

TOWN OF WEST SENECA



JOHN FENZ
TOWN ATTORNEY
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TOWN SUPERVISOR
SHEILA M. MEEGAN
TOWN COUNCIL
EUGENE P. HART
WILLIAM P. HANLEY, JR.

TO: The Honorable Town Board

FROM: John J. Fenz, Esq.
Town Attorney

DATE: August 20, 2015

RE: Upstate Tower Co., LLC – Land Lease Agreement
570 Mineral Springs Road (the “Property”)

Kindly authorize the Supervisor to execute the necessary documents to enter into a Land Lease Agreement with Upstate Tower Co., LLC, whereby the Town would lease approximately 250 square feet at the Property to construct and operate a communications facility. The pertinent terms of the Land Lease are as follows:

- 1.) Initial Term of five (5) years, and ten (10) automatic renewals for five (5) year terms;
- 2.) Annual rent of \$3,600, to increase by 12% for each successive term;
- 3.) Upstate shall pay the Town \$300 per month for each additional carrier located on the Tower beyond the first;
- 4.) Upstate shall follow all applicable local, state and federal laws when building or modifying its facility; and
- 4.) Upstate shall have a right of first refusal should the Town decide to sell the Property.

LAND LEASE AGREEMENT

THIS LAND LEASE AGREEMENT ("Lease") is dated _____, 2015 (the "Effective Date") between the **Town of West Seneca**, with offices located at 1250 Union Road, West Seneca, New York ("the Town"), and **Up State Tower Co., L.L.C.**, a Maryland limited liability company ("Upstate").

The Town agrees to lease the real property described on **Exhibit A** (the "Property") to Upstate and Upstate agrees to rent it from the Town so that Upstate can construct and operate a communications facility as described on **Exhibit B**. For the mutual promises provided in this Lease, the Town and Upstate agree to the terms in this Lease.

1. **LEASE OF PREMISES.** The Town agrees to lease to Upstate, and Upstate agrees to lease from the Town, an approximately 50 ft. x 50 ft. portion of the Property located at Latitude 42.866442, Longitude 78.794044 (the "Premises"), and grant certain easements in, under and across the Property to Upstate: (i) for entering, exiting and accessing the Premises, by foot, car and truck, by people working with Upstate or for Upstate, or people to whom Upstate has assigned this Lease, (ii) to install utility services at the Premises, and (iii) for installing and taking care of communications equipment, utility wires, poles, cables, conduits, and pipes for Upstate's use of the Premises, extending from the nearest public right-of-way, over and across any property of the Town to the Premises (the "Easements") in the location shown on **Exhibit B**. The Easements are non-exclusive easements and Upstate can construct a roadway over the Easements. If the Town or its other tenants damage the Easements, then the Town or its other tenants will have to share in the reasonable costs to repair the Easements.

2. **USE.** Upstate can use the Premises for sending and receiving signals and installing, building, taking care of, operating, replacing and upgrading its communications fixtures (including but not limited to, a tower, foundation, equipment pad or equipment platform and its related equipment, cables, antennas, equipment shelters or cabinets and fencing and any other items Upstate needs to successfully and securely use the Premises (collectively, the "Communications Facility"). Upstate can alter, replace, expand and upgrade the Communications Facility at any time during the term of this Lease. Upstate agrees to follow all applicable laws when building or modifying the Communications Facility. Upstate agrees to keep the Communications Facility in good condition and repair. The Town will allow Upstate 24-hours-a-day, 7-days-a-week access to the Premises and the Easements during the Term.

3. **TERM.** The term of this Lease (the "Initial Term") is 5 years, beginning on the day: (i) Upstate begins construction of the Communications Facility, or (ii) 6 months after the date that Upstate receives all governmental approvals necessary for the operation of the Communications Facility (the "Approvals"), whichever is earlier (the "Beginning Date"). This Lease will be automatically reinstated for 10 additional terms of 5 years each (the "Renewal Terms"), unless Upstate notifies the Town that it is not going to renew at least 30 days prior to the end of the current Term. "Term" means the Initial Term and any Renewal Terms.

4. **LEASE FEE.** Upstate will pay the Town annual rent ("Rent") of \$3,600.00, payable in twelve (12) monthly installments, with partial months prorated, which includes one carrier located on the tower. Additionally, if at any time more than one carrier is located on the tower, Upstate will pay the Town \$300.00 per month, per additional carrier (beyond the first) located on the Communications Facility. Rent will increase by 12% at the commencement of each Renewal Term, including the amounts being paid, in any, for additional carriers on the tower, beyond the first. Rent will be sent to the Town every month at the address in Section 23(g).

5. **FEASIBILITY PERIOD.**

(a) Upstate shall have 6 months from the Effective Date (the "Feasibility Period") to conduct tests and inspections of the Property and get title reports from a title company chosen by Upstate, at Upstate's sole expense, to determine if the Property is suitable for Upstate's use. Upstate shall pay the Town \$500.00 within 30 days of the Effective Date in return for the Town giving Upstate the right to investigate the Property. Upstate won't be responsible for any Property condition discovered during our investigation, but Upstate will repair any damage to the Property caused by our investigation.

(b) The Town will cooperate with Upstate and sign all documents required to permit Upstate's use of the Premises and the Easements.

(c) If Upstate decides for any reason that the Property isn't suitable for its use, Upstate can terminate this Lease by sending the Town written notice prior to the Beginning Date. If Upstate terminates this Lease, neither the Town nor Upstate will have any further obligation to each other, except as otherwise expressly provided herein.

(d) As long as Upstate has not obtained the Approvals, Upstate shall have the right to extend the Feasibility Period for successive six (6) month periods by notifying the Town and paying the Town \$500.00 for each extension. Upstate agrees to diligently pursue obtaining the Approvals.

6. **UTILITIES.** Upstate will pay for all utilities services Upstate used at the Premises, and Upstate may, at its sole expense, install or improve utility services at the Premises.

7. **ASSIGNMENT/SUBLEASING.** Upstate may assign, transfer, license or sublease all or part of this Lease, as long as Upstate provides the Town notice in writing and as long as the party being assigned or transferred to agrees to comply with this Lease. Additionally, Upstate can mortgage, assign or grant a security interest in this Lease or our Communications Facility to anyone making a loan to Upstate, as long as they agree to comply with this Lease.

8. **TRANSFER WARRANTY AND EXCLUSIVE USE.**

(a) The Town agrees not to sell, lease, or transfer the Property, or grant any interest in the Property, in a way that injures Upstate's use of the Premises and the Easements. Unless Upstate provides its approval in writing in advance, the Town will not:

- i. Assign the Rent to anyone who is in a business similar to ours;
- ii. Assign any of the rights to this Lease except when the Town sells the underlying Property;
- iii. Sell or transfer the Premises or this Lease separately from the Property; or
- iv. Sell or transfer any portion of the Property separately from the remainder of the Property.

(b) The Town will not lease, sell, or transfer any portion of the Property for anyone else to build or operate a communications tower or facility similar to the Communications Facility.

(c) The Town will sign and Upstate will file publicly the document attached hereto as Exhibit "F".

(d) If a court finds anything in this Lease to be overbroad or otherwise unreasonable, instead of rejecting it entirely the Court will enforce it only to the extent narrow or reasonable enough to be permitted.

9. **TAXES.** (Specifically Omitted).

10. **REMOVAL OF COMMUNICATIONS FACILITY.** Title to the Communications Facility will remain personal to and be vested in Upstate, regardless of whether the Communications Facilities are considered fixtures. Upstate can remove the Communications Facility from the Property at any time during the Term of this Lease and for up to 60 days after this Lease expires. If Upstate fails to remove the Communications Facility, all personal property remaining on the Premises after that time will become the Town's property. Upstate does not have to remove any slabs or foundations installed by Upstate.

11. **RIGHT OF FIRST REFUSAL.** Before the Town sells the Property, the Premises, or the Easements, the Town must first offer to sell Upstate the Property or any portion of the Property the Town intends to sell, on the same conditions as the sale the Town would make to a third party. Both of Upstate will sign, and Upstate will publicly file, a Memorandum of Right of First Refusal in the form attached as Exhibit "E".

12. **INSURANCE.** Upstate will carry commercial general liability insurance insuring the Town against liability for personal injury, death or damage to personal property caused by Upstate's use of the Premises and the Easements, with combined single limits of \$1,000,000.

13. **TERMINATION.** Upstate can terminate this Lease any time before the Beginning Date. Upstate can also terminate this Lease by giving the Town written notice if: (a) Upstate can't get the required Approvals, or (b) any Approval is canceled, terminated, or expires, or (c) the Town doesn't deliver to Upstate any non-disturbance agreement or subordination agreement the Town agreed to in this Lease, or (d) the Town doesn't own the Property and have authority to sign this Lease, or (e) Upstate determines that the Property contains Hazardous Substances that weren't introduced to the Property by Upstate, or (f) the Town doesn't comply with this Lease, or (g) the Town's use of the Property results in interference, or a degradation of a transmission signal, with the Communications Facility and the Town doesn't fix the interference within 10 days of receiving notice from Upstate. If Upstate terminates this Lease for any of these reasons Upstate doesn't lose its rights under Section 14 of this Lease.

14. **INDEMNITY.** Upstate and the Town shall indemnify and hold harmless each other from all claims and losses, to the extent the claims or losses are caused by (a) acts or omissions in operations or activities on the Property, the Premises or the Easements by the indemnifying party or the employees, agents, contractors, licensees, tenants (other than Upstate if the Town is the indemnifying party) and/or subtenants of the indemnifying party, or (b) a breach by the indemnifying party under this Lease that has not been cured. However, this indemnification doesn't cover claims or losses arising from the negligence or intentional misconduct of the indemnified party. A party that seeks indemnification must promptly give the other party notice of any legal action. But a delay in notice won't relieve an indemnifying party of any liability to an indemnified party, except to the extent the indemnifying party can show that the delay prejudiced the defense of the action. The indemnifying party may participate in or assume the defense. If the indemnifying party elects to assume the defense, then the indemnifying party must give the other party notice of its election; may select counsel satisfactory to the other party; is not liable to the other party for any fees of other counsel or any other expenses incurred by the other party in defending the action, other than reasonable investigation costs; and must not compromise or settle the action without the other party's consent; and the indemnified party must not unreasonably withhold its consent to any proposed settlement, and has no liability with respect to any compromise or settlement effected without its consent. If an indemnifying party doesn't give notice of its election to assume the defense of an action within 10 days after it receives notice of the action, then the indemnifying party is bound by any determination made in the action or by any compromise or settlement that the other party may effect. Notwithstanding anything to the contrary in this Lease, the Town and Upstate hereby waive any claims that one of us (the Town or Upstate) may have against the other with respect to consequential, incidental, or special damages.

15. **HAZARDOUS SUBSTANCES.**

(a) The Town promises Upstate that the Town has not been made aware any substance, chemical or waste (the "Hazardous Substances") on the Property that is identified as hazardous, toxic or dangerous in any applicable law or regulation. The Town will be responsible for (and conduct any investigation and remediation required by law) all releases of Hazardous Substance caused solely by **Town of West Seneca** the Town, or any of the Town's employees, agents, contractors, representatives or affiliates, that have happened in the past or that happen during the Term of this Lease.

(b) Upstate promises the Town that Upstate won't: (i) bury any Hazardous Substances underground or discharge any into the sewage system at the Premises, or (ii) store Hazardous Substances on the Premises, except minimal quantities used in the ordinary course of business following all applicable environmental laws.

(c) Both the Town and Upstate will indemnify and hold harmless each other from all claims and losses that the indemnified party may incur due to the existence or discovery of any Hazardous Substances on the Property, or the migration of any Hazardous Substance to other properties, or the release of any Hazardous Substance into the environment, that arise from the indemnifying party's activities on the Property. This indemnification obligation includes, without limitation, costs of investigation of site conditions and any cleanup, remedial, removal or restoration work required by the government. The Town and Upstate will both be responsible under this paragraph even after this Lease expires or is terminated.

16. **CASUALTY/CONDEMNATION.** (Omitted).

17. **QUIET ENJOYMENT.**

(a) The Town promises to allow Upstate quiet enjoyment of the Premises and the Easements during the Term as long as Upstate pays the rent and fulfills the requirements of this Lease. The Town will not allow any adjacent property the Town owns to interfere with Upstate's use of the Premises or the Easements.

(b) The Town promises Upstate that: (i) The Town is the fee owner of the Premises and the Easements; (ii) the Town's ownership is free and clear of all liens, claims and encumbrances other than any which don't interfere with Upstate's use of the Premises and the Easements; (iii) the Town has the lawful right and authority to sign this Lease; and (iv) The Town has obtained and delivered to Upstate the consents of all parties that hold any lien on or interest in the Premises or the Easements.

18. **DEFAULT.** If either Upstate or the Town is in default under this Lease for a period of (i) 10 days after receiving written notice of a default regarding non-payment, or (ii) 60 days after receiving written notice of any other default, then the non-defaulting party may pursue any remedies available under law or in equity. If a default that doesn't involve the non-payment of money can't reasonably be cured in 60 days, this Lease can't be terminated if the defaulting party begins to cure the default within the 60 day period and diligently proceeds to cure the default as soon as practicable.

19. **COLLATERAL ASSIGNMENT.**

(a) Upstate may, without the Town's consent, collaterally mortgage and grant a security interest to any lender (a "Lender"), as security for any loan, in all of our interest in: (i) this Lease, (ii) the Premises, (iii) the Easements, (iv) the Communications Facility, (v) any other personal property owned by Upstate and located at the Property, and (vi) all subleases and licenses by Upstate of all and any portion of the Premises and the Easements and the benefits of those. Upstate can also obtain, at its sole expense, a title insurance policy insuring its leasehold interest in the Premises and its easement interest in the Easements.

(b) A Lender may: (i) enforce its rights under its leasehold mortgage and other loan and security documents (a "Security Instrument") against our interests, (ii) acquire title to our interest in the Premises and the Easements under this Lease in any lawful way, (iii) pending foreclosure of such Security Instruments, take away from Upstate possession of the Premises and the Easements, and (iv) obtain, at the Lender's or our sole expense, a title insurance policy insuring those Security Instruments. In connection with a Lender's title insurance policy, the Town will promptly sign and deliver to the title company any affidavits and certificates that the title company may reasonably request. If a Lender acquires our interest in this Lease by foreclosure or otherwise, then the Lender can assign this Lease without the Town's consent.

20. **ESTOPPEL CERTIFICATES.** Within 10 days after Upstate asks the Town for it in writing, the Town will deliver to Upstate a letter addressed to Upstate and any Lender Upstate specifies, in a form required by the Lender, confirming the status of this Lease and any other details regarding this Lease that Upstate might reasonably request. Upstate may request such a letter as often as a Lender requires one.

21. **MORTGAGEE PROTECTION.** If Upstate fails to cure a default by the time required in this Lease, the Town will send each Lender that holds a Security Instrument an additional notice of our default. Upstate will provide the Town with the address for each Lender that requires notice. The Lender will then have 15 days to cure defaults involving non-payment and 30 days to cure other defaults (or longer if it requires more than 30 days to cure, as long as the cure has begun). The Town agrees to give the Lenders access to the Premises and the Easements so they can cure a default. Any cure by a Lender will be the same as a cure by Upstate.

22. **SUBORDINATION AND NON-DISTURBANCE.** If any lender of the Town holds a mortgage or security interest against all or part of the Premises or the Easements, the Town will request that lender to sign and deliver to Upstate an agreement where the lender and Upstate agree that (i) this Lease is subordinate to the mortgage and Upstate will treat the lender as our landlord if the lender acquires the Property; and (ii) if that happens, the lender agrees to honor this Lease. If the Town are not able to obtain that agreement from the Town's lender, Upstate can terminate this Lease.

23. **MISCELLANEOUS**

(a) Upstate promises that it is authorized to do business in the state in which the Property is located and that the person signing this lease on our behalf is authorized to enter into this Lease for Upstate.

(b) This Lease and its attachments contain the entire understanding between Upstate and the Town.

(c) The Town and Upstate may sign different copies of this Lease, and each signed copy will be considered an original, and all the copies taken together will be considered the same agreement.

(d) The terms and conditions of this Lease will extend to and bind the heirs, personal representatives, successors and assigns of both the Town and Upstate.

(e) If a dispute arises out of this Lease, then the prevailing party will be entitled to actual attorney's fees and costs.

(f) Either now or before the Beginning Date, the Town will sign, have notarized and deliver to Upstate (for Upstate to file publicly) a Memorandum/Notice of Lease (the "MOL") in the form of Exhibit "D".

(g) All required notices must be in writing and sent by United States Mail, certified or registered with return receipt requested, or by any nationally recognized overnight courier service for priority delivery, to the addresses set forth below. Notice will be considered given when deposited in the United States Mail or delivered to such courier service. Notices shall be sent to:

For Upstate:

Up State Tower Co., L.L.C.
4915 Auburn Avenue
Suite 200
Bethesda, MD 20814
notices@upstatetowerco.com

For The Town:

Sheila M. Meegan
Town Supervisor
1250 Union Road
West Seneca, New York 14224

With a copy to:

Town Attorney
1250 Union Road
West Seneca, New York 14224

(h) This Lease will be governed by and interpreted by the laws of the state in which the Property is located. The appropriate venue and jurisdiction for any dispute resolution or legal proceeding shall be in the County of Erie and State of New York.

(i) Neither Upstate nor the Town will disclose the financial or other terms of this Lease to anyone else (other than employees, attorneys, lenders and accountants) without the other's written permission.

(j) All of the attached Exhibits are part of this Lease for all purposes. Upstate and the Town agree that Exhibit A (the legal description of the Property), Exhibit B (the description of the Premises and the Easements) and Exhibit C (the description of the Communications Facility) may be attached to this Lease and the MOL in preliminary form. When the final exhibits to be used in our applications for the Approvals are prepared, they will also be attached to this Lease and will be the final Exhibits A, B and C to this Lease and the MOL.

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- (k) Upstate shall be responsible for paying broker fees, if any.
- (l) This Lease can only be amended by a written document that has been sign by both Upstate and the Town.
- (m) The waiver of a breach of any provision of this Lease will not be considered a waiver of any other breach by any party.
- (n) Each provision of this Lease must be interpreted in a way that is valid under applicable law. If any provision is held invalid, the rest of the Lease will remain in full effect.

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The parties sign this Lease effective as of the Effective Date.

WITNESS:

THE TOWN:

TOWN OF WEST SENECA

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Date: _____

WITNESS:

UPSTATE:

UP STATE TOWER CO., L.L.C.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Date: _____

BUF-562

EXHIBIT "A" TO LAND LEASE AGREEMENT

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT "B" TO LAND LEASE AGREEMENT

DESCRIPTION OF THE PREMISES
AND THE EASEMENTS

That certain _____ square foot parcel or tract of land, together with non-exclusive easements for access 24 hours a day, seven days a week and for utilities services and facilities, located in the Town of West Seneca, County of Erie and State of New York, and more particularly described as follows:

[See attached Plan of the Premises and the Easements]

EXHIBIT "C" TO LAND LEASE AGREEMENT

DESCRIPTION OF THE COMMUNICATIONS FACILITY

A wireless communications tower and base, transmitting and receiving antennas, cables, wires, utility lines, equipment shelters and buildings, electronics equipment, generators and other equipment, improvements and personal property, fencing and landscaping around the tower compound, a gate to the tower compound, and, if required by any county, state or federal agency/department with jurisdiction over the construction and operation of the Communications Facility, a location based system (including, without limitation, antenna(s), coaxial cable, base units and other associated equipment) more particularly described as follows:

[See attached Plan of the Communications Facility]

EXHIBIT "D" TO LAND LEASE AGREEMENT

MEMORANDUM OF LEASE

[See MOL attached hereto]

PREPARED BY AND UPON
RECORDATION PLEASE RETURN TO:

Tax ID No.: _____

MEMORANDUM OF LEASE

Site Name/Location: _____

This Memorandum of Lease, dated as of _____, 20____, evidences that a Land Lease Agreement (the "Lease") dated as of _____, 20____, was made and written between the Town of West Seneca ("Lessor"), a New York State municipal corporation with an address at 1250 Union Road, West Seneca, New York 14244, and **Up State Tower Co., L.L.C.** ("Lessee"), a Maryland limited liability company with an address at 4915 Auburn Avenue, Suite 200, Bethesda, MD 20814, and the terms and conditions of such Lease are incorporated herein by this reference. Nothing in this Memorandum of Lease shall be deemed to modify, amend, limit, or otherwise affect the terms and conditions of the Lease. In the event of any inconsistency between the terms of this Memorandum of Lease and the terms of the Lease, the terms of the Lease shall control.

Such Lease provides in part that Lessor leases to Lessee a certain parcel of real property located at _____, Town of West Seneca, County of Erie, State of New York, more particularly described in Exhibit A attached hereto (the "Tower Site"). The Tower Site is situated within a larger parcel of real property that is owned by Lessor and more particularly described in Exhibit A-1 attached hereto. Pursuant to the Lease, Lessor has also granted to Lessee an easement for non-exclusive rights of access to the Tower Site and for electric and telephone facilities to the Tower Site. The Lease term shall commence on the earlier of the date (the "Commencement Date") that: (i) Lessee begins construction of the Communications Facility (as such term is defined in the Lease) at the Tower Site, or (ii) is six (6) months after the date that Lessee receives all Approvals (as such term is defined in the Lease) necessary for the construction of the Communications Facility, and ends on the 5th anniversary of such Commencement Date. Such term is subject to ten (10) additional five (5) year extension periods.

Upon the cancellation, termination or expiration of the Lease, Lessee will make, execute and deliver to Lessor an instrument releasing this Memorandum of Lease, which instrument shall in form and substance be satisfactory to Lessor and shall be in recordable form.

Lessee does hereby make, constitute and appoint Lessor the Lessee's true and lawful attorney-in-fact for the limited, specific and exclusive purpose of executing, delivering and recording a termination of this Memorandum of Lease in the event that Lessee has not signed and returned to Lessor, within ten (10) business days after the cancellation, termination or expiration of the Lease in accordance with the terms thereof, a signed termination of this Memorandum of Lease. This power of attorney is coupled with an interest and shall be irrevocable until this Memorandum of Lease has been validly released of record. The power of attorney set forth in this paragraph is hereby expressly limited to the specific matters and rights set forth in such paragraph.

This Memorandum of Lease may be executed in counterparts, each of which, when executed, shall be deemed an original instrument, but all of which taken together shall constitute one and the same agreement. Capitalized terms not otherwise defined herein shall have the respective meanings ascribed to such terms in the Lease.

IN WITNESS WHEREOF, the parties have executed the Memorandum of Lease as of the day and year first above written.

**SIGNED, SEALED AND DELIVERED IN
THE PRESENCE OF:**

LESSOR:

Print Name: _____

By: _____

Name: _____

Title: _____

**SIGNED, SEALED AND DELIVERED IN
THE PRESENCE OF:**

LESSEE:

Up State Tower Co., L.L.C.

Print Name: _____

By: _____

Name: _____

Title: _____

ACKNOWLEDGEMENT

STATE OF NEW YORK
COUNTY OF ERIE

On this _____ day of _____, 20____, before me, the undersigned notary public, personally appeared Sheila M. Meegan, proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by a federal or state governmental agency, personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose in his/her capacity as the Supervisor of the Town of West Seneca.

(official seal)

(type or print name) Notary Public
My commission expires:

ACKNOWLEDGEMENT

STATE OF _____
COUNTY OF _____

On this _____ day of _____, 20____, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by a federal or state governmental agency, personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose in his/her capacity as the _____ of Up State Tower Co., L.L.C.

(official seal)

(type or print name) Notary Public
My commission expires:

EXHIBIT A

DESCRIPTION OF TOWER SITE

That certain _____ square foot parcel or tract of land, together with non-exclusive easements for access 24 hours a day, seven days a week and for utilities services and facilities, located in the Town of West Seneca, County of Erie, State of New York, and more particularly described as follows:

[See attached Plan of the Tower Site and Easements]

The Tower Site is located within a larger parcel(s) or tract(s) of land located in the Town of West Seneca, County of Erie, State of New York: (i) which is owned by the Town of West Seneca; and (ii) which is more particularly described in Exhibit A-1, attached hereto and by this reference made a part hereof.

EXHIBIT A-1

DESCRIPTION OF LARGER PARCEL OF PROPERTY
WITHIN WHICH TOWER SITE IS LOCATED

That certain lot or parcel of land situated in the Town of _____, County of _____, State of _____, bounded and described as follows:

[INSERT PROPERTY DESCRIPTION]

EXHIBIT "E" TO LAND LEASE AGREEMENT

STATE OF _____

COUNTY OF _____

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MEMORANDUM OF RIGHT OF FIRST REFUSAL

The Town of West Seneca, a New York State municipal corporation ("Owner"), and Up State Tower Co., L.L.C., a Maryland limited liability company ("Up State"), have entered into a Land Lease Agreement dated _____, 201__ (the "Lease"), whereby Owner granted a right of first offer and a right of first refusal to Up State to purchase certain property located in Erie County, New York, which property is more particularly described on Exhibit "A" attached hereto (the "Property"), and Up State accepted from Owner such right of first offer and right of first refusal, upon the terms and conditions and subject to the limitations more particularly set forth in the Lease. This Memorandum of Right of First Refusal is subject to all of the terms, conditions, and understandings set forth in the Lease, which Lease is incorporated herein by reference and made a part hereof, as fully as though copied verbatim herein.

EXECUTED THIS ____ day of _____, 201__.

OWNER:

Print Name: _____

By: _____

Name: _____

Title: _____

**SIGNED, SEALED AND DELIVERED IN
THE PRESENCE OF:**

UP STATE:

Up State Tower Co., L.L.C.

Print Name: _____

By: _____

Name: _____

Title: _____

ACKNOWLEDGEMENT

STATE OF NEW YORK
COUNTY OF ERIE

On this ____ day of _____, 20____, before me, the undersigned notary public, personally appeared Sheila M. Meegan, proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by a federal or state governmental agency, personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose in his/her capacity as the Supervisor of the Town of West Seneca.

(official seal)

(type or print name) Notary Public
My commission expires:

ACKNOWLEDGEMENT

STATE OF _____
COUNTY OF _____

On this ____ day of _____, 20____, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by a federal or state governmental agency, personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose in his/her capacity as the _____ of Up State Tower Co., L.L.C.

(official seal)

(type or print name) Notary Public
My commission expires:

AFTER RECORDING RETURN TO:

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT "F" TO LAND LEASE AGREEMENT

STATE OF _____

§
§
§

COUNTY OF _____

MEMORANDUM OF SALE CONDITIONS

The Town of West Seneca, a New York State municipal corporation ("Owner"), and Up State Tower Co., L.L.C., a Maryland limited liability company ("Up State"), have entered into a Land Lease Agreement dated _____, 201__ (the "Lease"), whereby Owner agreed to the following restrictions on the sale or lease of the property located in _____ County, _____, which property is more particularly described on Exhibit "A" attached hereto (the "Property"), upon the terms and conditions and subject to the limitations more particularly set forth in the Lease. Owner agrees, without Up State's prior written consent, not to:

- i. Assign the Rent to any other person or entity who is in a business similar to that of Upstate;
- ii. Assign any of the rights to this Lease without the transfer of the underlying Property;
- iii. Sell or transfer the Premises or this Lease separately from the Property, such that the leasehold estate is separated from the Property; or
- iv. Sell or transfer any portion of the Property separately from the remainder of the Property.

This Memorandum of Sale Conditions is subject to all of the terms, conditions, and understandings set forth in the Lease, which Lease is incorporated herein by reference and made a part hereof, as fully as though copied verbatim herein.

EXECUTED THIS ____ day of _____, 201__.

OWNER:

Print Name: _____

By: _____

Name: _____

Title: _____

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

UP STATE:

Up State Tower Co., L.L.C.

Print Name: _____

By: _____

Name: _____

Title: _____

ACKNOWLEDGEMENT

STATE OF NEW YORK
COUNTY OF ERIE

On this _____ day of _____, 20____, before me, the undersigned notary public, personally appeared Sheila M. Meegan, proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by a federal or state governmental agency, personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose in his/her capacity as the Supervisor of the Town of West Seneca.

(official seal)

(type or print name) Notary Public
My commission expires:

ACKNOWLEDGEMENT

STATE OF _____
COUNTY OF _____

On this _____ day of _____, 20____, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by a federal or state governmental agency, personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose in his/her capacity as the _____ of Up State Tower Co., L.L.C..

(official seal)

(type or print name) Notary Public
My commission expires:

AFTER RECORDING RETURN TO:

EXHIBIT A
LEGAL DESCRIPTION

**Resolution Authorizing Signing and Submittal of Environmental Facilities Grant
Program for Sanitary Sewer Inflow and Infiltration for Sewer District No. 5**

WHEREAS, the Town of West Seneca Sewer District No. 5 is under consent order by the Department of Environmental Conservation for Inflow & Infiltration (I & I) as a result of sanitary sewer overflows;

WHEREAS, the Town of West Seneca, after thorough consideration of the various aspects of the I & I problem and study of available data, has hereby determined that certain work, as described in its application and attachments, herein called the "Project", is desirable, is in the public interest, and is required in order to implement the Project, which will reduce the frequency, intensity and duration of sewer overflows; and

WHEREAS the Town of West Seneca will request in funding in an amount up to 25% of total eligible project costs to be matched by 75% funding from the Town of West Seneca through bond notes, a resolution for which was already adopted by the West Seneca Town Board;

NOW, THEREFORE, BE IT RESOLVED BY the Town of West Seneca:

1. That Supervisor Sheila M. Meegan is the representative authorized to act in behalf of the Town of West Seneca's governing body in all matters related to the Environmental Facilities Corporation's NYS Water Infrastructure Improvement Act Grant for Clean Water. The Supervisor is also directed to sign, submit and if funded, execute the State Assistance Contract, submit Project documentation, and otherwise act for the Town of West Seneca's Town Board in all matters related to the Project and to State assistance;
2. That Connie D. Miner and Co., the Town of West Seneca's Grants Consultant, be authorized and directed to complete the necessary application, forms, etc. to be submitted to the New York State Environmental Facilities Corporation for the purpose of securing this grant,
3. That this Resolution take effect immediately.

CERTIFICATE OF RECORDING OFFICER

That the attached Resolution is a true and correct copy of the Resolution, as regularly adopted at a legally convened meeting of the Town of West Seneca duly held on the _____ day of _____, _____; and further that such Resolution has been fully recorded in the _____ in my office.

(Title of Record Book)

In witness thereof, I have hereunto set my hand this _____ day of _____, _____.

Signature of Recording Officer

If the Applicant has an Official Seal, Impress here.

Title of Recording Officer