# WIRELESS COMMUNICATIONS CONSULTING AND MARKETING AGREEMENT

**THIS EXCLUSIVE WIRELESS COMMUNICATIONS CONSULTING**

**AND MARKETING AGREEMENT** ("Agreement") is entered into as of the day of

, 20 by and between **,** having its principal place of business at , ,

(" "), and

, (the "Client").

# WITNESSETH:

**WHEREAS**, the Client desires to engage to provide consulting and marketing services to Client; and

**WHEREAS**, desires to enter into this Agreement subject to the terms, covenants and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

# SERVICES

1.1 Description and Performance of Services. shall provide the following services to the Client during the Term of this Agreement:

* 1. Electronic Database. The establishment of an electronic database which shall include an inventory of the Client's assets which may be marketed as potential wireless communications facilities (Facilities). The Client shall provide the necessary information or allow reasonable access to the Facilities to obtain such information.
  2. Marketing. shall market Facilities for lease to wireless communications companies.
  3. Negotiation. shall coordinate in the negotiation of leases or licenses on behalf of Client. Client shall provide reasonable assistance to in the performance of services under this Agreement.
  4. Coordination. shall provide assistance to and on behalf of the Client in coordinating the equipment installation utility requirements and means of ingress and egress of wireless communications companies.
  5. Lease Administration. shall collect on behalf of the Client and shall disburse the revenues to the Client within days of the date of receipt of those sums by .

# COMPENSATION

In consideration of performance of the Services, shall receive one-third (1/3) of all revenues arising from any lease or license of Facilities. Said consideration shall be deducted from revenues in accordance with § 1(e).

Notwithstanding a termination of this Agreement by either party pursuant to § 6.2,

shall receive one-third (1/3) of all revenues arising from the lease or license of Facilities by the Client to wireless communications companies for the initial term of the lease or license and any extensions or renewals thereof which leases or licenses were entered into by the Client during the term of this Agreement or which were entered into by the Client after the termination of this Agreement but Client had been introduced to the prospective wireless communications company by .

shall periodically notify the Client in writing of the wireless communications companies contacted by on behalf of Client in order to document this list of wireless communications companies which introduced to Client.

# OTHER SERVICES AND COSTS

In addition to the services itemized in § 1.1 above, shall provide such additional services as may be requested by Client at the rates disclosed on Exhibit A attached hereto which may be revised by from time to time upon notice to Client.

# EXCLUSIVITY

During the term of this Agreement, the Client shall not engage an independent contractor, consultant or employees to perform services the same as or similar to the Services on behalf of the Client unless has materially breached any of the terms, covenants or conditions contained in this Agreement and has failed to cure any such breach within days of the date of receipt by of notice of an alleged breach from the Client.

# RECORDS AND REPORTS

* 1. Books and Records. shall maintain books and records at

's offices in , which shall be available for inspection by the Client through its agents or representatives during normal working hours as the Client shall reasonably request. shall maintain such books and records for not less than years following the termination or expiration of this Agreement.

* 1. Status Reports. shall submit to the Client periodic status reports setting forth a summary of all expenses and the revenues generated by all Facility leases or licenses entered into by Client.

# TERM AND TERMINATION

* 1. Term. Subject to the termination provisions set forth in § 6.2, this Agreement shall have an initial term of five (5) years, commencing on , 20 and terminating on , 20\_, (Initial Term) which shall be automatically extended for three (3) separate additional year terms unless either party shall

provide the other written notice of its desire not to renew this Agreement days in advance of the lapse of the then existing term.

* 1. Termination and Actions Thereafter.

1. This Agreement may be terminated by the Client by written notice to

upon a material breach by of any of the provisions of this Agreement provided Client has provided written notice to specifying the facts giving rise to the alleged breach and fails to commence and diligently proceed with efforts to cure the alleged breach within days of the date of receipt of said notice from the Client.

1. This Agreement may be terminated by by written notice to the Client upon a material breach by the Client of any of the provisions of this Agreement, provided has provided written notice to the Client specifying the facts giving rise to the alleged breach and the Client fails to commence and diligently proceed with efforts to cure the alleged breach within days of the date of receipt of said notice from .

# RELATIONSHIP OF THE PARTIES

* 1. Independent Status. The relationship of to the Client hereunder shall be that of an independent contractor. Nothing in this Agreement is intended or shall be construed to constitute , or any of its employees, agents or subcontractors, an employee agent or partner of the Client, nor shall , or any of its employees, agents or subcontractors have authority to bind the Client in any respect. The Client shall not be liable for any negligent or willful act or omission of

or its employees, agents or subcontractors, and agrees to indemnify, defend and hold harmless the Client and its directors, officers, partners, agents and employees from and against any and all losses, damages, costs and expenses (including attorneys' fees and expenses) in any manner resulting from or arising out of any negligent or willful act or omission or any breach of obligations under this Agreement. The Client shall hold harmless and its directors, officers, members, agents, and employees from and against any and all losses, damages, costs and expenses (including attorney's fees and expenses) in any manner resulting from or arising out of any negligent or willful act or omission, any breach of the Client's obligations under the

Agreement or any defect or unsafe or dangerous condition existing on Premises owned by Client.

* 1. Independent Contractors. The Client acknowledges that the work to be

performed by

pursuant to this Agreement may require the

involvement and assistance of other professionals and service companies ("Independent Contractors") which shall include but not be limited to abstract and title companies, surveyors, environmental auditors, real estate brokers, real estate attorneys, architects,

engineers, and graphic artists.

shall bill the wireless

communication company for a variety of coordination services including, but not limited to, application fee, structural analysis contracting charges, frequency interference analysis charges, zoning consulting and general consulting services.

(CMS), of which

is a member, shall provide installation and

structural consulting services to the wireless communications companies and to the Client as necessary and as requested by the Client. Any charges for said services provided on behalf of the Client will be approved in advance by Client and will be billed at cost plus ten percent (10%). Privity of contract shall exist only between the Client and

the Independent Contractors.

shall coordinate and manage the

services of the Independent Contractors for the benefit of the Client; however, the Client shall be solely responsible for the payment of invoices submitted by the Independent Contractors.

* 1. Site Acquisition. The Client acknowledges that

includes

a separate site acquisition division which from time to time may represent wireless carriers seeking antennae sites in Client's area, and therefore the situation may arise in

which

has a relationship with both parties for a particular

antenna site. In that instance, if Client asserts that a conflict of interest exists,

will not represent one party for that site. also reserves the right to withdraw of its own volition from representation of one party for that particular site.

# RESTRICTIVE COVENANTS

* 1. Confidential Information. Unless authorized or instructed in writing by

, the Client shall not, during or at any time after the term of this Agreement except as required in the conduct of 's business, disclose to others, or use, or permit to be disclosed to others or used, any of

's works, ideas, information, or knowledge which the Client may obtain during the course of or in connection with the services provided by

, including such works, ideas, information, or knowledge relating to systems, software, research and/or development, designs, compositions, formulae, processes, business methods, present and prospective customers of

, business dealings with such customers, prospective marketing, promotion, sales and advertising programs and strategies. Irrespective of whether or not such inventions, discoveries, works, ideas, information, knowledge or data have been

identified by

as secret or confidential, unless and until, and then

to the extent and only to the extent that such information becomes available to the public

otherwise than by the Client's act or omission, all inventions, discoveries, works, ideas, information, knowledge, and data described or referred to in this § 8.1 are referred to herein collectively as "Confidential Information".

* 1. Essence of Agreement. The Client acknowledges (i) that the use, misappropriation or disclosure of the Confidential Information (as defined in § 8.1) would constitute a breach of trust and cause irreparable injury to

, (ii) that all such Confidential Information is the property of

(iii) that it is essential to the protection of the goodwill and to the maintenance of

and

's competitive position that the Confidential Information be kept secret and that the Confidential Information not be disclosed by the Client to others or used by the Client to the Client's own advantage or the advantage of others. The Client further acknowledges that the Client's agreement to the provisions of this Article 8 and the enforceability of such provisions against the Client are an essential element of this Agreement and that, absent such provisions and the enforceability thereof,

would not (i) engage the Client nor (ii) permit the Client access to and use of Confidential Information.

* 1. Non-solicitation. During the term of this Agreement and for 180 days thereafter, the Client shall not (i) solicit or induce any employee of

to leave the employ of attempt to hire any employee of .

or (ii) hire or

* 1. Equitable Relief. The Client acknowledges that the provisions of Articles 7 and 8 of this Agreement are material to , that

would not have entered into this Agreement if it did not include

Articles 7 and 8, and that the damages sustained by

as a result of

a breach of those Articles cannot be adequately remedied by damages at law.

shall be entitled to injunctive and any other equitable relief to prevent or curtail any breach of Articles 7 and 8 of this Agreement, in addition to any other remedy it may have at law.

# INSURANCE

shall maintain, at its expense, a policy or policies of insurance for each type of coverage and with the minimum limits stated below:

* 1. Commercial general liability insurance and errors and omissions insurance, including broad form contractual coverage, insuring against liability arising

out of or based upon any act or omission of

its officers,

directors, employees and agents. Such insurance shall provide coverage to a limit of not less than Dollars ($ );

* 1. Comprehensive automobile liability insurance covering liability arising out of or based upon the use of any owned, hired or non-owned automobile or other

automobile equipment. Such insurance shall provide coverage to a limit of not less than

($ ); and

* 1. Workers' compensation insurance covering the liability of and its subcontractors arising out of or based upon injury to and death of employees. Such insurance shall provide coverage for employer's liability under any applicable state or federal workers' compensation law to a limit of not less than the requirements of applicable law.

# MISCELLANEOUS

* 1. Additional Actions and Documents. Each of the parties hereto shall take or cause to be taken such further actions, to execute, deliver and file or cause to be executed, delivered and filed such further documents, and will obtain such consents, as may be necessary or as may be reasonably requested in order to effectuate fully the purposes, terms and conditions of this Agreement.
  2. Entire Agreement; Amendment. This Agreement together with Exhibit "A" constitutes the entire agreement between the parties hereto with respect to the transactions contemplated herein, and it supersedes all prior oral or written agreements, commitments or understandings with respect to the matters provided for herein. No amendment, modification or discharge of this Agreement shall be valid or binding unless set forth in writing and duly executed and delivered by the party against whom enforcement of the amendment, modification, or discharge is sought.
  3. Waiver. No delay or failure on the part of any party hereto in exercising any right, power or privilege under this Agreement or under any other documents furnished in connection with or pursuant to this Agreement shall impair any such right, power or privilege or be construed as a waiver of any default or any acquiescence therein. No single or partial exercise of any such right, power or privilege shall preclude the further exercise of such right, power or privilege, or the exercise of any other right, power or privilege. No waiver shall be valid against any party hereto unless made in writing and signed by the party against whom enforcement of such waiver is sought and then only to the extent expressly specified therein.
  4. Governing Law. This Agreement, the rights and obligations of the parties hereto, and any claims or disputes relating thereto, shall be governed by and construed in accordance with the laws of the State of .
  5. Notices. All notices, demands, requests, or other communications that may be or are required to be given, served, or sent by any party to any other party pursuant to this Agreement shall be in writing and shall be hand delivered, sent by overnight courier or mailed by first class, registered or certified mail, return receipt requested, postage prepaid, or transmitted by telegram, facsimile or telex, addressed as follows:

1. If to the Client:

# Attn:

( )

1. If to :

# Attn: or

Each party may designate by notice in writing a new address to which any notice, demand, request or communication may thereafter be so given, served or sent. Each notice, demand, request, or communication that shall be hand delivered, sent, mailed, telecopied or telexed in the manner described above shall be deemed sufficiently given, served, sent, received or delivered for all purposes at such time as it is delivered to the addressee (with the return receipt, the delivery receipt, or (with respect to a facsimile or telex) the answerback being deemed conclusive, but not exclusive, evidence of such delivery) or at such time as delivery is refused by the addressee upon presentation.

* 1. Headings. Article and Section headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.
  2. Pronouns. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular, or plural, as the identity of the person or entity may require.
  3. Execution in Counterparts. To facilitate execution, this Agreement may be executed in as many counterparts as may be required. It shall not be necessary that the signatures of, or on behalf of, each party, or that the signatures of all persons required to bind any party, appear on each counterpart; but it shall be sufficient that the signature of, or on behalf of, each party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of, all of the parties hereto.
  4. Limitation on Benefits. The covenants, undertakings and agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, the parties hereto and their respective successors and permitted assigns.
  5. Binding Effect. Subject to any provisions hereof restricting assignment, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assign.
  6. Survival. The provisions contained in this Agreement that by their sense and context are intended to survive the performance hereof by either or both parties shall survive completion of performance and termination of this Agreement, including the making of any and all payments due hereunder.
  7. Force Majeure.

shall not be responsible for

delays resulting from failure by the Client to respond in a timely manner with respect to decisions required to be made by the Client under this Agreement. In addition,

shall not be responsible for delays caused by factors beyond the reasonable control of , including but not limited to, weather, strikes, or problems with governmental or zoning approval; provided, however, that in

the case of problems with governmental approvals,

agrees to

notify the Client as soon as it becomes apparent to consultant that a particular site may present unusual or inordinate delays in obtaining the necessary zoning of other governmental approvals.

**IN WITNESS WHEREOF**, the Client and

have caused

this Agreement to be executed by their respective duly authorized representatives as of the date first above written.

# Client:

Date:

Name:

By:

**ATTEST:** Title: By: Title:

# :

Date:

Witness:

By: Name:

Title:

# EXHIBIT A

ADDITIONAL SERVICES AND FEES

Zoning and Permitting Consultation $ /hour

Land Use and Land Planning Consultation $ /hour Radio Frequency (RF) Review $ /hour

Tower Construction Consultation $ /hour Zoning Application Review $ /hour