



# TOWN OF KILLINGLY

OFFICE OF THE TOWN MANAGER

172 Main Street

Killingly, CT 06239

Tel: 860 779-5300, ext. 7 Fax: 860 779-5382

## TOWN OF KILLINGLY FISCAL SUBCOMMITTEE MEETING

July 6, 2022

5:30 p.m.

Killingly Town Hall  
Conference Room 102

*Council Members:*

Jason Anderson, Chairman

Ulla Tiik-Barclay

Raymond Wood

Kevin Kerttula, Alternate

RECEIVED  
TOWN CLERK'S OFFICE  
2022 JUL -  
JUL 11 2022  
KILLINGLY, CT

**This is an in-person meeting. Public can attend the meeting at the Town Hall. Emailed public comment will still be accepted and presented at the meeting.**

### Agenda

1. Call to order
2. Citizens' participation

All presentations by citizens shall be limited to an aggregate of forty-five minutes (45) and each citizen's presentation shall not exceed five (5) minutes unless otherwise indicated by a majority vote of the Subcommittee. Public comment can be emailed to [publiccomment@killinglyct.gov](mailto:publiccomment@killinglyct.gov) or mailed to Town of Killingly, 172 Main Street, Killingly, CT 06239 on or before the meeting. All public comment must be received prior to 2pm the day of the meeting. Public comment will be posted on the Town's website [www.killinglyct.gov](http://www.killinglyct.gov).

3. Adoption of minutes:
  - a. April 27, 2022
4. Unfinished business
5. New business
  - a. Discussion and possible action on the recommendation to authorize the Town Manager to execute a Tower Cell Site Lease Agreement with DISH Wireless, LLC.
6. Executive Session
7. Adjournment

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This institution is an equal opportunity provider and employer.

**TOWN OF KILLINGLY**  
**FISCAL SUBCOMMITTEE MEETING**  
**April 27, 2022 7:30 p.m.**  
**Room 102, Killingly Town Hall, 172 Main Street**  
**Meeting Minutes**

**1. Call to Order**

Chairman, Jason Anderson called the meeting to order at 7:30pm.

**Members Present:** Jason Anderson, Ulla Tiik-Barclay, Raymond Wood and Keith Kertula

**Others Present:** Mary T. Calorio, Town Manager  
Jennifer Hawkins, Finance Director

**2. Citizens Participation: - None**

**3. Adoption of Minutes: March 29, 2022**

**Motion** by R. Wood to accept minutes. **Second** by U. Tiik-Barclay. **Motion carries** unanimously.

**4. Unfinished Business: None**

**5. New Business**

**a. Discussion and possible action on the recommendation to extend Mahoney Sabol & Company's audit services contract to complete the Town's financial audit for fiscal year ending June 30, 2022, thru June 30, 2024**

Manager Calorio reviewed the proposed audit service contract. Members discussed service and costs. Motion was made to recommend approval of the audit service contract to the Town Council by U. Tiik-Barclay. Seconded by R. Wood. Motion passed unanimously.

**b. Consideration and action on the recommendation to suspend and transfer uncollectible taxes to the Suspense Tax Book pursuant to Connecticut General Statutes**

Town Manager Calorio reviewed suspense list and collections procedure. Motion made by R. Wood to recommend approval of the transfer to the Suspense Tax Book. Seconded by U. Tiik-Barclay. Motion passed unanimously.

**c. Consideration and action on the recommendation to execute a three-year budget stabilization agreement with the Connecticut Interlocal Risk Management Agency (CIRMA)**

Town Manager Calorio reviewed the three-year agreement. Members discussed the rate cap and impact to the upcoming year budget. Motion was made to recommend approval of the budget stabilization agreement to the Town Council by U. Tiik-Barclay. Seconded by R. Wood. Motion passed unanimously.

**6. Executive Session - None**

**7. Adjournment**

**Motion** to adjourn by R. Wood at 8:05PM. **Second** by U. Tiik-Barclay. **Motion carries** unanimously.

Respectfully submitted,  
Mary T. Calorio

RECEIVED  
TOWN CLERK, KILLINGLY, CT  
2022 MAY 16 AM 11:21  
By: Jason M. Anderson

- Resolution
- Proposed Tower Cell Site Lease Agreement

Resolution #

**RESOLUTION TO AUTHORIZE THE TOWN MANAGER TO  
EXECUTE THE TOWER CELL SITE LEASE AGREEMENT  
WITH DISH WIRELESS, LLC FOR USE OF THE TOWN'S  
COMMUNICATIONS FACILITY AT 79 PUTNAM PIKE**

BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF KILLINGLY that the Town Manager is herein authorized to execute the proposed Tower Cell Site Lease Agreement in substantially the same form as the attached document from DISH Wireless, LLC regarding a lease agreement for use of the Town's communication facility at 79 Putnam Pike.

KILLINGLY TOWN COUNCIL

Jason Anderson  
Chairman

Dated at Killingly, Connecticut  
this 12<sup>th</sup> day of July 2022

Attest: I, Elizabeth Wilson, Town Clerk of the Town of Killingly, do hereby certify that the above is a true and correct copy of a resolution adopted by the Killingly Town Council at its duly called and held meeting on July 12, 2022, at which a quorum was present and acting throughout, and that the resolution has not been modified, rescinded, or revoked and is at present in full force and effect. I further certify that Mary T. Calorio now holds the office of Town Manager and that she has held that office since March 11, 2019.

\_\_\_\_\_  
Elizabeth Wilson, Town Clerk

\_\_\_\_\_  
Date

(Seal)

## TOWER CELL SITE LEASE AGREEMENT

This Tower Cell Site Lease Agreement (this “**Agreement**”) is made and effective as of [REDACTED] (the “**Effective Date**”), by and between The Town of Killingly, a Connecticut municipal corporation, having a place of business at 172 Main Street, Killingly, Connecticut 06239 (“**Landlord**”), and DISH Wireless L.L.C., a Colorado limited liability company having a place of business at 9601 S. Meridian Blvd., Englewood, Colorado 80112 (“**Tenant**,” and together with Landlord, sometimes hereinafter collectively the “**Parties**,” and each a “**Party**”).

### WITNESSETH:

#### 1. Definitions.

“**Affiliate(s)**” means, with respect to a Party, any Person directly or indirectly controlling, controlled by, or under common control with such Party, in each case for so long as such control continues. For purposes of this definition, “control” shall mean (i) the ownership, directly or indirectly, or at least fifty percent (50%) of either: (a) the voting rights attached to issued voting shares; or (b) the power to elect fifty percent (50%) of the directors of such Person, or (ii) the ability to direct the actions of the Person. Notwithstanding the preceding, for purposes of this Agreement, EchoStar Corporation and its direct and indirect subsidiaries shall not be deemed to be “Affiliates” of Tenant unless after the Effective Date any such Person qualifies as a direct or indirect subsidiary of DISH Network Corporation.

“**Applicable Law**” means any applicable federal, state or local act, law, statute, ordinance, building code, rule, regulation or permit, or any order, judgment, consent or approval of any Governmental Authority having jurisdiction over the Parties or this Agreement.

“**Cable Space**” means the additional space on the Property utilized by Tenant pursuant to the easement described in Section 4.1 hereof, for the installation, use, operation, modification, repair, replacement, monitoring and maintenance of wires, cables, fiber/T-1, conduits, pipes running between and among the Equipment Space, Tower Space and/or public right of way, and to all necessary electrical, fiber and telephone utility sources located on the Property.

“**Equipment Space**” means the leased Ground Space (as hereinafter defined) where cabinets, generators, cabling, conduit, backhaul fiber, electrical feeds and similar supporting communications equipment are located.

“**Governmental Authority**” means any: (i) federal, state, county, municipal, tribal or other local government and any political subdivision thereof having jurisdiction over either of the Parties or this Agreement; (ii) any court or administrative tribunal exercising proper jurisdiction; or (iii) any other governmental, quasi-governmental, self-regulatory, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity of competent jurisdiction.

“**Installation**” means the installation of Tenant’s Equipment (as hereinafter defined) at the Premises.

“**Person**” means any natural person or any organized entity; including without limitation any corporation, limited liability company, partnership, joint venture, association, trust; any unincorporated organization, or any municipal or other government body or organization.

“**Property**” means that certain parcel of real property as hereinafter described, upon which the Tower, Cable Space and Ground Space are located.

“**Tower**” means the structure located on the Property owned by the Landlord upon which Tenant’s antennas, radios, and related communication equipment are mounted, but does not include the Ground Space used for the placement of cabinets, generators, cabling, conduit, backhaul fiber, electrical feeds and similar supporting communications equipment.

“**Tower Space**” means that portion of the Tower designated for use by the Tenant for the installation, use, operation, modification, repair, replacement, monitoring and maintenance of antennas, radios, cables/coax, nodes, and/or related equipment, which will be comprised of a radiation center of 140’ AGL with a minimum of ten (10) feet from centerline of separation from adjacent occupants on the Tower.

## **2. Premises, Term, Rent and Contingencies.**

2.1 Premises. Landlord has the right to grant the rights set forth in this Agreement as they pertain to the Property located at 79 Putnam Pike, Dayville, CT 06241, as more particularly described in Exhibit A, attached to and incorporated herein. In consideration of the obligations of Landlord and Tenant set forth herein, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord: (i) the portion of the Tower located on the Property for the installation of Tenant’s Equipment as the Tower Space; and (ii) a maximum of thirty-five (35) square feet of ground space (“**Ground Space**”) for Tenant’s use as Equipment Space; which Equipment Space shall not be larger than the Ground Space. The Tower Space and the Ground Space/Equipment Space are hereinafter collectively referred to as the “**Premises**” and are depicted on the drawings attached hereto and incorporated herein as Exhibit B. Tenant shall have the right, but not the obligation, to prepare a survey of the Property, Tower Space, Equipment Space, Ground Space, and/or the Easement (as defined below) and said survey may, at Tenant’s election, replace Exhibit B; provided, however, that such replacement Exhibit B shall only include such changes from the original Exhibit B as (i) are necessary to allow for essential field changes identified by Tenant; (ii) are reasonably acceptable to the Landlord; and (iii) do not interfere with the pre-existing rights or obligations of Landlord or of any third party. The replacement Exhibit B shall make no changes to the previously agreed-upon Tower Space. Promptly following Tenant’s request, Landlord shall provide Tenant any existing surveys of the Premises in Landlord’s possession.

2.2 Term. This Agreement shall be effective as of the Effective Date. The initial term of this Agreement (the “**Initial Term**”) will commence on the earlier to occur of: (i) the first (1<sup>st</sup>) day of the month following the date that is twelve (12) months after the Effective Date; and (ii) the first (1<sup>st</sup>) day of the month following the commencement of Tenant’s Installation (such earlier date, the “**Commencement Date**”), and will expire on the last day of the month that is sixty (60) months after the Commencement Date unless terminated sooner, renewed or extended as provided herein. Provided that no Event of Default of this Agreement (as hereinafter defined) by Tenant has occurred and is continuing, the Initial Term shall automatically be extended for up to four (4) additional consecutive terms of sixty (60) months each (each, a “**Renewal Term**”) unless Tenant elects, in Tenant’s sole and absolute discretion, not to renew the lease at the end of the Initial Term or the then-current Renewal Term, by giving Landlord written Notice at least ninety days (90) days prior to the end of Initial Term or the then-current Renewal Term. If Tenant gives such Notice of its intent not to renew the Agreement, then the Term (including any remaining Renewal Term(s)) shall cease as of 11:59 PM on the last day of the Initial Term or the then-current Renewal Term; as applicable. The Parties agree to execute a “Certificate of Commencement” in the form substantially similar to Exhibit C (attached hereto and incorporated herein) within fifteen (15) business days after the Commencement Date. Notwithstanding the fact that the Commencement Date may be subsequent to the Effective Date of this Agreement, the Parties agree that each Party has vested rights hereunder and that this Agreement constitutes a binding and valid obligation of each Party as of the Effective Date, subject to the Contingencies (as defined in Section 2.4 below). The Initial Term and any applicable Renewal Term(s) shall be referred to collectively hereinafter as the “**Term**”.



2.3 Rent. Subject to the provisions of this Section 2.3 and beginning on the Commencement Date, and for each month thereafter during the Term, Tenant shall pay to Landlord rent for the Premises ("**Rent**") in advance, without Notice, demand or set-off (except as otherwise set forth herein), in the amount of Two Thousand Six Hundred Fifty and 00/100 Dollars (\$2,650.00). All payments shall be made on or before the first day of the applicable month, at such places as may be designated in writing from time to time by Landlord at least thirty (30) days in advance of the first affected payment, except that all payments due hereunder for any fractional calendar month shall be prorated based upon the number of days during said month that the payment obligation was in force. The Parties acknowledge and agree that, notwithstanding anything to the contrary set forth in this Section 2.3, Tenant's obligation to pay Rent or any other amount due hereunder is contingent upon Tenant's receipt of an IRS approved W-9 form setting forth the tax identification number of Landlord (or of the person or entity to whom Rent is to be made payable, if applicable). Upon the commencement of each Renewal Term, the Rent shall be automatically increased by three percent (3%) of the prior Rent.

2.4 Contingencies. The Parties acknowledge and agree that Tenant's ability to lawfully use the Premises is contingent upon Tenant obtaining each of the following: (a) a satisfactory structural analysis showing that the Tower is suitable for Tenant's Permitted Use ("**Structural Analysis**"); and (b) all certificates, permits, approvals and other authorizations that may be required by any Governmental Authority in accordance with Applicable Law (collectively, the "**Governmental Approvals**"). Tenant will endeavor to obtain all Governmental Approvals promptly following the Effective Date. Landlord hereby authorizes Tenant to file and submit for Governmental Approvals, at Tenant's sole cost and expense. Landlord shall: (x) cooperate with Tenant in Tenant's efforts to obtain such Governmental Approvals; subject to such Governmental Authorities' status as independent tribunals with independent discretion to grant or deny such Governmental Approvals; (y) promptly execute and deliver any and all documents necessary to obtain and maintain Government Approvals; and (z) take no action that would adversely affect Tenant's ability to obtain Governmental Approvals, subject to Landlord's municipal authority and obligations pursuant to Applicable Law. Prior to the Commencement Date, if: (i) the Structural Analysis shows that the Tower is not suitable for Tenant's Permitted Use; (ii) any application for Governmental Approvals is rejected, conditioned, materially delayed or otherwise not approved for any or no reason; or (iii) Tenant determines, in Tenant's sole and absolute discretion, that such Governmental Approvals cannot be obtained in a timely and commercially reasonable manner, then, following the occurrence of any of the events set forth in clauses (i) through (iii) (collectively, the "**Contingencies**"), Tenant shall have the right to terminate this Agreement immediately upon Notice to Landlord and without penalty or further obligation to Landlord, its employees, officers, agents or lenders. If this Agreement is terminated in accordance with this Section 2.4, this Agreement shall be of no further force or effect (except as set forth to the contrary herein). If, following the Commencement Date, and through no fault of Tenant, any Governmental Approval issued to Tenant is canceled, expires, lapses or is otherwise withdrawn or terminated by the applicable Governmental Authority, then Tenant shall have the right to terminate this Agreement upon ninety (90) days' written Notice to Landlord without penalty or further obligation to Landlord, its employees, officers, agents or lenders; other than with respect to any Rent then due and owed through the termination date.

### **3. Use, Access and Installation.**

3.1 Tenant's Permitted Use. Landlord agrees that subject to Applicable Law and this Agreement, Tenant may use the Premises and the Cable Space for the purpose of the installation, operation, and management of a telecommunications facility, including, without limitation, antennas, nodes, wires, cables, conduits, piping, electrical and utility lines, and other related equipment or personal property (collectively, "**Tenant's Equipment**"), which shall include the right, subject to Section 3.3 below, to replace, repair, add, or otherwise modify Tenant's Equipment or any portion thereof and the frequencies over which Tenant's Equipment operates ("**Tenant's Permitted Use**"). Promptly following Tenant's request, Landlord shall provide the most recent Structural Analysis (if any) in Landlord's possession to facilitate Tenant or its designee's production of its own Structural Analysis.

Subject to Applicable Law and this Agreement, Landlord hereby grants permission to Tenant to install, maintain and operate on the Property the Tenant's Equipment set forth in Exhibit D, attached hereto and incorporated herein by reference.

3.2 Access. The Parties acknowledge and agree that commencing on the Effective Date and continuing throughout the Term, Tenant, its employees, agents and contractors shall have access to the Premises at no additional cost or expense to Tenant; *provided, however*, that other than for emergency access (understood for the purposes of this Agreement to be 24 hours per day, 7 days per week access to address actual or threatened damage to property, and/or risk to life or health; an "Emergency"), access to the Premises shall be limited to the hours of 7am to 3pm, on Mondays through Fridays, other than on federal, state or municipal holidays. Other than for Emergency access, Tenant, or its employees, agents and contractors, shall provide at least 72 hours' advance written notice to Landlord (which notice may be via email) of Tenant's intent to access the Premises. Tenant shall comply with Landlord's reasonable conditions with respect to such access, including with respect to the rights of third parties. Further and subject to the preceding provisions of this Section 3.2, Landlord grants to Tenant: (i) the right of ingress and egress to the Property; (ii) access to the Property from all public streets within and bordering the Property; and (iii) access to the Property from any and all public right-of-way(s) adjacent to the Property.

3.3 Installation of Tenant's Equipment. Following Tenant's initial Installation of Tenant's Equipment and subject to Applicable Law and this Agreement, Tenant shall be permitted to: (i) modify or add additional frequencies or technologies; and (ii) replace, modify or add equipment within the Premises (as long as doing so does not cause (a) an increase to the size of the Premises as shown on Exhibit B, (b) an adverse effect on the structural integrity of the Tower, or (c) interference with the existing equipment of Landlord and/or any third party occupants of the Tower as of the Effective Date in violation of Section 5.1; in either case, without incurring any increase in the then-current Rent or other modification of the terms and conditions set forth in this Agreement.

#### **4. Utilities, Liens and Taxes.**

4.1 Utilities. Tenant shall be solely responsible for cost of the electrical and other utilities necessary to power and/or otherwise operate Tenant's Equipment. Tenant shall obtain its own utility meter installed in a mutually agreed upon location as between the Parties, and Tenant's utility usage shall be billed directly to Tenant by the incumbent electric utility company. Subject to the Landlord's reasonable conditions, and to the rights and obligations of Landlord, and of third parties (including other occupants of the Tower) with an interest in the Property and/or the Tower as of the Effective Date, Landlord grants to Tenant and its utility providers, at no cost, a non-exclusive easement for the Cable Space and Tenant's utilities, including, without limitation, fiber optic cabling and electrical power as may be reasonably necessary for utilization of Tenant's Equipment at the Premises ("Easement"). The Parties acknowledge and agree that independent third-party providers of utility services, including but not limited to, fiber, gas, electric and telephone, and third-party occupants of the Tower, may utilize the Easement. If required by any such third-party provider, Landlord agrees to execute, at Tenant's expense but no additional consideration required, a separate recordable document or other reasonable documentation evidencing such rights. The Parties acknowledge and agree that Tenant may wish to obtain real property rights or interests from third-parties and, if requested, Landlord shall promptly provide commercially reasonable assistance to Tenant, at Tenant's expense, with respect to obtaining such rights. Landlord also grants to Tenant: (a) the right to use any fiber installed at the Property (except for fiber used solely for municipal purposes) to support Tenant's Installation, if available and subject to the consent or agreement of the owner and/or controller of such fiber; and (b) the right to install such fiber services on, through, over and/or under the Property in available utility/fiber conduit. It is expressly acknowledged and agreed that independent third party providers of utility services, including, but not limited to, fiber, and third party occupants of the Tower may utilize the Easement and conduit for the installation of lines, equipment, and all necessary appurtenances, without the execution of any further documentation. In the event that



the existing electric, gas, telephone, cable or fiber utility sources located on the Property are or become insufficient for Tenant's Permitted Use during the Term, Landlord agrees to expand the Easement to grant Tenant and/or the applicable third-party utility or fiber provider the right, at Tenant's sole cost and expense, to install such utilities on, over and/or under the Property as is necessary for Tenant's Permitted Use; provided that space for such expansion is available, and subject to the rights and obligations of Landlord and any existing third party occupants of the Tower as of the Effective Date. Subject to the preceding sentence, the location of such utilities shall be mutually agreed upon by Landlord and Tenant prior to the commencement of installation thereof. The Easement is depicted on the drawings attached hereto and incorporated herein as **Exhibit B**.

4.2 **Liens**. Tenant will use commercially reasonable efforts to prevent any lien from attaching to the Property or any part thereof. If any lien is filed purporting to be for labor or material furnished or to be furnished at the request of Tenant, then Tenant shall do all acts necessary to discharge such lien by payment, satisfaction or posting of bond within ninety (90) days of receipt of Notice of the same from Landlord; provided, that Tenant may contest any such lien if Tenant provides Landlord with cash or a letter of credit in the amount of said lien as security for its payment within such ninety (90) day period, and thereafter diligently contests such lien. In the event Tenant fails to deposit the aforementioned security with Landlord and fails to pay any lien claim after entry of final judgment in favor of the claimant, then Landlord shall have the right to expend all sums reasonably necessary to discharge the lien claim, and Tenant shall promptly reimburse Landlord for all such sums within sixty (60) day from Tenant's receipt of Landlord's invoice and supporting documentation.

4.3 **Real Estate Taxes**. Landlord shall pay all Taxes that accrue against the Property and/or Tower during the Term, which shall be deemed to be included as part of the Rent charged to Tenant. "Taxes" means any present or future federal, state, county, municipal or local taxes, assessments, levies, benefit charges, and/or other governmental and/or private impositions (including business park charges and dues), levied, assessed and/or agreed to be imposed upon the Property and/or Tower, or upon the Rent due and payable hereunder, whether or not now customary or within the contemplation of the Parties hereto and regardless of whether the same shall be extraordinary or ordinary, general or special, or similar or dissimilar to any of the foregoing, but shall not include any inheritance, estate, succession, income, profits or franchise tax. If any such tax or excise is levied or assessed directly against Tenant with respect to Tenant's Equipment, then Tenant shall be responsible for and shall pay the same at such times and in such manner as the taxing authority requires. Tenant shall be **solely** liable for all taxes levied or assessed against Tenant's Equipment or Tenant's other personal property or Tenant's fixtures placed in the Premises, whether levied or assessed against Landlord or Tenant. Landlord shall reasonably cooperate with Tenant, at Tenant's expense, in filing, prosecuting and perfecting any appeal or challenge to Taxes (other than with respect to Taxes levied by Landlord) as set forth in the preceding sentence, including but not limited to, executing any consent, appeal or other similar document. If, as a result of any appeal or challenge by Tenant, there is a reduction, credit or repayment received by Landlord for any Taxes previously paid by Tenant, Landlord agrees to promptly reimburse to Tenant the amount of said reduction, credit or repayment.

## **5. Interference and Structure Damage.**

5.1 **Interference**. Tenant agrees to use commercially reasonable efforts to ensure that Tenant's Equipment does not cause measurable Interference (as defined below) with the electronic equipment, operations of, or other telecommunications equipment installed at the Property as of the Effective Date. Following Tenant's Installation, Landlord agrees not to install or to permit others to install any structure or equipment which would block or otherwise interfere with any transmission or reception by Tenant's Equipment (whether such blockage or interference is in the form of an emission, radiation, induction, harmonic, a physical barrier or otherwise ("**Interference**")). If Interference continues for a period more than seventy-two (72) hours following a Party's receipt of notification thereof with respect to such Party's equipment (including Tenant's Equipment, or the equipment of a third party in privity with such Party), such Party shall cease (or Landlord shall cause any such third

party) to cease operating and/or relocate the source of Interference or to reduce the power sufficiently to minimize the Interference until such Interference can be remedied. Landlord represents, warrants and covenants that all leases, subleases, or other agreements entered into by Landlord or any Affiliate of Landlord after the Effective Date, for the installation of equipment used for any service utilizing in whole or in part the transmission or reception of any radio frequency(ies) at the Property contain or will contain language prohibiting interference to any then pre-existing use of the Property. The Parties acknowledge and agree that there will not be an adequate remedy at law for noncompliance with the provisions of this Section 5.1, and therefore either Party shall have the right to equitable remedies, including, without limitation, injunctive relief and specific performance. Any uncured Interference extending beyond thirty (30) days shall be considered an Event of Default.

5.2 Tower Unfit For Tenant's Permitted Use. In the event that all or a substantial portion of the Tower is destroyed, damaged or otherwise unfit for Tenant's occupancy in accordance with the Tenant's Permitted Use (as determined by Tenant in its reasonable discretion) and the Tower cannot be restored, or rebuilt, by Landlord within thirty (30) days to a condition which is fit for Tenant's occupancy in accordance with the Tenant's Permitted Use (as determined by Tenant in its reasonable discretion), then Tenant may elect to immediately terminate this Agreement by written Notice to Landlord without penalty or further obligation to Landlord, its employees, officers, agents or lenders, other than with respect to Rent then due and the other applicable provisions of this Agreement. Landlord shall notify Tenant whether Landlord intends to rebuild, repair or replace the Tower as soon as possible under the circumstances, but in all cases within thirty (30) days following Landlord's discovery of such condition. In the event Tenant does not elect to terminate this Agreement and Landlord does not rebuild, repair or replace the Tower, then the Parties shall negotiate in good faith within ninety (90) days of such Notice regarding the relocation of Tenant's Equipment to another property owned by Landlord; if available, and if so available, the terms and conditions of such relocation, including Rent. If after ninety (90) day period the Parties cannot agree on such terms and conditions after good faith negotiations, then either Party may terminate this Agreement without penalty or further obligation to the other Party, other than with respect to Rent then due and owing to the date of destruction or damage. For avoidance of doubt, if this Agreement is terminated pursuant to this Section 5.2, then the Tenant's Equipment shall be removed in compliance with Section 7.1 hereof.

## **6. Maintenance and Repair Obligations.**

6.1 Landlord Maintenance of the Tower. Landlord represents and warrants that: (i) its operation of the Tower and Property (exclusive of Tenant's Equipment), including, without limitation, any required or advisable lighting systems, currently complies with, and will be maintained throughout the Term in accordance with, all Applicable Law. Landlord shall at all times throughout the Term maintain, at its sole cost and expense, the Tower and the Property, including, without limitation, the lighting systems, transmission lines, equipment and building(s) in good operating condition. In no event, other than an emergency, shall Landlord access or power down Tenant's Equipment without Tenant's prior written consent (email being sufficient).

6.2 Tenant Maintenance of Tenant's Equipment. Tenant assumes sole responsibility **and liability** for the maintenance, repair and/or replacement of Tenant's Equipment in compliance with Applicable Law and this Agreement, except as set forth in Section 6.1. Tenant agrees to perform all maintenance, repair or replacement of Tenant's Equipment ("**Tenant Maintenance**") in accordance with Applicable Law, and in a good and workmanlike manner. Tenant acknowledges and agrees that Tenant shall not be permitted to conduct Tenant Maintenance in a manner that would materially increase the size of the Premises.

## **7. Surrender and Hold Over.**

7.1 **Surrender.** Except as set forth to the contrary herein, within ninety (90) days following the expiration or termination of the Term (the “**Equipment Removal Period**”), in each case in accordance with the terms of this Agreement, Tenant will remove Tenant’s Equipment at its sole expense, and shall surrender the Premises to Landlord in a condition similar to that which existed on the Commencement Date, normal wear and tear excepted, together with all additions, alterations and improvements thereto; provided, however, that Tenant shall have no obligation to remove any Tenant’s Equipment or other objects that are below the surface of the Property (such as cables) or any concrete or equivalent installation pad. The Parties acknowledge and agree that Rent shall be paid during the Equipment Removal Period, provided, however, that if Tenant fails to remove Tenant’s Equipment during the Equipment Removal Period, Tenant will be deemed to be in Hold Over (as defined in Section 7.2 below) until such time as Tenant removes Tenant’s Equipment from the Premises in accordance with this Section 7. Nothing herein, however, shall prohibit Tenant from accessing the Premises or removing all or any portion of Tenant’s Equipment from the Premises at any time during the Term or the Equipment Removal Period. Tenant shall repair any damage to the Premises caused by the removal of Tenant’s Equipment.

7.2 **Holding Over.** If Tenant occupies the Premises beyond the Equipment Removal Period without Landlord’s written consent (“**Hold Over**”), Tenant will be deemed to occupy the Premises on a month-to-month basis, terminable by either Party on thirty (30) days’ written Notice to the other Party, and all of the terms and provisions of this Agreement shall be applicable during that period, except that Tenant shall pay rental to Landlord equal to one hundred twenty-five percent (125%) of the monthly Rent applicable hereunder at the expiration of the Term, prorated for the number of days of such Hold Over period. Notwithstanding the foregoing, Tenant shall remove Tenant’s Equipment pursuant to the requirements of this Section 7 within sixty (60) days after the beginning of the Hold Over period. If Tenant does not so remove Tenant’s Equipment by the end of such sixty (60) day period, then upon reasonable prior Notice to Tenant (“**Notice of Removal**”), Landlord, at its sole discretion, may remove and dispose of Tenant’s Equipment at Tenant’s sole but reasonable expense; however, Landlord shall not remove Tenant’s Equipment if the Parties are mutually engaged in good faith negotiations for a new lease or lease extension. **For avoidance of doubt, the provision by Landlord to Tenant of a Notice of Removal shall mean that any such good faith negotiations have ceased.**

## **8. Default, Remedies and Termination.**

8.1 **Default.** If any one (1) or more of the following events (each, an “**Event of Default**”) occurs during the Term, then the non-defaulting Party may elect one or more of the remedies set forth below in this Section 8 or seek any other remedy available at law or in equity: (a) a Party’s failure to make any payment required by this Agreement within thirty (30) days after such Party’s receipt of written Notice from the other Party of such failure to pay; (b) failure by either Party to observe or perform any of the covenants or other provisions of this Agreement to which either Party is bound by this Agreement where such failure: (1) continues for a period of thirty (30) days after written Notice thereof from the non-defaulting Party, provided, however, that if the event for which the Notice is given is of a nature that may not be reasonably cured within said thirty (30) day period, then such Party shall not be in default for so long as such Party commences to cure the failure within the thirty (30) day period and diligently pursues it to conclusion; and/or (2) based upon the affected Party’s reasonable determination, materially affects the affected Party’s ability to transmit or receive wireless communications signals to or from the Premises or the Property; (c) either Party files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or admits the material allegations of any such petition by answer or otherwise, or is dissolved or makes an assignment for the benefit of creditors; (d) involuntary proceedings under any such bankruptcy law or insolvency act, or for the dissolution of either Party are instituted against either Party, or a receiver or trustee is appointed for all or substantially all of the property of either Party, and such proceeding is not dismissed, or such receivership or trusteeship vacated within sixty (60) days after such institution or appointment; and/or (e) any uncured Interference pursuant to Section 5.1 hereof.



8.2 Remedies and Termination. Upon the occurrence of any uncured Event of Default, the non-defaulting Party may thereafter terminate this Agreement immediately upon written Notice to the other Party without prejudice to any other remedies the non-defaulting Party may have at law or in equity. Further, Tenant shall have the right, but not the obligation, to terminate this Agreement without further liability upon thirty (30) days prior written Notice to Landlord due to any one or more of the following: (i) changes in Applicable Law which prohibit or adversely affect Tenant's ability to operate Tenant's Equipment at the Premises; (ii) Tenant, in its sole discretion, determines that Tenant's Permitted Use of the Premises is obsolete or unnecessary; (iii) Landlord or a third party installs any structure, equipment, or other item on the Tower Property or an adjacent parcel of real property, which blocks, hinders, limits, or prevents Tenant from being able to use the Tenant Equipment for Tenant's Permitted Use.

## **9. Limitation of Liability and Indemnification.**

9.1 Limitation of Liability. EXCEPT FOR EACH PARTY'S INDEMNIFICATION OBLIGATIONS SET FORTH BELOW IN THIS SECTION 9, NEITHER PARTY NOR ANY OF ITS AGENTS, CONTRACTORS OR EMPLOYEES, SHALL BE LIABLE TO THE OTHER PARTY OR ANY PERSON CLAIMING THROUGH THAT PARTY FOR ANY EXEMPLARY, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR ANY CAUSE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, CLAIMS CAUSED BY OR RESULTING FROM THE NEGLIGENCE OF THAT PARTY, ITS AGENTS, CONTRACTORS OR EMPLOYEES.

9.2 Tenant's Indemnity. Except to the extent caused by the breach of this Agreement by Landlord, or the acts or omissions of Landlord, its officers, agents, employees, contractors, or any other Person for whom Landlord is legally responsible, Tenant shall defend, indemnify and hold Landlord and its officers, directors, shareholders, employees, agents and representatives harmless from and against any and all claims, demands, litigation, settlements, judgments, damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees) arising directly or indirectly out of: (i) any act or omission of Tenant, or of its officers, agents, employees, contractors, or any other Person for whom Tenant is legally responsible ("Tenant's Representatives"); (ii) a breach of any representation, warranty or covenant of Tenant contained or incorporated in this Agreement; and/or (iii) the generation, possession, use, storage, presence, the disturbance and release of new or pre-existing Hazardous Substances (including pre-existing Hazardous Substances which predate the Term), spill, treatment, transportation, manufacture, refinement, handling, production and/or disposal of Hazardous Substances (as defined in Section 11); specifically by Tenant or Tenant's Representatives in, on, about, adjacent to, under or near the Premises and/or the Property, and/or any contamination of the Premises and/or the Property by any Hazardous Substance caused by Tenant or Tenant's Representatives. Tenant's obligations under this Section 9.2 shall survive the expiration or earlier termination of this Agreement for two (2) years.

9.3 Landlord's Indemnity. Except to the extent caused by the breach of this Agreement by Tenant, or the acts or omissions of Tenant, or of any Tenant's Representatives, Landlord shall defend, indemnify and hold Tenant and the Tenant's Representatives harmless from and against any and all claims, demands, litigation, settlements, judgments, damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees) arising directly or indirectly out of: (i) any act or omission of Landlord, its officers, agents, employees, contractors, or any other Person for whom Landlord is legally responsible; (ii) a breach of any representation, warranty or covenant of Landlord contained or incorporated in this Agreement; and/or (iii) the generation, possession, use, storage, presence, release, spill, treatment, transportation, manufacture, refinement, handling, production and/or disposal of Hazardous Substances (as defined in Section 11) by Landlord, its officers, agents, employees, contractors or any other Person for whom Landlord is legally responsible; in, on, about, adjacent to, under or near the Premises and/or the Property, and/or any contamination of the Premises and/or the Property

by any Hazardous Substance, but only to the extent not caused by Tenant or Tenant's Representatives as described in Section 9.2 (iii). Landlord's obligations under this Section 9.3 shall survive the expiration or earlier termination of this Agreement for two (2) years.

9.4 Indemnification Procedure. The Party seeking indemnification (the "**Indemnified Party**") shall promptly send Notice to the Party from whom indemnification is being sought (the "**Indemnifying Party**") of the claim or suit for which indemnification is sought. The Indemnified Party shall not make any admission as to liability or agree to any settlement of or compromise any claim without the prior written consent of the Indemnifying Party. The Indemnified Party shall, at the Indemnifying Party's request and expense, give the Indemnifying Party all reasonable assistance in connection with such negotiations and litigation. The Indemnified Party may defend itself with counsel of its choice at the Indemnifying Party's expense, if the Indemnifying Party does not take up such defense in a reasonable time.

## 10. Insurance.

10.1 Landlord Obligations. Throughout the Term, Landlord shall maintain, at Landlord's sole cost and expense, the following insurance coverage: (i) Commercial General Liability of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate; and (ii) such other insurance policies as may be deemed normal and customary for substantially similar properties, including, without limitation, coverage for loss of rent. ~~All such policies shall be endorsed to include Tenant as an additional insured.~~ Subject to the policy minimums set forth above in this Section 10.1, the insurance required of Landlord hereunder may be maintained by a blanket or master policy that includes properties other than the Property.

10.2 Tenant Obligations. Throughout the Term, Tenant shall maintain, at Tenant's sole cost and expense, the following **minimum** insurance coverages: (i) workers' compensation insurance with no less than the minimum limits required by Applicable Law; (ii) employer's liability insurance with such limits as required by Applicable Law; (iii) Commercial General Liability with a minimum limit of \$1,000,000 per occurrence and \$2,000,000 aggregate; and (iv) **pollution insurance with a minimum limit of \$1,000,000.** All such policies shall be endorsed to include Landlord as additional insured **on a primary and non contributory basis.** Waiver of subrogation is required in favor of Landlord on all policies including workers' compensation. These insurance requirements do not constitute a limitation of liability with respect to indemnification pursuant to 9.2.

10.3 Insurance Requirements. All policies required to be maintained by this Section 10 shall be issued by insurers that are (1) licensed to do business in the state in which the Property are located, (2) rated A- or better by Best's Key Rating Guide, and (3) shall require notice of termination to the other Party.

~~10.4 Waiver of Subrogation. To the fullest extent permitted by law, Landlord and Tenant for themselves and any and all parties claiming under or through them, including, without limitation, their respective insurers, hereby mutually release and discharge each other and the other's Affiliates, and their respective officers, directors, shareholders, agents, employees, contractors, and/or any other person or entity for whom a Party is legally responsible from any claims for damage to any person or to the Premises or any other real or personal property that are or are claimed to have been caused by or result from risks insured against under any insurance policies carried by the waiving party and in force at the time of such damage and hereby waive any right of subrogation that might otherwise exist in or accrue to any person on account thereof. All policies required to be carried by either Party herein shall contain an endorsement in favor of the other Party waiving the insurance company's right of subrogation against such other Party. THIS RELEASE SHALL APPLY EVEN IF THE LOSS OR DAMAGE IS CAUSED BY THE FAULT OR NEGLIGENCE OF A PARTY HERETO OR BY ANY PERSON FOR WHICH SUCH PARTY~~

~~IS RESPONSIBLE. EACH PARTY AGREES TO NOTIFY ITS INSURANCE CARRIER(S) OF THIS PROVISION.~~

**11. Representations and Warranties.** Landlord represents, warrants and covenants that to the best of its knowledge and belief: (a) Landlord has good and sufficient title and interest to the Premises, whether by ownership, license, lease or otherwise and has the right to grant the rights set forth in this Agreement; (b) there are no liens, judgments or other title matters materially and adversely affecting Landlord's title to or interest in the Property; (c) there are no covenants, easements or restrictions that prevent the use of the Premises for Tenant's Permitted Use; (d) the Property and the Premises are in good repair and suitable for Tenant's Permitted Use; (e) in the event a third party other than Landlord owns or controls any rights to, or Landlord subleases any portion of the Property, Landlord has obtained all rights necessary to enter into this Agreement; and (f) subject to the terms of this Agreement, Landlord shall not, during the Term, cause, knowingly permit or, fail to remediate in accordance with Applicable Law (at Landlord's sole cost and expense) any hazardous substance (as such phrase is defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC §9601 et seq. ("**Hazardous Substance**")) to be placed, stored, treated, released, spilled, transported or disposed of on, under, at or from the Property in violation of any applicable environmental laws. Landlord understands and agrees that notwithstanding anything contained in this Agreement to the contrary (excluding Section 9.2), in no event shall Tenant have any liability whatsoever with respect to any Hazardous Substance that was on, about, adjacent to, under or near the Property prior to the Effective Date, or that was generated, possessed, used, stored, released, spilled, treated, transported, manufactured, refined, handled, produced or disposed of on, about, adjacent to, under or near the Property by: (1) Landlord, its agents, employees, contractors or invitees; or (2) any third party who is not an employee, agent, contractor or invitee of Tenant.

Tenant and Landlord each represent, warrant and covenant to the other Party that: (i) it is a duly constituted organization (corporation, limited partnership, limited liability company, partnership, non-profit corporation, etc.) in good standing in its State of organization and qualified to do business in the State in which the Premises is located to the extent required by Applicable Law; (ii) it has filed all forms, reports, fees and other documents necessary to materially comply with Applicable Law as and when due; (iii) it has all rights, power and authority necessary to enter into and to execute and deliver this Agreement and to perform its obligations (and in the case of Landlord grant any rights) hereunder; (iv) neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby or thereby will violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental agency, or court to which it or any of its Affiliates are subject; and (v) the transaction contemplated by this Agreement does not require the consent of any other party, will not result in a breach of or default under any third party agreement, and will not otherwise cause any such third party agreement to cease to be legal, valid, binding, enforceable and in full force and effect.

## **12. Miscellaneous.**

**12.1 Assignment.** Neither Party may assign or otherwise transfer any of its rights or obligations under this Agreement to any third party without the prior written approval of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing and so long as no Event of Default has been committed by Tenant and is continuing, Tenant may assign or transfer some or all of its rights and/or obligations under the Agreement to: (i) an Affiliate; (ii) a successor entity to its business, whether by merger or by sale of all or substantially all of its assets or stock; (iii) any entity in which Tenant or its Affiliates have any direct or indirect equity investment; and/or (iv) any other entity directly or indirectly controlling, controlled by or under common control with any of the foregoing, and in each case, such assignment or transfer shall not be considered an



assignment under this Section 12.1 requiring consent and Landlord shall have no right to delay, alter or impede such assignment or transfer. For clarity, and the avoidance of doubt, neither: (a) a change in ownership of Tenant as a result of a merger, consolidation or reorganization; nor (b) the sale of all or substantially all of the assets of Tenant shall be considered an assignment under this Section 12.1 requiring Landlord's consent, and Landlord shall have no right to delay, alter or impede any of the foregoing transactions.

12.2 Rights Upon Sale of Premises or Tower. Should Landlord, at any time during the Term, sell or transfer all or any part of the Premises or the Tower thereon to a purchaser other than Tenant, such transfer shall be subject to this Agreement and Landlord shall require any such purchaser or transferee to recognize Tenant's rights under the terms of this Agreement in a written instrument signed by Landlord and the third party transferee. In the event that Landlord completes any such transfer without executing such a written instrument, then Landlord shall not be released from its obligations to Tenant under this Agreement, and Tenant shall have the right to look to Landlord and the third party for the full performance of this Agreement.

12.3 Subordination and Non-Disturbance. At Landlord's option, this Agreement shall be subordinate to any mortgage, deed of trust, or other security agreement (each a "**Mortgage**") by Landlord which, from time to time, may encumber all or part of the Property; provided, however, the lender under every such Mortgage shall, in the event of a foreclosure of Landlord's interest, recognize the validity of this Agreement and Tenant's right to remain in occupancy of and have access to the Premises, as long as no Event of Default by Tenant exists under this Agreement. If the Property is encumbered by a Mortgage as of the Effective Date, then Landlord shall, promptly following Tenant's request, obtain and furnish to Tenant a non-disturbance agreement, in recordable form, for each such Mortgage. If Landlord defaults in any payment or other performance obligations under any Mortgage encumbering the Property, Tenant may, at its option (but without any obligation), cure or correct such default and, upon doing so, Tenant: (a) shall be subrogated to any and all rights, titles, liens, and/or equities of the holders of such Mortgage; and (b) may offset the full amount against any Rent or other amount owed by Tenant to Landlord under this Agreement.

12.4 Condemnation. If all or any portion of the Premises is condemned, taken by a Governmental Authority or otherwise appropriated by the exercise of the right of eminent domain or a deed or conveyance in lieu of eminent domain (each, a "**Taking**"), either Party hereto shall have the right, but not the obligation, to terminate this Agreement immediately upon Notice to the other Party. If either Party elects to terminate this Agreement, the Rent set forth herein shall be abated, and Tenant's liability therefor will cease as of the date of such Taking, this Agreement shall terminate as of said date, and any prepaid rent shall be returned to Tenant. If this Agreement is not terminated as herein provided, then it shall continue in full force and effect, and Landlord shall, within a reasonable time after possession is physically taken by the condemning authority restore the remaining portion of the Premises to render it reasonably suitable for the uses permitted by this Agreement and the Rent shall be proportionately and equitably reduced. Notwithstanding the foregoing, Landlord shall not be obligated to expend an amount greater than the proceeds received from the condemning authority less all expenses reasonably incurred in connection therewith (including attorneys' fees) for the restoration. All compensation awarded in connection with a Taking shall be the property of Landlord, provided that if allowed under Applicable Law, Tenant may apply for and keep as its property a separate award for (i) the value of Tenant's leasehold interest; (ii) the value of Tenant's Equipment or other personal property of Tenant; (iii) Tenant's relocation expenses; and (iv) damages to Tenant's business incurred as a result of such Taking.

12.5 Recording. If requested by Tenant, Landlord and Tenant agree to execute a Memorandum of Lease that Tenant may record, at Tenant's sole cost and expense, with the appropriate recording officer. The date set forth in the Memorandum of Lease is for recording purposes only, and bears no reference to commencement of either the Term or rent payments of any kind.

12.6 **Force Majeure.** Notwithstanding anything to the contrary in this Agreement, neither Party shall be liable to the other Party for nonperformance or delay in performance of any of its obligations under this Agreement due to causes beyond its reasonable control, including, without limitation, strikes, lockouts, pandemics, labor troubles, acts of God, accidents, technical failure governmental restrictions, insurrections, riots, enemy act, war, civil commotion, fire, explosion, flood, windstorm, earthquake, natural disaster or other casualty ("**Force Majeure**"). Upon the occurrence of a Force Majeure condition, the affected Party shall immediately notify the other Party with as much detail as possible and shall promptly inform the other Party of any further developments. Immediately after the Force Majeure event is removed or abates, the affected Party shall perform such obligations with all due speed. Neither Party shall be deemed in default of this Agreement to the extent that a delay or other breach is due to or related to a Force Majeure event. A proportion of the Rent herein reserved, according to the extent that such Force Majeure event shall interfere with the full enjoyment and use of the Premises, shall be suspended and abated from the date of commencement of such Force Majeure event until the date that such Force Majeure event subsides. If such Force Majeure event prevents the affected Party from performing its obligations under this Agreement, in whole or in part, for a period of forty-five (45) or more consecutive days, then the other Party may terminate this Agreement immediately upon Notice to the affected Party.

12.7 **Successors and Assigns.** The respective rights and obligations provided in this Agreement shall bind and shall inure to the benefit of the Parties hereto, their legal representative, heirs, successors and permitted assigns. No rights however, shall inure to the benefit of any assignee, unless such assignment shall have been made in accordance with Section 12.1 of this Agreement.

12.8 **Governing Law and Construction.** This Agreement shall be construed, governed and enforced in accordance with the laws of the State of Connecticut, without regard to the Conflicts of Laws provisions thereof. The Parties each consent to the jurisdiction of the State and Federal Courts located in Connecticut, and of the appellate courts thereof. Landlord and Tenant acknowledge and agree that they and their counsel have reviewed, or have been given a reasonable opportunity to review, this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments hereto.

12.9 **Person; Gender; Number; Section Headings.** As used in this Agreement, the word "Person" means and includes, where appropriate, an individual, corporation, partnership or other organized entity; the plural shall be substituted for the singular, and the singular for the plural, where appropriate; and words of any gender shall include any other gender. The section and paragraph headings contained in this Agreement are solely for reference purposes, and shall not affect in any way the meaning or interpretation of this Agreement.

12.10 **Severability.** Each provision of this Agreement shall be construed as separable and divisible from every other provision, and the unenforceability of any one provision shall not limit the enforceability, in whole or in part, of any other provision. In the event that a court or other adjudicator of competent jurisdiction holds any provision of this Agreement to be invalid, illegal, void or less than fully enforceable as to time, scope or otherwise, such provision shall be construed by limiting and reducing it so that such provision is valid, legal and fully enforceable while preserving to the greatest extent permissible the original intent of the Parties; the remaining terms and conditions of this Agreement shall not be affected by such alteration, and shall remain in full force and effect.

12.11 **Waiver.** It is agreed that, except as expressly set forth in this Agreement, the rights and remedies herein provided in case of an Event of Default by either Landlord or Tenant are cumulative and shall not affect in any manner any other remedies that the non-breaching Party may have by reason of such Event of Default. The exercise of any right or remedy herein provided shall be without prejudice to the right to exercise any other right or remedy provided herein, at law, in equity or otherwise.

12.12 Notice. Unless explicitly set forth to the contrary herein, all notices or requests that are required or permitted to be given pursuant to this Agreement must be given in writing and must be sent via first-class certified mail, postage prepaid, or by overnight courier service, charges prepaid, to the Party to be notified, addressed to such Party at the address(es), email address(es) or fax number(s) set forth below, or such other address(es), email address(es) or fax number(s) as such Party may have substituted by written notice (given in accordance with this Section 12.12) to the other Party ("**Notice**"). Confirmation of receipt of such Notice (in the case of delivery by first-class certified mail or by overnight courier service) will constitute the giving thereof. Then sending of such other notice required or permitted hereunder via email, and the sending with confirmation of receipt in the case of facsimile transmission, will constitute the giving thereof.

**If to be given to Landlord:**

[Insert Landlord Entity]

Attn: \_\_\_\_\_ Town \_\_\_\_\_ Manager's  
Office \_\_\_\_\_

*If by overnight courier service:*

172 \_\_\_\_\_ Main  
Street \_\_\_\_\_  
Killingly, \_\_\_\_\_ CT  
06239 \_\_\_\_\_

*If by first-class certified mail:*

172 \_\_\_\_\_ Main  
Street \_\_\_\_\_  
Killingly, \_\_\_\_\_ CT  
06239 \_\_\_\_\_

*If by email:*

Email \_\_\_\_\_ address:  
townmanager@killinglyct.gov \_\_\_\_\_

**If to be given to Tenant:**

DISH Wireless L.L.C.

Attn: Lease Administration

*If by overnight courier service:*

5701 South Santa Fe Drive.  
Littleton, Colorado 80120

*If by first-class certified mail:*

5701 South Santa Fe Drive  
Littleton, Colorado 80120

12.13 Entire Agreement. This Agreement sets forth the entire, final and complete understanding between the Parties hereto relevant to the subject matter of this Agreement, and it supersedes and replaces all previous understandings or agreements, written, oral, or implied, relevant to the subject matter of this Agreement made or existing before the Effective Date. Except as expressly provided by this Agreement, no waiver or modification of any of the terms or conditions of this Agreement shall be effective unless in writing and signed by both Parties. Any provision of this Agreement that logically would be expected to survive termination or expiration, shall survive for a reasonable time period under the circumstances, whether or not specifically provided in this Agreement, unless such provision calls for a specific time period or states that the effectiveness of such provision ends at the time of termination or expiration.

12.14 Compliance with Law. Each Party shall, with respect to its actions and/or inactions pursuant to and in connection with this Agreement, comply with Applicable Law and all amendments thereto, now enacted or hereafter promulgated and in force during the Term of this Agreement, a Renewal Term or any extension of either of the foregoing shall also so comply .

12.15 Counterparts. This Agreement may be executed in any number of identical counterparts and in multiple counterparts, and as so executed, shall constitute one agreement, binding on all the Parties hereto, notwithstanding that all the Parties are not signatories to the original or the same counterpart. Execution of this Agreement by facsimile or electronic signature shall be effective to create a binding agreement and, if requested, Landlord and Tenant agree to exchange original signed counterparts in their possession.

12.16 Incorporation of Exhibits. All exhibits referenced herein and attached hereto are hereby incorporated herein in their entirety by this reference.

*[Remainder of page intentionally left blank. Signature page follows.]*

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Agreement as of the Effective Date.

**LANDLORD:**

**THE TOWN OF KILLINGLY**

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

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

Its: \_\_\_\_\_

**TENANT:**

**DISH WIRELESS L.L.C.**

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

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

Its: \_\_\_\_\_

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

[To be inserted prior to execution]



EXHIBIT B

SITE PLAN; DEPICTION OF TOWER SPACE AND GROUND-/EQUIPMENT SPACE:

[To be inserted prior to execution]

EXHIBIT C  
CERTIFICATE OF COMMENCEMENT

Tenant: DISH Wireless L.L.C.

Landlord: [REDACTED]

Tenant Site ID: [REDACTED]

Address of Property containing the Premises: [REDACTED]

RE: That certain Tower Cell Site Lease Agreement by and between Landlord and DISH Wireless L.L.C., made and effective as of [REDACTED].

This certificate certifies that:

1. The above referenced Premises has been accepted by Tenant.
2. Tenant's Installation at the Premises commenced on [REDACTED], 202[REDACTED].
3. Tenant's obligation to pay Rent to Landlord commences on [REDACTED] 1<sup>st</sup>, 202[REDACTED].

The execution of this certificate shall not relieve Landlord of its obligations under the Agreement. In the event of a conflict between this certificate and the Agreement, the terms set forth in the Agreement shall prevail. Capitalized terms used in this certificate shall have the same meaning ascribed to them in the Agreement, unless otherwise indicated herein. If Landlord does not deliver written Notice of Landlord's objection to the terms set forth in this certificate to Tenant within fifteen (15) days following Landlord's receipt thereof, the terms set forth in this certificate shall be deemed to have been approved by Landlord.

**DISH Wireless L.L.C.**

By:

Name:

Title:

Date:

EXHIBIT D

TENANT'S EQUIPMENT

[To be inserted prior to execution]