

SUBJECT: LEASE OF BOROUGH OWNED REAL PROPERTY TO CONSTRUCT, INSTALL, MAINTAIN, REPAIR, OPERATE, AND MANAGE A BROADCAST TOWER SITE. (MSB007173)

AGENDA OF: June 6, 2017

ASSEMBLY ACTION:

postponed indefinitely 8-1-17 BJA
w/o objection

MANAGER RECOMMENDATION: Introduce and set for public hearing.

APPROVED BY JOHN MOOSEY, BOROUGH MANAGER:

Route To:	Department/Individual	Initials	Remarks
	Originator	gs	
	Community Development Director	Q	
	Finance Director	CS	
	Borough Attorney	RS	
	Borough Clerk	mm	5/26/17

ATTACHMENT(S): Fiscal Note: NO ☐ YES ☒
Lease and Exhibits (26 pp)
Ordinance Serial No. 17-081 (3 pp)

SUMMARY STATEMENT:

An application has been submitted, pursuant to MSB 23.10.080, for a lease of borough-owned port property by the Ohana Investments, LLC. The purpose of application is to construct, install, maintain, repair, operate, and manage a broadcast tower site with a tower \geq 200 feet in height. A tower of this height inside the Port District does not require a conditional use permit; however, the applicant must apply for and receive a Port Development Permit.

DISCUSSION:

FM radio waves do not travel far beyond the visual horizon, so reception distances for FM stations may be limited and they can also be blocked by hills. Radio waves are similar to light waves in that they cannot be bent around a radius. It takes a large

number of FM transmitting stations to cover a geographically large area, particularly where there are terrain difficulties. Alaska's diverse population, small towns and villages, and, at times, lack of other information infrastructure due to cost, is provided a valuable service through FM broadcasting.

Once the requirements for the FM broadcast are met, other areas of the tower may be available for emergency services equipment or cellular communications. Emergency Services equipment also requires line of sight transmission with few tower options in the Port District and surrounding area. Lack of options for the borough to place EMS transmission equipment has resulted in the borough paying higher prices, in competition with for-profit cell providers. This provider has a use plan that would allow the borough to negotiate for space for emergency services communication needs.

The land is currently in the Port Commercial District which is to include commercial and light industrial uses not reliant on the marine terminal, railroad, incineration, or transient storage. The Port MacKenzie map for this area showing the gravel pit next to the KABATA purchased right-of-way is not the same as the interim materials district (IMD) for the port district, as approved by the Assembly. The IMD is adjacent to the road in the south half of the northeast quarter of Section 23, north of Point MacKenzie Road. The proposed tower site is north of the current IMD, almost in the middle of the northeast quarter of Section 23. The tower site's proposed driveway would utilize the gravel pit driveway exit from Point MacKenzie Road and continue north to the tower site - which is beyond the material site outlined in the IMD.

Public notice was provided in the Frontiersman, by mail to surrounding residents, community council, required boards and assembly members, and was posted on the web site. Following this notice, one public comment was received with regard to a possible eagle's nest. The applicant is aware of the need to be observant and possibly of need for scientific location services.

The Port Commission requested relocation of the tower to the west due to small plane traffic; however, there are no other elevations in the Port District of sufficient height. The site where MTA communications are housed was evaluated. The highest elevation in the area around the MTA site is 310 feet. This is 45.5 feet lower than the site selected and evaluation revealed signal blockage at that location.

Information is appended to the IM showing elevations in the Port area, Port District Plan map and Page 15 of the Port Master Plan Update showing the designations in the Port, as well as Page 22

of the Port Master Plan update which defines what types of businesses are proposed to be placed in the Port Commercial District.

Authority:

23.05.010 (A) Real property in which the borough has an interest shall be managed to:

(3) maximize revenue to the extent consistent with the borough's financial goals, in balance with the borough's nonfinancial goals;

(5) make vacant borough-owned real property available for development where and when it is feasible to do so

23.05.030(E) (6) Borough-owned real property, or any interest in real property, may be conveyed by deed or leased by the manager in accordance with any of the following methods of disposal:

by agreements by application.

23.05.050(A) No person or entity shall disturb, place improvements or place personal property upon, or make unauthorized use of borough-owned real property without written permission from the manager or in accordance with borough code or the Land and Resource Division Policy and Procedures Manual.

MSB 23.10.030(C) requires Assembly approval by Ordinance of any lease greater than 10 years in length.

23.10.060 CONSIDERATIONS. (B) Fair market value shall be based on one of the following:

(1) a third party appraisal pursuant to the criteria set forth in the Uniform Standards of Professional Appraisal Practice (USPAP) as published by the Appraisal Foundation

MSB 23.10.080 Application. All applications for purchase or use of borough-owned real property shall be filed with the manager according to the procedures adopted by assembly resolution. Each application shall be accompanied by the appropriate fee.

RECOMMENDATION OF ADMINISTRATION:

Staff respectfully recommends entering into a fair market value lease to construct, install, maintain, repair, operate, and manage a broadcast tower site in the Port District.

MATANUSKA-SUSITNA BOROUGH
FISCAL NOTE

Agenda Date: June 6, 2017

SUBJECT: LEASE OF BOROUGH OWNED REAL PROPERTY TO CONSTRUCT, INSTALL, MAINTAIN, REPAIR, OPERATE, AND MANAGE A COMMUNICATION SITE. (MSB007173)

ORIGINATOR:

FISCAL ACTION (TO BE COMPLETED BY FINANCE)	FISCAL IMPACT <u>YES</u> NO
AMOUNT REQUESTED <u>*</u>	FUNDING SOURCE <u>Lease Revenue</u>
FROM ACCOUNT #	PROJECT #
TO ACCOUNT: <u>203.000.000 3xx.xxx</u>	PROJECT #
VERIFIED BY: <u>[Signature]</u>	CERTIFIED BY:
DATE: <u>5-24-17</u>	DATE:

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING	FY2017	FY2018	FY2019	FY2020	FY2021	FY2022
Personnel Services						
Travel						
Contractual						
Supplies						
Equipment						
Land/ Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING						

CAPITAL						
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REVENUE	<u>*</u>	<u>—————></u>				
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FUNDING:

(Thousands of Dollars)

General Fund						
State/Federal Funds						
Other	<u>*</u>	<u>—————></u>				
TOTAL	<u>*</u>	<u>—————></u>				

POSITIONS:

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

* Amount to be determined

PREPARED BY:

PHONE:

DEPARTMENT:

DATE:

APPROVED BY:

Chapman Hensel

DATE:

5/29/17



MATANUSKA-SUSITNA BOROUGH

Community Development Department

350 East Dahlia Avenue • Palmer, AK 99645

Phone (907) 861-7869 • Fax (907) 861-8635

E-mail: lmb@matsugov.us

BROADCAST TOWER SITE LEASE

THIS LEASE (the "Lease") is entered into this 20th day of June 2017, by and between:

MATANUSKA SUSITNA BOROUGH (hereinafter "Lessor"), a municipal corporation formed under the laws of the State of Alaska, whose mailing address is 350 E. Dahlia Avenue, Palmer, Alaska 99645;

and

Ohana Investments, LLC, a Washington Limited Liability Company (hereinafter "Lessee"); whose mailing address is ATTN: Trila Bumstead, PO Box 99827, Seattle, WA 98139.

The parties recite that:

- A. Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor, a parcel of land more specifically described and depicted on Exhibit A attached to and for all purposes made a part of this Lease.
- B. The parties desire to adopt this Lease as a complete and final statement of all of the promises, covenants, terms and conditions in effect and binding between them.
- C. Lessor is entering into this Lease as land owner, exercising its power to manage its own lands under Alaska Statute 29.35.010(8), and the applicable provisions of the Matanuska-Susitna Borough Code ("MSB Code") Section 1.10.010(A)(9) and Title 23. The Matanuska-Susitna Borough Community Development Department, Land and Resource Management Division is responsible for management of borough-owned real property, timber, and gravel resources including lease origination, management, oversight, and enforcement, pursuant to Sections 23.05.010, 23.05.050, 23.05.070, 23.10.060, and 23.10.180 of MSB Code.

In so acting, Lessor is not waiving, and Lessor is explicitly reserving unto itself, all of its governmental authority, sovereignty and power to enact and enforce laws and regulations governing land use and development, or the conduct of any business or activity, anywhere within the Borough. Nothing in this Lease shall waive or otherwise diminish Lessor's governmental authority, sovereignty and power with respect to leased land or Lessee's use or occupancy of it.

- D. The Matanuska-Susitna Borough cannot, and does not, through this Lease, make any representations, warranties or guarantees as to the future results of any land use permits, applications, or proposals which are governed by Matanuska-Susitna Borough Code. Ohana Investments, LLC must obtain a port development permit in conjunction with this lease.

NOW, THEREFORE, in consideration of the promises and covenants set out below, the parties agree as follows:

Section 1. Premises Leased.

- 1.1 Leased Premises. Lessor, for and in consideration of the rents, covenants and conditions hereinafter specified to be paid, performed and observed by Lessee, leases to Lessee, and Lessee leases from Lessor, land situated in Port MacKenzie. The leased land is more particularly described and the site depicted on Exhibit A. Within 180 days of lease effective date Lessee will provide the Borough an Amended Exhibit A with reference to the Record of Survey of the leasehold recorded in the Palmer Recording District. At that time, the parties will execute an Amendment to incorporate the Amended Exhibit A into this document. The Record of Survey and will define the driveway and leasehold. The leased land, together with all rights, easements, privileges and appurtenances attaching or belonging to the described land, but subject to the reservation contained in Section 1.2 below, is referred to hereafter as the "Leased Premises."
- 1.2 Reservation of Minerals and Resources. All oil, gas, coal, other hydrocarbons, geothermal resources, rock, sand, gravel, peat, timber, and minerals of whatever nature on, in or under the above-described land are excluded from the Leased Premises and reserved to Lessor. Lessor may, nevertheless, grant Lessee a permit to make use of the timber, rock, sand, or gravel found on the Leased Premises in Lessee's development of the Leased Premises, which may require Lessee to obtain any required permit. Lessor has not promised or obligated itself to providing any such permit to Lessee. If Lessor mines and/or extracts any of the reserved minerals or resources, Lessor agrees that the mining and/or extraction shall not interfere with Lessee's business and activities on the Leased Premises or its access to the Leased Premises.

Section 2. Term.

2.1 Lease Term. This Lease shall be and continue in full force and effect for an initial term of twenty-five (25) years (the "Initial Term") commencing as of June 20, 2017, and expiring at 11:59 p.m. on June 19, 2041, contingent upon the receipt of a Port Development Permit, unless earlier terminated as provided in this Lease.

2.2 Option to Renew. Lessee may apply to renew this Lease for up to two (2) additional periods of up to five (5) years each (the "Renewal Term"). To effectively exercise an option to renew, Lessee must not be in default of any of its obligations at the time of the exercise or at the time of the commencement of any Renewal Term. During the Renewal Term(s), all of the provisions of this Lease shall remain in full force and effect, except that the rent Lessee shall pay to Lessor shall be adjusted as is provided for below.

2.2.1 Unless otherwise agreed in writing by lessor and lessee, lessee will apply for lease renewal no more than 180 days prior to lease expiration and no less than 120 days prior to lease expiration. Lease renewal for periods of 5 years may be approved by the Borough Manager.

Section 3. Use and Occupancy.

3.1 Permitted Use. The non-exclusive use of Premises shall be to construct, install, maintain, repair, operate, and manage a broadcast tower site, including but not limited to the construction and maintenance of a driveway, a tower 205 feet in height, structural tower base, broadcast equipment, and an equipment cabinet.

3.1.1 Collocated Communication Equipment. Lessee is encouraged to cooperate with other companies interested in equipment collocation. It is to be noted that collocation of equipment and/or additional collocated cabinets is subject to application for and receipt of an appropriate land use lease from MSB Land and Resource Management Division for surface cabinet space at the site and requires a Development Plan and Port Development Permit from any and all collocators.

3.2 Quiet Enjoyment. Upon Lessee's timely payment of all of rents and other sums required to be paid by Lessee under this Lease, and upon Lessee's full and faithful observance and performance of all of its obligations contained in this Lease, and so long as such observance and performance continues, Lessee shall peaceably hold and enjoy the Leased Premises during the Term without hindrance or interruption by Lessor or anyone lawfully claiming by, through, or under Lessor.

3.3 Repair and Maintenance. Lessee shall, at Lessee's expense and without notice from Lessor at all times during the Term, keep the Leased Premises and all Improvements now existing or hereafter built on the Leased Premises (including but not limited to exterior building walls, windows, doors, fences, signs, landscaping and yard areas, refuse disposal equipment and facilities, pavement, curbs, gutters, exterior lighting, and drainage facilities), in good order, condition, maintenance, operability, and repair and of a neat, clean, and pleasing appearance reasonably satisfactory to Lessor.

3.4 Compliance with Laws. Lessee, at all times during the Term, at its own expense, and with all due diligence, shall observe and comply with all laws, ordinances, rules, and regulations that are now in effect or that may later be adopted by any governmental authority (including Lessor), and that may be applicable to the Leased Premises or any Improvement on it or any use of it.

3.5 Authorized Representative. Immediately after the execution of this Lease, Lessee shall provide Lessor with the name and contact information (including cell phone number and e-mail address) for Lessee's principal point of contact for Lessee's operations on the Leased Premises. Lessor shall be entitled to directly communicate with the named individual for all matters under this Lease. Lessee shall promptly notify Lessor of any change in the person acting as Lessee's Authorized Representative for the Leased Premises.

3.6 Supervision. Lessee shall maintain reasonable and adequate on-site supervision of the Leased Premises to insure that the terms and conditions of this Lease and all applicable federal, state and borough laws, rules, and regulations governing operations within the Leased Premises are enforced.

3.7 Signage. Lessee shall not place on the Leased Premises any signage that is unrelated to any business Lessee is operating on the Leased Premises. Lessee's signage shall conform to the Port MacKenzie Master Plan and the Port Development Permit. No electioneering or campaign signs of any kind shall be placed upon the Leased Premises.

3.8 Utilities. Lessee shall pay for all utility services consumed or used on the Leased Premises.

3.9 Waste and Wrongful Use. Lessee shall not commit or suffer any strip or waste of the Leased Premises, or engage in any unlawful activity, or engage in any unauthorized activity that is unsafe, results in any public or private nuisance thereon, or adversely affects the value, character, or utility of Lessor's surrounding property.

3.10 Setbacks. Lessee shall observe all setback requirements applicable to the Leased Premises and shall not construct or maintain any building or other structure whatever between any road or other specified rights-of-way boundary of the Leased Premises and any setback along such boundary, except for fences or walls approved by Lessor. Lessor reserves the right to make use of, and to grant utility easements and other rights to third parties in the setback areas of the Leased Premises.

3.11 Inspection and Repair. Lessee shall repair, maintain and make good all conditions required under the provisions of this Lease, permit requirements and applicable laws within a time frame provided for curing a default under the terms of this Lease. In the event of an emergency, Lessor's notice may be verbally given and followed after-the-fact by written notice. If Lessee refuses or neglects to provide reasonable and necessary repairs or maintenance for the Leased Premises as required under the terms of this Lease to the reasonable satisfaction of Lessor after written demand, then Lessor, without prejudice to any other right or remedy it has under this Lease or otherwise, may perform such reasonable and necessary maintenance work or make such repairs without liability to Lessee for any loss or damage that may accrue to Lessee's merchandise or other property or Lessee's business by reason thereof. Upon completion of any such repair or maintenance, and no later than thirty (30) days after presentation of an invoice therefore, Lessee shall pay as additional rent Lessor's reasonable costs for making such necessary repairs or performing such maintenance, plus fifteen percent (15%) of the repair cost to cover Lessor's overhead.

3.11.1 Condition of Premises. Lessee has had an opportunity to inspect Premises and enters into this lease solely in reliance on lessee's own examination and not by reason of any representation by the Borough. Lessee accepts the Premises in present condition "AS IS WHERE IS". No reliance shall be placed on any opinion, material, or information provided by or through Borough, and Lessee does so at its own risk, cost, and expense.

Section 4. Rent.

Rent is based on the Follett and Associates 2011 Appraisal Consulting Report specific to Port MacKenzie properties. The tower height is to be 205 feet. Based on MSB policy of site size based on tower height, this site will be 42025 sf. Using the appraisal consultation report valuation of \$2.00 sf, the property rent is \$761.32 per acre/per month for a fair market value rental rate of \$700.42 per month for the broadcast tower site of 42025 sf. Driveway rent will be calculated at 0.61 acre with rent based on the Appraisal Consulting Report of \$1.00 sf, which is \$363.00 per acre/per month, or \$221.43 for 26572 sf.

Rent for the site and driveway will be \$921.85 during the first contract year, following completion of construction, and is subject to increase each July 1.

4.1 Rent. Rent may be based on a combination of rent for the land and rent for any other collocated authorized users (collectively referred to as "Authorized Users"). Prior to collocation of ground or air structures by another company as an Authorized User they shall obtain a land use lease through Land and Resource Management Division, for cabinet or other structure location.

4.1.1.1 Land Rent During Construction. Lessee shall pay reduced rent during construction of \$250.00 a month. Construction is considered the time necessary for the development of the site and construction of the tower and cabinet following receipt of the Port Development Permit. The construction phase includes the access driveway and construction of the tower and appurtenances.

4.1.1.2 Upon conclusion of construction, Lessee will obtain and record, at Lessee's cost, a Record of Survey for the broadcast tower site and driveway with a separate acreage shown for the tower site and the driveway. A recorded copy will be provided to the Lessor at which time regular rent will commence.

4.1.1.2.1 Rent will be increased by 3.0% or CPI, Anchorage, whichever is higher, each July 1.

4.2 Taxes. Lessee shall pay all taxes imposed by MSB on Premises and improvements thereon or any other taxes relating to its operations during the term of the Lease.

4.3 Assessments. Lessee shall pay its pro rata share of assessments charged against Premises. Borough will send a written notice with a detailed explanation of any assessments pertaining to Premises to Lessee. Lessee shall pay assessment within thirty (30) days of receipt of written notice from Borough.

4.4 Failure to Pay. If Borough must pay any tax, assessment, penalty, or interest because of the failure of Lessee to pay such taxes, assessments, penalties, or interest, such obligations shall be considered a debt to Borough.

4.5 Late Charge. In the event Lessee fails to make any payment of rent or any other payments due hereunder upon the date due, Borough shall be entitled to collect from Lessee a late charge equal to six percent (6%) of the amount of the delinquent payment or \$50.00, whichever is greater.

4.6 Interest Charge. Failure to pay rent or any other payments due under the Lease on the date due shall be subject to interest at the rate of 10.5% per annum.

Section 5. Special Requirements.

5.1 Electrical Power. Lessee shall pay for all electric power and other charges or expenses incurred for Premises to supply the electric power.

5.2 Telephone, Internet, Fiberoptic. Lessee shall pay for all overhead or buried telephone or communication lines and equipment and other charges incurred for Premises to supply same.

5.2 Compliance with Laws. Lessee shall conform with all local, state, and federal applicable laws and regulations of public authority affecting Premises and the use thereon and assume, at Lessee's sole expense, any costs of such compliance including any fines or penalties. Lessee shall obtain all federal, state, and local permits and licenses necessary to operate under this lease, including but not limited to compliance with Federal Communication Commission (FCC) requirements, Federal Aviation Administration (FAA) requirements, Title 47 CFR, National Telecommunications and Information Administration (NTIA), ANSI/NFPA 70.

5.3 Minerals and Valuable Materials. Lessee shall not remove or sell valuable materials, held by the Borough, including but not limited to gravel and timber without written consent of Borough.

5.3.1 Lessee will reimburse MSB for any gravel from the Premises utilized in construction of the access road or construction site at FMV. Authorization for same may be obtained by providing an application to Resource Specialist, Land and Resource Management Division, (907) 861-8572.

5.3.2 Lessee will make timber removed for construction that is \geq 4-inch diameter at breast height (DBH) available to the Lessor through notification of the Resource Manager, Land and Resource Management Division, (907) 861-7863.

5.4 Fire. To the extent possible, Lessee shall protect Premises from fire and shall report any fires on Premises to Borough, by phone, as soon as possible, at the phone number shown on the signature page.

5.5 FCC License. Lessee shall operate its equipment and units in compliance with the rules and regulations of the Federal Communications Commission or Lessee's license authority. Within thirty (30) days prior to the beginning of operation and any subsequent collocation, Lessee shall furnish Borough with a copy of its current license and subsequent renewal license to: Matanuska Susitna Borough, Land and Resource Management Division, MSB007139, 350 East Dahlia Avenue, Palmer, Alaska, 99645.

5.6 Hazardous, Toxic, or Harmful Substances.

5.6.1 Deleterious Material. Lessee shall not make, or suffer to be made, any filling in of Premises or any deposit of rock, earth, ballast, refuse, garbage, waste matter, chemical, biological, or other wastes, hydrocarbons, any other pollutants, or other matter within or upon Premises, except as approved in writing by Borough. If Lessee fails to remove all non-approved fill material, refuse, garbage, wastes, or any other of the above materials from Premises, Lessee agrees that Borough may, but is not obligated to, remove such materials and charge Permittee for the cost of removal and disposal.

5.6.2 Hazardous, Toxic, or Harmful Substances. For the purposes of this Lease, the term "Hazardous Material" means any hazardous or toxic substances, material, or waste, including but not limited to oil, petroleum products and byproducts, gasoline, diesel fuel, stove oil, kerosene, and other hydrocarbons; those substances, materials and wastes listed in U.S. Department of Transportation Hazardous Materials table (49 CFR Part 172.101) or by the U.S. Environmental Protection Agency as hazardous substances (40 CFR Part 302), and amendments thereto; all materials the release of which must be reported under Title 46 of Alaska Statutes; and any such other substance, materials, and wastes that are or become regulated under any applicable local, state, or federal law. **Under no circumstance shall any hazardous material be improperly disposed of on the Leased Premises.**

5.6.2.1 Lessee or any authorized users shall not keep on or about Premises, any substances now or hereinafter designated as or containing components now or hereinafter designated as hazardous, toxic, dangerous, or harmful (and/or which are subject to regulation as hazardous, toxic, dangerous, or harmful) by any federal, state, or local law, regulation, statute, or ordinance (hereinafter collectively referred to as "Hazardous Substances") unless such are necessary to carry out Lessee's permitted use under Section 3 and unless Lessee fully complies with all federal, state, and local laws, regulations, statutes, and ordinances now in existence or as subsequently enacted or amended. Any substances designated as hazardous, toxic, dangerous, or harmful that are necessary to carry out Lessee's permitted use will be reported to Lessor, in writing, and copies of required permits will be provided to Lessor.

5.6.2.2 Lessee shall immediately notify Borough of any of the following:

5.6.2.2.1 All spills or re-permits of any Hazardous Substance in, on, or adjacent to Premises,

5.6.2.2.2 All failures to comply with any federal, state, or local law, regulation, or ordinance, as now enacted or as subsequently enacted or amended,

5.6.2.2.3 All inspections of Premises by, or any correspondence, orders, citations, or notifications from any regulatory entity concerning Hazardous Substances affecting Premises,

5.6.2.2.4 All regulatory orders or fines, or all response or interim cleanup actions taken by or proposed to be taken by any government entity or private party concerning Premises.

5.6.2.2.5 On request, Lessee shall provide copies to Borough of any and all correspondence, pleadings, and/or reports received by or required of Lessee or issued or written by Lessee or on Lessee's behalf with respect to the use, presence, transportation, or generation of Hazardous Substances in, on, about, or adjacent to Premises.

5.6.2.3 Lessee shall be fully and completely liable to Borough, and, to the full extent permitted by law, shall indemnify, defend, and hold harmless Lessor and its elected and appointed officials, employees, officers, and agents with respect to any and all damages, costs, fees (including attorney's fees and costs), penalties (civil and criminal), and cleanup costs assessed against or imposed as a result of Lessee or authorized user's use, disposal, transportation, generation, and/or sale of Hazardous Substances or that of Lessee's employees, agents, assigns, contractors, subcontractors, licensees, or invitees.

5.7 Non-Ionizing Electromagnetic Radiation (NIER). Lessee shall comply with standards or requirements in effect for non-ionizing electromagnetic radiation levels as established by the Environmental Protection Agency (EPA) or other governing agencies.

5.8 Weed Control. Weed control shall be approved in writing by Borough prior to beginning such activities. No aerial spraying is allowed without prior Borough approval.

5.9 Survey. Lessee shall submit a recorded Record of Survey for the Premises and access driveway within thirty (30) days of completion of the construction phase, stamped by a licensed surveyor or engineer.

Section 6. Assignment, Insurance, Mortgage, and Indemnity

6.1 Assignment. Lessee shall not hypothecate, mortgage, assign, subpermit, transfer, or otherwise alienate this lease ("Assignment"), or any interest therein, without the prior written consent of Borough, which consent shall be at the sole discretion of Borough; however, the Borough will not unduly withhold consent. The consent of Borough to any one assignment shall not constitute a waiver of Borough's right to consent to subsequent assignments, nor shall consent of Borough to any one assignment relieve any party previously liable as Lessee from any obligations under this Lease. The acceptance by Borough of the payment of rent following an assignment shall not constitute consent to any assignment and Borough's consent shall be evidenced only in writing.

6.2 Subordination. Any Leasehold Mortgage and all rights acquired under it shall be subject and subordinate to each and all the covenants, conditions, and restrictions stated in this Lease, and to all rights and interests of Lessor. Under no circumstances will Lessor's fee simple interest in the Leased Premises, or Lessor's rights under this Lease or its reversionary interest, ever be subject to or subordinate to the lien or encumbrance of any Leasehold Mortgage. With respect to Lessor's interests, this Lease is specifically intended to be only an unsubordinated ground lease.

6.3 Name Change. If during the term of this Agreement Lessee changes its name, Lessee shall provide Borough with documentation legally supporting the name change within 60 days of the effective date of the change. Lessee may contact Matanuska-Susitna Borough, Land and Resource Management Division for a list of acceptable documentation.

6.4 Lessee's Assumption of Liability, and Liability and Casualty Insurance

6.4.1 Assumption of Liability. Borough shall have no responsibility with respect to any aspect of Premises or any activity conducted thereon from and after the effective date of the lease. Lessee shall indemnify and save Borough harmless from any and all liability, damage, expense (including attorney fees and costs), cause of action, suits, claims, or judgments by any reason whatsoever caused or arising out of the use, occupation, and control of Premises by Lessee, Collocated Lessees, invitees, agents, employees, licensees, or permittees except as may arise solely out of the willful act or gross negligence of Borough or Borough's officers, agents, or employees.

6.4.2 Evidence of Insurance. Lessee must furnish evidence of insurance in the form of a Certificate of Insurance satisfactory to Borough, executed by a duly authorized representative of each insurer showing compliance with the insurance requirements set forth below. The Certificate of Insurance must reference the Matanuska Susitna Borough as an additional insured and shall contain the MSB Agreement number. Before implementing this Agreement, Lessee must provide proof of coverage.

6.4.3 Cancellation. The Certificate(s) of Insurance must provide 45 days written notice to Borough before the cancellation, non-renewal, or material change of any insurance coverage included therein. Notices must be sent to Borough via certified mail.

6.4.4 Minimum Coverage Requirements. The Minimum Coverage Requirements set forth the minimum limits of insurance Lessee must purchase to secure a contract with the Borough. These limits may not be sufficient to cover all liability losses and related claim settlement expenses. Purchase of these minimum limits of coverage does not relieve Lessee from liability for losses and settlement expenses greater than these amounts.

During the term of this Agreement, Lessee must purchase and maintain, and shall require all authorized collocated lessees or independent contractors to maintain while performing work on Premises, the minimum insurance coverages and limits in Exhibit C, which may be increased by Borough at its sole discretion:

The Lessee waives all rights against the Borough for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.

6.5 Self-Insurance. In lieu of the coverages required under Exhibit B Insurance "Minimum Coverage Requirements," Borough at its sole discretion, may accept evidence of self-insurance by Lessee, provided Lessee provides the following:

6.5.1 Lessee shall provide a statement by a CPA or actuary; satisfactory to the Borough that demonstrates Lessee's financial condition is satisfactory to self-insure any of the required insurance coverages.

6.5.2 Borough may require Lessee to provide the above yearly to ensure Lessee's continuing ability to self-insure. If at any time Lessee does not satisfy the self-insurance requirement, Lessee shall immediately purchase insurance as set forth under "Minimum Coverage Requirements".

6.5.4 Aside from any "self-insurance" guaranteed by the Lessee, it is the responsibility of Lessee to ensure that its contractors, agents, employees, guests, invitees, Collocated Authorized Users, or affiliates in, on, under, or above Premises, any adjoining property, or any other property subject to use by Lessee in conjunction with its use of Premises, meet minimum insurance requirements described above.

Section 7. Indemnity

7.1 Lessee assumes all responsibility, risk, and liability for its activities and use of or contact with the Leasehold. The Lessee shall defend, indemnify, save, and hold harmless the Borough, its elected and appointed officials and officers, agents, and employees, from and against any and all demands, causes of action (whether in the nature of an action for damages, indemnity, contribution, government cost recovery, hazardous materials or otherwise), fines, judgments, suits, claims, actions, proceedings, losses, costs (including full reasonable attorney's fees and costs), expenses, charges, forfeitures, liens, liabilities, settlements, penalties, and damages of any kind or nature whatsoever, including, but not limited to those alleging personal injury, wrongful death, nuisance property damage, economic loss, damages, violation of statutes, ordinances, constitutions, or other laws, rules, or regulations, contractual claims, environmental contamination (including any disposal, release, spill or discharge or any threatened disposal, release, spill, or discharge of, or contamination by hazardous materials), and environmental noncompliance (including the Lessee's failure to provide all information, make all submissions, and take all steps required by the authority under the environmental laws or any other law concerning any spill, discharge, or contamination), or any other kind of loss, tangible or intangible, sustained by any person, or property arising out of, in connection with, directly or indirectly from, or otherwise incident to Lessee's, Lessee's officers, agents, employees, partners, attorneys, suppliers, and subcontractors' Leasehold activities or performance related to this lease in any way whatsoever or use of or contact with the Leasehold, except to the extent the sole legal cause of injury or damage is the negligence or willful misconduct of the Lessor or anyone acting on the Lessor's behalf. This defense and indemnification responsibility includes claims alleging acts or omission by the Lessor or its agents which are said to have contributed to the losses, failure, violations, or damage. However, the Lessee shall not be responsible for any damages or claim arising from the sole negligence or willful misconduct of the Lessor, its agents, or employees.

7.1.1 The obligations of the Lessee to indemnify the Lessor under the terms of this lease shall survive transfer, assignment, or other disposition of an interest in this lease as well as the expiration, forfeiture, relinquishment, abandonment, or other termination of this lease.

7.1.2 The Lessee shall name the Lessor as an additional insured on all insurance policies obtained and maintained by the Lessee. Any insurance purchased by the Lessee under this section will not be construed to limit in any way the Lessee's liabilities or responsibilities under this lease.

7.2 If any portion of this clause is voided by law or a court of competent jurisdiction the remainder of the clause shall remain enforceable.

Section 8. Default and Termination.

8.1 Breach by Lessee. In the event of any breach of any provision of this Lease by Lessee, the breach, whether material or not, shall be deemed a default entitling Borough to cancel this Lease and seek any other remedies set forth in this Lease or otherwise available at law or equity, after Borough has delivered to Lessee notice of the breach and a demand that the same be remedied immediately. Lessee shall not be in default if the breach pertains to the payment of money and Lessee cures the breach within twenty (20) days of receipt of the notice, or if the breach pertains to a matter other than the payment of any monies due under this lease, and Lessee promptly commences to cure the breach and cures the breach within forty-five (45) days after receipt of the notice.

8.2 Re-entry. In the event of any default by Lessee, Borough shall have the right, with or without canceling the Lease, to re-enter the Premises and remove all persons and property from Premises and take whatever actions may be necessary or advisable to relet, protect or preserve the Premises. Borough shall not be responsible for any damages or losses suffered by Lessee as a result of such re-entry, removal, storage, or other disposition, and no such action shall be construed as an election to terminate this Lease unless a written notice of termination is given to Lessee.

8.3 Termination of Agreements. Borough may terminate this lease for default by Lessee and subject to any non-disturbance and attornment agreements, if any, Borough shall have a right to terminate any and all subpermits, licenses, concessions, or other arrangement for possession affecting Premises.

8.4 Right to Cure. If Lessee fails to perform any undertaking or promise contained herein, Borough shall have the right but not the obligation to make such performance thirty (30) days after expiration of the notice to cure defaults stated above. Borough's expenditures to correct Lessee's failure to perform shall be reimbursed by Lessee.

8.5 Remedies Cumulative. The specified remedies to which Borough or Lessee may resort under the terms of this permit are cumulative and are not intended to be exclusive of any other remedies or means of redress to which Borough or Lessee may lawfully be entitled in case of any breach or threatened breach by Borough or Lessee of any provision of this permit.

8.6 Insolvency. If a receiver or trustee is appointed to take possession of all or substantially all of the assets of Lessee; or if any action is taken or suffered by Lessee pursuant to an insolvency, bankruptcy or reorganization act; or if Lessee makes a general assignment for the benefit of its creditors; and if such appointment, action or assignment continues for a period of thirty (30) days, it shall, at Borough's option, constitute a material breach by Lessee.

8.7 Termination Upon Notice. Lessor or Lessee may terminate this agreement for any reason or for no reason upon 180 days prior written notice.

Section 9. Access and Driveway Maintenance.

9.1 Access. Provisions for access to Premises are as follows:

9.1.1 The site presently has no Access. Lessee is required to construct access to this site beginning at the previously constructed driveway into the Lake Lorraine Material Site and extending that driveway to the tower site. The access driveway rent will include the driveway beyond the gravel pit, which has the potential to be public access when further leasing occurs. Lessee is solely responsible for constructing legal driveway access to Premises. All driveway construction will be in compliance with current Matanuska Susitna Borough road construction standards. Lessee is responsible for obtaining any necessary permits for driveway construction including, but not limited to, Matanuska-Susitna Borough, Planning Department, Development Services ROW Coordination. Such access must contain a provision that entitles Borough to use the access as a licensee to the extent necessary to administer this lease.

9.1.2 Restricting Access. Lessee will, at its sole expense, restrict public access to the Premises and Tower by construction of at least a 6-foot chain link gated fence around the broadcast tower site. Access to borough property and tower site property outside the fence will be limited by a locked, gated driveway.

9.2 Driveway Repair/Maintenance. Lessee shall repair or cause to be repaired, at its sole cost and expense, any damage to said driveway beyond the gravel pit.

9.3 Improvements. Lessee shall construct no improvements to roads where access has been provided by Borough without the prior written consent of Borough, which shall not be unreasonably withheld. Unless Borough agrees to share in the cost of the improvement in writing, the improvements shall be at the sole cost of the improver.

9.4 Insurance. The provisions under Section 6 – Assignment, Insurance, and Indemnity- shall apply to Lessee's use of roads or driveways authorized herein.

9.5 Time Restrictions. Road or driveway maintenance shall take place after June 15 and prior to October 15 of each year. Lessee shall provide Borough with a driveway or road (for any borough roads involved) maintenance plan to be accepted by Borough prior to June 1 of each year.

Section 10. Improvements.

10.1 Site Plan. Lessee has submitted and Borough has accepted a site plan, which is attached as Exhibit C. Lessee shall not construct any improvement unless such improvements are authorized in an approved site plan. The plan shall not be changed without prior written acceptance by Borough.

10.2 Development Timetable. In developing the Leased Premises, Lessee shall comply with the development timetable as developed pursuant to a Port Development Permit:

10.3 Utilities. Prior to excavation, clearing, or construction, Lessee will employ a utility locator service, at no cost to Borough, to check the permit area for buried utilities.

10.4 Unauthorized Improvements. All improvements made on Premises without the written consent of Borough are unauthorized and shall, at the option of Borough, be removed by Lessee, be removed by Borough at the cost to Lessee, or become the property of Borough.

10.5 Maintenance and Repair of Improvements. Lessee shall maintain and repair all improvements owned by Lessee, at its own cost.

10.6 Removal of Improvements. Lessee shall remove all Lessee owned improvements, including fixtures, from Premises within sixty (60) days from the Termination Date unless otherwise provided herein. In the event Borough authorizes Lessee owned improvements to remain past the sixty-day period, Lessee shall pay to Borough the contract rent then in effect from the Termination Date until the improvements are removed. If Lessee fails to remove the improvements at the end of the sixty day period where no extension has been granted or at the end of such other period authorized by Borough, Lessee shall be in trespass, and such improvements shall be deemed unauthorized improvements subject to disposition as set forth in Section 9.3.

10.7 As-Built Drawing. Within 30 days after the completion of construction, Lessee shall provide Borough with an 8-1/2 x 11 inch as-built drawing of the site stamped by a licensed surveyor or engineer. As-built drawing must establish the location and dimensions of all improvements constructed or installed, including tower, tower footings, surface structures (cabinets), fences, utilities, and must provide bearings and distances to an established survey point in a form consistent with generally accepted professional standards and any special survey instructions issued. This As-Built is in addition to the required Record of Survey for the site.

Section 11. Miscellaneous.

11.1 No Partnership. Borough is not a partner nor a joint venturer with Lessee in connection with the business carried on under this permit and shall have no obligation with respect to Lessee's debts or other liabilities.

11.2 Non-Waiver. Waiver by either party of strict performance or any provisions of this permit shall not be a waiver of nor prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

11.3 Venue and Choice of Law. Any dispute arising out of this Lease shall be governed by the laws of the State of Alaska. Venue for resolving such disputes shall be in State of Alaska, Third Judicial District at Palmer and not elsewhere.

11.4 Interpretation and Numbering. This lease has been submitted to the scrutiny of all parties hereto and their counsel if desired, and shall be given a fair and reasonable interpretation in accordance with the words hereof, without consideration or weight being given to its having been drafted by any party hereto or its counsel. Section numbers or titles are not to be considered in interpreting this permit.

11.5 Notices.

11.5.1 Any notice given under this lease shall be deemed received when delivered by hand or three (3) days after deposit in the United States mail with proper first class postage affixed addressed to the parties authorized representatives.

11.5.2 Changes of address may be given in accordance with this section. Lessee shall notify Borough within seven (7) calendar days of any change of address, business name, contact person's name or other changes that may affect the permit.

11.6 Liens. Lessee shall not suffer nor permit any lien to be filed against Lessee's interest in Premises or any improvement thereon by reason of work, labor, services or materials performed or supplied to Lessee or anyone holding Premises or any part thereof under the lease. If any such lien is filed against Lessee's interest or any improvements thereon, Lessee shall cause the same to be discharged of record within thirty (30) days after the date of filing the same unless other arrangements are authorized in writing by Borough. Lessee shall indemnify Borough for any costs, damages or expenses (including attorneys' fees) incurred as a result of the filing of such liens or in obtaining their discharge whether such costs, damages or expenses were incurred prior or subsequent to permit termination.

11.7 Force Majeure. Borough's or Lessee's failure to perform any of its obligations under this lease shall be excused if due to causes beyond its control and without the fault or negligence of Borough or Lessee, including but not restricted to acts of God, acts of the public enemy, vandalism, fires, lightning, floods, epidemics or labor strikes.

11.8 Preservation of Markers. Any legal land subdivision survey corners, reference points or monuments are to be preserved. If such are destroyed or disturbed by Lessee, Lessee shall re-establish them by a licensed land surveyor in accordance with U. S. General Land Office standards at their own expense. Corners, reference points, or monuments that must necessarily be disturbed or destroyed in the process of carrying out the operations allowed by this lease must be adequately referenced and/or replaced. Such references must be approved by Borough prior to removal of said corners, reference points, or monuments.

11.9 Condemnation. If all of Premises is taken by any public authority under the power of eminent domain, this lease shall terminate as of the date possession was taken by said public authority pursuant to such condemnation. If any part of Premises is so taken and, in the opinion of either Borough or Lessee, it is not economically feasible to continue this lease in effect, either party

may terminate this lease. Such termination by either party shall be made by notice to the other given not later than thirty (30) days after possession is so taken, the termination to be effective as of the later of thirty (30) days after said notice or the date possession is taken. If part of Premises is so taken and neither Borough nor Lessee elects to terminate this lease, or until termination is effective, as the case may be, the rental shall be abated in the same proportion as the portion of Premises so taken bears to the whole of Premises. All damages awarded for the taking or damaging of all or any part of Premises, or Borough-owned improvements thereon, shall belong to and become the property of Borough and Lessee hereby assigns to Borough any and all claims to such award. However, Borough shall not claim any interest in or to personal property or authorized improvements belonging to Lessee.

11.10 Discriminatory Acts Prohibited. Lessee in its use or occupancy of the Leased Premises, shall not discriminate against any person or class of persons by reason of sex, race, color, creed, or national origin and shall comply with all federal regulations and laws in regard to discrimination.

11.11 Recordation of Lease. This Lease shall be recorded, along with all Exhibits and attachments therefrom, and which recording expense shall be borne by the Lessee.

11.12 Proprietary Information/Public Disclosure. Materials or information submitted as required in this Agreement shall become public records within the meaning MSB 1.50.030 and A.S. 40.25.110.

Any submitted materials or information that the Lessee claims as exempt from disclosure under the provisions of MSB 1.50.040 and A.S. 40.25.110 must be clearly designated. The page must be identified and the particular exemption from disclosure upon which the Lessee will rely upon in making the claim for exemption must be identified. Making the entire submitted materials or information exempt from disclosure is not acceptable unless warranted.

The Borough will consider a Lessee's request for documents to be exempt from disclosure; however, the Borough will make an independent decision on the applicability of any claimed exemption. If a public records request is made regarding materials that the Lessee has requested be exempt, the affected Lessee will be given notice of the request and allowed to seek a court injunction against the requested disclosure prior to the Borough fulfilling the public records request.

Section 12. Exhibits. This Lease is subject to the terms and conditions of exhibits referenced herein, which are attached hereto and by this reference, made a part hereof.

List of Exhibits

Exhibit A	Legal Description
Exhibit B	Site topography
Exhibit B.1	Site overview with proposed access
Exhibit B.2	Site proposed tower coordinates
Exhibit C	Insurance
Exhibit D	Record of Survey to Amend Exhibit A – Not included at this time

IN WITNESS WHEREOF, Lessor and Lessee have duly executed and acknowledged this Lease for on the dates indicated below.

MATANUSKA SUSITNA BOROUGH

John Moosey
Borough Manager

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of June 2017, by John Moosey, the Manager of MATANUSKA-SUSITNA BOROUGH, on behalf of the municipal corporation.

Notary Public in and for Alaska
My Commission Expires: _____

OHANA INVESTMENTS, LLC

TRILA BUMSTEAD
MEMBER

STATE OF ALASKA)
)ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of June 2017, by Trila Bumstead, the authorized representative of Ohana Investments, LLC, on behalf of the limited liability company.

Notary Public in and for Alaska
My Commission Expires: _____

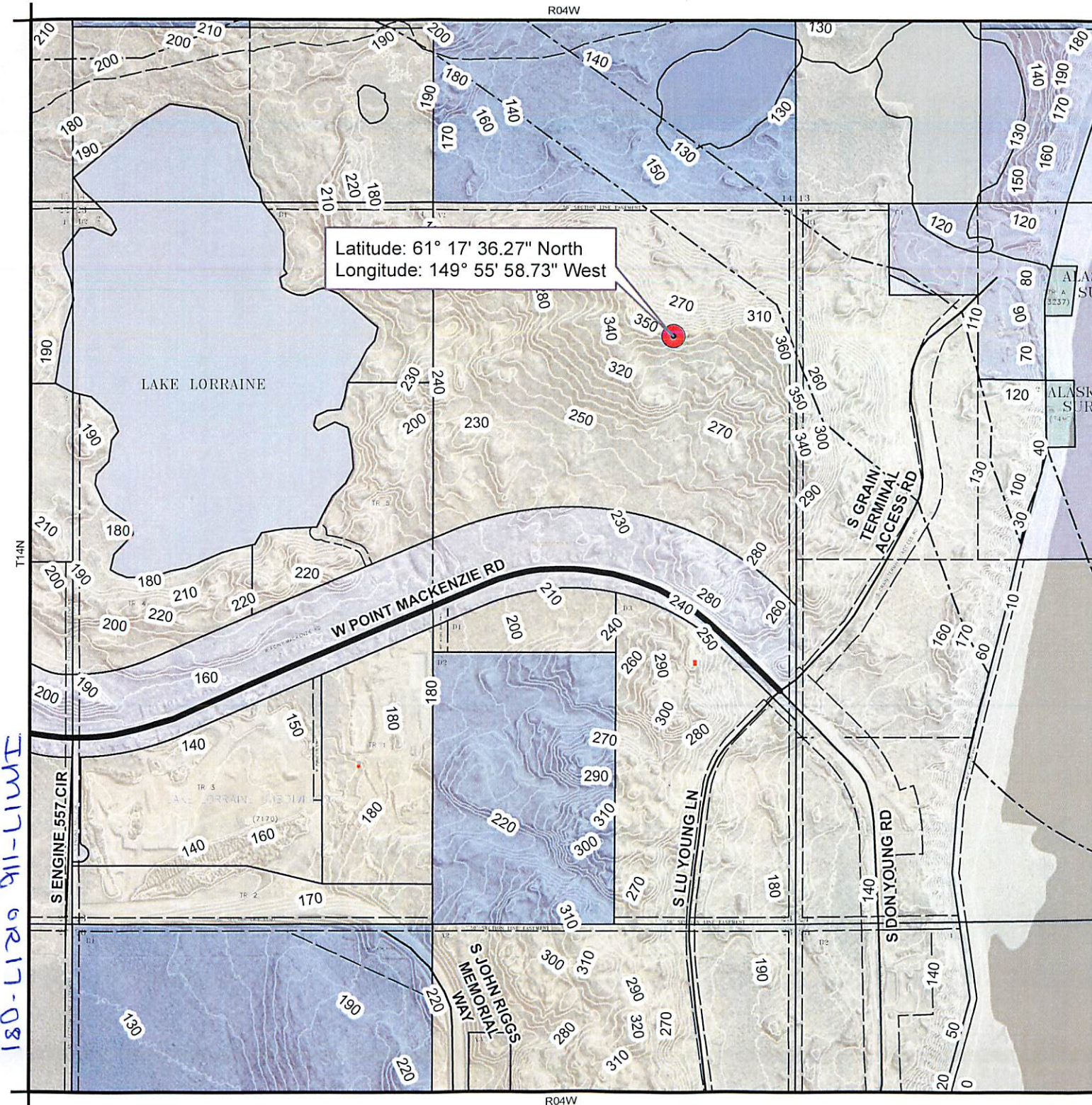
EXHIBIT A

The Leased Premises are described as follows:

TOWNSHIP 14 NORTH, RANGE 4 WEST, SEWARD MERIDIAN, ALASKA

Section 23: NE1/4

A 205 feet x 205 feet parcel located at latitude 61°17'36.27" North and longitude 149°55'58.73" West, 42025 sf, more or less, and the access road extending through Lake Lorraine material site North to the tower site, approximately 26572 sf, more or less, as visually depicted on Exhibit B and Exhibit B.1.



Matanuska - Susitna Borough Land and Resource Management Division

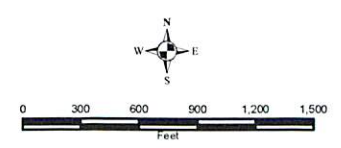


Point MacKenzie Tower Location

Legend

- TOWER SITE
- ROW
- Land Status**
- BOROUGH
- CITY
- COOPERATIVE
- FEDERAL
- MENTAL HEALTH
- NA
- NATIVE CORP
- PRIVATE
- PUBLIC UNIVERSITY
- STATE
- NO DATA - LIKELY STATE
- TAXID MISMATCH

Contour Interval: 10ft



Date: May, 2017
Sources: MSB GIS, MSB LRMD, AK DOT
Projection: NAD 83 AK ST PLN Z4
Location: MSB
Author: MSB LRMD

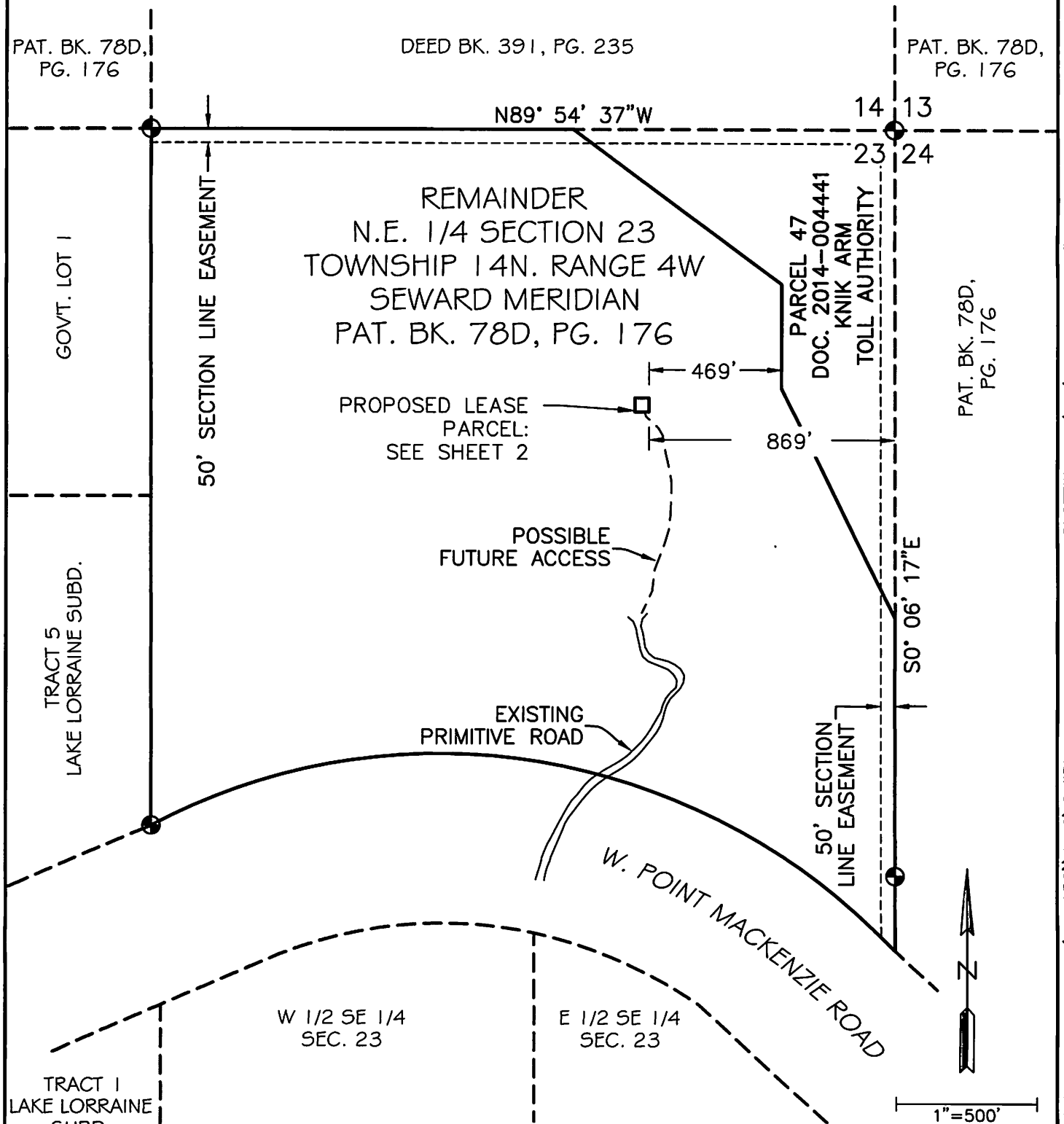
EXHIBIT B

IM17-116 6R17-081

EXHIBIT B.1

BROADCAST TOWER SITE

PORTION OF SECTION 23
T14N, R4W, S.M., ALASKA



LEGEND

● FOUND MONUMENT



12501 OLD SEWARD, D ANCHORAGE, AK 99515
Phone (907) 344-5990 Fax (907) 344-7794

10/20/2016 SCALE: 1"=500' SHEET 1 OF 2

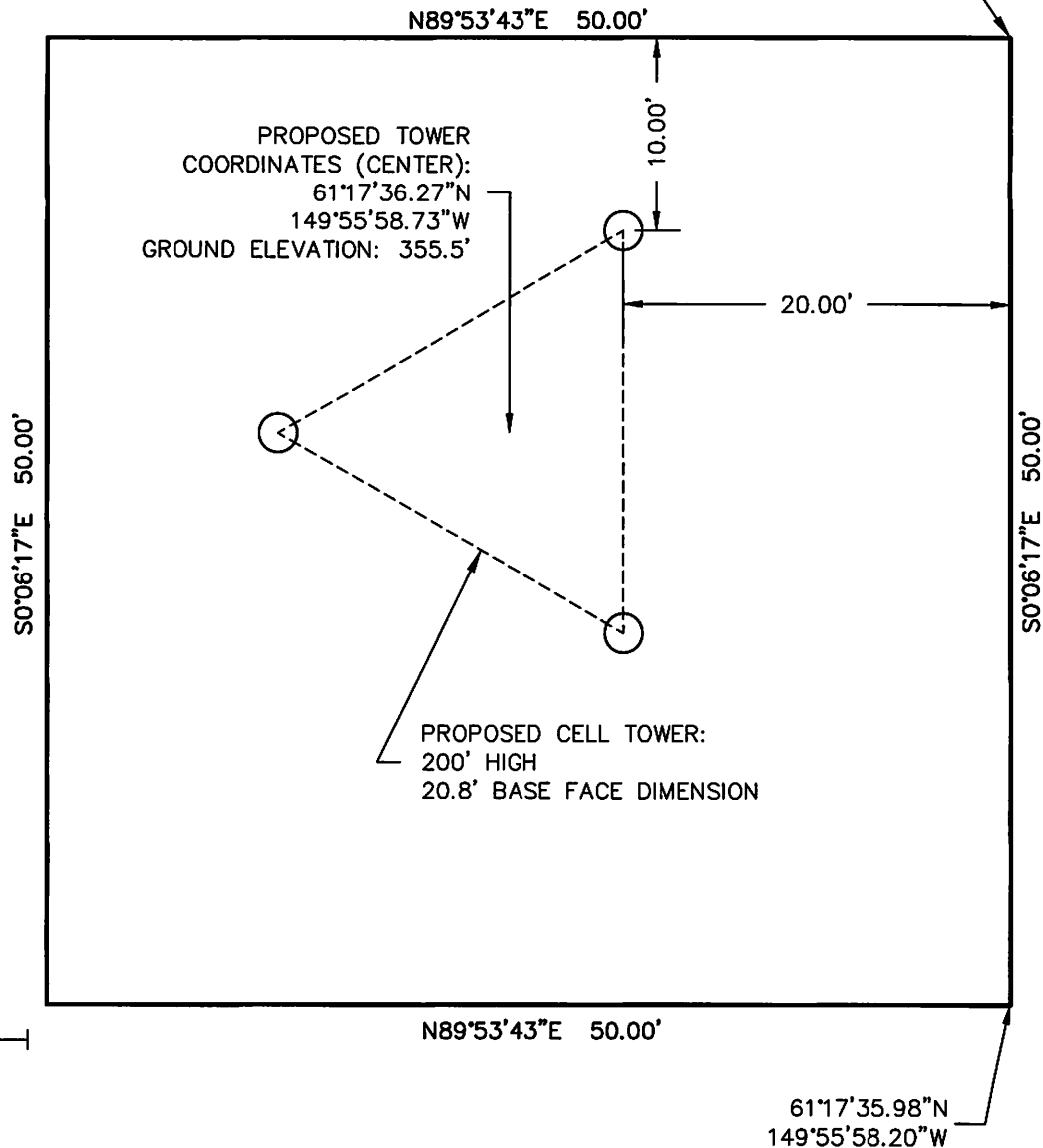
P:_Projects\2016\Point Mack Cell Tower (16-156)\DWG\CellPhoneTowerLeaseSite.dwg PLOTTED: 10/20/2016 2:07:31 PM

Im17-116
OR17-081

EXHIBIT B.2

BROADCAST TOWER SITE

PROPOSED LEASE PARCEL:
50' x 50' DIMENSIONS



NOTES

1. LATITUDE AND LONGITUDE SHOWN HEREON ARE NAD83(2011) EPOCH 2010.0000 AND WERE DERIVED FROM A NGS OPUS SOLUTION OF STATIC SURVEYS PERFORMED BY EDGE SURVEY AND DESIGN ON OCTOBER 17, 2016 USING TOPCON HIPER V SURVEY GRADE GPS RECEIVERS.
2. THE ELEVATION SHOWN HEREON IS NAVD88 (GEOID 12B), US SURVEY FEET.
3. BEARINGS SHOWN HEREON ARE ALASKA STATE PLANE, ZONE 4.
4. NO CORNERS WERE SET AS A PART OF THIS SURVEY



12501 OLD SEWARD, D ANCHORAGE, AK 99515
Phone (907) 344-5990 Fax (907) 344-7794
10/20/2016 SCALE: 1"=10' SHEET 2 OF 2

Im17-116
0R17-081

EXHIBIT C

INSURANCE (Lessee/Permittee/Manager)

It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of the Agreement to create in the public or any member thereof a third party benefit hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

It is highly recommended that the Lessee/Permittee/Manager confer with their respective insurance companies or brokers to determine if their insurance program complies with the Lessor's Insurance requirements.

The Lessee/Permittee/Manager shall procure and maintain the following insurance:

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services office form number CG 0001 (Edition 10/01) covering Commercial General Liability.
2. Insurance Services office form number CA 0001 (Edition 10/99) covering Automobile Liability, symbol 1 "any auto."
3. Worker's Compensation insurance as required by the State of Alaska and Employers Liability Insurance.
4. Builders risk for any leasehold development to cover:
 - a. building materials (installed and uninstalled) and supplies on the job site, in storage, and in transit;
 - b. temporary structures, foundations, and excavation sites;
 - c. equipment, scaffolding, and fences;
 - d. theft, flood, sinkholes, fire, earthquakes, and other weather-related damage; and
 - e. design error, faulty workmanship, changes in laws;
5. Protection and Indemnity Insurance if operating a vessel or engaged in any activities creating liability traditionally covered by maritime insurance, if applicable. Insurance shall cover crew and third-party liability and coverage shall not be less than \$1,000,000 per occurrence.
6. Environmental/Pollution Liability insurance to cover any activities arising out of the Lessee's operations.

B. Minimum Limits of Insurance

Lessee/Permittee/Manager shall maintain limits no less than:

1. General Liability:

\$1,000,000 combined single limit per occurrence for bodily injury, property damage, personal injury and advertising injury. The general aggregate limit shall be \$1,000,000 minimum. The general aggregate limits shall apply separately to each project.

General liability insurance shall be maintained in effect throughout the term of the Agreement.

If the general liability insurance is written on a claim made form, the Lessee/Permittee/Manager shall provide insurance for a period of two years after termination or expiration of this Agreement. The policy(s) shall evidence a retroactive date, no later than the beginning of this Agreement.

2. Auto Liability:

\$1,000,000 combined single limit per accident for bodily injury and property damage.

3. Worker's Compensation and Employers Liability:

Worker's Compensation shall be statutory as required by the State of Alaska. Employer's liability shall be endorsed to the following minimum limits:

Bodily injury by Accident -	\$100,000 each accident
Bodily injury by Disease -	\$100,000 each employee
Bodily injury by Disease -	\$500,000 policy limit

4. Builders risk: Minimum would be determined by cost of project. This insurance may be provided by the Lessee or Lessee's contractor.

5. Protection and Indemnity (P&I),
If applicable, minimum \$1,000,000.

6. Environmental/Pollution Liability.

A policy providing coverage for claims involving transport, remediation, storage, disposal, or other handling of hazardous materials or waste arising out of the Lessee's operations. Environmental Impairment/Pollution Liability Insurance, which may be written on a claims-made basis covering claims involving transport, remediation, storage, disposal, or other handling of hazardous materials or waste, including materials containing lead or asbestos, if applicable, arising out of or in connection with Lessee's business and operations with respect to the Leased Premises, including coverage for direct remediation/clean up costs and third-party bodily injury, property damage, or remediation/clean up cost claims,

including government action, arising out of on-site and off-site pollution conditions on, at, under, or migrating from the Leased Premises. Such Pollution Liability policy shall provide at least \$1,000,000 per occurrence/aggregate coverage for bodily injury and property damage.

7. Excess Liability:

In order to meet the required minimum limits of insurance it is permissible for the Lessee/Permittee/Manager to combine an excess liability or umbrella policy with the general liability, auto liability or employer's liability. In the instance where the Lessee/ Permittee/ Manager purchases an excess liability or umbrella policy the occurrence limit and the aggregate limit may be of the same amount.

C. Deductibles and Self-Insured Retention

Prior to occupancy, any deductible or self-insured retention must be declared and approved by the Lessor. Lessee/Permittee/Manager may be requested to demonstrate how the deductible or self-insured retention will be funded in the event of a claim. At the option of the Lessor, the Lessee/Permittee/Manager shall reduce or eliminate such deductibles or self-insured retention as respects the Lessor, its officers, officials, employees and volunteers; or the Lessee/Permittee/Manager shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability, Automobile Liability

- a. The Lessor, its Administrator, officers, officials, employees, and volunteers shall be covered as additional insured as respects: liability arising out of activities performed by or on behalf of the Lessee/Permittee/Manager; products and completed operations of the Lessee/Permittee/Manager; premises owned, occupied or used by the Lessee/ Permittee/ Manager or automobiles owned, leased, hired or borrowed by the Lessee/Permittee/Manager. The coverage shall contain no special limitation on the scope of protection afforded to the Lessor, its Administrator, officers, officials, employees, and volunteers.
- b. The Lessee/Permittee/Manager's insurance coverage shall be primary insurance as respects the Lessor, its Administrator, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Lessor, it's Administrator, officers, officials, employees, and volunteers shall be excess of the Lessee/Permittee/Manager insurance and shall not contribute to it.

- c. The Lessee/Permittee/Manager insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Worker's Compensation and Employer's Liability

The insurer shall agree to waive all rights of subrogation against the Lessor, its Administrator, officers, officials, employees, and volunteers for losses arising from work performed by the Lessee/Permittee/Manager or any subcontractor of the Lessee/Permittee/Manager in relation to this Agreement.

3. All Insurance

Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after 30 days prior written notice for nonpayment of premium or fraud on the part of the Lessee/Permittee/Manager or 60 days prior written notice for any other reason by certified mail, return receipt requested, has been given to the Lessor. ***Such notice shall be mailed to the attention of the Lessor's Land Management representative.***

E. Acceptability of Insurers

Insurance is to be placed with insurers with a Best's rating of no less than A-VII.

F. Verification of Coverage

Lessee/Permittee/Manager shall furnish the Lessor with certificates of insurance and with certified copies of all endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on forms acceptable to the Lessor. All certificates are to be received and approved by the Lessor before occupancy commences. The Lessor reserves the rights to require complete, certified copies of all required insurance policies, at any time.

G. Subcontractors

Lessee/Permittee/Manager shall include all subcontractors and as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all requirements stated herein.

H. Lapse in Insurance Coverage

A lapse in insurance coverage, any change that restricts, reduces insurance provided, or changes name of insured without Lessor approval is a material breach of this agreement, which shall result in immediate termination of the agreement.