

STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

IN RE:

APPLICATION OF NORTH ATLANTIC TOWERS, LLC
and NEW CINGULAR WIRELESS PCS, LLC (AT&T)
FOR A CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED FOR THE
CONSTRUCTION, MAINTENANCE AND OPERATION
OF A TELECOMMUNICATIONS TOWER FACILITY
AT ONE OF TWO SITES: 171 SHORT BEACH ROAD,
BRANFORD, OR 82 SHORT BEACH ROAD,
EAST HAVEN, CONNECTICUT

DOCKET NO. 427

August 7, 2012



CONNECTICUT
SITING COUNCIL

APPLICANTS

NORTH ATLANTIC TOWERS, LLC and NEW CINGULAR WIRELESS PCS, LLC (AT&T)
SUPPLEMENTAL INFORMATION

Applicants North Atlantic Towers, LLC and New Cingular Wireless PCS, LLC (AT&T)
respectfully submit the following supplemental information.

Site Search Information

189 Alps Road, Branford – Number 3 in the Site Search Summary

As set forth in the correspondence included in Attachment 6 of the Application, in response to the Town of Branford's request, AT&T sent a letter to the owners of 189 Alps Road to inquire whether they were interested in resuming negotiations for a lease for the siting of a wireless facility. A copy of AT&T's letter to Messrs. Charles F. Shelton and Steve Shelton dated January 24, 2011 is included in Attachment 6 of the Application. Included in Attachment 1 hereto is a copy of the return receipt card from January 24, 2011 letter. As Mr. Vivian indicated at the July 10th hearing, there was no response to the January 24, 2011 letter.

Orchard House, 345 Shore Drive, Branford – Number 7 in the Site Search Summary

As Mr. Howse noted at the July 10, 2012 hearing, with respect to the review of the Town-owned Orchard House site as a potential alternative site, North Atlantic Towers conducted two design visits with the Town of Branford and provided the Town of Branford with a lease, lease exhibits and a photosimulation for the Orchard House location. Included in Attachment 2 hereto are a copy of the draft lease provided to the Town with lease exhibits and a photosimulation and a copy of the comments from the Town on the lease. The copy of the lease in Attachment 2 includes some of the comments from the Town. As discussed at the July 10, 2012 hearing, it is North Atlantic Towers understanding that the Town did not pursue the Orchard House location due to community opposition.

67 and 71 Goodsell Road, Branford

Subsequent to the July 10, 2012 hearing, the owner of the adjacent properties located at 67 and 71 Goodsell Road in the Town of Branford contacted the Applicants' representative expressing

interest in leasing her properties for the siting of a tower facility. North Atlantic Towers followed up with the property owner for more specific location information. Upon review, it was determined that the properties are located close to an existing AT&T site at 123 Pine Orchard Road and that a tower at either location would be highly visible from the Branford Historic District. Thus, these properties are not considered viable alternative locations for the needed facility.

Facility Design Information

Updated Drawings

Included in Attachment 3 are updated drawings for the Branford Site. The drawings were updated to show the distance from the proposed tower to a residence to the southwest (approximately 136') and to update the size of the equipment area for additional carriers to 10' x 20', consistent with the equipment areas for the East Haven Site.

Included in Attachment 4 are updated drawings for the East Haven Site. Per the discussion at the July 10, 2012 hearing, the enclosed drawings depict a reconfiguration of the compound area where the proposed tower is shifted approximately 450 feet to the east behind the fire house building and AT&T's proposed emergency generator is shifted further from the eastern property boundary and situated between AT&T's shelter and the future equipment area for another carrier.

Emergency Generator Noise Studies

Included in Attachment 5 are noise studies for the emergency generator at the proposed Branford Site and the proposed East Haven Site. The attached noise studies demonstrate that the anticipated worst-case noise level associated with the emergency generator at the closest residence to either proposed Site will be similar to the noise level of a conversation. As noted in the attached noise studies, the analysis did not consider the intervening vegetation that will further dampen or reduce noise levels.

CERTIFICATE OF SERVICE

I hereby certify that on this day, a copy of the foregoing was sent electronically and by overnight mail to the Connecticut Siting Council and:

Kenneth C. Baldwin, Esq.
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103-3597
(860) 275 8345
KBALDWIN@RC.com


Sarah Pierson
63 Hilton Avenue
East Haven, CT 06512
(203) 215 6635
Sarahpierson@att.net

Keith Ainsworth, Esq.
Evans, Feldman & Ainsworth, L.L.C.
261 Bradley Street, P.O. Box 1694
New Haven, Connecticut 06507-1694
(203) 772-4900
krainsworth@snet.net

Niki Whitehead
9 Hilton Avenue
East Haven, CT 06512
(203) 467-9705

Richard Moreland
8 Hilton Avenue
East Haven, CT 06512
(203) 467 1779
Richard.Moreland@live.com

Dated: August 7, 2012



Christopher B. Fisher

cc: Bret Buggeln, NAT, LLC; Michele Briggs, AT&T; John Stevens, Infinigy Engineering PLLC; Tony Wells, C-Squared Systems, Inc.; Martin Lavin, C-Squared Systems, Inc.; David Vivian, New Cingular Wireless PCS, LLC; Michael Libertine, All-Points Technology Corporation, P.C. ;Randy Howse; Christopher Fisher, Esq.

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Charles & Steve Shelton
Branford Hills Health
189 Alps Rd Ctr
Branford, CT 06405

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

[Handwritten Signature]

Agent

Addressee

B. Received by (Printed Name)

Peter Malischak

C. Date of Delivery

1-29-11

D. Is delivery address different from item 1? Yes

If YES, enter delivery address below:

No

3. Service Type

Certified Mail Express Mail

Registered Return Receipt for Merchandise

Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

2. A
0

7010 1870 0002 6383 5542

LAND LEASE AGREEMENT

This Land Lease Agreement ("Agreement") entered into as of the date set forth on the signature page hereof, by and between Town of Branford, a municipality whose address is 1019 Main Street Branford, CT 06405 and Florida Tower Partners, LLC, a Delaware limited liability company, 1001 3rd Ave West - Ste 420 Bradenton, Florida 34205 ("Tenant"), provides for the granting and leasing of certain property interests on the following terms:

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **PROPERTY.** The property interests hereby leased and granted by Owner ("Premises") shall include the following:
 - a) Real property comprised of approximately twenty five hundred (2500) square feet of land
 - b) Non - exclusive easement required to run utility lines and cables
 - c) Non - exclusive easement across Owner's Property (hereinafter defined) for access

IN OR UPON THE Owner's real property ("Owner's Property") located at 345 Shore Road, in the Town of Branford, New Haven County, Connecticut, which Owner's Property Map C-10/C-11 Block 001 Lot 0006 is more particularly described on Exhibit "A" and the Premises which are more particularly described on Exhibit "B" both exhibits of which are attached hereto and incorporated herein by this reference as if fully set forth.

2. **OPTION.** In consideration of the sum of [REDACTED] (the "Option Money"), to be paid by Tenant to Owner within thirty (30) days of Tenant's execution of this Agreement, Owner hereby grants to Tenant the exclusive right and option (the "Option") to lease the Premises in accordance with the terms and conditions set forth herein.

Tenant's obligation to pay the Option Money is contingent upon Tenant's receipt of a W-9 form setting forth the tax identification number or social security number of Owner, person or entity, to whom the Option Money is to be made payable as directed in writing by Owner.

OPTION PERIOD. The Option may be exercised at any time within Twelve (12) months of execution of this Agreement by all parties (the "Option Period"). At Tenant's election and upon Tenant's written notice to Owner prior to expiration of the Option Period, the Option Period may be further extended for an additional Twelve (12) months with an additional payment of [REDACTED] by Tenant to Owner for the extension of the Option Period. The Option Period may be further extended by mutual written agreement at the same rate as set forth hereinabove. If Tenant fails to exercise the Option within the Option Period as it may be extended as provided herein, the Option shall terminate, all rights and privileges granted hereunder shall be deemed surrendered, Owner shall retain all money paid for the Option, and no additional money shall be payable as either party to the other.

CHANGES IN PROPERTY DURING THE OPTION PERIOD. If during the Option Period or any extension thereof, or during the term of this Agreement if the Option is exercised, Owner decides to sell, subdivide, or change the status of the zoning of the Premises, Owner's Property or other real Property of Owner contiguous to, surrounding, or in the vicinity of the Premises, Owner shall immediately notify Tenant in writing. Any sale of Owner's Property shall be subject to Tenant's rights under this Agreement. Owner agrees that during the Option Period or any extension thereof, or during the term of this Agreement if the Option is exercised, Owner shall not initiate or consent to any change in the zoning of Owner's Property or consent to any other restriction that would prevent or limit Tenant from using the Premises for the uses intended by Tenant as hereinafter set forth in this Agreement.

3. **TERM.** The term of this Agreement shall be five (5) years commencing on the date ("Commencement Date") that Tenant begins construction of the communications facility (as such term is defined in Paragraph 5 below), and terminating on the fifth annual anniversary of the Commencement Date (the "Term"), unless otherwise terminated as provided in Paragraph 12. Tenant shall have the right to extend the Term for nine (9) successive five (5) year periods (each a "Renewal Term" and collectively the "Renewal Terms") on the same terms and

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conditions as set forth herein. This Agreement shall automatically be extended for each successive Renewal Term unless Tenant notifies Owner, in writing, of its intention not to renew prior to commencement of the succeeding Renewal Term.

4. **RENT.** Tenant shall pay to Owner an annual lease fee of [REDACTED] in monthly payments of [REDACTED] the first day of each month. If the obligations to pay Rent commences or ends on a day other than the first day of the month, then the Rent shall be prorated for that month. The Rent shall increase annually by Three Percent (3%) on the anniversary of the Commencement Date. The first Rent payment shall be delivered within twenty (20) business days of the Commencement Date. The Tenant shall pay the Owner as additional rent ten percent (10%) of the revenues collected by each subtenant. Such additional rent shall commence with the second subtenant.
5. **USE.** (a) Tenant may use the Premises for the purpose of constructing, installing, removing, replacing, maintaining and operating a communications facility subject to such modifications and alterations as required by Tenant (collectively, the "Communications Facility"), provided that Tenant shall not be required to occupy the Premises. The Communications Facility may include, without limitation, a tower, antenna arrays, dishes, cables, wires, temporary cell sites, equipment shelters and buildings, electronics equipment, generators, and other accessories. Owner shall provide Tenant with twenty-four (24) hour, seven (7) day a week, year-round access to the Property. Tenant shall have the right to park its vehicles on Owner's Property when Tenant is constructing, removing, replacing, and/or servicing its Communications Facility. The initial construction shall take place during normal business hours starting no earlier than 7:00 a.m. and finishing no later than 8:00 p.m. Normal routine maintenance shall occur during normal business hours and no work shall be done on the tower after business hours unless there is a true emergency.
(b) Owner shall timely pay all real property taxes and assessments against the Owner's Property. Tenant shall pay any increase in real property taxes, directly or via reimbursement to Owner, attributed to the Premises and any improvements thereon upon receipt from Owner of a copy of said tax bill evidencing such an increase. Tenant shall pay all personal property taxes attributed to the Premises and any improvements thereon.
(c) Tenant, its agents and contractors, are hereby granted the right, at its sole cost and expense, to enter upon the Owner's Property and conduct such studies, as Tenant deems necessary to determine the Premises' suitability for Tenant's intended use. These studies may include surveys, soil tests, environmental evaluations, radio wave propagation measurements, field strength tests and such other analyses and studies, as Tenant deems necessary or desirable. Tenant shall not be liable to Owner or any third party on account of any pre-existing defect or condition on or with respect to Owner's Property, whether or not such defect or condition is disclosed by Tenant's analyses.
(d) Throughout the term of this Agreement, Owner shall cooperate with Tenant and execute all documents required to permit Tenant's intended use of the Premises in compliance with zoning, land use, utility service, and for building regulations. Owner shall not take any action that would adversely affect Tenant's obtaining or maintaining any governmental approval. Owner hereby appoints Tenant as its agent and attorney-in-fact for the limited purpose of making such filings and taking such actions as are necessary to obtain any desired zoning, land use approvals and/or building permits.
6. **SUBLEASING.** Tenant has the right to sublease all or any portion of the Premises during the Term and Renewal Terms of this Agreement, without Owner's consent, subject to the following conditions (i) the term of the sublease may not extend beyond the Term and any Renewal Terms of this Agreement, and, (ii) all subleases are subject to all the terms, covenants, and conditions of this Agreement. Tenant shall supply to Owner all copies of subleases within thirty (30) days of execution of such document.
7. **ASSIGNMENT.** (a) Tenant shall have the right to freely assign or transfer its rights under this Agreement, in whole or in part, to its holding company, at any time, without Owner consent which shall not be unreasonably withheld conditioned or delayed. Tenant shall have the right to assign or transfer its rights under this Agreement, in whole or in part, to any person or any business entity at any time. After delivery by Tenant of an instrument of assumption by an assignee that assumes all of the obligations of Tenant under this Agreement to Owner, Tenant will be relieved of all liability thereafter.
(b) Tenant may assign, pledge, mortgage or otherwise encumber its interest in this Agreement to any third party (a "Leasehold Lender") as security for any loan to which Owner hereby consents to without requirement of

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further evidence of such consent. The Leasehold Lender may secure its interest in such a loan by Tenant's grant of (i) a leasehold mortgage and assignment of rents, leases, contracts, etc. (the "Leasehold Mortgage") encumbering all of Tenant's interest in this Agreement and the Premises; (ii) a security agreement and other security documents (the "Security Agreements") that will encumber and grant a security interest in all of Tenant's now or hereafter existing tangible or intangible personal property located on, derived from, or utilized in connection with the Premises and the Lease (collectively the "Personal Property").

1. **Successors.** Any Leasehold Lender under any note or loan secured by a Leasehold Mortgage or deed of trust lien on Tenant's interest (or any successor's interest to Tenant's interest) who succeeds to such interest by foreclosure, deed in lieu of foreclosure, or otherwise, may take title to and shall have all of the rights of Tenant under this Agreement including the right to exercise any renewal option(s) or purchase option(s) set forth in this Agreement, and to assign this Agreement as permitted hereunder.

2. **Default Notice.** Owner shall deliver to the initial Leasehold Lender and any subsequent Leasehold Lender(s) (for such subsequent Leasehold Lender(s) at the address as Tenant or Leasehold Lender shall affirmatively inform Owner by written notice hereof) a copy of any default notice given by Owner to Tenant under this Agreement. No default notice from Owner to Tenant shall be deemed effective against the Leasehold Lender unless sent to the notice address for Leasehold Lender (if provided to Owner as set forth herein) or as amended from time to time.

3. **Notice and Curative Rights.** If Tenant defaults on any monetary obligations under this Agreement then Owner shall accept a cure thereof by the Leasehold Lender within thirty (30) days after Leasehold Lender receipt of written notice of such default. For non-monetary defaults, Owner will not terminate this Agreement for so long as Leasehold Lender is diligently pursuing a cure of the default and if curing such non-monetary default requires possession of the Premises then Owner agrees to give the Leasehold Lender a reasonable time to obtain possession of the Premises and to cure such default.

4. **No Amendment.** This Agreement may not be amended in any respect which would be reasonably likely to have a material adverse effect on Leasehold Lender's interest therein and this Agreement will not be surrendered, terminated or cancelled without the prior written consent of the Leasehold Lender.

5. **New Lease.** ~~If this Agreement is terminated for any reason or otherwise rejected in bankruptcy then Owner will enter into a new lease with Leasehold Lender (or its designee) on the same terms as this Agreement as long as Leasehold Lender pays all past due amounts under this Agreement within thirty (30) calendar days of notice of such termination.~~

6. **Subordination.** Owner hereby agrees that all right, title and interest of the Owner in and to any collateral encumbered by the Leasehold Mortgage or Security Agreements in favor of Leasehold Lender, is hereby subordinated and made subject, subordinate and inferior to the lien and security interest of the Leasehold Mortgage and Security Agreements which subordination shall remain in effect for any modifications or extensions of the Leasehold Mortgage and Security Agreements.

7. **Initial Leasehold Lender/Third Party Beneficiary.** Any Leasehold Lender shall be considered a third party beneficiary of the terms and conditions of this Agreement. The initial Leasehold Lender is Regions Bank and any notices thereto shall be addressed as follows:

If to Leasehold Lender:	Regions Bank Commercial Banking 100 North Tampa Street Ste. 3100 Tampa, FL 33602 ATTN: Greg Hoerbelt
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8. **Notice.** Notices to Leasehold Lender shall be sent to such address as affirmatively provided above or in a later writing for subsequent Leasehold Lender(s) to Owner by Tenant from time to time and as may be amended from time to time by written notice to Owner from Tenant.

8. **TRANSFER WARRANTY.** During the term of this Agreement, Owner covenants and agrees that it will not grant, create, or suffer any claim, lien, encumbrance, easement, restriction, or other charge or exception to title to the Owner's Property and the Premises without the prior written consent of Tenant. Upon Tenant's prior written consent, Owner may sell, lease, transfer, grant a perpetual easement or otherwise convey all or any part of the Owner's Property to a transferee and such transfer shall be under and subject to this Agreement and all of

Comment [KC1]: Please give some language that will work for the town.

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Tenant's rights hereunder. It is agreed that in no event will Owner allow any sale, lease, transfer, or grant of easement that adversely affects Tenant's rights under this Agreement.

9. **UTILITIES.** Tenant shall have the right, at its expense, to install or improve utilities in a location acceptable to the Owner servicing Owner's Property (including, but not limited to, the installation of emergency power generators, power lines and utility poles). Payment for electric service and for telephone or other communication services to the Communications Facility shall be Tenant's responsibility. Owner agrees to cooperate with Tenant in its efforts to obtain, install and connect the Communications Facility to existing utility service at Tenant's expense.
10. **REMOVAL OF COMMUNICATIONS FACILITY.** Upon written request of Owner, to be given within ten (10) days of the expiration or earlier termination of this Agreement, or at Tenant's option, all personal property and trade fixtures of Tenant, specifically including towers and buildings, shall be removed by Tenant within sixty (60) days after the expiration or earlier termination of this Agreement. Notwithstanding the foregoing, upon expiration or earlier termination of this Agreement, Tenant shall not be required to remove any foundation more than two (2) feet below grade level.
11. **INSURANCE.** Tenant shall maintain commercial general liability insurance insuring Tenant against liability for personal injury, death or damage to personal property arising out of use of the Premises by Tenant, with combined single limits of One Million Dollars (\$1,000,000).
12. **CONDITION OF PROPERTY.** Owner represents that the Owner's Property and all improvements thereto, are in compliance with all building, life/safety, and other laws of any governmental or quasi-governmental authority.
13. **TERMINATION.** Tenant may terminate this Agreement at any time, in its sole discretion by giving written notice thereof to Owner not less than thirty (30) days prior to the Commencement Date. Further, this Agreement may be terminated by Tenant immediately, at any time, upon giving written notice to Owner, if (a) Tenant cannot obtain all governmental certificates, permits, leases or other approvals (collectively, "Approvals") required and/or any easements required from any third party, or (b) any Approval is canceled, terminated, expired or lapsed, or (c) Owner fails to deliver any required non-disturbance agreement or subordination agreement, or (d) Owner breaches a representation or warranty contained in this Agreement, or (e) Owner fails to have proper ownership of the Owner's Property and/or authority to enter into this Agreement, or (f) Tenant determines that the Owner's Property contains substances of the type described in Section 14 of this Agreement, or (g) Tenant determines that the Premises is not appropriate for its operations for economic, environmental or technological reasons.
14. **INDEMNITY.** Owner indemnifies Tenant against, and holds harmless from any and all costs (including reasonable attorney's fees and expenses) and claims, actions, damages, obligations, liabilities and liens which arise out of (a) the breach of this Agreement by the indemnifying party; and (b) the use and/or occupancy of the Premises, or the balance of the Owner's Property, by such indemnifying party. This indemnity shall not apply to any claims, actions, damages, obligations, liabilities and liens arising from any negligent or intentional misconduct of the indemnified party and shall survive the termination of this Agreement.

Comment [KC2]: We do not want to inherit any zoning violations but if you have language that works let me know.

Comment [KC3]: Please let me know what is acceptable for C,D and G

Comment [KC4]: Please provide some sort of language that indemnifies us for negligence or intentional misconduct on the Premises by a town worker or someone under a contract with the town.

- ~~15. **HAZARDOUS SUBSTANCES.** Owner represents that Owner has no knowledge of any substance, chemical, or waste on the Owner's Property that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Owner shall hold Tenant harmless from and indemnify Tenant against any damage, loss, expense, response costs, or liability, including consultant fees and attorneys' fees resulting from the presence of hazardous substances on, under or around the Owner's Property or resulting from hazardous substances being generated, stored, disposed of, or transported to, on, under, or around the Owner's Property as long as the hazardous substances were not generated, stored, disposed of, or transported by Tenant or its employees, agents or contractors.~~

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- ~~17.16.~~ **CASUALTY/CONDEMNATION.** (a) If any portion of the Owner's Property or Communication Facility is damaged by any casualty and such damage adversely affects Tenant's use of the property, or if a condemning authority takes any portion of the Owner's Property and such taking adversely affects Tenant's use of the Owner's Property, this Agreement shall terminate as of the date of casualty or the date the title vests in the

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condemning authority, as the case may be if Tenant gives written notice of the same within thirty (30) days after Tenant receives notice of such casualty or taking. The parties shall be entitled to make claims in any condemnation proceeding for value of their respective interests in the Property (which may include, where applicable, the value of the Communications Facility, moving expenses, prepaid Rents, and business dislocation expenses). Sale of all or part of the Owner's Property including the Premises to a purchaser with the power of eminent domain in the face of the exercise of the power shall be treated as a taking by condemnation.

(b) Notwithstanding anything in this Agreement to the contrary, in the event of any casualty to or condemnation of the Premises or any portion thereof during such time as any Leasehold Mortgage shall remain unsatisfied, the Leasehold Lender shall be entitled to receive all insurance proceeds and/or condemnation awards (up to the amount of the indebtedness secured by the Leasehold Mortgage) otherwise payable to Tenant or Owner or both and apply them in accordance with the Leasehold Mortgage and shall have the right, but not the obligation, to restore the Premises.

~~17. WAIVER OF LANDLORD'S LIEN. To the extent permitted by law, Owner hereby waives any and all lien rights it has or may have, statutory or otherwise, concerning the Communications Facility or any portion thereof, regardless of whether or not the same is deemed real or personal property under applicable law.~~

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~~20. 18. QUIET ENJOYMENT. Tenant, upon payment of the Rent, shall peaceably and quietly have, hold and enjoy the Property. If, as of the date of execution of this Agreement or hereafter, there is any mortgage, or other encumbrance affecting Owner's Property, then Owner agrees to obtain from the holder of such encumbrance a Non-Disturbance and Attornment Agreement that Tenant shall not be disturbed in its possession, use, and enjoyment of the Property. Owner shall not cause or permit any use of Owner's Property that interferes with or impairs the quality of the communication services being rendered by Tenant from the Premises. Owner shall not grant any other person or entity the right to operate a wireless communication facility on Owner's Property without the express written consent of Tenant. Except in cases of emergency, Owner shall not have access to the Premises unless accompanied by Tenant personnel except in cases of emergency threatening life and/or personal property.~~

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~~21. 19. DEFAULT. Except as expressly limited herein, Owner and Tenant shall each have such remedies for the default of the other party hereto as may be provided at law or equity following written notice of such default and failure to cure the same within thirty (30) days. Notwithstanding anything in this Agreement to the contrary, if, pursuant to the provisions of this Agreement or as a matter of law, Owner shall have the right to terminate this Agreement, then (i) Owner shall take no action to terminate the Agreement without first giving to the Leasehold Lender written notice of such right, a description of the default in reasonable detail, and a reasonable time thereafter in the case of a default susceptible of being cured by the Leasehold Lender, to cure such default or (ii) in the case of a default not so susceptible of being cured, to institute, prosecute and complete foreclosure proceedings to otherwise acquire Tenant's interest under this Agreement; provided however, that the Leasehold Lender shall not be obligated to continue such possession or continue such foreclosure proceedings after such default shall have been cured.~~

20. ESTOPPEL CERTIFICATES. Owner shall from time to time, within ten (10) days after receipt of request by Tenant, deliver a written statement addressed to Tenant or any Leasehold Lender certifying:

(a) that this Agreement is unmodified and in full force and effect (or if modified that this Agreement as so modified is in full force and effect);

(b) that the agreement attached to the certificate is a true and correct copy of this Agreement, and all amendments hereto;

(c) that to the knowledge of Owner, Tenant has not previously assigned or hypothecated its rights or interests under this Agreement, except as described in such statement with as much specificity as Owner is able to provide;

(d) the term of this Agreement and the Rent then in effect and any additional charges;

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(e) the date through which Tenant has paid the Rent;

(f) that Tenant is not in default under any provision of this Agreement (or if in default, the nature thereof in detail) and a statement as to any outstanding obligations on the part of Tenant and Owner; and

(g) such other matters as are reasonably requested by Tenant.

Without in any way limiting Tenant's remedies which may arise out of Owner's failure to timely provide an estoppel certificate as required herein, Owner's failure to deliver such certificate within such time shall be conclusive (i) that this Agreement is in full force and effect, without modification except as may be represented by Tenant; (ii) that there are no uncured defaults in Tenant's or Owner's performance hereunder; and (iii) that no Rent for the then current month, has been paid in advance by Tenant.

21. MISCELLANEOUS

(a) Owner represents and warrants that Owner has full authority to enter into and sign this Agreement and has good and indefeasible fee simple title to the Owner's Property. The person executing on behalf of Owner represents individually that such person has the authority to execute this Agreement on behalf of Owner.

(b) Tenant warrants and represents that it is duly authorized to do business in the state in which the Premises is located and that the undersigned is fully authorized by Tenant to enter into this Agreement on behalf of Tenant.

(c) This Agreement supersedes all prior discussions and negotiations and contains all agreements and understandings between the Owner and Tenant. A writing signed by both parties may only amend this Agreement.

(d) The parties may sign this Agreement in counterparts hereto.

(e) The terms and conditions of this Agreement shall extend to and bind the heirs, personal representatives, successors and assigns of Owner and Tenant.

(f) The prevailing party in any action or proceeding in court to enforce the terms of this Agreement shall be entitled to receive its reasonable attorneys' fees and other reasonable enforcement costs and expenses from the non-prevailing party.

(g) Owner shall execute and acknowledge and deliver to Tenant for recording a Memorandum of this Agreement ("Memorandum") upon Tenant's reasonable request to properly memorialize and give notice of this Agreement in the public records. Tenant will record such Memoranda at Tenant's sole cost and expense.

(h) Rent payments and notices, requests, and other communication shall be in writing and sent by United States Mail, postage prepaid, certified or registered with return receipt requested or by any nationally recognized overnight courier service to the address set forth beneath the signature of each party below. Any such notice shall be deemed given when deposited in the United States Mail or delivered to such courier service. Notices shall be sent to:

For Tenant: Florida Tower Partners, LLC
1001 3rd Ave West - Ste 420
Bradenton, FL 34205

For Owner: Town of Branford
1019 Main Street
Branford, CT 06405

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Site Name:

(i) This Agreement shall be construed in accordance with the laws of the state in which the Owner's Property is located.

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

(k) Owner and Tenant each represent that a real estate broker or other agent in this transaction has not represented them. Each party shall indemnify and hold harmless the other from any claims for commission, fee or other payment by such broker or any other agent claiming to have represented a party herein.

(l) Owner agrees to pay when due all taxes, charges, judgments, liens, claims, assessments, and/or other charges outstanding which are levied upon Owner or the Owner's Property and which are or in the future could become liens upon the Owner's Property, in whole or in any part (individually or collectively, "Liens"). Upon failure of the Owner to pay the Liens when due as provided above, Tenant at its option, may pay said Liens. Tenant shall have the right to setoff and offset any sum so paid by Tenant and any and all costs, expenses and fees (including reasonable attorney's fees) incurred in effecting said payment, against Rents or against any other charges payable by Tenant to Owner under the terms of this Agreement. In the event that Tenant elects not to set off or offset the amounts paid by Tenant against Rents or in the event that the amounts paid by Tenant exceed the Rents payable to Owner for the then term of the Agreement, Owner shall reimburse Tenant for all amounts paid by Tenant (or not offset) immediately upon demand. Any forbearance by Tenant in exercising any right or remedy provided in this paragraph or otherwise afforded by law shall not be deemed a waiver of or preclude the later exercise of said right or remedy.

~~(m) Neither Tenant nor Owner shall disclose the financial terms of this Agreement to third parties without the express written consent of the non-disclosing party.~~

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(n) Owner's recourse against any Leasehold Lender shall be expressly limited to such Leasehold Lender's interest in this Agreement.

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Site #:
Site Name:

IN WITNESS WHEREOF, the parties hereto bind themselves to this Agreement effective as of the _____ day of _____, 200__.

OWNER:

By: _____
Print Name: _____
Title: _____
Date: _____

Witnesses for Owner:

By: _____
Print Name: _____
By: _____
Print Name: _____

TENANT:

Florida Tower Partners, LLC
a Delaware limited liability company

By: _____
Name: _____
Its: _____
Date: _____

Witnesses for Tenant:

By: _____
Print Name: _____
By: _____
Print Name: _____

Site #:
Site Name:

EXHIBIT "A" TO LAND LEASE AGREEMENT

OWNER'S PROPERTY

Owner and Tenant agree that the precise legal description for the Owner's Property will be corrected, if necessary, and that Tenant may place the correct legal description on this Exhibit "A".

Site #:

Site Name:

EXHIBIT "B" TO LAND LEASE AGREEMENT

PREMISES

- a) Real property comprised of approximately _____ (_____) square feet of land
- b) Non – exclusive easement required to run utility lines and cables
- c) Non – exclusive easement across Owner's Property (hereinafter defined) for access

SITE SKETCH:

APPROVED Owner: _____ (Initial)
APPROVED Tenant: _____ (Initial)

Notes:

1. This Exhibit may be replaced by a land survey of the Premises at Tenant's sole cost and expense, together with non-exclusive easements for utility lines and cables to service the Premises, and a non-exclusive easement for ingress and egress across Owner's Property to the Premises.
2. Setback of the Premises from the Owner's Property lines shall be the distance required by the applicable governmental authorities.
3. Width of access road, if any, shall be the width required by the applicable governmental authorities, including police and fire departments.

Site #:
Site Name:

THIS DOCUMENT IS THE PROPERTY OF INFINIGY ENGINEERING & SURVEYING. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREIN. IT IS NOT TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF INFINIGY ENGINEERING & SURVEYING.	
1. PROJECT NO.	238202E
2. PROJECT NAME	BRANFORD CTT1109-B
3. PROJECT LOCATION	346 SHORE RD BRANFORD, CT 06405
4. DRAWN BY	J.P.
5. CHECKED BY	J.P.
6. DATE	11/20/09
7. SCALE	AS SHOWN
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Project Title: **BRANFORD CTT1109-B**
 346 SHORE RD
 BRANFORD, CT 06405

Prepared For: **Florida Tower Partners**

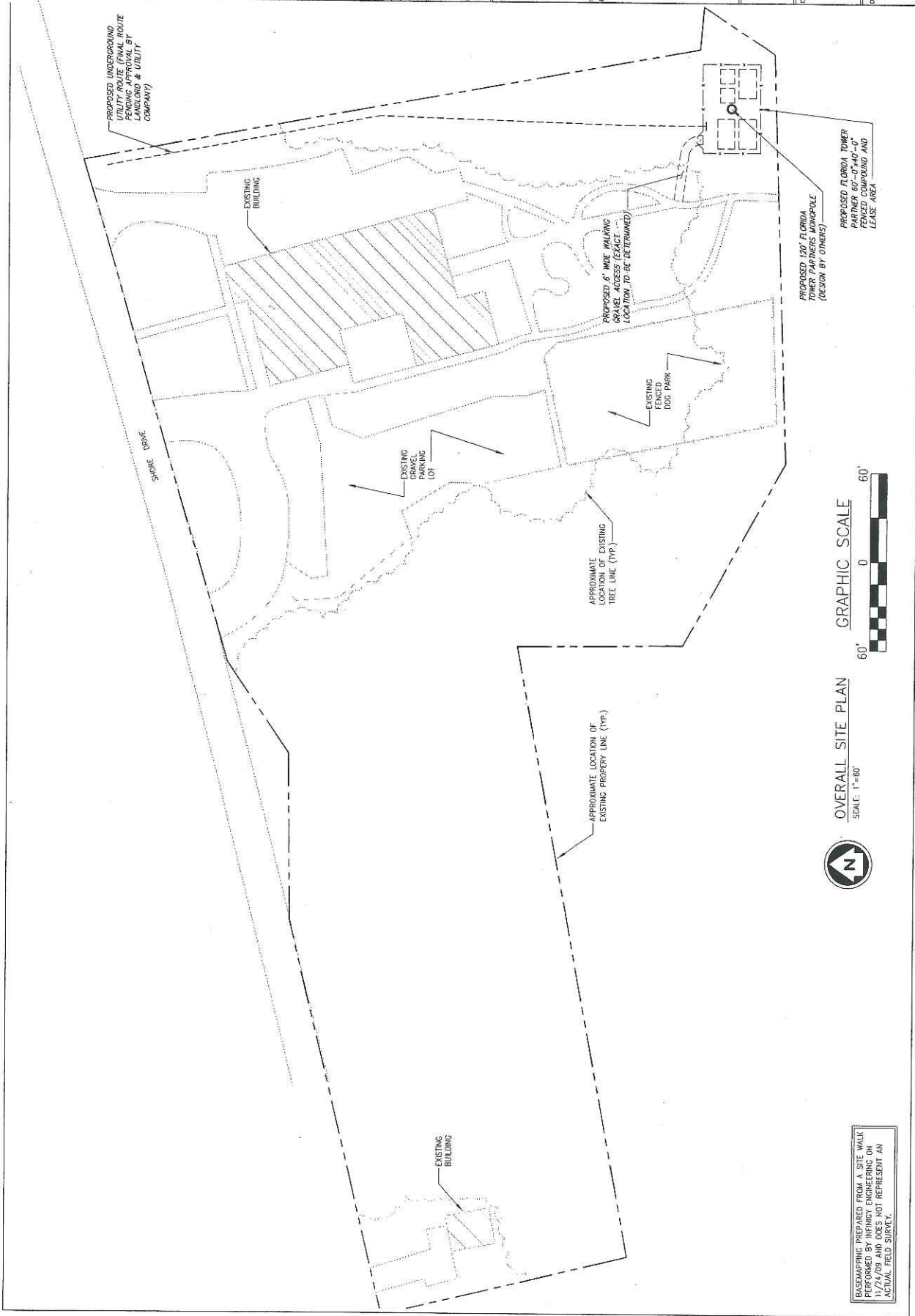


Drawing Title: **LEASE EXHIBIT**

Drawing Number: **LE1**

Scale: **AS NOTED**

Date: **11/20/09**



OVERALL SITE PLAN
SCALE: 1"=60'



BASEMAPMING PREPARED FROM A SITE WALK PERFORMED BY INFINIGY ENGINEERING ON 11/10/09. THESE LINES NOT REPRESENT AN ACTUAL FIELD SURVEY.




Florida Tower Partners
Branford
CT1109-B
345 Shore Rd., Branford CT 06405
120' Monopole Simulation



Existing View

CLENDENEN & SHEA, LLC

Attorneys at Law

William H. Clendenen, Jr.
Kevin C. Shea
Thomas J. McHale
Maura A. Mastrony
Elizabeth R. McKenna

400 Orange Street
New Haven, Connecticut 06511

Telephone 203-787-1183
Telecopier 203-787-2847
E-Mail: office@clenlaw.com

Janet O. Marlowe
Lynne M. Tourville
Nadine P. Toce
Legal Assistants

January 22, 2010
BY FAX

Honorable Anthony J. DaRos
First Selectman's Office
Town of Branford
P.O. Box 150
Branford, CT 06405

Re: Proposed Land Lease Agreement - 345 Shore Road

Dear Unk:

I have reviewed the proposed land lease agreement with Florida Tower Partners, LLC. I offer the following comments:

1. On page 1, paragraph 3 **TERM**, does the Town want to grant a lease that could run 50 years?
2. On page 1, paragraphs 2 and 3, Florida Tower Partners should have a limited time such as 6 months to begin paying rent or have the agreement terminate. The proposed lease is too open-ended.
3. On page 2, paragraph 5 **USE**, the use clause is too broad. Please review carefully the map. We should agree on where Florida Tower Partners can park. What are the hours of construction? Given the location, there needs to be limitations.
4. On page 2, paragraph 6 **SUBLEASING**, we should be notified of and have copies of all subleases.
5. On page 2, paragraph 7 **ASSIGNMENT**, the lease should not be assignable without our consent. Any mortgage should be subject to our right to receive our rent first.
6. On page 3, paragraph 5 **New Lease**, this provision is not acceptable.

Honorable Anthony J. DaRos
January 22, 2010
Page 2

7. On page 3, paragraph 6 **Subordination**, this provision is not acceptable. See paragraph 5, *supra*.

8. On pages 3 and 4, paragraph 9 **UTILITIES**, this section should require our prior written consent.

9. On page 4, paragraph 11 **INSURANCE**, please have Joyce Forte review with our agent.

10. On page 4, paragraph 12 **CONDITION OF PROPERTY**, the paragraph should be removed. They take the lease interest "as is, where is".

11. On page 4, paragraph 13 **TERMINATION**, subsections (c), (d) and (g) are unacceptable.

12. Delete paragraph 14.

13. On page 4, paragraph 15 **HAZARDOUS SUBSTANCES**, the first sentence is acceptable. The remaining language is not acceptable.

14. On page 4, paragraph 16 **CASUALTY/CONDEMNATION**, this clause is too broad. It should be redrafted to reflect this property. At all times, the Town should be paid all sums due and owing before the Lender.

15. Delete paragraph 17.

16. On page 7, paragraph 21 (m), we cannot agree. At all times this matter is subject to FOI. It should be deleted. Paragraph 21 (n) needs to be deleted.

Please call if you have any questions.

Sincerely,


William H. Clendenen, Jr.
Attorney at Law

WHCj/jm
Enc.