

This Appendix includes three leases (listed below) for review by Washington County municipalities. Study authors would like to thank the communities for their time and assistance in sharing their experience for this study. Additional lease examples are referenced in the study but could not be obtained in time for publication.

1. US Cellular and Yarmouth, ME
2. Maine Department of Conservation Policy on Use and Management of State-Owned Mountain tops for Communication Facilities in Maine, January 2000
3. US Cellular and Scarborough, ME

1. US Cellular and Yarmouth, ME

GROUND LEASE

This Lease is made and entered into as of the ____ day of _____, 2004, by and between, **The Town of Yarmouth, Maine** (the "Landlord"), and **Maine RSA # 1, Inc.**, a Maine corporation, 8410 West Bryn Mawr Avenue, Suite 700, Chicago, Illinois 60631 (the "Tenant").

In consideration of the mutual promises, conditions, and other good and valuable consideration of the parties hereto, it is covenanted and agreed as follows:

1. Option to Lease. (a) Landlord hereby grants to Tenant an option ("the Option") to lease from Landlord the following described Leasehold Parcel:

Approximate dimensions: 60' x 60'

Approximate acreage: .083 acres

Location: That parcel of land commonly known as 178 North Road, Cumberland County, State of Maine.

(collectively the "Leasehold Parcel") together with unrestricted access for Tenant's uses from the nearest public right-of-way along the Landlord's property. This description of the Leasehold Parcel shall be superseded by a surveyed legal description that shall be attached to this lease as exhibit "A."

(b) During the Option period and any extension thereof, and during the term of this Agreement, Tenant and its agents, engineers, surveyors and other representatives will have the right to enter upon the Leasehold Parcel to inspect, examine, conduct soil borings, drainage testing, material sampling, and other geological or engineering tests or studies of the Leasehold Parcel (collectively the "Tests"), to apply for and obtain licenses, permits, approvals, or other relief required of or deemed necessary or appropriate at Tenant's sole discretion for its use of the Premises and include without limitation applications for zoning variances, zoning ordinances, amendments, special use permits, and construction permits (collectively referred to as "Governmental Approvals"), and otherwise to do those things on or off the Leasehold Parcel that, in the opinion of Tenant, are necessary in Tenant's sole discretion to determine the physical condition of the Leasehold Parcel, the environmental history of the

Leasehold Parcel, Landlord's title to the Leasehold Parcel, and the feasibility or suitability of the Leasehold Parcel for Tenant's Permitted Use, all at Tenant's expense. Tenant will not be liable to Landlord or any third party on account of any pre-existing defect or condition on or with respect to the Leasehold Parcel, whether or not such defect or condition is disclosed by Tenant's inspection. Upon completion of any such Tests, Tenant shall return the Property to the condition that existed prior to Tenant's entry on the Property

(c) In consideration of Landlord granting Tenant the Option, Tenant hereby agrees to pay Landlord the sum of \$4,000 upon execution of this Agreement. The Option will be for an initial term of twelve months (the "Initial Option Term") and may be renewed by Tenant for an additional six months upon written notification to Landlord and the payment of an additional \$2,000 no later than ten (10) days prior to the expiration date of the Initial Option Term.

(d) During the Initial Option Term and any extension thereof, Tenant may exercise the Option by notifying Landlord in writing. If Tenant exercises the Option then Landlord leases the Leasehold Parcel to the Tenant subject to the following terms and conditions.

2. Grant of Easement Parcel(s). Upon Tenant's exercise of the Option, Landlord agrees to grant to Tenant an Access easement 30 feet in width from the Leasehold Parcel to the nearest accessible public right-of-way and a Utility easement 10 feet in width to the nearest suitable utility company-approved service connection points as further described in Exhibit "A" attached hereto and incorporated herein. Upon Tenant's exercise of the Option, Landlord agrees to make such direct grants of easement as the utility companies may require.

3. Grant of Easement Rights. Upon Tenant's exercise of the Option and to effect the purposes of this Lease, Landlord agrees to grant to Tenant the following Easement Rights: (a) the right to clear vegetation, cut timber, and move earthen materials upon the Easement Parcels; (b) the right to improve an access road within the Access Easement Parcel; (c) the right to place utility lines and related infrastructure within the Utilities Easement Parcel; (d) the right to enter and temporarily rest upon Landlord's adjacent lands for the purposes of installing, repairing, replacing, and removing the leasehold improvements (the "Improvements") and any other personal property of Tenant upon the Leasehold Parcel and improving the Easement Parcels, including the right to bring in and use all necessary tools and machinery; and (e) the right of pedestrian and vehicular ingress and egress to and from the Leasehold Parcel at any time over and upon the Access Easement Parcel. The Leasehold Parcel and Easement Parcels are collectively referred to herein as the "Premises."

4. Survey / Site Plan. Tenant may, at Tenant's expense, cause a survey, site plan, and/or legal description of the Premises to be prepared, to further delineate and identify the land underlying the Premises, and to attach the same as exhibits to this Lease.

5. Use of the Premises. Tenant shall be entitled to use the Premises to construct, operate, modify as necessary, and maintain thereon a communications antenna tower (including a generator and/or aviation hazard lights when required), an access road, one or more equipment buildings, and a security fence, together with all necessary lines, anchors, connections, devices, and equipment for the transmission, reception, encryption, and translation of voice and data signals by means of radio frequency energy and landline carriage. Tenant shall have unlimited 24/7 access to the Premises.

- (a.) At all times, Tenant shall comply with all applicable federal, state and local laws and ordinances, and all rules and regulations relative to the use, occupancy, construction and maintenance of the contemplated Improvements on the Premises.
- (b.) Tenant shall take all reasonable precautions to assure that Tenant's activity shall not cause any unreasonable interference or disturbance to Landlord's radio frequency reception and transmission and/or the emergency services operations on or immediately adjacent to the Premises.
- (c.) Tenant shall provide Landlord space upon the Tower at the 130' elevation, at no cost to Landlord, for the installation of Landlord's 20' whip antenna. Additionally, Tenant shall construct for Landlord upon the Premises, at Tenant's sole cost and expense, a separate shelter to house Landlord's base station equipment. Ownership of said shelter shall vest to Landlord upon completion of construction.
6. Term of Lease. In the event Tenant exercises the Option, the initial lease term will be five (5) years (the "Initial Term"), commencing upon the Commencement Date, as defined below. The Initial Term will terminate on the last day of the month in which the 5th annual anniversary of the Commencement Date occurred.
7. Option to Renew. The term of this lease shall automatically extend for up to four (4) additional terms of five (5) years each, upon a continuation of all the same provisions hereof, unless Tenant gives Landlord written notice of Tenant's intention to terminate the lease at least sixty (60) days before the expiration of the term then present at the time of such notice.
8. Option to Terminate. Subject to Section 22 hereunder, Tenant shall have the unilateral right to terminate this Lease at any time by giving written notice to Landlord of Tenant's exercise of this option and paying Landlord the amount of \$8,000 as liquidated damages.
9. Base Rent. Commencing on the date that Tenant commences construction (the "Commencement Date"), Tenant shall pay Base Rent to Landlord in the amount of One Thousand Seven Hundred Fifty Dollars (\$1,750.00) per month, which shall be due when construction begins and then regularly thereafter on the first day of each calendar month. Landlord shall specify the name, address, and employer identification number of a sole payee (or maximum two joint payees) who shall receive rent on behalf of the Landlord. Rent will be prorated for any partial month.
10. Adjusted Rent. On each annual anniversary of the Commencement Date of the term of this Lease, and throughout the duration hereof as renewed and extended, the Base Rent shall be increased by an amount equal to three percent (3%) of the rent paid for the previous year.
11. Possession of Premises. Tenant shall not be entitled to take possession of the Premises and commence work to construct the Improvements until Tenant makes the first payment of rent.
12. Utilities. Tenant shall solely and independently be responsible for all costs of providing utilities to the Premises, including the separate metering, billing, and payment of utility services consumed by Tenant's operations.
13. Property Taxes.

- (a) Tenant shall pay an amount equivalent to the personal property taxes levied against the Improvements and the real estate taxes levied against the land underlying the Leasehold Parcel. If the classification of the land for tax valuation purposes changes as a result of Tenant's commercial use, then Tenant shall be responsible an amount equivalent to adjustments for increases attributable to such commercial use.
- (b) Although Tenant will be receiving a separate tax bill for its personal property, the parties assume that the Leasehold Parcel will not be eligible for a separate assessor's parcel number. Therefore, Tenant shall contribute an amount equivalent to the payment of real estate taxes on the underlying land promptly following Landlord's demand therefor, provided that Tenant's proportionate share shall be computed as follows: Area of Leasehold Parcel, divided by area of total tract shown on tax bill, times total tax attributable to land only. The parties agree to cooperate in good faith to identify the amount equivalent to the portion of Landlord's property tax increases for which Tenant is fairly responsible, and Tenant agrees to subsidize such increases.
- (c) Landlord's requests to Tenant for contribution or reimbursement of property taxes or payment of amount equivalent thereto should be addressed to U. S. Cellular, P.O. Box 31369, Chicago, IL 60631-0369. All requests must be accompanied by a statement of Landlord's tax equivalency calculation. Tenant shall comply with requests for contribution by issuing a check for Tenant's proportionate share made payable to the tax collector. Tenant shall comply with requests for reimbursement by issuing a check to Landlord.
- (d) Tenant shall have the right, but not the obligation, to pay an amount equivalent to Landlord's real estate taxes on the underlying land if the same become delinquent, to ensure that Tenant's leasehold interest does not become extinguished. Tenant shall be entitled to take a credit against rent for the portion of Landlord's taxes which it was not Tenant's obligation to pay, as such amount shall reasonably be substantiated.
14. Repairs. Tenant shall be responsible for all repairs of the Improvements, and may at its own expense alter or modify the Improvements to suit its needs consistent with the intended use of the Premises.
- (a) Tenant shall provide advance notification to the Town and a list of all persons, suppliers or contractors providing services, repairs, or materials for the Improvement and/or any maintenance or repairs thereof. And all such persons, suppliers or contractors shall be notified by the Tenant that the Landlord shall not be subject to any Mechanic's or other liens for payment of obligations.
15. Indemnification. Tenant shall indemnify and hold Landlord harmless from and against any loss, damage, or injury caused by, or on behalf of, or through the fault of the Tenant, or in any way resulting from Tenant's presence upon Landlord's lands.
16. Insurance. Tenant shall continuously maintain in full force and effect a policy of commercial general liability insurance with limits of not less than One Million Dollars covering Tenant's work and operations upon Landlord's lands and shall provide Landlord with a certificate of insurance naming Landlord as an additional insured.

17. Monetary Default. Tenant shall be in default of this Lease if Tenant fails to make a payment of rent when due and such failure continues for fifteen (15) days after Landlord notifies Tenant in writing of such failure.

18. Opportunity to Cure Non-Monetary Defaults. If Landlord or Tenant fails to comply with any non-monetary provision of this Lease which the other party claims to be a default hereof, the party making such claim shall serve written notice of such default upon the defaulting party, whereupon a grace period of 30 days shall commence to run during which the defaulting party shall undertake and diligently pursue a cure of the default. Such grace period shall automatically be extended for an additional 30 days, provided the defaulting party makes a good faith showing that efforts toward a cure are continuing.

19. Assignment of Lease by Tenant. Tenant's interest under this Lease may be freely assigned in connection with the transfer of Tenant's FCC authorization to operate a commercial mobile radio base station at the Site, so that the name and identity of the holder of Tenant's interest hereunder can be consistent with the name and identity of the holder of said FCC authorization. Any other assignment of this Lease by Tenant shall require Landlord's prior written consent which consent shall not unreasonably be withheld. No assignment shall be effected pursuant to this Section unless Tenant shall notify Landlord in a writing setting forth the name, address, and telephone number of such assignee and such assignee shall be bound by the same terms and conditions as the Tenant under this Agreement.

20. Subleasing. Tenant shall be entitled to sublet all or any portion of the tower, building, and ground space upon the Premises to subtenants from time to time but only with the prior written consent of Landlord, which consent shall not be unreasonably withheld. In the event of any sublease of all or a portion of the Premises for co-location of another PCS or similar user, Tenant shall pay to Landlord as additional rent twenty percent (20%) of any rents actually received by reason of such sublease.

21. Execution of Other Instruments. Landlord agrees to execute, acknowledge, and deliver to Tenant other instruments respecting the Premises, as Tenant or Tenant's lender may reasonably request from time to time, provided that any such instruments are in furtherance of, and do not substantially expand, Tenant's rights and privileges herein established. Such instruments may include a memorandum of lease which may be recorded in the county land records. Landlord also agrees to reasonably cooperate with Tenant's efforts to obtain all private and public consents related to Tenant's use of the Premises, as long as Landlord is not expected to bear the financial burden of any such efforts.

22. Removal of Improvements. The Improvements are agreed to be Tenant's personal property and shall never be considered fixtures to the real estate. Tenant shall at all times be authorized to remove the Improvements from the Premises. Upon the expiration or earlier termination of this Lease, Tenant shall, unless instructed otherwise in writing by Landlord, remove any aboveground Improvements from the Premises at Tenant's sole cost and expense. Tenant shall be entitled to abandon all footings, foundations, and other below-ground Improvements in place. Upon the full execution of the Lease, Tenant shall provide Landlord a removal bond in the amount of twenty thousand dollars (\$20,000.00) to guarantee the removal of Tenant's equipment upon the expiration or earlier termination of this Lease.

23. Quiet Enjoyment. Landlord covenants that Tenant shall have quiet and peaceable possession of the Premises throughout the Lease term as the same may be extended, and that Landlord will not intentionally disturb Tenant's enjoyment thereof as long as Tenant is not in default under this Lease.

24. Subordination. Tenant agrees to subordinate this Lease to any mortgage or trust deed which may hereafter be placed on the Premises, provided such mortgagee or trustee thereunder shall ensure to Tenant the right to possession of the Premises and other rights granted to Tenant herein so long as Tenant is not in default beyond any applicable grace or cure period, such assurance to be in form reasonably satisfactory to Tenant. If requested by Tenant, Landlord agrees to use Landlord's best efforts to assist Tenant in obtaining from any holder of a security interest in the land underlying the Premises a non-disturbance agreement in form reasonably satisfactory to Tenant.

25. Environmental Warranty. Landlord hereby represents to Tenant that Landlord has never generated, stored, handled, or disposed of any hazardous waste or hazardous substance upon the Leasehold Parcel, and that Landlord has no knowledge of such uses historically having been made of the Leasehold Parcel or such substances historically having been introduced thereon.

26. Attorney's fees. In any action on this Lease at law or in equity, each party shall be fully responsible for its own legal fees and costs, including costs of appeal.

27. Binding Effect. All of the covenants, conditions, and provisions of this Lease shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

28. Entire Agreement. This Lease constitutes the entire agreement between the parties and supersedes any prior understandings or oral or written agreements between the parties respecting the within subject matter.

29. Modifications. This Lease may not be modified, except in writing signed by the party against whom such modification is sought to be enforced.

30. Non-binding until Full Execution. Both parties agree that this Lease is not binding on both parties until both parties execute the Lease.

31. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of Maine.

Signature Page

IN WITNESS WHEREOF, the parties hereto bind themselves to this Ground Lease as of the day and year first above written.

LANDLORD:

TENANT:
Maine RSA #1, Inc.
a Maine corporation
d/b/a U.S. Cellular

By: _____

By: _____

Printed: _____

Printed: _____

Title: _____

Title: Vice President

Social Security # / FEIN

I, the undersigned, a notary public in and for the State and County aforesaid, do hereby certify that _____ (and) _____, known to me to be the same person(s) whose name(s) (is) (are) subscribed to the foregoing Ground Lease, appeared before me this day in person and (severally) acknowledged that pursuant to (his) (her) (their) authority, (he) (she) (they) signed the said Lease, on behalf of the named Landlord, as (his) (her) (their) free and voluntary act for the uses and purposes therein stated.

Given under my hand and seal this ____ day of _____, 2004.

Notary Public

My commission expires _____

STATE OF ILLINOIS)

)

COUNTY OF COOK)

I, the undersigned, a notary public in and for the State and County aforesaid, do hereby certify that __, Vice President, known to me to be the same person whose name is subscribed to the foregoing Ground Lease, appeared before me this day in person and acknowledged that, pursuant to his authority, he signed the said Lease as his free and voluntary act on behalf of the named Tenant, for the uses and purposes therein stated.

Given under my hand and seal this ____ day of _____, 2004.

Notary Public

My commission expires _____

EXHIBIT A

DESCRIPTION OF PREMISES

STATE OF _____)
)
COUNTY OF _____)

Site Address:
APN#:

A PORTION OF:

2. Maine Department of Conservation Policy on Use and Management of State-Owned Mountain tops for Communication Facilities in Maine, January 2000

Contact Maine Department of Conservation - #22 State House Station, August, ME 04333

3. US Cellular and Scarborough, ME

Site Name: Black Point Fire House

Site Number: 853303.2

TOWER AND GROUND SPACE LEASE

This Lease is made and entered into the ____ day of _____ 2005, by and between the **Town of Scarborough**, 259 US Route 1, Scarborough, Maine, 04074 (the "**Landlord**"), and **Maine RSA #1, Inc.**, a Maine corporation, 8410 West Bryn Mawr Avenue, Suite 700, Chicago, Illinois 60631 (the "**Tenant**").

WHEREAS, Landlord owns on a parcel of land (the "**Land**") at a Latitude of 043-33-28 and Longitude 070-18-17.6 (NAD 83), in or near the City of Scarborough, in Cumberland County, State of Maine, as depicted on the Exhibit attached hereto and made a part hereof, and marked as **Exhibit A**, upon which is located a portion of ground space wherein Tenant will locate its improvements described elsewhere, which portion of ground space shall be the subject of this Lease.

WHEREAS, Tenant desires to construct, at Tenant's sole cost and expense, a 80' flag pole (the "**Tower**") upon which Landlord is willing to provide Tenant attachment locations at the locations described below together with ground space for Tenant's cellular common carrier mobile radio base station operations, including related telecommunications functions. Upon completion of construction of the Tower, ownership of said Tower shall vest exclusively in Landlord.

1. Tenant will replace this Exhibit with a survey depicting the site and setting forth the legal description of the property on which the Site is located. Landlord and Tenant hereby agree that the replacement of this Exhibit A (including the access and utility easements) will then replace this Exhibit A and become a part hereof and will control or describe the Premises.
2. Setback of the Premises from the Land's boundaries shall be the distance required by the applicable governmental authorities.
3. Width of access road shall be the width required by the applicable governmental authorities, including police and fire departments.

WHEREAS, Tenant further agrees to procure and install for Landlord, at Tenant's sole cost and expense, Landlord's public safety equipment as provided in this Agreement. The public safety equipment shall be installed at the topmost point of the Tower and, upon completion of said installation, ownership of the public safety equipment shall vest in Landlord. Notwithstanding the foregoing, Tenant's cost for the purchase and installation of Landlord's public safety equipment shall not exceed Twenty Seven Thousand Dollars (\$27,000.00).

NOW, THEREFORE, in consideration of the mutual promises, conditions, and other good and valuable consideration of the parties hereto, it is covenanted and agreed as follows:

1. Grant of Lease. (a) Landlord hereby leases to Tenant the following described Site:
 - (a) Attachment locations upon the Tower for the placement and affixing of

cellular antennas, at the heights and orientations shown on “**Exhibit B**” attached hereto (the “**Tower Space**”); and

(b) A 10’ x 20’ parcel of ground space (the “**Ground Space**”) that includes the area of the base of the Tower, as shown on “**Exhibit B**” attached hereto, for the placement of a radio station equipment shelter measuring approximately 8’ feet by 15’ feet (“**Tenant’s Building**”) upon a poured concrete foundation, as further described in Exhibit “B” attached hereto and incorporated herein (collectively the “**Site**”) together with unrestricted access for Tenant’s uses from the nearest public right-of-way along the area of Landlord’s Land shown on said Exhibit B. This right of access is non-exclusive and shall be in common with Landlord and others having a right from time to time to use of same. Tenant acknowledges and agrees that Tenant takes the Site and all related rights in their “as-is” condition, with no Landlord representation or warranty, express or implied, as to their title, condition, suitability or otherwise. Tenant by execution of this Lease agrees and acknowledges that it has had the full opportunity to inspect the Site and related rights and that the Site is satisfactory to it in all respects.

(c) During the term of this Agreement, Tenant and its agents, engineers, surveyors and other representatives will have the right to enter upon the Site to inspect, examine, conduct soil borings, drainage testing, material sampling, and other geological or engineering tests or studies of the Site (collectively the “**Tests**”), to apply for and obtain licenses, permits, approvals, or other relief required of or deemed necessary or appropriate at Tenant’s sole discretion for its use of the Site and include without limitation applications for zoning variances, zoning ordinance amendments, special use permits, and construction permits (collectively referred to as “**Governmental Approvals**”), and otherwise to do those things on or off the Site that, in the opinion of Tenant, are necessary in Tenant’s sole discretion to determine the physical condition of the Site, the environmental history of the Site, Landlord’s title to the Site, and the feasibility or suitability of the Site for Tenant’s Permitted Use, all at Tenant’s expense. Tenant will not be liable to Landlord or any third party on account of any pre-existing defect or condition on or with respect to the Site, whether or not such defect or condition is disclosed by Tenant’s inspection. Upon completion of any Tests Tenant conducts on the Site, Tenant shall restore and repair the Site to its previous condition. Tenant shall not conduct invasive testing without prior written approval of the Landlord, which approval shall not be unreasonably withheld. If the parties determine that the Site should be fenced, Tenant shall install and maintain fencing at its sole cost and expense.

2. **Privileges.** Landlord hereby confers upon Tenant the following described privileges appurtenant to the Site, which shall be irrevocable for the duration of the Lease:

(a) To place and affix lines, conduits, connections, devices, and equipment for the transmission, reception, encryption and translation of voice and data signals by means of radio frequency energy and landline carriage, including lines for signal carriage between the Ground Space and the Tower Space in the areas shown on said **Exhibit B** only, as Tenant, in its sole discretion, deems necessary or desirable for the conduct of Tenant’s business, subject to Landlord’s prior written consent to any changes which Tenant may from time to time propose to make to said lines, conduits, connections, devices, and equipment, which consent shall not unreasonably be withheld or delayed;

(b) To extend and connect electric utility lines between Tenant’s Building and suitable utility company service connection points, subject to Landlord’s prior written consent as to the

location and contents of such utility corridors and lines and the contents of any documentation related thereto, which consent shall not unreasonably be withheld or delayed;

(c) To travel between the Site and the public road over route(s) identified on Exhibit B; and

(d) To traverse other portions of the Site reasonably necessary to accomplish Tenant’s purposes as contemplated herein.

3. **Use of Site.** Tenant shall be entitled to use the Site to install, operate, and maintain thereon for receipt and transmission of its own signals a cellular common carrier mobile radio base station, including system networking, station control, and performance monitoring functions, but for no other use or purpose. Tenant’s use of the Site and all of its installations and operations thereon shall at all times comply with and conform to all laws and regulations applicable thereto.

4. **Term of Lease.** The lease term will be twenty (20) years (the “**Term**”), commencing March 1, 2005 (the “**Commencement Date**”) and terminating on February 28, 2025.

5. **Option to Terminate.** Tenant shall have the unilateral right to terminate this Lease at any time by giving Landlord written notice of Tenant’s exercise of this option.

6. **Base Rent.** Tenant shall pay Base Rent to Landlord in the amount of Eight Thousand Four Hundred Dollars (\$8400.00) per annum, payable in installments of Seven Hundred Dollars (\$700.00) per month, which first monthly installment of Base Rent shall be due upon the Commencement Date and then regularly thereafter on the first day of each calendar month. Base Rent shall be payable to the Town of Scarborough, federal tax identification number _____ at the address listed above.

7. **Adjusted Rent.** On each annual anniversary of the Commencement Date of the term of this Lease, the Base Rent shall be increased by an amount equal to three percent (3%) of the Base Rent due for the previous year.

8. **Tenant’s Personal Property.** Landlord acknowledges and agrees that all personal property, equipment, apparatus, fittings, building, fixtures and trade fixtures installed or stored on the Site by Tenant, except for the Tower and the Landlord’s Public Safety Equipment, constitute personal property, not real property, and shall continue to be the personal and exclusive property of Tenant, including, without limitation, all telecommunication equipment, switches, cables, wiring and associated equipment or personal property placed upon the Site by the Tenant (collectively, “**Tenant’s Equipment**.”). Tenant’s Equipment shall remain at all times the personal property of Tenant, and neither Landlord nor any person claiming by, through or under Landlord shall have any right, title or interest (including without limitation, a security interest) in Tenant’s Equipment. Tenant, and Tenant’s successors in interest, shall have the right to remove Tenant’s Equipment at any time during the term of this Lease or its earlier termination, provided that Tenant shall promptly repair any damage to the Site or the Tower caused by such removal. With respect to the holder of any mortgage, deed of trust or other lien affecting Landlord’s interest in the Site, whether existing as of the date hereof or arising hereafter, Landlord and Tenant hereby agree, acknowledge and declare that Tenant’s Equipment is now and shall at all times hereafter remain the personal and exclusive property of

Tenant. The parties further acknowledge and agree that Landlord shall have no right or authority to grant a lien upon or security interest in any of Tenant's Equipment.

9. **Tower Maintenance.** Landlord represents that it has the right and responsibility to repair and maintain the Tower, except for repairs required by Tenant's construction or use of the Tower or by defects in the Tower, which shall be the responsibility of the Tenant. If the Tower is damaged for any reason, other than a negligent or wrongful act or omission of Tenant or its contractors, so as to render it substantially unusable for Tenant's intended use, rent shall abate for such period until Landlord, at Landlord's expense, restores the Tower to its condition prior to such damage; provided, however, in the event Landlord fails to repair the Tower within seven (7) days following the date of such damage, Tenant shall have the right to terminate this Lease by giving Landlord written notice thereof, as long as Tenant has not resumed operations upon the Site.
10. Tenant agrees in conjunction with its installation of the Tower to procure and install for Landlord by no later than _____, 2005, at Tenant's sole cost and expense, the public safety equipment identified on Exhibit __ attached hereto [**Need an Exhibit itemizing the equipment**](“Landlord's Public Safety Equipment”). Upon Landlord's approval of all plans and specifications for such work (including the installation of said Public Safety Equipment, related to the Tower, the Public Safety Equipment shall be installed at the appropriate point at the top of the Tower and, upon completion of said installation, ownership of the Public Safety Equipment shall vest in Landlord. Notwithstanding the foregoing, Tenant's cost for the purchase and installation of Landlord's Public Safety Equipment shall not exceed Twenty Seven Thousand Dollars (\$27,000.00).
10. **Aviation Hazard Marking.** Tenant agrees to design and construct the Tower to be in full compliance with the Tower marking, lighting, maintenance, inspection, recording, registration, and notification requirements of the Federal Communications Commission and the Federal Aviation Administration. After transfer of ownership of the Tower to the Landlord, Landlord thereafter shall be responsible for any new or additional Tower marking, lighting, maintenance, inspection, recording, registration, and notification requirements of the Federal Communications Commission and the Federal Aviation Administration.
11. **FCC and FAA Tower Registration.** Tenant warrants to Landlord that in the event the FCC or the FAA requires the tower to be registered during the term of this lease, Tenant shall take all necessary actions to register the tower in the Landlord's name and shall provide Landlord with a copy of the FCC and FAA tower registration.
12. **Utilities.** Tenant shall be responsible for the procuring, installation and separate metering, billing, and payment of its electric utility services consumed by its operations on the Site; provided the location and contents of easements or rights for utilities and related installations shall require Landlord's consent, which consent shall not unreasonably be withheld or delayed.
13. **Taxes.** Tenant shall pay any personal property taxes levied against Tenant's Building and Tenant's base station equipment. Landlord shall pay any real estate taxes and assessments

attributable to the land underlying the Site, and any personal property taxes levied against the Tower, and any of Landlord's Public Safety Equipment.

14. **Access.** Tenant shall have unrestricted access over the way set forth in Exhibit B to Tenant's Building at all hours of the day and night, subject to applicable laws and regulations and such reasonable rules and regulations as Landlord may impose. In no event shall Tenant's access and use rights under this Lease be construed to permit Tenant to interfere with the use and operation of any portion of the Land as a fire station or other public facility, and Tenant acknowledges that there are and will be from time to time rules and regulations as to limitations on its rights of access and use to the Site related to such public purposes.
15. **Compliance with Laws.** Tenant, shall in its installation, maintenance and use of the Site, at Tenant's cost and expense, comply with all federal, state, county or local laws, rules, regulations and ordinances now or hereafter enacted by any governmental authority or administrative agencies having jurisdiction over the Site and Tenant's operations thereupon.
16. **Mutual Indemnification.** Tenant shall indemnify and hold Landlord harmless from and against any loss, damage, or injury caused by, or on behalf of, or through the fault of the Tenant, or resulting from Tenant's use of the Site or its presence at the Site. Landlord shall indemnify and hold Tenant harmless from and against any loss, damage, or injury caused by, or on behalf of, or through the fault of the Landlord, provided, however, that nothing in this provision or this Lease is intended or shall be construed as a waiver of Landlord's immunity from, or limited liability for, tort claims. Nothing in this Article shall require either party to indemnify the other party against such other party's own willful or negligent misconduct.
17. **Insurance.** Tenant shall continuously maintain in full force and effect a policy of commercial general liability insurance with limits of not less than Two Million Dollars (or such increased amount and scope of insurance required by Landlord from time to time in order to provide reasonable and customary coverage to what is typical for amount and coverage of similar facilities in the region of the Site) covering Tenant's work and operations upon Landlord's lands. Landlord shall continuously maintain in full force and effect policy of casualty insurance covering the full replacement value of Landlord's property demised herein to Tenant, and Landlord covenants to apply all proceeds from such policy to repair, restore, and replace said property if it is damaged or destroyed.
18. **Interference.** Landlord shall not use, nor shall Landlord permit its other tenants to use, any portion of the Site in any way which interferes with the operations of Tenant. Such interference shall be deemed a material breach by Landlord, and Landlord shall have the responsibility to promptly cause any such interference to be eliminated. If said interference cannot be eliminated within twenty-four (24) hours after receipt of notice that such interference is occurring, Landlord shall discontinue or cause to be discontinued the operation of any equipment causing the interference until the same can be corrected, except for such intermittent operation as may be necessary for the purposes of testing, after action has been taken for the purposes of correcting such interference. In the event any such interference does not cease promptly, Tenant shall have the right, in addition to any other right that it may have at law or in equity, to terminate this Lease. Tenant covenants and agrees that its use, installations and operations at the Site will not interfere with the use, installations and operations of the Public Safety Equipment being installed by Tenant for Landlord, and that Tenant shall take all reasonably necessary steps to promptly remedy and eliminate any interference Tenant's use has or causes with said Public Safety Equipment and related installations. Tenant agrees that it shall provide

Landlord with a copy of its license or other documentation indicating what frequencies it is entitled to use. Tenant agrees that Landlord may use or permit the use of the Site for other telecommunications purposes or uses, provided that Landlord shall notify Tenant of any such other use prior to commencement of same, and Tenant shall have the right to prohibit such use if such use will unreasonably interfere with Tenant's use and the frequencies it is permitted to and then using; provided, however, if Tenant does not provide written notice to its objection to such proposed use within thirty (30) days of Landlord's notice to Tenant, Landlord shall be free to permit the use of the Site for such other telecommunications purpose or use notwithstanding anything to the contrary contained herein.

19. Default. If Tenant fails to comply with any provision of this Lease, the Landlord may serve written notice of such default upon the Tenant, whereupon a grace period of thirty (30) days shall commence to run during which the Tenant shall undertake and diligently pursue a cure of default (except for defaults in Tenant's obligation to pay Base Rent or other charges for which the cure period shall be five (5) calendar days after written notice of default and for default of Tenant's insurance requirements for which there will be no notice of default or cure period). Such grace period shall automatically be extended for an additional thirty (30) days, provided the Tenant makes a good faith showing that efforts toward a cure are continuing and that there shall be no extension of the five (5) day grace period for payment of defaulted rent or other payments. The reasonable costs of curing such default shall be payable by the defaulting party upon the written demand of the non-defaulting party. This Article shall not apply in the case of interference, which instead shall require immediate and effective curative action. In case of any Tenant default as aforesaid, then, and in any of said cases (notwithstanding any license of any former breach of covenant or waiver of the benefit hereof or consent in a former instance), Landlord shall be entitled to all remedies available to Landlord at law and/or equity, including, without limitation, the remedy of forcible entry and detainer, and Landlord may, if permitted by law, immediately or at any time thereafter, and without demand or notice, enter into and upon the Site or any part thereof in the name of the whole and repossess the same as of its former estate, and expel Tenant and those claiming through or under it and remove it or their effects without being deemed guilty of any manner of trespass, and without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenant, or mail a notice of termination to Tenant, and upon entry or mailing of notice of termination as aforesaid, this Lease shall automatically terminate. Tenant covenants and agrees that in case of such termination, in addition to, and not in lieu of any remedies of Landlord for arrears of rent or other charges or obligations due hereunder, Tenant will pay the Landlord as partial damages for any above-described breach, all costs of evicting Tenant and repossessing the Site, including reasonable attorney's fees and all costs of re-letting the Site, including, but not limited to, remodeling, capital improvements, brokerage fees, advertising and marketing costs. In any event, Tenant agrees that in the event of its breach of this Lease, it shall be liable to Landlord for any and all damages, costs or losses suffered by Landlord due to or arising in connection with Tenant's breach, including without limit, reasonable attorney's fees, in addition to the foregoing.

Landlord shall in no event be in default in the performance of any of its obligations hereunder unless and until Landlord shall have failed to perform such obligations within thirty (30) days or such additional time as is reasonably required to correct any such default after written notice by Tenant to Landlord properly specifying wherein Landlord has failed to perform any such obligation. Tenant specifically agrees to look solely to Landlord's interest in the Site for recovery of any judgment from Landlord; it being specifically agreed that neither Landlord, nor any of its officers, agents or employees (as the case may be) nor anyone claiming under Landlord shall ever be personally liable for

any such judgment. The provision contained in the foregoing sentence is not intended to, and shall not, limit any right that Tenant might otherwise have to obtain injunctive relief against Landlord or Landlord's successors in interest, or any other action not involving the personal liability of Landlord or anyone claiming under Landlord. In no event shall Landlord ever be liable to Tenant for any indirect or consequential damages.

20. Attorney Fees and Expenses. In addition to and not in lieu of amounts recoverable by either party as described elsewhere in this Lease, in the event of any litigation arising under this Lease, each party to such litigation shall bear its own costs and attorneys fees.

21. Quiet Enjoyment. Landlord hereby covenants that Tenant shall, subject to the terms of this Lease, have quiet and peaceful possession of the Site throughout the duration of this Lease, and that Landlord will not intentionally disturb Tenant's occupancy thereof as long as Tenant is not in default hereunder.

22. Authority. Landlord covenants and warrants to Tenant that Landlord presently owns the fee simple interest in and to the Property; that the Premises are served by legal access from a public way; that Landlord is duly authorized and empowered to enter into this lease; and that the person executing this lease on behalf of the Landlord warrants himself to be duly authorized to bind the Landlord hereto.

23. Assignment of Tenant's Interest. Tenant's interest under this Lease may be freely assigned in connection with the transfer of Tenant's FCC authorization to operate a commercial mobile radio base station at the Site, so that the name and identity of the holder of Tenant's interest hereunder can be consistent with the name and identity of the holder of said FCC authorization. Any other assignment of this Lease by Tenant shall require Landlord's prior written consent which consent shall not unreasonably be withheld. No assignment shall be effected pursuant to this Section unless Tenant shall notify Landlord in a writing setting forth the name, address, and telephone number of such assignee. Tenant's subletting or licensing of the Site or any portion thereof is expressly prohibited.

24. Environmental Warranty. Tenant hereby represents and warrants to Landlord that Tenant shall not generate, store, handle, or dispose of any hazardous waste or hazardous substances upon the Site or anywhere on Landlord's Land, and that Tenant shall be liable to return the Site and all other areas Tenant has the right to use to the Landlord free of any such substance or material that came on to the Site or area(s) due to or related to Tenant's occupancy and use of the Site and/or due to or related to its acts or omissions, or those of its agents, employees, or licensees. Notwithstanding the foregoing, Landlord hereby consents to Tenant storing sufficient quantities of batteries necessary to conduct Tenant's business at and from the Premises, so long as used, stored and disposed of in compliance with applicable governmental code and regulation. Notwithstanding anything to the contrary contained in this Section, Tenant shall have no responsibility, duty or obligation with respect to or by reason of any "Hazardous Materials" present or located at or on or upon or in Land, the Building or the Premises (or any part thereof) as of the date of this Lease or for any contamination by Hazardous Materials caused by or resulting from Landlord, its agents, employees, or contractors.

25. Compliance with FCC Radio Frequency Emissions Requirements.

(a) It shall be the responsibility of Tenant to ensure that Tenant's use, installation, or modification of Equipment at the Site does not cause radio frequency exposure levels of all the existing equipment located at the Site and in the surrounding vicinity (including the Communications Equipment, Landlord's equipment, the Public Safety Equipment and all other transmitting equipment in the vicinity) to exceed those levels permitted by the FCC. Landlord shall require other tenants or users of the Tower installing equipment after the installation of the Communications Equipment to bear the same responsibility.

(b) Tenant agrees that in the event that there is any change to applicable rules, regulations, and procedures governing exposure to radio frequency radiation which place the Tower in non-compliance, Tenant will cooperate with Landlord and other users of the Tower to bring the Tower into compliance, which cooperation shall include, but not be limited to, sharing pro rata the costs associated with bringing the Tower into compliance based on use of the Tower.

26. Subordination. Tenant agrees to subordinate this Lease to any mortgage or trust deed which may hereafter be placed on the Site, provided such mortgagee or trustee thereunder shall ensure to Tenant the right to possession of the Site and other rights granted to Tenant herein so long as Tenant is not in default beyond any applicable grace or cure period, such assurance to be in form reasonably satisfactory to Tenant. Further, Landlord agrees to promptly have any mortgage or trustee which has a mortgage or trust deed currently placed on the Site execute a non-disturbance agreement in a form reasonably satisfactory to Tenant.

27. Notices. Any notice, demand or communication which Landlord or Tenant shall desire or be required to give pursuant to the provisions of this Lease shall be sent by registered or certified mail; and the giving of any such notices shall be deemed complete upon mailing in a United States Post Office with postage charges prepaid, addressed to the party intended to be given such notice at its address as first above set forth in this Lease or to such other address as such party may theretofore have designated by notice given pursuant to the requirements of this Section.

28. Contingencies. Tenant shall have the right to cancel this Lease upon written notice to Landlord, relieving both parties of all further obligations hereunder, if Tenant, acting reasonably and in good faith, shall be unable to obtain any or all licenses or permits required to construct its intended improvements upon the Site and/or conduct Tenant's business at the Site; if Tenant's technical reports fail to establish to Tenant's satisfaction that the Site are capable of being suitably engineered to accomplish Tenant's intended use of the Site; or if Tenant's title insurer determines that Landlord does not own good and clear marketable title to the land underlying the Site, or if such title has encumbrances and restrictions which would interfere with Tenant's intended use of the Site.

29. Intentionally Omitted [**This is redundant of other provisions.**]

30. Surrender. Upon the expiration or earlier termination of this Lease, Tenant shall remove all of Tenant's property from the Site and surrender the Site to Landlord in good condition, reasonable wear and tear excepted. The parties agree that all of Tenant's property must be removed from the Site not later than the date of expiration or effective termination hereof; otherwise, Tenant shall be deemed to be a holdover tenant, and shall be liable for the payment of cash rent to Landlord at Two (2) times the rate of rent which was last in effect preceding such holdover tenancy.

31.

32. Binding Effect. All of the covenants, conditions, and provisions of this Lease shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

33. Entire Agreement. This Lease constitutes the entire agreement of the parties, and may not be modified except in writing signed by the party against whom such modification is sought to be enforced.

34. Non-binding until Full Execution. Both parties agree that this Lease is not binding on both parties until both parties execute the Lease.

[END OF AGREEMENT]

[SIGNATURE PAGE FOLLOWS NEXT]

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first above written.

LANDLORD:
Town of Scarborough

By: _____

Printed: _____

Title: _____

TENANT:

Maine RSA #1, Inc.
a Maine corporation

By: _____

Printed: _____

Title: Vice President _____

STATE OF _____)
)
COUNTY OF _____)

I, the undersigned, a notary public in and for the State and County aforesaid, do hereby certify that _____ (name), the _____ (title), known to me to be the same person whose name is subscribed to the foregoing Tower and Ground Space Lease, appeared before me this day in person and acknowledged that (he) (she) signed the said Lease as (his) (her) free and voluntary act for the uses and purposes therein stated.

Given under my hand and seal this ____ day of _____, 2004.

Notary Public

My commission expires _____

STATE OF ILLINOIS)
)
COUNTY OF COOK)

I, the undersigned, a notary public in and for the State and County aforesaid, do hereby certify that _____, Vice President, known to me to be the same person whose name is subscribed to the foregoing Tower and Ground Space Lease, appeared before me this day in person and acknowledged that, pursuant to his authority, he signed the said Lease as his free and voluntary act on behalf of the named Tenant, for the uses and purposes therein stated.

Given under my hand and seal this ____ day of _____, 2004.

Notary Public

My commission expires _____

EXHIBIT A**Land Description**

Site Address: 345 Blackpoint Road	Scarborough, ME
04074	County of

LEGAL DESCRIPTION PENDING

1. Tenant may, at Tenant's option, replace this Exhibit with a survey depicting the Site that has received the prior written approval of Landlord. Landlord and Tenant hereby agree that the replacement of this Exhibit A (including the access and utility easements) will then replace this Exhibit A and become a part hereof and will control or describe the Site.
2. Setback of the Site from the Land's boundaries shall be the distance required by the applicable governmental authorities.
3. Width of access road shall be the width required by the applicable governmental authorities, including police and fire departments.

EXHIBIT B**Tenant's Equipment
And Site Depiction**ANTENNA'S: *antenna info pending.*

<u>QTY</u>	<u>MODEL</u>	<u>RAD CL</u>	<u>COAX</u>
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() per sector, Three (3) sectors / Azimuths °, °, °

GROUND:10' by 20' Leased parcel for the placement of a 8' by 15' Shelter

NOTE: This Exhibit to be superceded by Landlord approved Site Plan Drawings