
MEMORANDUM

To: Mayor McConnell and Assembly Members
Jay Sweeney, Interim Municipal Administrator

From: Michael Harmon, Public Works Director *MH*
Gary Baugher Jr., Maint. & Operations Superintendent *GB*

Reviewed: Mike Middleton, Interim Financial Director

Date: April 30, 2013

Subject: AT&T Cell on Wheels (COW) Temporary Lease Request:
Kimsham Sports Complex

Background

AT&T is getting overloaded with the increase usage of their cell phones and wants to install another cell tower. The City and Borough of Sitka was contacted by a representative of AT&T Cell Phone Company about the possibility of locating a place to install a cell tower on City property. Ideally, AT&T would like to locate the cell tower on Japonski Island. If that cannot be accomplished they would like to locate the new tower at the alternative site adjacent to the Kimsham Sports Complex. Until a final location is determined and permitted AT&T would like to put a temporary Cell on Wheels (COW) in the back parking lot area of the Kimsham Sports Complex. The COW would be placed on the property under a temporary lease with CBS.

Analysis

Attached is a picture of where the proposed location of the COW would be located. AT&T will be paying for all permitting and costs associated with installing an electrical line around the outside of the Kimsham Complex as shown on the attached electrical detail. The 35' tall, 8ft x 20ft trailer mounted cell antennae would be installed as a temporary unit until a permanent location could be found. Any permanent location for a cell tower on CBS property will come back to the Assembly for approval. Typical long term cell tower agreements include monthly payments and access to the tower for City Antennae usage/instrumentation. As part of the lease agreement, CBS retains the utility structure (i.e. electric) and paid for by AT&T.

Fiscal Note:

A lease agreement was negotiated at \$750 per month for three months with the option to extend the lease to a month to month lease agreement with the approval of the Municipal Administrator. Due to the temporary nature of this lease agreement the value negotiated is at a higher rate than an assessed value would have been calculated. The normal rate for Southeast Alaska for a similar size property of limited use is approximately \$500 per month.

Recommendation:

Pass Ordinance 2013- XX to make it possible for AT&T to lease Municipal Property for placement of a Cell on Wheels (COW) unit just behind the upper parking lot at Kimsham Sports Complex for \$750 per month for three months.

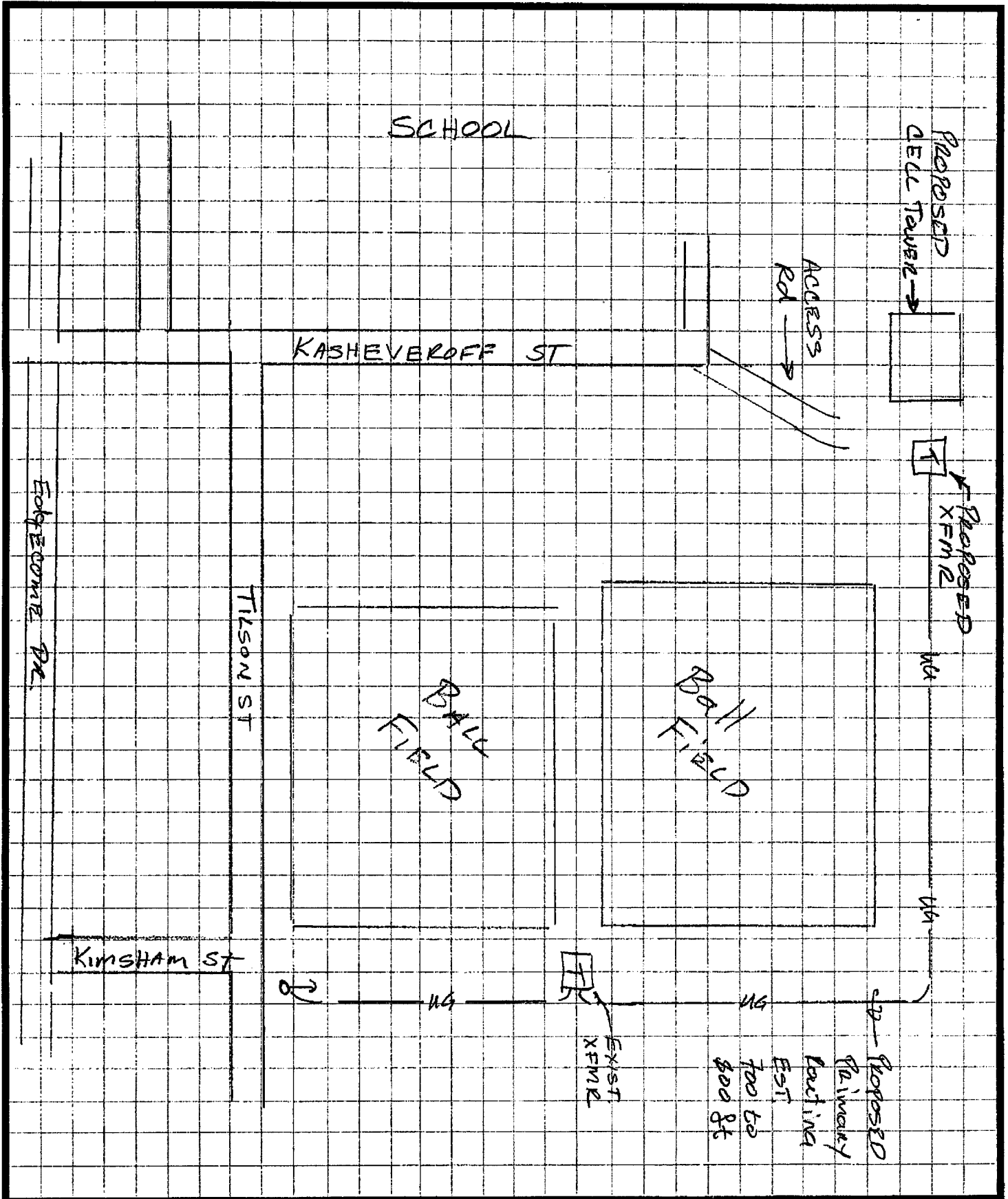


City & Borough of Sitka

ELECTRIC DEPARTMENT

105 Jarvis Street
Sitka, Alaska 99835
(907) 747-4000
FAX 747-3208

PROJECT PROPOSED CELL TOWER
LOCATION SITKA AK
DATE _____ BY DRH
SCALE _____ SHEET _____ OF _____



Possible Tower Location

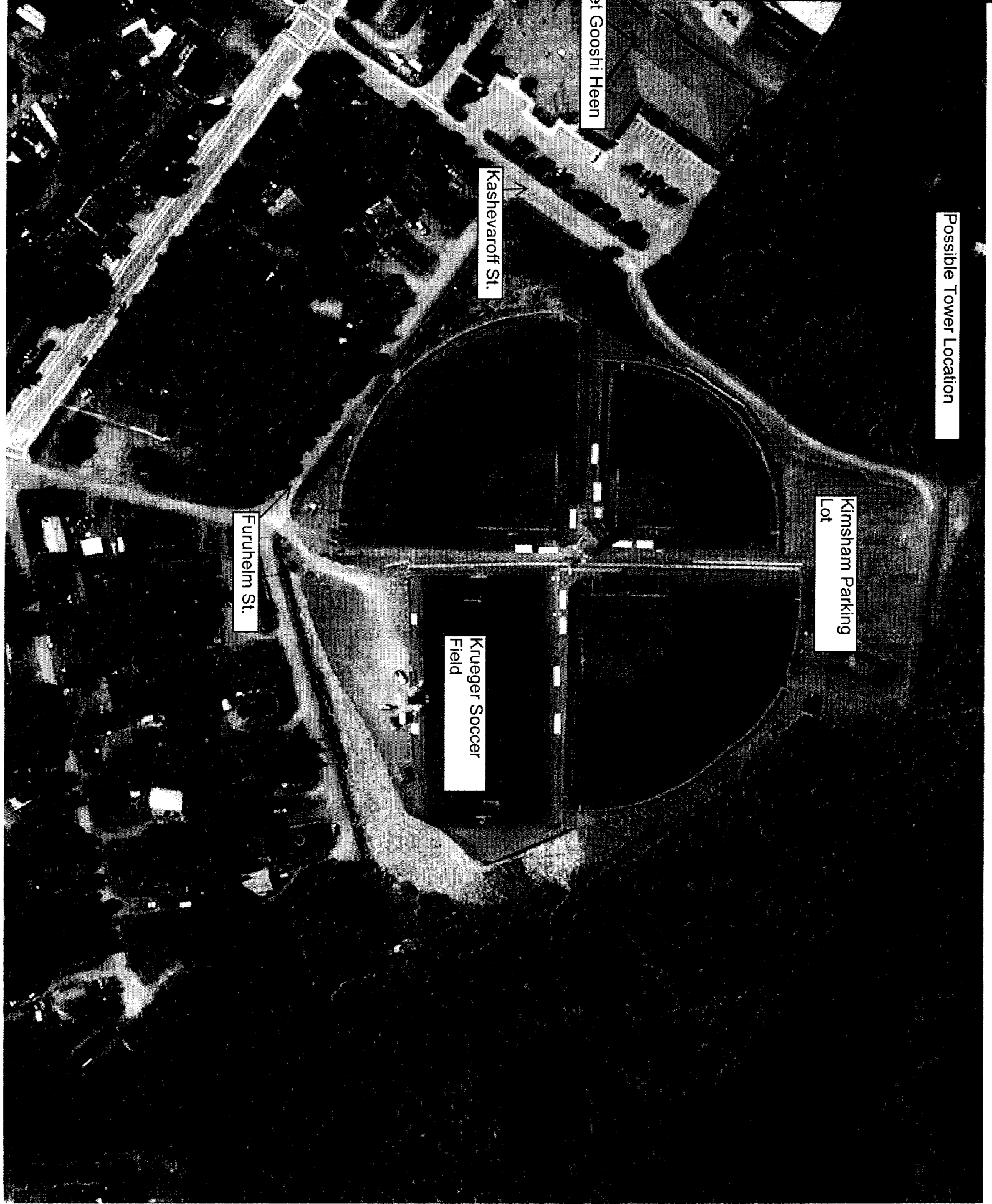
Kimsham Parking
Lot

Kashevaroff St.

st Gooshi Heen

Krueger Soccer
Field

Furuhelm St.



CITY AND BOROUGH OF SITKA

ORDINANCE NO. 2013-24

**AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA AUTHORIZING A
THREE MONTH LEASE OF MUNICIPAL PROPERTY ABOVE THE KIMSHAM
BALL FIELD EASTERN PARKING LOT WITH
NEW CINGULAR WIRELESS PCS, LLC**

1. **CLASSIFICATION.** This ordinance is not of a permanent nature and is not intended to become a part of the Sitka General Code ("SGC").

2. **SEVERABILITY.** If any provision of this ordinance or any application to any person or circumstance is held invalid, the remainder of this ordinance and application to any person or circumstances shall not be affected.

3. **PURPOSE.** City and Borough of Sitka ("CBS") owns Kimsham Ball Fields and its parking lots. New Cingular Wireless PCS, LLC ("AT&T") has requested leasing a portion of this municipal land at the end of the back parking lot in order to put a 35 foot mobile cell tower on a temporary 8' x 20' modular known as "Cell on Wheels" ("COW") for better phone reception for Sitka, for three months. Attached is a proposed lease, using the CBS's standard template lease for a term of three months, with an option to renew on a month-to-month basis. The lease of this property was not subject to competitive bidding due to the temporary nature of this lease and the small amount of property being leased. Additionally, CBS and AT&T have agreed to a lease rate to the property at \$750/month for approximately 1,200 square feet, which appears more than a lease rate for a comparable size property in Southeast Alaska.

The Assembly finds that competitive bidding is inappropriate under the Charter at Art. 11.14, which allows for other than competitive bid due to the nature of the property or the circumstances surrounding its disposal under SGC 18.12.010E, and also allows for non-competitive bid due to the size, shape, or location of the parcel, rendering it of true usefulness to only one party. Regarding this lease, competitive bid is inappropriate considering the small size and location of the parcel, no other inquiries regarding this property, the purpose of the lease to improve telecommunications for Sitkans, and agreed to payment for the property appears reasonable under the proposed lease.

4. **ENACTMENT.** NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka that:

- A. The Assembly finds that competitive bidding is inappropriate under the Charter at Art. 11.14 and SGC 18.12.010.E. regarding the lease of a 1,200 square foot portion of municipal property at the end of the back parking lot of the Kimsham Ball Fields to AT&T, based on the small size and location of the parcel, the purpose to increase telecommunications for Sitkans, no other

inquiries regarding this property and the negotiated price appears more than competitive with property of a comparable size in Southeast Alaska;

B. The attached lease is approved; and

C. Administrator is authorized to sign the attached lease.

5. **EFFECTIVE DATE.** This ordinance shall become effective on the day after the date of its passage.

PASSED, APPROVED, AND ADOPTED by the Assembly of the City and Borough of Sitka, Alaska this 28th day of May, 2013.

Mim McConnell, Mayor

ATTEST:

Colleen Ingman, MMC
Municipal Clerk



LEASE AGREEMENT

BETWEEN

CITY AND BOROUGH OF SITKA

AND

**NEW CINGULAR WIRELESS PCS,
LLC**

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EXHIBITS:

Exhibit A – Diagram of Lease Area

**LEASE AGREEMENT BETWEEN CITY AND BOROUGH OF SITKA
AND NEW CINGULAR WIRELESS PCS, LLC**

PREAMBLE

This Lease Agreement Between City and Borough of Sitka And New Cingular Wireless PCS, LLC ("Lease") is executed by City and Borough of Sitka, 100 Lincoln Street, Sitka, Alaska 99835 ("Sitka" "or "Lessor") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 12555 Cingular Way, Suite 1300, Alpharetta, GA 30004 ("AT&T" or "Lessee"), regarding municipal property located in the back parking lot of Kimsham Ball Field Complex. This Lease consists of the Special Provisions, the General Provisions, and the attached Exhibit A – Description of the area leased.

This Lease was approved by City and Borough Sitka Assembly on _____, 2013.

SPECIAL PROVISIONS

ARTICLE I: LEASE, TERM OF LEASE, AND TERMINATION OF LEASE

Section 1.1 Conveyance of Estate in Lease.

Lessor, for and in consideration of the Rents received and of the covenants and agreements made by Lessee, does lease to Lessee, and Lessee leases from Lessor, the property as shown on Exhibit A. Exhibit A shows approximately 1,200 square feet of leased space ("Subject Property") located uphill from the eastern back parking lot of the Kimsham Ball Field Complex.

Section 1.2 Lease Term.

The Term is for three months and commences on _____, 2013, and ends on _____, 2013, unless sooner terminated or extended as provided in this Lease. The Term may be extended on a month-to-month basis by written mutual agreement of the Parties, and in accordance with Section 1.3 below, with no further Sitka Assembly approval required.

Section 1.3 Option to Renew.

Provided there does not exist a continuing material default by Lessee under this Lease, Lessee shall have the right to exercise the option to lease Subject Property on a month-to-month basis upon the same terms and conditions as this Lease, with the Lease payments during the month-to-month term as described in Article II. This option is effective only if (a) Lessee makes a written request to exercise such an option written 30 days prior to expiration of the Term; (b) Lessee is in compliance with all applicable laws; and (c) Lessee is not in default under this Lease. The option to renew does not need to be approved by Sitka Assembly.

Section 1.4 Disposition of Improvements and Lessee's Personal Property Following Term of Lease.

With the exception of such improvements described in the next sentence, Lessee shall remove from the Subject Property any personal property or improvements constructed, installed, or deposited at the Subject Property at the termination of this Lease or any extension unless Lessee makes a separate written agreement with Sitka to do otherwise. Subject to the provisions of the

next sentence, Lessee shall leave behind at no cost to Sitka improvements including but not limited to electrical equipment and connection if agreed to by Sitka. Any improvements or personal property not removed after thirty (30) days have passed after termination of this Lease shall be deemed abandoned, and at Lessor's option, shall become the property of Lessor, and Lessee shall repay to Sitka any costs of removing such improvements or personal property from the Subject Property if Sitka does not exercise such option. Subject to Sitka's obligations under Subsection 3.1(a) below, Lessee agrees to leave Subject Property in a neat, clean, and weather-tight condition at the end of the Term of the Lease.

Section 1.5 Covenants to Perform.

This Lease is made upon the above and the following terms and conditions, each of which the Party bound by such covenants and conditions agrees to perform, irrespective of whether the particular provision is in the form of a covenant, an agreement, a condition, a direction, or otherwise, and each Party agrees to provide the other Party with documents or further assurances as may be required to carry out the expressed intentions.

ARTICLE II: RENT

Section 2.1 Calculation & Method of Payment of Rent.

Notwithstanding any other provision of this Lease, on the Term start date set out in Article I, Lessee shall pay the full monthly Rent payment owed under this Lease, which shall be prorated if the date this Lease is executed is not the first day of the month. Subject to the provision in the previous sentence, Lessee shall pay the Rent payments for each month in advance upon the first day of each and every month for which Rent is due throughout the Term of the Lease without the necessity of any billing by Lessor. Lessee will lease the space as shown in Exhibit A for \$750.00/month. Sales tax is to be paid in addition to the stated Rent.

Section 2.2 Reserved.

Section 2.3 Reserved.

Section 2.4 Property Tax Responsibility.

Beginning with the Term, Lessee will be responsible to pay any property taxes to City and Borough of Sitka for its possessory interest in the Cell On Wheels ("COW"), land, and equipment to the extent taxable as determined by the Assessor, which is assessed as of January 1 of each calendar year.

ARTICLE III: RESTRICTIONS UPON USE OF SUBJECT PROPERTY

Section 3.1 Lessee's Obligations as to Construction, Maintenance, Repair and Safety.

(a) Except as otherwise provided in this Lease, Lessee acknowledges the leasehold is in an "as is" condition. At the sole cost and expense of Lessee and in compliance with all legal requirements, Lessee may purchase, construct, develop, repair, transfer to the Subject Property, and/or maintain any improvements, personal property, fixtures, and other items on the Subject Property in a first-class manner using materials of good quality.

Lessor reserves the right to expand or modify the Subject Property. In that event, Lessor and Lessee will work together to complete such expansion or modification in a manner that minimizes disruption to Lessee's use of the Subject Property. Some anticipated disruptions could be interruption in utilities (i.e. power, water), and operational disturbances from noise, dust and other construction activities.

(b) Lessee acknowledges that Lessor has made no representation or warranty with respect to Lessee's ability to obtain any permit, license, or approval.

(c) Lessee shall also use the Subject Property and any improvements placed on the Subject Property only for lawful uses and as specified in the Lease for a COW, with any antennae no higher than 35 feet from the ground.

(d) Lessee shall confine their equipment, storage and operation to the Subject Property.

(e) Lessee shall not permit the accumulation of waste or refuse matter on the Subject Property, and Lessee shall not obstruct or permit the obstruction of the streets, sidewalks, access ways, parking lots or alleys adjoining the Subject Property, except as may be permitted by CBS or other municipal authorities having jurisdiction. Lessee shall do all things necessary during the term of this Lease to remove any dangerous condition from time to time existing on the Subject Property as the result of the use by Lessee.

(f) Lessee may erect outdoor signage at its expense with the permission of CBS Building Official and the Public Works Director. The style, size and physical placement location of the sign will be approved on a case-by-case basis.

Section 3.2 Lessor's Approval of Certain Alterations or Improvements.

Lessee shall not make or permit to be made any alteration of, addition or improvements to the Subject Property, without the prior written consent of Lessor, which consent shall not be unreasonably withheld. The phrase "structures and improvements" in the previous sentence includes electrical systems.

In requesting consent, Lessee shall comply with all applicable laws and ordinances, and shall submit to the Public Works Director or his or her designee detailed plans and specifications of proposed work, an explanation of the needs and reasons for the work, and a plan of full payment of the costs of the work. Lessor shall notify Lessee of its approval or objections no later than 30 days after receiving the information described in the previous sentence. In approving or objecting Lessor shall be acting in its proprietary function and not its regulatory function, any such approval in this proprietary function does not relieve Lessee of any obligation to obey the law. Nothing in this Section shall be interpreted to prevent Lessee from removing at the termination of this Lease any improvements or personal property as described in Section 1.4.

Section 3.3 Rights of Access to Property.

(a) Lessor reserves for itself and any public utility company the right to access the Subject Property at all reasonable times in a reasonable manner for the purposes of opening, inspecting, repairing, replacing, reconstructing, maintaining, or servicing the public utilities, if any, located

on the Subject Property, as well as for the purposes of constructing or installing new public utilities. Lessor also reserves for itself and the Alaska Department of Environmental Conservation the right to access the Subject Property at all reasonable times in a reasonable manner for the purposes of regulation and enforcement of this Lease. Sitka also reserves for itself the right to access the Subject Property at all reasonable times in a reasonable manner for the purposes of: (1) inspection of all work being performed in connection with the construction of improvements; (2) showing Subject Property for exhibiting Subject Property in connection with renting or leasing Subject Property in a matter that will not unreasonably interfere with Lessee's business; and (3) placing "For Sale" or "For Rent" signs on Subject Property. Lessee shall not charge for any of the access allowed in the situations described in this subsection.

(b) Lessee shall not construct any permanent improvements over or within the boundary lines of any easement for public utilities without receiving the written prior consent of Lessor and any applicable utility company.

Section 3.4 Additional Conditions of Leasing.

Lessee recognizes and shall cause all beneficiaries of Lessee and all permitted successors in interest in or to any part of the Subject Property to recognize that:

(a) Rent payments will be made in monthly installments in advance in cash or by check, bank draft or money order made available to City and Borough of Sitka. Installments to be delivered or mailed to 100 Lincoln Street, Sitka, Alaska 99835, by or on the first day of each calendar month.

(b) Rent payments shall become delinquent if not paid within ten (10) days after the due date. Delinquent payments are subject to a late charge of \$25 and interest accrued from the due date at 12% annum.

(c) The charges and fees paid by Lessee to Lessor must be separated according to City and Borough of Sitka accounting standards.

(d) Lessor will only invoice if rent payments are delinquent. Lessor will only invoice if failure to make rent payment within thirty (30) days of due date. Lessor at its option can terminate the Lease for Lessee's failure to make payment.

(e) Lessee covenants and agrees that as it relates to use of the Subject Property, it will not, on the grounds of race, color or national origin, sex, religion, age, physical handicap, marital status, pregnancy or parenthood, discriminate or permit discrimination against any person or group of person in any manner prohibited by Federal or State laws or regulations promulgated thereunder, and Lessee further grants Lessor the right to take such action to enforce such covenant as it deems necessary or as it is directed pursuant to any Federal or State law or regulation.

(f) Lessor may sell the Subject Property in the future and all agreements regarding the Subject Property, including this Lease, between Lessor and Lessee shall be completely transferable to the new owner. A transfer of the Subject Property to any such entity shall not create any restrictions upon use of the Subject Property in addition to those set forth in this Lease.

(g) Lessor may, upon at least 10 days prior written notice to Lessee, temporarily suspend the supply, if provided on the Subject Property, of any electric power to perform routine maintenance and, in all events, subject to unavoidable delays, as provided in Section 4.4. Such interruptions shall be of as short duration as necessary to perform such maintenance, and Sitka shall not be responsible for any such costs or expenses as a result of suspending such utilities.

(h) Lessee will pay any applicable City and Borough of Sitka Fire Marshal fees and other building permit fees and any property taxes and assessments as applicable when due.

(i) Lessee is responsible for taking any measures that Lessee deems necessary to provide security for their property. Sitka is not responsible for theft or vandalism.

(j) City and Borough of Sitka sales tax will apply to rent payments. Sales taxes will also apply to any utility services and will be calculated into each monthly billing from City and Borough of Sitka. Sales tax rates, limits, exemptions, and exclusions are subject to change by the Sitka Assembly of City and Borough of Sitka.

ARTICLE IV: UTILITY SERVICES & RATES

Section 4.1 Provision of Utility Services.

Lessee will pay for utilities, if available, and for any installation charges related to utilities, such as electrical services.

Section 4.2 Rates for Utility Services Provided by CBS.

Utility rates charged by Lessor for utility services shall be those set forth in City and Borough of Sitka's Customer Service Policy and/or Sitka General Code. Lessee acknowledges the requirements of Section 9.4 as to utility lines. The Sitka Assembly of City and Borough may change utility rates from time to time by amending the Customer Service Policies and/or Sitka General Code.

Section 4.3 Lessee to Pay for Utility Services.

Lessee will pay, or cause to be paid, all proper charges for any of the following, if available: electricity and solid waste; sewer and water; and for all other public or private utility services, which shall be used by Lessee and supplied to the Subject Property at any time during the term of this Lease. In the event that any charge, cost, or expense for any of the above-mentioned utility services or for any of the other above-mentioned services shall not be paid when due and payable, Lessor shall have the right, but shall not be obligated, to pay it, with the understanding that amounts paid by Lessor shall constitute additional Rent due and payable under this Lease, and shall be repaid to Lessor by Lessee when billed by Lessor. Interest at the highest rate allowable by law shall be added as a charge for unpaid utility bills paid by Lessor on behalf of Lessee. Lessor reserves the right to suspend utility services if Lessee does not pay for utility services within 30 days after written notice to Lessee of such failure. Failure to timely pay utility services may also result in Lessor terminating this Lease.

Section 4.4 Lessor Not Liable for Failure of Utilities.

Except to the extent that any such failure, injury, or other casualty is due to Lessor's negligence or breach of any obligation under this Lease, Lessor shall not be liable for any failure of any water supply, sewer, or electric current, or for any injury or damages to person or property caused by or resulting from any natural disaster, natural condition, gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind or similar storms or disturbances, or water, rain, or snows which may leak or flow from the street, sewer, or from any part of the Subject Property or from any other place. Lessor shall not be held responsible or liable for any claim or action due to or arising from any suspension of operation, breakage, unavoidable accident or injury of any kind occurring to, or caused by the sewer mains by an act of God, beyond Lessor's control, or caused by the elements, strikes, riots, or a terrorist or terrorists.

Section 4.5. Reserved.

Section 4.6 Reserved.

ARTICLE V: LIABILITY AND INDEMNIFICATION

Section 5.1 Liability of Lessee and Indemnification of Lessor.

Except as provided in Section 7.3, Lessee agrees to indemnify, defend, and hold harmless Lessor against and from any and all claims by or on behalf of any person, firm, or corporation arising, other than due to acts or omissions of Lessor, from the conduct or management of or from any work or thing whatsoever done in or about the Subject Property and its structures and improvements. This includes any claim arising from Lessee's equipment or use of the Subject Property. Lessee also agrees to indemnify, defend, and hold Lessor harmless against and from any and all claims and damages arising, other than due to acts or omissions of Lessor, during the Term of this Lease from: (a) any condition of the Subject Property or improvements placed on it; (b) any breach or default on the part of Lessee regarding any act or duty to be performed by Lessee pursuant to the terms of this Lease; (c) any act or negligence of Lessee or any of its agents, contractors, servants, employees or licensees; and (d) any accident, injury, death or damage caused to any person occurring during the Term of this Lease in or on the Subject Property. Lessee agrees to indemnify, defend, and hold harmless Lessor from and against all costs, counsel and legal fees, expenses, and liabilities incurred, other than due to acts or omissions of Lessor, in any claim or action or proceeding brought asserting claims of or asserting damages for any alleged act, negligence, omission, conduct, management, work, thing, breach, default, accident, injury, or damage described in the previous two sentences. The above agreements regarding liability, defense and indemnity are in addition to and not by way of limitation of any other covenants in this Lease. These agreements by Lessee do not apply to any claims of damage arising out of the failure of Lessor to perform acts or render services in its municipal capacity.

Section 5.2 Liability of Lessor and Indemnification of Lessee.

Except as provided in Section 7.3 and to the extent of liabilities arising from Lessee's acts or omissions, Lessor indemnifies, defends, and holds Lessee harmless for liabilities to the extent that they were incurred by reason of conditions existing on the site as of the date of execution of this Lease or by reasons of Lessor's acts or omissions. Lessor also agrees to indemnify, defend,

and hold Lessee harmless against and from any and all claims and damages arising, other than due to acts or omissions of Lessee, during the Term of this Lease from: (a) any condition of the Subject Property or improvements placed on it; (b) any breach or default on the part of Lessor regarding any act or duty to be performed by Lessor pursuant to the terms of the Lease; (c) any act or negligence of Lessor or any of its agents, contractors, servants, employees, or licensees; and (d) any accident, injury, death, or damage caused to any person occurring during the Term of this Lease in or on the Subject Property. Lessor agrees to indemnify, defend, and hold harmless Lessee from and against all costs, counsel and legal fees, expenses, and liabilities incurred, other than due to acts or omissions of Lessee, in any claim or action or proceeding brought asserting claims of or asserting damages for any alleged act, negligence, omission, conduct, management, work, thing, breach, default, accident, injury, or damage described in the previous two sentences. The above agreements of liability, defense and indemnity are in addition to and not by way of limitation of any other covenants in this Lease.

Section 5.3 Reimbursement of Costs of Obtaining Possession.

Each Party agrees to pay and to indemnify the other Party prevailing in any dispute under this Lease against all costs and charges, including but not limited to full reasonable counsel and legal fees lawfully and reasonably incurred in enforcing any provision of this Lease, including obtaining possession of the Subject Property and establishing Lessor's title free and clear of this Lease upon expiration or earlier termination of this Lease.

GENERAL PROVISIONS

ARTICLE VI: DEFINITIONS

Section 6.1 Defined Terms.

For the purposes of this Lease, the following words shall have the meanings attributed to them in this Section:

(a) "Event of Default" means the occurrence of any action specified in Section 14.1.

(b) "Imposition" means all of the taxes, assessments, utility rates or charges, fees, levies and other governmental charges, levied or assessed against the Subject Property, any part thereof, any right or interest or any Rent and income received as well as sales taxes on Rent.

(c) "Improvements" or "improvements" means all buildings, structures and improvements of any nature now or hereafter located upon the Subject Property, as well as all apparatus and equipment necessary for the complete and comfortable use, occupancy, enjoyment and operation of the Subject Property. This includes COW, fittings, appliances, machinery, equipment (i.e., heating equipment, lighting equipment, cooling equipment, air conditioning and ventilating equipment), wiring, controls, communications equipment, plumbing, switchboards, antennae, elevators, escalators, floor coverings, refrigerating equipment, hot water heating and all other appliances and equipment, except articles of personal property appurtenances and fixtures (including trade fixtures) owned by Lessee, Sublessees, or others which can be removed without defacing or materially injuring the improvements remaining on the Subject Property. The portion of the property from which such items are removed shall be returned to a condition at

least as good as that existing on the date of this Lease. "Improvements" also includes fill, grading, asphalt, and other non-building land improvements.

(d) "Personal Property" means tangible personal property owned or leased and used by Lessee or any sublessee of Lessee, in connection with and located upon the Subject Property.

(e) "Premises" means the "Subject Property."

(f) "Rent" means the lease rate, which is the amount Lessee periodically owes and is obligated to pay Lessor as lease payments under this Lease for the use of the demise.

(g) "Subject Property" is the area leased as shown on Exhibit A or elsewhere in the document.

(h) "Sublease" means any lease, license, concession or other agreement for the use and occupancy of any part of the Subject Property made by any person holding by or through Lessee, which needs to be approved by the Sitka Assembly.

(i) "Sublessee" means any subtenant, concessionaire, licensee, or occupant of space in or on the Subject Property holding by or through Lessee, who needs to be approved by the Sitka Assembly.

(j) "Term" means the period of time Lessee rents or leases the Subject Property from Lessor.

ARTICLE VII: INSURANCE

Section 7.1 Insurance.

Lessee shall maintain property damage and comprehensive general liability insurance in the amount of one million dollars (\$1,000,000) per occurrence and in the aggregate, including leasehold improvements. Lessor shall be named as an additional insured. Lessor shall maintain for the COW and antennae a policy of standard fire and extended coverage insurance.

Section 7.2 Notification of Claim, Loss, or Adjustment.

Lessee shall advise Lessor of any claim, loss, adjustment, or negotiations and settlements involving any loss under all policies of the character described in Section 7.1.

Section 7.3 Waiver of Subrogation.

Whenever: (i) any loss, cost, damage or expense resulting from fire, explosion or any other casualty or occurrence is incurred by either of the Parties to this Lease, or anyone claiming under it in connection with the Subject Property or improvements; and (ii) the Party is then covered in whole or in part by insurance with respect to loss, cost, damage or expense or is required under this Lease to be so insured, then the Party so insured (or so required) releases the other Party from any liability the other Party may have on account of the loss, cost, damage or expense to the extent of any amount recoverable by reason of insurance and waives any right of subrogation which might otherwise exist in or accrue to any person on account of it, provided that the release of liability and waiver of the right of subrogation shall not be operative in any case where the effect is to invalidate the insurance coverage or increase its cost. In the case of increased cost,

the other Party shall have the right, within thirty (30) days following written notice, to pay the increased cost keeping the release and waiver in full force and effect.

ARTICLE VIII: RESTRICTIONS REGARDING ASSIGNMENT, SUBLEASES, AND TRANSFERS OF SUBJECT PROPERTY

Section 8.1 Lessee Without Power to Assign Lease or Transfer or Encumber Subject Property.

Lessee has no power under this Lease to assign the Lease or transfer the Subject Property, except with the approval of the Sitka Assembly. Lessee has no power to encumber Subject Property or pledge its interest in Subject Property as collateral for any loan or mortgage.

Section 8.2 Limitations on Subleases.

Lessee shall not sublease the Subject Property or any portion of it except with the approval of the Sitka Assembly. All subleases entered into demising all or any part of the improvements or the Subject Property shall be expressly subject and subordinate to this Lease, including Exhibits A. Lessor's consent to a sublease of the Subject Property shall not release Lessee from its obligations under the Lease. Lessor's consent to a sublease shall not be deemed to give any consent to any subsequent subletting.

ARTICLE IX: USE AND PROTECTION OF THE SUBJECT PROPERTY

Section 9.1 Property As Is - Repairs.

Lessee acknowledges that it has examined the Subject Property and the present improvements including any public improvements presently located there and knows the condition of them and accepts them in their present condition and without any representations or warranties of any kind or nature whatsoever by Lessor as to their condition or as to the use or occupancy which may be made of them. Lessee assumes the sole responsibility for the condition of the improvements located on the Subject Property. The foregoing shall not be deemed to relieve Lessor of its general municipal obligations, or of its obligations under Section 3.1.

Section 9.2 Compliance with Laws.

Lessee shall throughout any Term of this Lease, at Lessee's sole expense, promptly comply with all the laws and ordinances and the orders, rules, regulations, and requirements of all federal, state, and municipal governments and appropriate departments, commissions, boards, and officers (whether or not the same require structural repairs or alterations) and all other legal requirements that may be applicable to the use of the Subject Property. Nothing in the prior sentence shall be deemed to relieve Lessor of its general obligations in its municipal capacity.

Section 9.3 Notification of City and Borough of Sitka's Public Works Director of Discovery of Contamination.

Lessee shall promptly notify the Public Works Director within 24 hours if any contaminated soils or other media that require special handling are encountered on the Subject Property.

Lessee shall be responsible for all clean-up costs associated with contamination of soils of subject property, adjoining property, and/or buildings, caused by Lessee. In the event of Lessee's failure to clean-up to applicable regulatory standards or to the satisfaction of the Public Works Director, Lessor may perform clean-up or contract for clean-up and all charges for such work shall be payable by Lessee.

Section 9.4 Use of Utility Lines.

Lessee shall connect or otherwise discharge to such utility lines as are approved by the Public Works Director and/or Electric Department Director, and shall obtain any permits and comply with any conditions specified by the Public Works Director and/or Electric Department Director for such connections.

Section 9.5 Permits and Approvals for Activities.

Lessee shall be responsible for obtaining all necessary permits and approvals for its activities unless otherwise specifically allowed by Lessor. Not less than ten (10) days in advance of applying for permits to any public entity other than City and Borough of Sitka, Lessee shall provide copies of all permit applications and associated plans and specifications to the Public Works Director to facilitate review by departments of City and Borough of Sitka. City and Borough of Sitka is not obligated to comment on the permit applications and plans. The result of any review by City and Borough of Sitka does not affect Lessee's obligation to comply with any applicable laws.

ARTICLE X: LESSOR'S RIGHT TO PERFORM LESSEE'S COVENANTS; REIMBURSEMENT OF LESSOR FOR AMOUNTS SO EXPENDED

Section 10.1 Performance of Lessee's Covenants To Pay Money.

Lessee covenants that if it shall at any time default or shall fail to make any other payment due (other than Rent) under this Lease, and the failure shall continue for thirty (30) days after written notice to Lessee, then Lessor may, but shall not be obligated, and without further notice to or demand upon Lessee and without releasing Lessee from any obligations of Lessee under this Lease may terminate the lease.

Section 10.2 Lessor's Right To Cure Lessee's Default.

If there is a default involving the failure of Lessee to keep the Subject Property in good condition and repair in accordance with the provisions of this Lease, to make any necessary renewals or replacements or to remove any dangerous condition in accordance with the requirements of this Lease or to take any other action required by the terms of this Lease, then Lessor shall have the right, but shall not be required, to make good any default of Lessee. Lessor shall not in any event be liable for inconvenience, annoyance, disturbance, loss of business, or other damage of or to Lessee by reason of bringing materials, supplies and equipment into or through the building during the course of the work required to be done to make good such default. The obligations of Lessee under this Lease shall remain unaffected by such work, provided that Lessor uses reasonable care under the circumstances prevailing to avoid unnecessary inconvenience, annoyance, disturbance, loss of business, or other damage to Lessee.

Section 10.3 Reserved.

ARTICLE XI: DAMAGE OR DESTRUCTION

Section 11.1 Repair and Replacement of Property and Improvements Following Damage.

(a) If the Premises shall be destroyed or so injured by any cause as to be unfit, in whole or in part, for occupancy and such destruction or injury could reasonably be repaired within ninety (90) days from the date of such damage or destruction, then Lessee shall not be entitled to surrender possession of the Subject Property, nor shall Lessee's liability to pay Rent under this Lease cease, without the mutual consent of the Parties. In case of any such destruction or injury, Lessor shall repair the same with all reasonable speed and shall complete such repairs within ninety (90) days from the date of such damage or destruction. If during such period Lessee shall be unable to use all or any portion of the Subject Property, a proportionate allowance shall be made to Lessee from the Rent corresponding to the time during which and to the portion of the Subject Property of which Lessee shall be so deprived of the use.

(b) If such destruction or injury cannot reasonably be repaired within ninety (90) days from the date of such damage or destruction, Lessor shall notify Lessee within fifteen (15) days after the determination that restoration cannot be made in ninety (90) days. If Lessor elects not to repair or rebuild, this Lease shall be terminated. If Lessor elects to repair or rebuild, Lessor shall specify the time within which such repairs or reconstruction will be complete. Lessee shall have the option, to be exercised within thirty (30) days after the receipt of such notice to either terminate this Lease and further liability, or to extend the Term of this Lease by a period of time equivalent to the time from the destruction or injury until the Subject Property is restored to its former condition. In the event Lessee elects to extend the Term of this Lease, Lessor shall restore the Subject Property to its former condition within the time specified in the notice, and Lessee shall not be liable to pay Rent for the period from the time of such destruction or injury until the Subject Property is so restored to its former condition.

(c) The timeframes in this article may be modified by mutual agreement of the Parties.

ARTICLE XII: MECHANIC'S LIENS

Section 12.1 Discharge of Mechanics' Liens.

Lessee shall neither suffer nor permit any mechanics' liens to be filed against the title to the Subject Property, nor against Lessee's interest in the Subject Property, nor against the improvements by reason of work, labor, services or materials supplied or claimed to have been supplied to Lessee or anyone having a right to possession of the Subject Property or improvements as a result of an agreement with or the assent of Lessee. If any mechanics' lien shall at the time be filed against the Subject Property including the Improvements, Lessee shall cause it to be discharged of record within 30 days after the date that Lessee has knowledge of its filing.

ARTICLE XIII: LIEN FOR RENT AND OTHER CHARGES

Section 13.1 Lien for Rent.

The whole amount of the Rent and each and every installment, and the amount of all taxes, assessments, water rates, insurance premiums and other charges and impositions paid by Lessor under the provisions of this Lease, and all costs, attorney's fees and other expenses which may be incurred by Lessor in enforcing the provisions of this Lease or on account of any delinquency of Lessee in carrying out any of the provisions of this Lease, shall be and are declared to constitute a valid and prior lien upon Lessee as well as Lessee's improvements to the Subject Property, and upon Lessee's leasehold estate, and may be enforced by equitable remedies including the appointment of a receiver.

ARTICLE XIV: DEFAULT PROVISIONS

Section 14.1 Events of Default.

Each of the following events is defined as an "Event of Default":

(a) The failure of Lessee to pay any installment of Rent, or any other payments owed to Lessor under this Lease (i.e., utilities, taxes, etc.) or deposits of money, or furnish receipts for deposits as required associated with this Lease, and the continuance of the failure for a period of thirty (30) days after written notice from Lessor to Lessee.

(b) The failure of Lessee to perform any of the other covenants, conditions and agreements under this Lease (other lease payments, utilities, taxes, etc.) and the continuance of the failure for a period of thirty (30) days after written notice (which notice shall specify the respects in which Lessor contends that Lessee has failed to perform any of the covenants, conditions and agreements) from Lessor to Lessee. However, with respect to any default which cannot be cured within thirty (30) days, Lessee, or any person holding by, through or under Lessee, in good faith, promptly after receipt of written notice, shall have commenced and shall continue diligently and reasonably to prosecute all action necessary to cure the default within an additional sixty (60) days.

(c) The filing of an application by Lessee (the term, for this purpose, to include any approved transferee other than a sublessee of Lessee's interest in this Lease): (i) for a consent to the appointment of a receiver, trustee or liquidator of itself or all its assets; (ii) of a voluntary petition in bankruptcy or the filing of a pleading in any court of record admitting in writing of its inability to pay its debts as they come due; (iii) of a general assignment for the benefit of creditors; (iv) of an answer admitting the material allegations of, or its consenting to, or defaulting in answering, a petition filed against it in any bankruptcy proceeding.

(d) The entry of an order, judgment or decree by any court of competent jurisdiction, adjudicating Lessee bankrupt, or appointing a receiver, trustee or liquidator of it or of its assets, and this order, judgment or decree continuing unstayed and in effect for any period of sixty (60) consecutive days, or if this Lease is taken under a writ of execution.

Section 14.2 Assumption or Assignment of Lease to Bankruptcy Trustee.

In the event that this Lease is assumed by or assigned to a trustee pursuant to the provisions of the bankruptcy reform Act of 1978 (referred to as "Bankruptcy Code") (11 U.S.C. § 101 et seq.), and the trustee shall cure any default under this Lease and shall provide adequate assurances of future performance of this Lease as are required by the Bankruptcy Code (including but not limited to, the requirement of Code § 365(b)(1)) (referred to as "Adequate Assurances"), and if the trustee does not cure such defaults and provide such adequate assurances under the Bankruptcy Code within the applicable time periods provided by the Bankruptcy Code, then this Lease shall be deemed rejected automatically and Lessor shall have the right immediately to possession of the Subject Property immediately and shall be entitled to all remedies provided by the Bankruptcy Code for damages for breach or termination of this Lease.

Section 14.3 Remedies in Event of Default.

Lessor may treat any one or more of the Events of Default as a breach of this Lease by serving written notice on Lessee and each Secured Party and Leasehold Mortgagee of whom Lessor has written notice. In addition to other remedies provided by law, Lessor shall have the following options:

(a) Lessor may terminate this Lease and the Term created. In that event Lessor may repossess the entire Subject Property and any improvements, and be entitled to recover as damages a sum of money equal to the value, as of the date of termination of this Lease, of the Rent to be paid by Lessee for the balance of the stated Term of this Lease less the fair rental value as of the date of termination of this Lease of the fee interest in the Subject Property and improvements for the period, and any other sum of money and damages due under the Terms of this Lease to Lessor.. Any personal property not removed after such termination shall be addressed as provided for in Section 1.4 above.

(b) Lessor may terminate Lessee's right of possession. Lessor may then repossess the entire Subject Property and improvements by forcible entry and detainer suit or otherwise, without demand or notice of any kind to Lessee (except as above expressly provided for) and without terminating this Lease. In the event Lessor may, but shall be under no obligation to do so, relet all or any part of the Subject Property for Rent and upon terms as shall be satisfactory in the judgment reasonably exercised by Lessor, including the right to relet the Subject Property for a term greater or lesser than that remaining under the stated Term of this Lease and the right to relet the Subject Property as a part of a larger area and the right to change the use made of the Subject Property. For the purpose of reletting, Lessor may make any repairs, changes, alterations or additions in or to the Subject Property and improvements that may be reasonably necessary or convenient in Lessor's judgment reasonably exercised. If Lessor shall be unable after a reasonable effort to relet the Subject Property, or if the Subject Property are relet and a sufficient sum shall not be realized from reletting after paying all of the costs and expenses of repairs, change, alterations and additions and the expense of reletting and the collection of the Rent accruing from it, to satisfy the Rent above provided to be paid, then Lessee shall pay to Lessor as damages a sum equal to the amount of the Rent reserved in this Lease for the period or periods as and when payable pursuant to this Lease. If the Subject Property or any part of it has been relet, Lessee shall satisfy and pay any deficiency upon demand from time to time, Lessee acknowledges that Lessor may file suit to recover any sums falling due under the terms of this

Section from time to time, and that any suit or recovery of any portion due Lessee shall be no defense to any subsequent action brought for any amount not reduced to judgment in favor of Lessor. Any personal property not removed after such termination shall be addressed as provided for in Section 1.4 above.

(c) In the event of any breach or threatened breach by Lessee of any of the terms, covenants, agreements, provisions or conditions in this Lease, Lessor shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise as through reentry, summary proceedings, and other remedies were not provided for in this Lease.

(d) Upon the termination of this Lease and the Term created, or upon the termination of Lessee's right of possession, whether by lapse of time or at the option of Lessor, Lessee will at once surrender possession of the Subject Property and dispose of personal property and improvements as described in Section 1.4. If possession is not immediately surrendered, Lessor may reenter the Subject Property and Improvements and repossess itself of it as of its former estate and remove all persons and their personal property, using force as may be necessary without being deemed guilty of any manner of trespass or forcible entry or detainer. Lessor may at its option seek expedited consideration to obtain possession if Lessor determines that the Lease has terminated as described in the first sentence of this paragraph, and Lessee agrees not to oppose such expedited consideration.

(e) In the event that Lessee shall fail to make any payment required to be made provided for in this Lease or defaults in the performance of any other covenant or agreement which Lessee is required to perform under this Lease during the period when work provided for in this Lease shall be in process or shall be required by the terms of this Lease to commence, Lessor may treat the default as a breach of this Lease and, in addition to the rights and remedies provided in this Article, but subject to the requirements of service of notice pursuant to this Lease, Lessor shall have the right to carry out or complete the work on behalf of Lessee without terminating this Lease.

Section 14.4 Waivers and Surrenders To Be In Writing.

No provision may be waived except in a writing signed by both parties. The failure by a party to enforce any provision of this Lease or to require performance by the other party will not be construed to be a waiver, or in any way affect the right of either party to enforce such provision thereafter.

ARTICLE XV: LESSOR'S TITLE AND LIEN

Section 15.1 Lessor's Title and Lien Paramount.

Lessor has title to Subject Property. Lessor's lien for Rent and other charges shall be paramount to all other liens.

Section 15.2 Lessee Not To Encumber Lessor's Interest.

Lessee shall have no right or power to and shall not in any way encumber the title of Lessor in the Subject Property. The fee-simple estate of Lessor in the Subject Property shall not in any way be subject to any claim by way of lien or otherwise, whether claimed by operation of law or

by virtue of any express or implied lease or contract or other instrument made by Lessee. Any claim to the lien or otherwise upon the Subject Property arising from any act or omission of Lessee shall accrue only against the leasehold estate of Lessee in the Subject Property and Lessee's interest in the improvements, and shall in all respects be subject to the paramount rights of Lessor in the Subject Property.

ARTICLE XVI: REMEDIES CUMULATIVE

Section 16.1 Remedies Cumulative.

No remedy conferred upon or reserved to Lessor shall be considered exclusive of any other remedy, but shall be cumulative and shall be in addition to every other remedy given under this Lease or existing at law or in equity or by statute. Every power and remedy given by this Lease to Lessor may be exercised from time to time and as often as occasion may arise or as may be deemed expedient by Lessor. No delay or omission of Lessor to exercise any right or power arising from any default shall impair any right or power, nor shall it be construed to be a waiver of any default or any acquiescence in it.

Section 16.2 Waiver of Remedies Not To Be Inferred.

No waiver of any breach of any of the covenants or conditions of this Lease shall be construed to be a waiver of any other breach or to be a waiver of, acquiescence in, or consent to any further or succeeding breach of it or similar covenant or condition.

Section 16.3 Right to Terminate Not Waived.

Neither the rights given to receive, sue for or distrain from any rent, moneys or other payments, or to enforce any of the terms of this Lease, or to prevent the breach or nonobservance of it, nor the exercise of any right or of any other right or remedy shall in any way impair or toll the right or power of Lessor to declare ended the Term granted and to terminate this Lease because of any event of default.

ARTICLE XVII: SURRENDER AND HOLDING OVER

Section 17.1 Surrender at End of Term.

Lessee shall peaceably and quietly leave, surrender and deliver the entire Subject Property to Lessor at the termination of the Lease, subject to the provisions of Section 1.4, in good repair, order, and condition, environmentally clean and free of contaminants, reasonable use, wear and tear excepted, free and clear of any and all mortgages, liens, encumbrances, and claims. If the Subject Property is not so surrendered, Lessee shall repay Lessor for all expenses which Lessor shall incur by reason of it, and in addition, Lessee shall indemnify, defend and hold harmless Lessor from and against all claims made by any succeeding lessee against Lessor, founded upon delay occasioned by the failure of Lessee to surrender the Subject Property.

Section 17.2 Rights Upon Holding Over.

At the termination of this Lease, by lapse of time or otherwise, Lessee shall yield up immediately possession of the Subject Property to Lessor and, failing to do so, agrees, at the option of Lessor, to pay to Lessor for the whole time such possession is withheld, a sum per day equal to one hundred and seventy-five percent (175%) times 1/30th of the aggregate of the Rent paid or

payable to Lessor during the last month of the Term of the Lease the day before the termination of the Lease. The provisions of this Article shall not be held to be a waiver by Lessor of any right or reentry as set forth in this Lease, nor shall the receipt of a sum, or any other act in apparent affirmance of the tenancy, operate as a waiver of the right to terminate this Lease and the Term granted for the period still unexpired for any breach of Lessee under this Lease.

ARTICLE XVIII: MODIFICATION

Section 18.1 Modification.

None of the covenants, terms or conditions of this Lease to be kept and performed by either Party to this Lease shall in any manner be waived, modified, changed or abandoned except by a written instrument duly signed, acknowledged, and delivered by both Lessor and Lessee.

ARTICLE XIX: INVALIDITY OF PARTICULAR PROVISIONS

Section 19.1 Invalidity of Provisions.

If any provision of this Lease or the application of it to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

ARTICLE XX: APPLICABLE LAW AND VENUE

Section 20.1 Applicable Law.

This Lease shall be construed and enforced in accordance with the laws of the State of Alaska. The forum and venue for any action seeking to interpret, construe, or enforce this Lease shall be only in the Superior Court for the State of Alaska at Sitka, Alaska, unless it qualifies as a small claims action, in which case the action shall still be filed in Sitka, Alaska.

ARTICLE XXI: NOTICES

Section 21.1 Manner of Mailing Notices.

In every case where under any of the provisions of this Lease or otherwise it shall or may become necessary or desirable to make or give any declaration or notice of any kind to Lessor or Lessee, it shall be sufficient if a copy of any declaration or notice is sent by United States mail, postage prepaid, return receipt requested, addressed: If to Lessor at: Municipal Administrator, City and Borough of Sitka, of 100 Lincoln Street, Sitka, Alaska 99835, with a copy to: Municipal Clerk at address listed above; and if to Lessee, at: the address set out in the Preamble. Each Party from time to time may change its address for purposes of receiving declarations or notices by giving notice of the changed address, to become effective seven days following the giving of notice.

Section 21.2 Notice to Leasehold Mortgagee and Secured Parties.

Lessor shall provide each Leasehold Mortgagee and Secured Party, who has so requested, copies of all notices from Lessor to Lessee relating to existing or potential default under, or other

noncompliance with the terms of, this Lease. All notices, demands or requests which may be required to be given by Lessor or Lessee to any Leasehold Mortgagee and Secured Parties shall be sent in writing, by United States registered or certified mail or express mail, postage prepaid, addressed to the Leasehold Mortgagee at a place as the Leasehold Mortgagee may from time to time designate in a written notice to Lessor and Lessee. Copies of all notices shall simultaneously be sent to the other of Lessor or Lessee, as the case may be.

Section 21.3 Sufficiency of Service.

Service of any demand or notice as in this Article provided shall be sufficient for all purposes.

Section 21.4 When Notice Deemed Given or Received.

Whenever a notice is required by this Lease to be given by any Party to the other Party or by any Party to a Leasehold Mortgagee, the notice shall be considered as having been given when a registered or certified notice is placed in the United States Post Office mail as provided by this Article and shall be deemed received on the third business day thereafter and for all purposes under this Lease of starting any time period after notice, the time period shall be conclusively deemed to have commenced three business days after the giving of notice and whether or not it is provided that a time period commences after notice is given or after notice is received.

ARTICLE XXII: MISCELLANEOUS PROVISIONS

Section 22.1 Captions.

The captions of this Lease and the index preceding it are for convenience and reference only and in no way define, limit or describe the scope or intent of this Lease, nor in any way affect this Lease.

Section 22.2 Conditions and Covenants.

All the provisions of this Lease shall be deemed and construed to be "conditions" as well as "covenants," as though the words specifically expressing or importing covenants and conditions were used in each separate provision.

Section 22.3 Entire Agreement.

This Lease contains the entire agreement between the Parties and shall not be modified in any manner except by an instrument in writing executed by the Parties or their respective successors or assigns in interest.

Section 22.4 Time of Essence as to Covenants of Lease.

Time is of the essence as to the covenants in this Lease.

ARTICLE XXIII: COVENANTS TO BIND AND BENEFIT RESPECTIVE PARTIES AND TO RUN WITH THE SUBJECT PROPERTY

Section 23.1 Covenants to Run with the Subject Property.

All covenants, agreements, conditions and undertakings in this Lease shall extend and inure to the benefit of and be binding upon the successors and assigns of each of the Parties, the same as if they were in every case named and expressed, and they shall be construed as covenants

running with the Subject Property. Wherever in this Lease reference is made to any of the Parties, it shall be held to include and apply to, wherever applicable, also the officers, directors, successors and assigns of each Party, the same as if in each and every case so expressed.

Section 23.2 Interest in Deposits Automatically Transferred.

The sale, conveyance or assignment of the interest of Lessee (pursuant to the terms of this Lease) or of Lessor in and to this Lease shall act automatically as a transfer to the assignee of Lessor or of Lessee, as the case may be, of its respective interest in any funds on deposit with and held by any Construction Lender and Lessor, and every subsequent sale, conveyance or assignment by any assignee of Lessor or of Lessee also shall act automatically as a transfer of their respective rights to the deposits with such Construction Lender and Lessor to the subsequent assignee.

ARTICLE XXIV: ADDITIONAL GENERAL PROVISIONS

Section 24.1 Absence of Personal Liability.

No agent, official, or employee of Lessor shall be personally liable to Lessee, its successors and assigns, or anyone claiming by, through or under Lessee or any successor in interest to the Subject Property, in the event of any default or breach by Lessor or for any amount which may become due to Lessee, its successors and assigns, or any successor in interest to the Subject Property, or on any obligation under the terms of this Lease. No agent, official, or employee of Lessee shall be personally liable to Lessor, its successors and assigns, or anyone claiming by, through, or under Lessor or any successor in interest to the Subject Property, in the event of any default or breach by Lessee or for any amount which become due to Lessor, its successors and assigns, or any successor in interest to the Subject Property, or on any obligation under the terms of this Lease.

Section 24.2 Lease Only Effective As Against Lessor Upon Approval by Sitka Assembly.

This Lease is effective as against Lessor only upon the approval of the Sitka Assembly and the execution by the Municipal Administrator and Lessee.

Section 24.3 Binding Effects and Attorneys Fees.

This Lease shall be binding up and inure to the benefit of the respective successors and assigns of the Parties. In the event of litigation over this Lease, the Parties agree that the prevailing Party shall receive full reasonable attorneys' fees.

Section 24.4 Duplicate Originals.

This Lease may be executed in any number of copies, each of which shall constitute an original of this Lease. The warranties, representations, agreements and undertakings shall not be deemed to have been made for the benefit of any person or entity, other than the Parties.

Section 24.5 Declaration of Termination.

With respect to Lessor's rights to obtain possession of the Subject Property or to revest title in itself with respect to the leasehold estate of Lessee in the Subject Property, Lessor shall have the right to institute such actions or proceedings as it may deem desirable to effectuate its rights including, without limitation, the right to execute and record or file with the Recorder of Sitka

Recording District, a written declaration of the termination of all rights and title of Lessee in the Subject Property, and the reversioning of any title in Lessor as specifically provided in this Lease.

Section 24.6 Authority.

Lessor and Lessee represent to each other that each has, and has exercised, the required corporate power and authority and has complied with all applicable legal requirements necessary to adopt, execute and deliver this Lease and perform its obligations. Both Parties also represent that this Lease has been duly executed and delivered by each and constitutes a valid and binding obligation of each enforceable in accordance with its terms, conditions, and provisions.

NEW CINGULAR WIRELESS PCS, LLC
A Delaware limited liability company

CITY AND BOROUGH OF SITKA

BY: AT&T MOBILITY CORPORATION
Its: Manager

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

John P. Sweeney, III
Interim Municipal Administrator

STATE OF _____)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2013, _____, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, signs this Lease on behalf of New Cingular Wireless PCS, LLC, and affirms by signing this document to be authorized to sign on behalf of New Cingular Wireless PCS, LLC, and does so freely and voluntarily.

Notary Public for Alaska
My Commission Expires: _____

STATE OF ALASKA)
) ss.
FIRST JUDICIAL DISTRICT)

On this ____ day of _____, 2013, John P. Sweeney, III, Interim Municipal Administrator of City and Borough of Sitka, Alaska, a municipal corporation organized under the laws of the State of Alaska, signs this Lease on its behalf, and affirms by signing this document to be authorized to sign on its behalf, and does so freely and voluntarily.

Notary Public for Alaska
My Commission Expires: _____



City & Borough of Sitka

ELECTRIC DEPARTMENT

105 Jarvis Street
Sitka, Alaska 99835
(907) 747-4000
FAX 747-3208

PROJECT PROPOSED CELL TOWER
LOCATION SITKA AK

DATE _____ BY DRH

SCALE _____ SHEET _____ OF _____

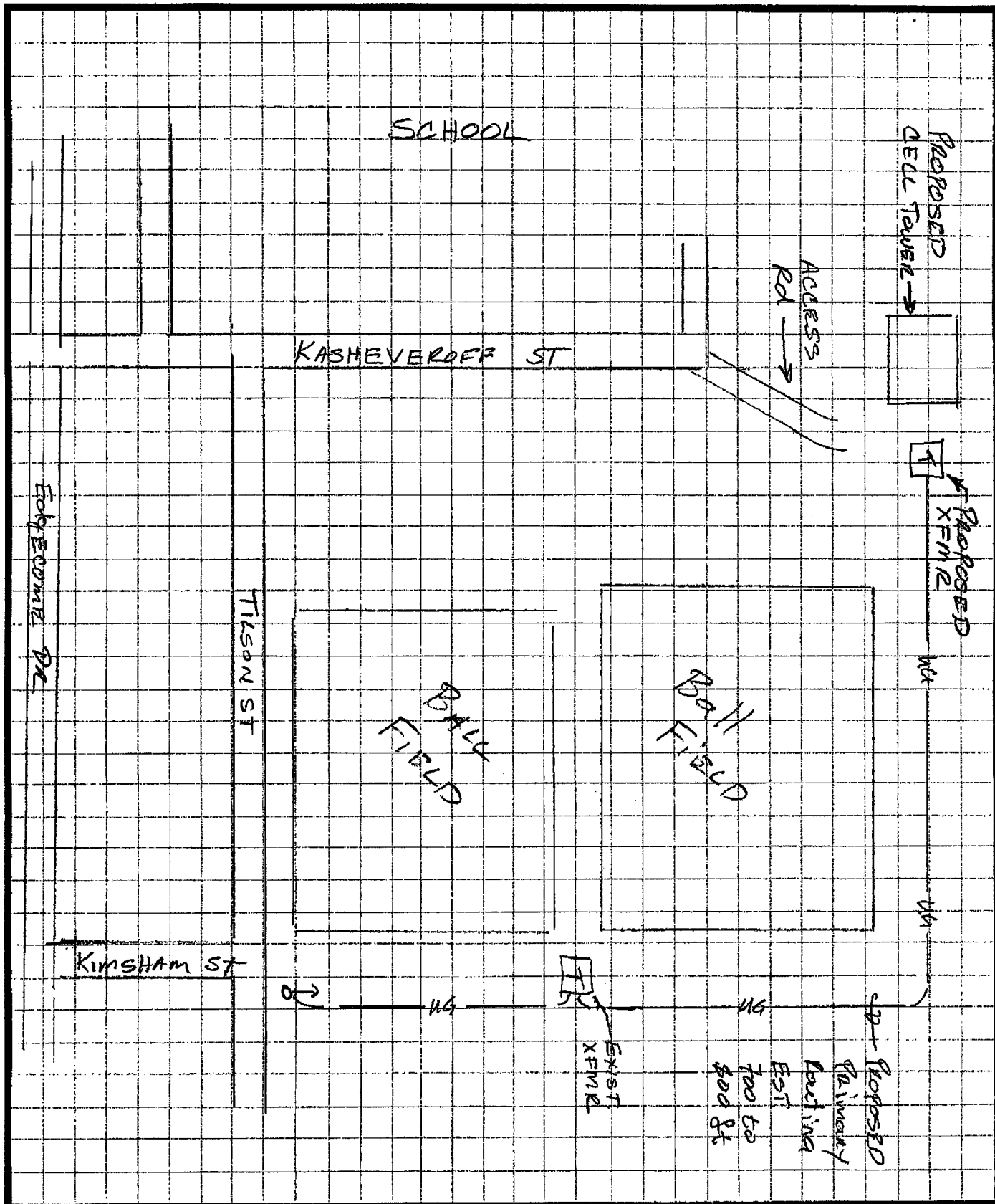


EXHIBIT A