its rights of foreclosure. LESSOR further agrees (A) to subordinate any lien or security interest which

it may have which arises by law or pursuant to this Agreement to the lien and security interest of LESSEE's mortgagee in the collateral securing all indebtedness at any time owed by LESSEE to its mortgagee (collectively the "Collateral"), and (B) that, upon an event of default by LESSEE under this Agreement or under any applicable mortgage, security agreement, or other loan document executed in favor of LESSEE's mortgagee, LESSEE's mortgagee shall have the full right, title, and authority to exercise its rights against the Collateral prior to the exercise by the LESSOR of any rights which it may have or claim to have therein, including, but not limited to, the right to enter upon the Leased Premises and remove the Collateral free and clear of any applicable lien or security interest of LESSOR;

(iii) Within a reasonable time after the occurrence thereof, LESSOR shall give LESSEE's lender written notice of any breach or default of the terms of this Agreement that is not cured by LESSEE within any applicable notice and cure period(s) (an "Uncured LESSEE Default"). As of the Effective Date of this Agreement, notices to LESSEE's lender are to be addressed to: Goldman Sachs Specialty Lending Group, LP, ATTN: InSite Account Manager, 6011 Connection Drive, Irving, TX 75039, or to such other address/and or lender as may be specified by LESSEE from time to time during the Term hereof. LESSOR further agrees that no default shall be deemed to have occurred under this Agreement unless LESSOR gives the notice required to lender that is required by this paragraph, and that in the event of any Uncured LESSEE Default, lender shall have the right, to the same extent and with the same effect as LESSEE, for the period set forth in this Agreement, to cure or correct any such Uncured LESSEE Default, whether the same shall consist of the failure to pay rent or the failure to perform, and LESSOR agrees to accept such payment or performance on the part of lender as though the same had been made or performed by the LESSEE; and

(iv) LESSOR acknowledges and agrees that nothing contained in this Agreement shall construed as obligating LESSEE's mortgagee to take any action hereunder, or to perform or discharge any obligation, duty, or liability of LESSEE under this Agreement.

**19. Assignment and Subletting** LESSEE shall have the right to assign its interest in this this Agreement, whether in whole or in part, without LESSOR's consent. Upon notification to LESSOR of such assignment, LESSEE shall be relieved of all future performance, liabilities and obligations under this Agreement. In addition, LESSEE shall have the right to license or sublet the Leased Premises, in whole or in part, without LESSOR's consent, for the Permitted Use set forth in Section 3.

**20. Right of First Refusal**. If during the term of this Agreement, LESSOR receives a bona fide offer ("Bona Fide Offer") from a third party to lease or purchase (a) an interest in all or a portion of the Property whether in fee, by grant of easement, or otherwise, (b) LESSOR's interest under this Agreement including, but not limited to, LESSOR's rights to receive rents hereunder, and/or (c) the right to enter into an option, lease, or easement after the term of this Agreement that LESSOR is willing to accept (individually and collectively, the "Property Interest"), LESSEE shall have the right of first refusal ("Right of First Refusal") to so acquire the Property Interest that is the subject of the Bona Fide Offer. LESSOR shall provide LESSEE with a written copy of the Bona Fide Offer, and LESSEE shall have thirty (30) days following its receipt thereof to notify LESSOR in writing as to whether it wishes to exercise its Right of First Refusal with respect to the Property Interest that is the subject thereof. If LESSEE exercises its right to purchase the subject Property Interest, such purchase shall be made pursuant to all of the terms and conditions set forth under the Bona Fide Offer. If LESSEE fails to exercise its Right of First Refusal, this Agreement shall remain in full force and effect, and such Right of First Refusal shall lapse with respect to the Bona Fide Offer, but not with respect to any subsequent Bona Fide Offer(s), if LESSOR fails to convey the Property Interest that is the subject thereof to the third party in strict accordance with the terms of the Bona Fide Offer within one hundred eighty (180) days of the date of LESSEE's waiver of such Right of First Refusal.

**21. Miscellaneous**. (a) This Agreement, including Exhibits A-E hereto which are hereby incorporated herein by this reference, constitutes the entire Agreement and understanding of the parties with respect to the subject matter hereof, and supersedes all prior offers, negotiations, and agreements with respect thereto. There are no representations or understandings of any kind not set forth herein. Any amendments to this Agreement must be in writing and be executed by a duly authorized representative of each party.

(b) LESSOR shall, not later than thirty (30) days following the Effective Date hereof, provide LESSEE with a copy of LESSOR's organizational documents which may include, by way of example, (i) LESSOR's Articles of Incorporation, By-Laws, Partnership Agreement, Operating Agreement and the like, which documents shall evidence LESSOR's authority, right, and ability to enter into this Agreement, (ii) current certificates of good standing and incumbency, (iii) a duly-executed and authorized resolution authorizing the transactions contemplated hereby, and (iv) a document evidencing, to LESSEE's commercially-reasonable satisfaction, the signature authority of the LESSOR representative who executed this Agreement on LESSOR's behalf.

(c) Upon the request of LESSEE, the parties shall execute the Memorandum of Lease attached hereto and incorporated herein as **Exhibit "D"** (the "Memorandum"). LESSEE shall cause the Memorandum to be recorded, at LESSEE's sole cost and expense, in the official records of the county and state in which the Leased Premises are located. Upon determination of the legal description of the Leased Premises by LESSEE (the "Leased Premises Legal Description"), LESSOR and LESSEE shall amend this Agreement and record an amendment to the Memorandum to incorporate the Leased Premises Legal Description.

(d) Any sale or conveyance of all or any portion of the Premises shall be subject to this Agreement and LESSEE's rights hereunder.

(e) This Agreement shall be construed in accordance with the laws of the state in which the Premises are located, without regard to the choice of law rules thereof.

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

(g) This Agreement may be executed in any number of counterparts (including by facsimile or by electronic copy or transmission), each of which shall be the binding agreement of the executing party, and which, when taken together, shall constitute but one and the same instrument.

(h) The provisions of this Section 21 shall survive the expiration or earlier termination of this Agreement.

[SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, the parties have caused this Option and Ground Lease Agreement to be executed by their duly-authorized representatives as of the Effective Date set forth above.

\_\_\_\_\_  
**(“LESSOR”)**

Signed, sealed and delivered in the presence of:

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

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

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

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

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

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

Tax ID: \_\_\_\_\_

**HOMELAND TOWERS, LLC**  
**(“LESSEE”)**

Signed, sealed and delivered in the presence of:

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

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

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

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

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

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

**EXHIBIT "A" TO OPTION AND GROUND LEASE AGREEMENT**

**LEGAL DESCRIPTION OF PROPERTY**

**EXHIBIT “B” TO OPTION AND GROUND LEASE AGREEMENT**

**DEPICTION/DESCRIPTION/SITE PLAN OF LEASED PREMISES<sup>1</sup>**

\_\_\_\_ The Leased Premises includes ground space.

\_\_\_\_ The Leased Premises includes rooftop space.

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<sup>1</sup> LESSEE reserves the right to replace this Exhibit during the Term of this Agreement with a legal description of the Leased Premises (the “Leased Premises Legal Description”). Effective on the date of LESSEE’s delivery of the Leased Premises Legal Description to LESSOR, such Legal Description shall replace the text of this Exhibit.

EXHIBIT “C” TO OPTION AND GROUND LEASE AGREEMENT

SITE PLAN<sup>2</sup>

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<sup>2</sup> LESSEE reserves the right to replace this Exhibit during the Term of this Agreement with an as-built site plan (the “As-Built Site Plan”). Effective on the date of LESSEE’s delivery of the As-Built Site Plan to LESSOR, such As-Built Site Plan shall replace the text of this Exhibit.

**EXHIBIT "D" TO OPTION AND GROUND LEASE AGREEMENT**

**MEMORANDUM OF LEASE**

[SEE ATTACHED.]

**PREPARED/RECORDING REQUESTED BY:**

**Homeland Towers, LLC**

**Record and Return to:**

**Tax ID/Parcel No.:** \_\_\_\_\_

*(space above for Recorder's use only)*

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**MEMORANDUM OF OPTION AND GROUND LEASE AGREEMENT**

THIS MEMORANDUM OF OPTION AND GROUND LEASE AGREEMENT (this "Memorandum"), made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 201\_\_ by and between \_\_\_\_\_, a \_\_\_\_\_, with an address of \_\_\_\_\_ ("Lessor") and HOMELAND TOWERS, LLC, a New York limited liability company, with an address of 9 Harmony Street, 2<sup>nd</sup> Floor, Danbury, CT 06810 ("Lessee"), is a record of that certain Option and Ground Lease Agreement ("Lease") between Lessor and Lessee dated as of \_\_\_\_\_, 20\_\_\_\_. The Lease contains, among other things, the following terms:

1. Description of Property. The Leased Premises are located on that certain real property described in Exhibit A hereto (the "Property").
2. Term. The "Initial Term" of the Lease is ten (10) years beginning on the date that Lessee exercises the Option set forth in Section 1 of the Lease. Lessee has the right to extend the term of the Lease for nine (9) successive terms of five (5) years each (individually, a "Renewal Term," and collectively, the "Renewal

Terms”). The Initial Term and any applicable Renewal Term(s) are collectively referred to as the “Term.”

3. Quiet Enjoyment. Pursuant to the Lease, Lessee has the exclusive right to use the Property or any portion thereof for use as telecommunications facilities providing transmission and/or receiving facilities for wireless providers and/or users, Pursuant to the Lease, Lessor shall not grant a lease, sublease, license, or other right to use the Property, any portion thereof, or any property that is adjacent thereto that may be owned by LESSOR, to any other person or entity for the operation of antenna and/or telecommunications facilities.

4. Subletting. Lessee has the right, at any time during the Term of the Lease, to sublet any portion of the Leased Premises or to permit any portion of the Leased Premises to be occupied or used by its subtenants, licensees, and customers in connection with the provision of communication services.

5. Right of First Refusal. The Lease grants LESSEE a right of first refusal in the event of (a) a lease, grant of an easement, or sale of the Property, in whole or in part, including, but not necessarily limited to, the portion of the Property on which the Leased Premises are located, (b) a sale, transfer, or other conveyance of LESSOR’s interest in the Lease including, without limitation, the right to receive rent under the Lease, and (c) the right to enter into an option, lease, or easement after the term of the Lease.

6. Limited First Right to Negotiate. In the event that LESSEE exercises all of the Renewal Terms under the Lease, the Lease grants LESSEE an exclusive right to negotiate with LESSOR with respect to the terms of a new lease for a period of six (6) months commencing on the last day of the final Renewal Term. In the event that LESSEE and LESSOR have not reached agreement as to all of the material terms of the new lease on or before the expiration of such six (6) month period, then LESSEE’s exclusive right to negotiate shall be of no further force or effect.

7. Limited Power of Attorney. LESSOR hereby grants the right to LESSEE to complete and execute on behalf of LESSOR any government or transfer tax forms necessary for the recording of this Memorandum. This right shall terminate upon recording of this Memorandum.

8. Ratification of Lease; Release of Memorandum. By this Memorandum, the parties: (a) intend to record a reference to the Lease; (b) hereby ratify and confirm all of the terms and conditions of the Lease; and (c) declare that the Leased Premises are subject to the Lease. Following the expiration or earlier termination of the Lease, Lessee will, upon Lessor’s written request therefore, execute and deliver to the Lessor an instrument in recordable form evidencing the expiration/termination of the Lease and the release of this Memorandum.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Memorandum of Option and Ground Lease as of the date first above written.

\_\_\_\_\_  
a \_\_\_\_\_  
("LESSOR")

Signed, sealed and delivered in the presence of:

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

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

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

State of \_\_\_\_\_  
County of \_\_\_\_\_

On \_\_\_\_\_, 201\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

(Affix Notarial Seal)

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

My Commission Expires: \_\_\_\_\_

Commission No.: \_\_\_\_\_

IN WITNESS WHEREOF, Lessor and Lessee have executed this Memorandum of Option and Ground Lease as of the date first above written.

HOMELAND TOWERS, LLC,  
a New York limited liability company  
("LESSEE")

Signed, sealed and delivered in the presence  
of:

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

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

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

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

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

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

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

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

State of \_\_\_\_\_

County of \_\_\_\_\_

On \_\_\_\_\_, 201\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

(Affix Notarial Seal)

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

My Commission Expires: \_\_\_\_\_

Commission No.: \_\_\_\_\_

**EXHIBIT "A" TO MEMORANDUM OF OPTION AND GROUND LEASE  
AGREEMENT**

**LEGAL DESCRIPTION OF PROPERTY**