

12/22/2009
11/24/2009

5-R-10

A RESOLUTION

**Authorizing the City Manager to Execute a Lease Agreement
Between the City and Clear Wireless LLC
For Antenna Facilities at Fire Station #5**

NOW BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY
OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: That the City Manager is hereby authorized and directed to sign the lease with Clear Wireless LLC., attached hereto as Exhibit A and incorporated herein by reference.

SECTION 2: That the City Manager is hereby authorized and directed to negotiate any additional conditions of said lease as he may be determine to be in the best interests of the City.

SECTION 3: That this Resolution 5-R-10 shall be in full force and effect from and after its passage and approval in the manner provided by law.


Elizabeth B. Tisdahl, Mayor

Attest:


Rodney Greene, City Clerk

Adopted: January 11, 2010

EXHIBIT A

Lease Agreement Between the City and Clearwire Wireless LLC

SITE LEASE

THIS SITE LEASE (the "Lease") is by and between the City of Evanston, an Illinois municipal corporation (the "Landlord") and Clear Wireless LLC, a Nevada limited liability company (the "Tenant"), (collectively, the "Parties").

1. Lease.

(a) Upon the Commencement Date (as defined below), Landlord shall lease to Tenant that portion of the real property described in the attached Exhibit A (the "Property") sufficient for placement of the Antenna Facilities (as defined below), together with all necessary space and easements for access and utilities, all as legally described and depicted in the attached Exhibit B (collectively referred to hereinafter as the "Premises"). The Premises, located at or near the northwest corner of Evanston Fire Station #5 at 2830 Central Street in Evanston, IL 60201 shall comprise approximately 100 square feet as more specifically depicted on Exhibit B attached hereto; provided, however, the Premises shall not exceed 100 square feet and shall not reduce any parking space provided at said Fire Station as of the Commencement Date (as defined below).

(b) Beginning on the Effective Date (as defined below) and continuing until the Commencement Date (as defined below) ("Due Diligence Period"), Landlord agrees to reasonably cooperate with Tenant in obtaining, at Tenant's sole cost and expense, all licenses and permits or authorizations, including all land use and zoning permit applications, required for Tenant's use of the Premises from all applicable government and/or regulatory entities (including, without limitation, zoning and land use authorities and the Federal Communications Commission (the "FCC")) (such licenses, permits, authorizations and/or applications are, collectively, referred to as the "Governmental Approvals"), and Landlord agrees to reasonably cooperate with and to allow Tenant, at no cost to Landlord, to obtain a title report, zoning approvals and variances, and land-use permits for the installation and operation of the Antenna Facilities. Landlord expressly grants to Tenant a right of access to the Property to perform any surveys, soil tests, and other engineering procedures or environmental investigations (the "Tests") on the Property deemed necessary or appropriate by Tenant to evaluate the suitability of the Property for the uses contemplated under this Lease. Tenant shall notify Landlord prior to making any such inspections in accordance with this Section 1 hereof. The Tenant hereby agrees to save, defend, indemnify and hold the Landlord harmless from and against: (i) any and all claims, actions, damages, expenses, liability, loss and costs arising from Tenant's performing the Tests; (ii) any mechanic's liens filed against the Property resulting from the Tests; and (iii) any gross negligence or willful acts by Tenant, Tenant's agents, representatives or employees. Tenant further agrees to repair and restore any damage caused by Tenant's inspection of the Property to its condition prior to the inspection. Prior to performing such Tests, Tenant will give Landlord a certificate of insurance naming Landlord and its officers, directors, agents and representatives as additional named insureds, issued by an insurance company authorized to do business in the State of Illinois insuring against all claims, demands or actions for injury or death for not less than Two Million Five Hundred Thousand and 00/100 (\$2,500,000.00) per occurrence and for damage to property for not less than Two Million Five Hundred Thousand and 00/100 Dollars (\$2,500,000.00), such limits may be satisfied by a combination of primary and umbrella policies. During the Term of this Lease, Landlord agrees that it will not interfere with Tenant's efforts to secure other licenses and permits or authorizations that relate to other property.

2. Term.

The initial term of this Lease shall be five (5) years commencing on the date Tenant commences construction of the Antenna Facilities or one hundred eighty (180) days after the Effective Date (as defined below), whichever first occurs, (the "Commencement Date"), and terminating at midnight on the last day of the full calendar month following the fifth (5th) anniversary of the Commencement Date (the "Initial Term").

3. Renewal.

(a) Tenant shall have the right to extend this Lease for five (5) additional and successive five (5) year terms (each a "Renewal Term," together with the Initial Term, hereinafter the "Term") on the terms and conditions as set forth herein. This Lease shall automatically renew for each successive Renewal Term unless Tenant notifies Landlord, in writing, of Tenant's intention not to renew this Lease, at least one-hundred eighty (180) days prior to the expiration of the Initial Term or any Renewal Term. If Tenant shall remain in possession of the Premises at the expiration of this Lease or any Renewal Term without a written agreement, at Landlord's option (i) Tenant shall be deemed to be occupying the Premises as a tenant at sufferance at one hundred fifty percent (150%) the Rent (as hereinafter defined) in effect during the last month immediately preceding such hold over and otherwise subject to all of the terms and conditions of this Lease, or (ii) Landlord may exercise any other remedies it has under this Lease or at law or in equity including an action for wrongfully holding over. No holding over by Tenant or payments of money by Tenant to Landlord after the expiration of the term of this Lease shall be construed to extend said term or prevent Landlord from recovery of immediate possession of the Premises by summary proceedings or otherwise. Tenant shall also be liable to Landlord for all direct and consequential damages which Landlord may suffer by reason of any holding over by Tenant. No payment by Tenant, or receipt by Landlord, of a lesser amount than the correct rent shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or letter accompanying any check for payment of rent or any other amounts owed to Landlord be deemed to effect or evidence an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of the rent or other amount owed or to pursue any other remedy provided in this Lease.

(b) Tenant will be deemed to have waived the right to extend the Term for any Renewal Term if there is an uncured default at the time of Tenant's exercise of the election to extend the Term.

4. Rent.

(a) From and after the Commencement Date, Tenant shall pay Landlord or its designee, as rent, the sum of two thousand and no/100 dollars (\$2,000.00) per month (the "Rent"), subject to the rent credit as more specifically set forth in Section 22 herein. The first payment of Rent shall be due within twenty (20) days of the Commencement Date and shall be prorated based on the days remaining in the month following the Commencement Date, and thereafter Rent will be payable monthly by the first (1st) day of each month to Landlord at the address specified in Section 15 below. In the event any sums required hereunder to be paid by Tenant are not received on or before the fifth (5th) calendar day after the same are due, then Tenant shall immediately pay, as additional Rent, a late payment service charge of Fifty Dollars (\$50.00). Payment of the late payment

service charge shall not in and of itself abrogate a default under this Lease. In addition, any amount due hereunder shall bear interest from the date due until said past due amount shall be paid by Tenant to Landlord at a rate equal to twelve percent (12%) per annum. If this Lease is terminated for any reason (other than a default by Tenant) at a time other than on the last day of a month, Rent shall be prorated as of the date of termination and any excess Rent shall be promptly refunded to Tenant. Landlord, its successors, assigns and/or designee, if any, will submit to Tenant any documents required by Tenant in connection with the payment of Rent, including, without limitation, an IRS Form W-9.

(b) During the Term, monthly Rent shall be adjusted, effective on the first anniversary of the Commencement Date (the "Initial Adjustment Date"), and on each subsequent anniversary thereof (such date, together with the Initial Adjustment Date, hereinafter the "Adjustment Date"), to an amount equal to one hundred four percent (104%) of the monthly Rent in effect immediately prior to the Adjustment Date.

5. Permitted Use.

The Premises shall be used by Tenant only for the transmission and reception of radio communication signals and for the construction, installation, operation, maintenance, repair, removal or replacement of the Antenna Facilities.

6. Interference.

(a) Tenant shall not use the Premises in any way which materially interferes with the use of the Property by Landlord, including Landlord's communications network existing as of the Commencement Date or established at the time Landlord's Equipment (as defined below) is installed on the Monopole, or the rights of lessees or licensees of Landlord with rights in the Property prior to the Commencement Date (subject to Tenant's rights under this Lease, including, without limitation, non-interference). Upon notice of any such interference, Tenant shall immediately cooperate with Landlord to identify the source of such interference and shall, within forty eight (48) hours, cease all interfering operations (except for intermittent testing as approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed) until the interference has been corrected, unless Tenant reasonably establishes prior to the expiration of such forty eight (48) hour period that such interference is not caused by Tenant or the Antenna Facilities, in which case Tenant may operate the Antenna Facilities pursuant to the terms of this Lease. Tenant shall be responsible for all costs associated with any tests deemed reasonably necessary to resolve any and all interference as set forth in this Lease, provided that Tenant's operations are determined to be the source of interference. If such interference has not been corrected within thirty (30) days after notice to Tenant of its occurrence, Landlord or Tenant may terminate this Lease upon ten (10) days prior written notice, or Landlord may require Tenant to remove the specific items from the equipment causing such interference, provided such interference is actually caused by Tenant or the Antenna Facilities. Tenant shall indemnify Landlord and hold Landlord harmless from all third party claims arising from any interference caused by or resulting from Tenant's equipment. Similarly, Landlord shall not use, nor shall Landlord permit its lessees, licensees, employees, invitees or agents to use, any portion of the Property in any way which materially interferes with the operations of Tenant. Such interference shall be deemed a material breach by the interfering Party, who shall, upon written notice from the other, be responsible for terminating said interference. In the event any such interference does not cease promptly, the Parties acknowledge that continuing interference may cause irreparable injury and, therefore, the injured Party shall have the right to bring a court action to enjoin such interference or to terminate this Lease immediately upon written notice.

(b) If any future tenant, licensee or co-locator of the Property commences its use or operations on the Property after the Commencement Date (individually or collectively, a "Future Tenant"), and such Future Tenant's equipment, use and/or operations causes interference with Tenant, Tenant shall reasonably cooperate, at no cost or expense to Tenant, with such Future Tenant to resolve such interference in a mutually acceptable manner, provided that such equipment of the Future Tenant is installed and operating within the technical parameters specified by its manufacturer and the Future Tenant's FCC license. If any Future Tenant should cause irresolvable interference with the Tenant, Tenant may, in addition to any other rights it may have at law or in equity, bring an action to enjoin any such interference, and Tenant's remedy, with respect to Landlord, shall be to terminate this Lease without further liability to Landlord or bring a court action to enjoin such interference. In no event shall Landlord have any liability or responsibility for any interference with Tenant's operations, except to the extent resulting from Landlord's negligence or intentional misconduct, provided however that Tenant's right to recover shall be limited to actual damages not to exceed two hundred fifty thousand dollars (\$250,000.00). In the event Landlord commences a new use of the Property after the Commencement Date, and such use materially interferes with Tenant's operations, Tenant and Landlord shall reasonably cooperate, at no cost to Tenant, to resolve such interference. If Tenant and Landlord are unable to resolve such interference, Tenant may terminate this Lease. Tenant's right to terminate this Lease pursuant to this Section 6(b) may be exercised only through a notice of termination, made in good faith, and supported by reasonable written evidence submitted to Landlord, conforming to generally accepted industry standards, that confirms (i) the existence of such material interference, (ii) that such material interference cannot be resolved through the reasonable efforts of Landlord and Tenant, and (iii) that Tenant has no reasonable alternative but to terminate this Lease. If Tenant elects to exercise the right to terminate this Lease under this Section 6(b), Tenant may relocate its Antenna Facilities to another property, at Landlord's sole cost and expense, not to exceed an amount equal to the cost to relocate, which amount will not exceed two hundred fifty thousand and 00/100 dollars (\$250,000.00) in any event, less the aggregate of the amount withheld by Tenant, pursuant to Section 22 of this Lease, as a credit against the Construction Costs. To the extent that Tenant's operations are not within the parameters of its FCC license or are in violation of the terms of this Lease, and such non-compliance is not caused by Landlord or a Future Tenant of Landlord, Tenant's protections from interference herein shall not apply, and Tenant shall indemnify and defend Landlord from all claims arising out of such unlicensed operations, or operations in violation of the terms of this Lease.

7. Improvements; Utilities; Access.

(a) Subject to Section 25 below, Tenant shall, at its sole cost and expense, erect and maintain on the Premises improvements, personal property and facilities necessary to operate its communications system, including, without limitation, radio transmitting and receiving antennas, microwave dishes, monopole and base (the "Monopole"), equipment shelters and/or cabinets and related cables and utility lines and a location-based system, as such location-based system may be required by any county, state or federal agency/department, including, without limitation, additional antenna(s), coaxial cable, base units and other associated equipment situated exclusively within the Premises, except as to Tenant's telco and utility casements, (collectively, the "Antenna Facilities"). The Monopole shall not exceed eighty feet (80') in height at the time of construction. Before construction of the Monopole, Tenant shall, at Tenant's sole cost and expense, remove the existing Musco pole from the Premises in a manner so as to preserve it so that Landlord might transport it, at Landlord's sole cost and expense, from the Premises for re-use. After construction of the

Monopole, Tenant agrees, at Tenant's sole cost and expense, to restore the Premises to a condition, in the City's sole determination, substantially similar to how it appeared before the Commencement Date. Tenant also agrees to install a platform at the eighty foot (80') level of the Monopole and a four inch (4") underground raceway approximately thirty feet (30') in length pursuant to specifications provided by Landlord to Tenant on or before the Commencement Date and Landlord shall be responsible for the maintenance, repair and removal of such improvements. Landlord shall have the right to install or have installed one (1) or more microwave dishes and other equipment as Landlord may elect to install on the Monopole ("Landlord's Equipment"), provided Landlord's Equipment does not interfere with the Antenna Facilities or exceed the Monopole's structural load capacity. At Tenant's sole cost and expense, Tenant shall mount Landlord's Equipment on the Monopole in substantial compliance with the proposed layout attached hereto as Exhibit C. The Monopole shall be constructed from light-colored steel and shall not be painted or used to display advertising of any sort. Tenant shall have the right, at its sole cost and expense, to alter, replace, enhance and upgrade the Antenna Facilities at any time during the term of this Lease without Landlord's consent, provided that (i) such actions do not impair Landlord's rights hereunder, (ii) such actions do not result in any interference with other operations at the Premises, (iii) the square footage of the Premises is not increased, (iv) such actions are undertaken in accordance with, and are governed by the terms of, this Lease. Tenant shall cause all construction (whether initially or as part of an expansion or alteration) to occur lien-free and in compliance with all applicable laws and ordinances. Landlord acknowledges that it shall neither interfere with any aspects of construction nor attempt to direct construction personnel as to the location of or method of installation of the Antenna Facilities and the Easements (as defined below). The Antenna Facilities, with the exception of the Monopole (which the Parties acknowledge shall be the property of Landlord as of, and after, the Transfer Date (as defined below)), shall remain the exclusive property of Tenant and shall not be considered fixtures. Tenant shall have the right to remove the Antenna Facilities, with the exception of the Monopole (which the Parties acknowledge shall be the property of Landlord as of, and after, the Transfer Date), at any time during and upon the expiration or termination of this Lease. Tenant shall install any coaxial or other wires connected to the Monopole, Antenna Facilities, and/or Landlord's Equipment in raceways secured by Unistrut, protected with PVC tubing, and sealed with waterproof materials. Tenant shall complete construction of the Monopole, installation of the Antenna Facilities, and installation of the Landlord's Equipment (collectively, "Construction Completion") no later than one (1) year after the Commencement Date. Should Tenant fail to achieve Construction Completion within the allotted time, Tenant, at Tenant's sole cost and expense, shall, at City's request, remove any improvements and restore the Premises to a condition, in the City's sole determination, substantially similar to how it appeared before the Commencement Date, and this Lease shall automatically terminate without further action by the Parties. Tenant warrants that, after Construction Completion, the Monopole, Antenna Facilities, and Landlord's Equipment shall not generate sufficient noise as to constitute a nuisance to the public.

(b) Tenant, at its expense, may use any and all appropriate means of restricting access to the Antenna Facilities, including, without limitation, the construction of a fence, as depicted in Exhibit B; provided, further, no action taken by Tenant shall interfere with the access by Landlord or Future Tenants to the Premises for the purpose of maintaining, repairing or accessing any of Landlord's Equipment or the Future Tenant's Equipment, as the case may be, or interfere with access to the Property by Landlord, or Landlord's employees, agents, invitees or others needing access to the Property.

(c) (i) Tenant shall, at Tenant's expense, keep and maintain the Antenna Facilities now or hereafter located on the Property in commercially reasonable condition and repair during the term of this Lease, normal wear and tear and casualty not caused by Tenant excepted. Except as otherwise provided herein, upon termination or expiration of this Lease, the Premises shall be returned to Landlord in good, usable condition, normal wear and tear and casualty not caused by Tenant excepted.

(ii) If Landlord reasonably determines that the Premises or the Antenna Facilities are not being maintained in the condition required by this Lease, and without limiting Landlord's other rights and remedies under this Lease, Landlord shall have the right, if Tenant fails to remedy the condition(s) identified by Landlord to the reasonable satisfaction of Landlord within thirty (30) days of receipt of notice thereof, or immediately in the event of an emergency, to take such action, at Tenant's expense, as Landlord reasonably deems necessary to restore the Premises to the condition required by this Lease. In the event of an emergency, Landlord shall give to Tenant as much advance notice as reasonably possible of its intent to enter the Premises and, within three (3) days following such entry, shall provide to Tenant a written report detailing the nature of such emergency and the corrective actions taken. Tenant shall pay to Landlord, within thirty (30) days of Tenant's receipt of an invoice and supporting documentation, Landlord's reasonable costs and expenses incurred pursuant to this Section 7 and as a result of Tenant's violation of the terms of this Lease.

(d) Tenant shall have the right to install utilities, at Tenant's sole cost and expense, and to improve the present utilities on the Property (including, but not limited to, the installation of emergency power generators). Landlord agrees to use commercially reasonable efforts, at no cost or expense to Landlord, in assisting Tenant to acquire necessary utility service. Tenant shall install separate meters for utilities used on the Property by Tenant. Landlord shall have no obligation whatsoever to provide such services to Tenant and Landlord shall have no obligation whatsoever for any disruption of or reduction in such services and in no event will Landlord be liable to Tenant for any damages, direct or indirect, resulting from any loss of power, except for any damages caused by Landlord's acts or omissions. Unless otherwise agreed by the Parties, Tenant shall at all times be responsible for the provision of its own emergency or "backup" power, and any such "backup" power system installed by Tenant shall be the sole responsibility of Tenant.

(e) As partial consideration for Rent paid under this Lease, and subject to the ability of the Parties to enter into mutually agreeable easement agreements, Landlord shall grant Tenant easements and/or rights of access on, under and across the Property as depicted on the plat(s) attached hereto as Exhibit B for ingress, egress, utilities and access (including access for the purposes described in Section 1) to the Premises adequate to install and maintain utilities, including, but not limited to, the installation of power and telephone service cable, and to service the Premises and the Antenna Facilities at all times during the Term (collectively, the "Easements"). The Easements provided hereunder shall have the same Term as this Lease and be co-terminous therewith.

(f) Tenant shall have 24-hours-a-day, 7-days-a-week access to the Premises at all times during the Term of this Lease.

(g) Landlord shall maintain and repair all access roadways from the nearest public roadway to the Premises in a manner sufficient to allow

vehicular and pedestrian access at all times, at its sole expense, except for any damage to such roadways caused by Tenant.

8. Termination.

(a) Except as otherwise provided herein, this Lease may be terminated, as follows:

(i) upon thirty (30) days' written notice by Landlord if Tenant fails to cure, within ten (10) days of receipt of written notice from Landlord that same is past due, a default for payment of amounts due under this Lease;

(ii) immediately upon written notice by Tenant if Tenant notifies Landlord of any unacceptable results of any Tests prior to Tenant's installation of the Antenna Facilities on the Premises, or if Tenant does not obtain, maintain, or otherwise forfeits or cancels any license (including, without limitation, an FCC license), permit or any Governmental Approval necessary to the installation and/or operation of the Antenna Facilities or Tenant's business;

(iii) upon thirty (30) days' written notice by Tenant if Tenant determines that the Property or the Antenna Facilities are inappropriate or unnecessary for Tenant's operations for economic or technological reasons.

(iv) upon thirty (30) days' written notice by Tenant if Tenant determines, within its sole discretion, that it will be unable to use the Premises for Tenant's intended purpose.

(b) In the event Tenant terminates this Lease pursuant to Section 8(a)(ii) or 8(a)(iii) prior to completion of construction of the Antenna Facilities, Tenant shall, at its sole cost and expense, restore the Premises to a condition, in the City's sole determination, substantially similar to how it existed as of the Commencement Date.

9. Title to Monopole.

Upon completion of construction of the Monopole ("Transfer Date"), Landlord shall, thereupon, be and become the absolute owner of and vested with full title to and ownership of the Monopole, without warranty, express or implied, free and clear of all rights or claims of Tenant and all persons hereafter claiming by, through or under Tenant as of the Transfer Date. When Tenant surrenders the Monopole to Landlord, Tenant agrees to satisfy or have satisfied, all mortgages, liens or encumbrances placed on its interests in the Monopole. Title to the Monopole shall automatically vest in Landlord without the necessity for the execution or delivery by Tenant of any instrument transferring title. Notwithstanding the foregoing, Tenant covenants and agrees that upon Landlord's request and at Landlord's sole cost and expense, Tenant shall execute, acknowledge and deliver to Landlord a commercially reasonable instrument or document reasonably requested by Landlord to confirm title to the Monopole in Landlord. Upon the Transfer Date, Landlord shall assume full responsibilities and liabilities associated with the ownership of the Monopole, including, without limitation, the cost of maintenance and repair to the monopole and the cost of insuring the monopole structure.

10. Casualty.

In case of damage to the Premises or those portions of the Property or the Premises which are essential to the operation of the Antenna Facilities, by fire or other casualty, Landlord may (but shall have no obligation to), at its expense, and subject to the availability of insurance proceeds, cause the damage to be repaired to a condition as nearly as practicable to that existing prior to the damage, with reasonable speed and diligence, subject to delays which may arise by reason of adjustment of loss under insurance policies, governmental regulations, and for delays beyond the control of Landlord, including an event of "force majeure". Landlord shall not be obligated to repair, restore, or rebuild any of Tenant's personal property except for any damage caused by Landlord's acts or omissions. Landlord shall not be liable for any inconvenience or annoyance to Tenant, or injury to Tenant's business resulting in any way from such damage or the repair thereof, except to the extent and for the time that Tenant is materially impeded from providing its services, in which case the Rent shall equitably abate. In addition, Tenant shall be permitted to terminate this Lease if (i) the Premises have been rendered unusable for Tenant's intended purpose, (ii) Landlord has determined to cause the damage to be repaired, and (iii) Landlord's estimated period for completion of the repair and restoration of the Building exceeds ninety (90) days (Landlord shall deliver such estimate to Tenant within fifteen (15) days after the casualty).

11. Condemnation.

(a) If all or substantially all of the Property or Premises are taken for any public or quasi-public use under any applicable laws or by right of eminent domain, or are sold to the condemning authority in lieu of condemnation, or by deed in lieu of condemnation, then this Lease will terminate as of the date when the condemning authority takes physical possession of or title to the Property or Premises, and any prepaid fees shall be apportioned as of said date and reimbursed to Tenant. If only part of the Property or Premises is thus taken or sold, and if after such partial taking in Landlord's reasonable judgment, alteration or reconstruction is not economically justified, then Landlord (whether or not the Premises are affected) may terminate this Lease by giving written notice to Tenant within ninety (90) days after the taking, or alternatively, if Tenant determines that the Premises taken interferes with Tenant's use, Tenant may terminate this Lease by giving Landlord thirty (30) days prior written notice. Termination by Landlord or Tenant will be effective as of the date when physical possession of the applicable portion of the Building or Premises is taken by the condemning authority. If neither Landlord nor Tenant elects to terminate this Lease upon a partial taking of a portion of the Property or the Premises, the Rent payable under this Lease will be diminished by an amount equitably allocable to the portion of the Property or the Premises which was so taken or sold, taking into reasonable account the effect of the taking or condemnation on Tenant's operations. If this Lease is not terminated upon a partial taking of the Property or Premises, Landlord will, at Landlord's sole expense, promptly restore and reconstruct the Premises to substantially their former condition to the extent the same is feasible. However, Landlord will not be required to spend for such restoration or reconstruction an amount in excess of the net amount received by Landlord as compensation or damages for the part of the Property or Premises so taken.

(b) As between the Parties to this Lease, Landlord will be entitled to receive, and Tenant assigns to Landlord, all of the compensation awarded upon taking of any part or all of the Property or Premises, including any award for the value of the unexpired term. However, Tenant may

assert a claim in a separate proceeding against the condemning authority for any damages resulting from the taking of Tenant's trade fixtures or personal property, or for moving expenses, business relocation expenses or damages to Tenant's business incurred as a result of such condemnation.

12. Default and Right to Cure.

Notwithstanding anything contained herein to the contrary and without waiving any other rights granted to it at law or in equity, each Party shall have the right, but not the obligation, to terminate this Lease on written notice pursuant to Section 15 hereof, to take effect immediately, if the other Party fails to perform any covenant or commits a material breach of this Lease and fails to diligently pursue a cure thereof to its completion after thirty (30) days' written notice specifying such failure of performance or default (the "Cure Period"); provided, however, the Cure Period shall be extended for such reasonable period of time if the cure cannot be completed prior to the expiration of the Cure Period so long as the cure is diligently pursued.

13 Taxes.

The Parties acknowledge that, due to Landlord's tax-exempt status, no taxes are due and payable for the Property. Tenant shall pay any personal property tax, real property tax or any other tax or fee which is directly attributable to the presence or installation of Tenant's Antenna Facilities, only for so long as this Lease remains in effect. If Landlord receives notice of any personal property or real property tax assessment against Landlord, which may affect Tenant and is directly attributable to Tenant's installation, Landlord shall provide timely notice of the assessment to Tenant sufficient to allow Tenant to consent to or challenge such assessment, whether in a Court, administrative proceeding, or other venue, on behalf of Landlord and/or Tenant. Further, Landlord shall provide to Tenant any and all documentation associated with the assessment and shall execute any and all documents reasonably necessary to effectuate the intent of this Section 13.

14. Insurance and Subrogation and Indemnification.

(a) Tenant will maintain (i) commercial general liability insurance insuring all operations by or on behalf of Tenant, on an occurrence basis against claims for both bodily injury (including death) and property damage, products and completed operations coverage, broad form property damage, severability of interests, and personal injury coverage, in amounts of One Million and no/100 Dollars (\$1,000,000.00) per occurrence and Two Million and no/100 Dollars (\$2,000,000.00) aggregate, such limits may be satisfied by a combination of primary and umbrella policies; (ii) workers' compensation insurance with minimum limits in accordance with all applicable state and federal statutes, and employer's liability insurance with limits not less than One Million Dollars (\$1,000,000.00) bodily injury for each accident and bodily injury by disease for each employee; (iii) commercial automobile liability insurance including coverage for bodily injury (including death) and property damage arising out of the use of any auto (including owned, hired and nonowned autos) with a combined single limit not less than One Million Dollars (\$1,000,000.00); (iv) "All Risk" or "Cause of Loss Special Form" property insurance for damage to property including coverage for vandalism and malicious mischief, for all of Tenant's telecommunication and other equipment, systems and facilities located on the Premises or elsewhere on the Property in an amount equal to 100% of the replacement value thereof, with the proceeds of such insurance being used to repair and/or replace the telecommunication and other equipment, systems and facilities so insured. Tenant may satisfy this requirement by obtaining the appropriate endorsement to any master policy of liability insurance Tenant may maintain. Such insurance shall name Landlord as additional insured.

(b) Landlord and Tenant hereby mutually release each other (and their successors or assigns) from liability and waive all right of recovery against the other for any loss or damage covered by their respective first party property insurance policies for all perils insured thereunder. In the event of such insured loss, neither Party's insurance company shall have a subrogated claim against the other.

(c) Subject to the property insurance waivers set forth in subsection 11(b), Landlord and Tenant each agree to indemnify and hold harmless the other Party from and against any and all claims, damages, costs and expenses, including reasonable attorney fees, to the extent caused by or arising out of the negligent acts or omissions or willful misconduct in the operations or activities on the Property by the indemnifying Party or the employees, agents, contractors, licensees, tenants and/or subtenants of the indemnifying Party, or a breach of any obligation of the indemnifying Party under this Lease. The indemnifying Party's obligations under this section are contingent upon its receiving prompt written notice of any event giving rise to an obligation to indemnify the other Party and the indemnified Party's granting it the right to control the defense and settlement of the same.

(d) Notwithstanding anything to the contrary in this Lease, the Parties hereby confirm that the provisions of this Section 14 shall survive the expiration or termination of this Lease.

(e) Tenant shall not be responsible to Landlord, or any third-party, for any claims, costs or damages (including, fines and penalties) attributable to any pre-existing violations of applicable codes, statutes or other regulations governing the Property.

(f) In no event shall either Party be liable under this Lease to the other for indirect, special, incidental or consequential damages, including, without limitation, loss of profits, income or business opportunities.

15. Notices.

All notices, requests, demands and other communications required hereunder shall be in writing and are effective three (3) days after deposit in the U.S. mail, certified and postage paid, or upon receipt if personally delivered or sent by next-business-day delivery via a nationally recognized overnight courier to the addresses set forth below. Landlord or Tenant may from time to time designate any other address for this purpose by providing written notice to the other Party.

If to Tenant, to:
Clear Wireless LLC
Attn.: Property Manager
5808 Lake Washington Blvd. NE, Suite 300
Kirkland, WA 98033

Telephone: 425-216-7600
Fax: 425-216-7900

With a copy to:
Clear Wireless LLC
Attention: Legal Department
5808 Lake Washington Blvd. NE, Suite 300
Kirkland, WA 98033
Telephone: 425-216-7600
Fax: 425-216-7900

If to Landlord to:
City Manager's Office
City of Evanston
2100 Ridge Avenue
Evanston, Illinois 60201

Evanston Fire Department
City of Evanston
Attn.: Fire Chief
909 Lake Street
Evanston, Illinois 60201

With a copy to:
Facilities Management Office
City of Evanston
2100 Ridge Avenue
Evanston, Illinois 60201

With a copy to:
Law Department
City of Evanston
2100 Ridge Avenue
Evanston, Illinois 60201

16. Quiet Enjoyment, Title and Authority.

As of the Effective Date and at all times during the Term of this Lease, Landlord covenants and warrants to Tenant that (i) Landlord has full right, power and authority to execute and perform this Lease; (ii) Landlord has fee title to the Property free and clear of any liens or mortgages which will not interfere with Tenant's rights to or use of the Premises; (iii) execution and performance of this Lease will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreement binding on Landlord; and (iv) Tenant's quiet enjoyment of the Premises or any part thereof shall not be disturbed as long as Tenant is not in default beyond any applicable grace or cure period.

17. Environmental Laws.

To the best of Landlord's knowledge and without having had any duty of investigation, Landlord represents that it has no knowledge of any substance, chemical or waste (collectively, "Hazardous Substance") on the Property that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Landlord and Tenant shall not introduce or use any Hazardous Substance on the Property in violation of any applicable law. Landlord shall be responsible for, and shall promptly conduct any investigation and remediation as required by any applicable environmental laws, all spills or other releases of any Hazardous Substance not caused solely by Tenant, that have occurred or which may occur on the Property. Each Party agrees to defend, indemnify and hold harmless the other from and against any and all administrative and judicial actions and rulings, claims, causes of action, demands and liability (collectively, "Claims") including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and reasonable attorney fees that the indemnitee may suffer or incur due to the existence 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 (collectively, "Actions"), that relate to or arise from the indemnitor's activities on the Property. Landlord agrees to defend, indemnify and hold Tenant harmless from Claims resulting from Actions on the Property not caused by Landlord or Tenant prior to and during the Term. The indemnifications in this section specifically include, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority. This Section 17 shall survive the termination or expiration of this Lease.

18. Assignment and Subleasing.

Tenant may, upon written notice to Landlord, assign or transfer (by sublease or otherwise) its rights arising under this Lease to any corporation, partnership or other entity which is (i) controlled by, controlling or under common control with Tenant, (ii) shall merge or consolidate with or into Tenant, (iii) shall succeed to all or substantially all the assets, property and business of Tenant, or (iv) any affiliate or subsidiary or other party as may be required in connection with any offering, merger, acquisition, recognized security exchange or financing. Under all other circumstances, such assignment or transfer shall require Landlord's written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Any such

assignee or transferee shall possess a financial condition, creditworthiness and operational ability following the contemplated assignment or transfer sufficient to permit such assignee or transferee to satisfy its obligations under this Lease. Upon assignment, Tenant shall be relieved of all liabilities and obligations hereunder and Landlord shall look solely to the assignee for performance under this Lease and all obligations hereunder.

Landlord shall have the right to assign or otherwise transfer this Lease and the Easements granted herein, upon written notice to Tenant. Upon Tenant's receipt of (i) an executed deed or assignment and (ii) an IRS Form W-9 from assignee. Upon assignment, Landlord shall be relieved of all liabilities and obligations hereunder and Tenant shall look solely to the assignee for performance under this Lease and all obligations hereunder. Landlord shall have the right to lease or license space on the Monopole not leased to Tenant, provided that any such lessee(s) or licensee(s) do not interfere with Tenant's operations or use hereunder.

Additionally, notwithstanding anything to the contrary above, Landlord or Tenant may, upon notice to the other, grant a security interest in this Lease (and as regards the Tenant, in the Antenna Facilities), and may collaterally assign this Lease (and as regards the Tenant, in the Antenna Facilities) to any mortgagees or holders of security interests, including their successors or assigns (collectively "Secured Parties"). In such event, Landlord or Tenant, as the case may be, shall execute such consent to leasehold financing as may reasonably be required by Secured Parties.

19. Successors and Assigns.

This Lease and the Easements granted herein shall run with the land, and shall be binding upon and inure to the benefit of the Parties, their respective successors, personal representatives and assigns.

20. Waiver of Landlord's Lien.

Landlord hereby waives any and all lien rights it may have, statutory or otherwise, concerning the Antenna Facilities or any portion thereof other than the Monopole, which shall be deemed personal property for the purposes of this Lease, whether or not the same is deemed real or personal property under applicable laws, and Landlord gives Tenant and Secured Parties the right to remove all or any portion of the same from time to time, whether before or after a default under this Lease, in Tenant's and/or Secured Party's sole discretion and without Landlord's consent.

21. Non-Recourse.

In no event shall Landlord be liable to Tenant either for any loss or damage that may be occasioned by or through the acts or omissions of any third parties (other than Landlord's employees, agents, contractors and affiliates (collectively, "Landlord's Parties")). None of the Landlord's Parties shall be personally liable for the performance of Landlord's obligations under this Lease. Tenant shall look solely to Landlord to enforce Landlord's obligations hereunder and shall not seek any damages against any of the Landlord's Parties. Notwithstanding anything to the contrary herein, neither Party shall be liable to the other for consequential, incidental, punitive or economic damages or lost profits to the other Party.

22. Rent Credit.

Pursuant to the terms and conditions contained herein, Tenant agrees that it shall construct the Antenna Facilities at its sole cost and expense, the costs of which shall be evidenced by a Sworn Owner's Statement and Sworn Contractor's Statement (the "Construction Costs"). Tenant warrants that the Construction Costs will not exceed \$200,000.00 and Landlord's obligation to reimburse the Construction Costs shall be capped at said amount. As of the date (a) Tenant has completed the Antenna Facilities, (b) Tenant has provided a certificate from its architect and all governmental authorities having jurisdiction over the Premises that the Antenna Facilities are complete and built pursuant to Tenant's Plans, and (c) Tenant has delivered to Landlord final lien waivers from the contractors constructing the Antenna Facilities, Tenant shall be entitled to withhold One Thousand and 00/100 Dollars (\$1,000.00) of Rent per month to be credited against, and to offset, the Construction Costs. Upon the expiration of the Term or earlier termination of this Lease, Landlord's obligation to contribute towards the Construction Costs shall cease irrespective of whether Landlord has paid to Tenant the full amount of the Construction Costs.

23. Effective Date.

The effective date of this Lease is the date of execution by the last Party to sign (the "Effective Date").

24. Compliance With Law.

Tenant agrees to comply with all applicable laws, plans, specifications and other Governmental Approvals and contractual obligations with respect to the installation, operation and maintenance of the Antenna Facilities. Tenant shall obtain and keep in effect all required licenses, permits and other authorizations necessary for Tenant to conduct business on the Premises and deliver copies thereof to Landlord within fifteen (15) business days of Tenant's receipt of Landlord's request. To the extent Tenant is operating radio frequency (RF) emitting equipment from the Premises, Tenant shall cooperate generally with Landlord and other carriers such that Tenant's equipment on the Premises shall be and remain in compliance with all FCC and OSHA rules and regulations relating to guidelines for human exposure to radio frequency or electromagnetic emission levels, as may be issued from time to time, including but not limited to the rules and regulations adopted in FCC document OET 65 (which rules and regulations have also been adopted by OSHA). If Tenant believes that the operation of its Antenna Facilities does not obligate Tenant to submit filings in accordance with FCC and OSHA rules and regulations, Tenant shall demonstrate, to Landlord's reasonable satisfaction, that Tenant's operation of its Antenna Facilities is so excluded. To the extent that the Antenna Facilities are not excluded, either by itself or in conjunction with other equipment in or on the Premises, may exceed permitted emission levels, Tenant shall (a) promptly upon Landlord's written request, deliver to Landlord a reasonably acceptable certification or survey report demonstrating that the Antenna Facilities are in compliance with all applicable FCC and OSHA rules and regulations (the "Compliance Survey"), and (b) to the extent the Antenna Facilities or the operation thereof are the sole cause of such non-compliance or cause the Premises (or any section thereof) to not be in compliance with such rules and regulations, promptly remedy any such non-compliance in accordance with applicable law and at Tenant's sole cost and expense.

25. Construction.

All equipment installed by Tenant at the Premises will be installed in the locations depicted in the drawings, and to the specifications and in accordance with the additional information attached hereto as Exhibit D (the "Work Plan"). The Work Plan will include, but not be limited to, the

maximum load capacity for the Monopole, the proposed load of Tenant's equipment to be installed as part of the Antenna Facilities, preliminary grading and drainage plans, utilities, service connections, locations of ingress and egress to and from public thoroughfares, lighting, landscaping, screening and the design of the Monopole, all sufficient to enable Landlord to make an informed judgment about the design and quality of construction. If no such drawings, specifications or additional information are attached, or if the attached materials are reasonably determined by Landlord to be inadequate, then Tenant shall not install or modify any equipment in or on the Premises unless and until such work is depicted in a Work Plan, submitted to, and approved in writing by, Landlord (each such approved Work Plan, an "Approved Work Plan"), which approval shall not be unreasonably withheld, conditioned or delayed. Landlord shall approve or reject the Work Plan within thirty (30) days after submission stating in writing the specific objections to the proposed Work Plan. Landlord may subject its approval of any Work Plan to reasonable conditions including, but not limited to, commercially reasonable accommodations to protect the aesthetics of the Property, such as appropriate screening, at Tenant's expense. After Tenant has completed Tenant's initial installation under the Approved Work Plan, any construction or alterations shall be subject to the terms and conditions of this Lease, including this Section 25 which requires that Tenant obtain an Approved Work Plan for all construction alterations to the Monopole. Landlord's failure to provide a written consent pursuant to this Section 25 shall under no circumstance be deemed to constitute an approval, provided however, if Landlord does not issue its approval, comments or rejection within forty-five (45) days of Tenant's Work Plan submission, the plans shall be deemed approved. Landlord's approval of any Work Plan or work performed pursuant thereto is not a representation that such installation of the Equipment is in compliance with all Applicable Laws or that it will not cause interference with other communications operations at the Property. All installation and other work to be performed by Tenant hereunder will be done in such a manner as to minimize disruption of use of the Property and not to block access to or in any way obstruct, interfere with or hinder the use of the Property, the sidewalks around the Property, or any entrance ways thereto, or interfere materially with, delay, or impose any additional expense upon Landlord in maintaining the Property. If such conditions shall occur, Tenant shall take immediate corrective action in accordance with this Lease. Tenant agrees that installation and construction shall be performed in a safe, neat, professional and workmanlike manner, using generally accepted construction standards, consistent with such other reasonable requirements as may be imposed by Landlord.

26. Miscellaneous.

(a) The prevailing Party in any litigation arising hereunder shall be entitled to reimbursement from the other Party of its reasonable attorneys' fees and court costs, including appeals, if any.

(b) This Lease constitutes the entire agreement and understanding of the Parties, and supersedes all offers, negotiations and other agreements with respect to the subject matter and property covered by this Lease. Any amendments to this Lease must be in writing and executed by both Parties.

(c) Landlord agrees to reasonably cooperate with Tenant, at Tenant's sole cost and expense, in executing any documents necessary to protect Tenant's rights in or use of the Premises. A Memorandum of Lease in substantially the form attached hereto as Exhibit E may be recorded in place of this Lease by Tenant.

(d) Tenant may obtain title insurance on its interest in the Premises. Landlord agrees to execute such commercially-reasonable documents as the title company may reasonably require in connection therewith.

(e) This Lease shall be construed in accordance with the laws of the state in which the Property is located, without regard to the conflicts of law principles of such state.

(f) If any term of this Lease is found to be void or invalid, the remaining terms of this Lease shall continue in full force and effect. Any questions of particular interpretation shall not be interpreted against the drafter, but rather in accordance with the fair meaning thereof. No provision of this Lease will be deemed waived by either Party unless expressly waived in writing by the waiving Party. No waiver shall be implied by delay or any other act or omission of either Party. No waiver by either Party of any provision of this Lease shall be deemed a waiver of such provision with respect to any subsequent matter relating to such provision.

(g) The persons who have executed this Lease represent and warrant that they are duly authorized to execute this Lease in their individual or representative capacities as indicated.

(h) This Lease may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

(i) All Exhibits referred to herein and any Addenda are incorporated herein for all purposes. The Parties understand and acknowledge that Exhibits A and B may be attached to this Lease and the Memorandum of Lease, in preliminary form. Accordingly, the Parties agree that upon the preparation of final, more complete exhibits, Exhibits A and/or B, as the case may be, may be replaced by Tenant with such final, more complete exhibit(s).

(j) If either Party is represented by any broker or any other leasing agent, such Party is responsible for all commission fee or other payment to such agent, and agrees to indemnify and hold the other Party harmless from all claims by such broker or anyone claiming through such broker.

LANDLORD: City of Evanston, an Illinois municipal corporation

By: Wally Bohkiewicz
Printed Name: Wally Bohkiewicz
Title: City Manager
Date: 26 January 2010

TENANT: Clear Wireless LLC, a Nevada limited liability company

By: [Signature]
Printed Name: Jason Caliento
Title: Director - Network Deployment
Date: 6/1/10

EXHIBIT A
Legal Description

The Property is legally described as follows:

LOT 6 AND THE WEST 45 FEET OF THE NORTH 100 FEET OF LOT 5 IN BLOCK 4 IN E.T. PAUL'S ADDITION TO EVANSTON, IN COOK COUNTY, ILLINOIS. (IN THE WEST ½ OF THE NORTHEAST ¼ OF SECTION 11, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN.)

COMMONLY KNOWN AS: 2830 CENTRAL ST., EVANSTON, ILLINOIS.

EXHIBIT B

The location of the Premises within the Property (together with access and utilities) is more particularly described and depicted as follows:

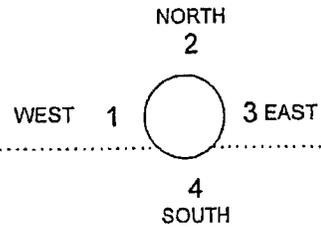
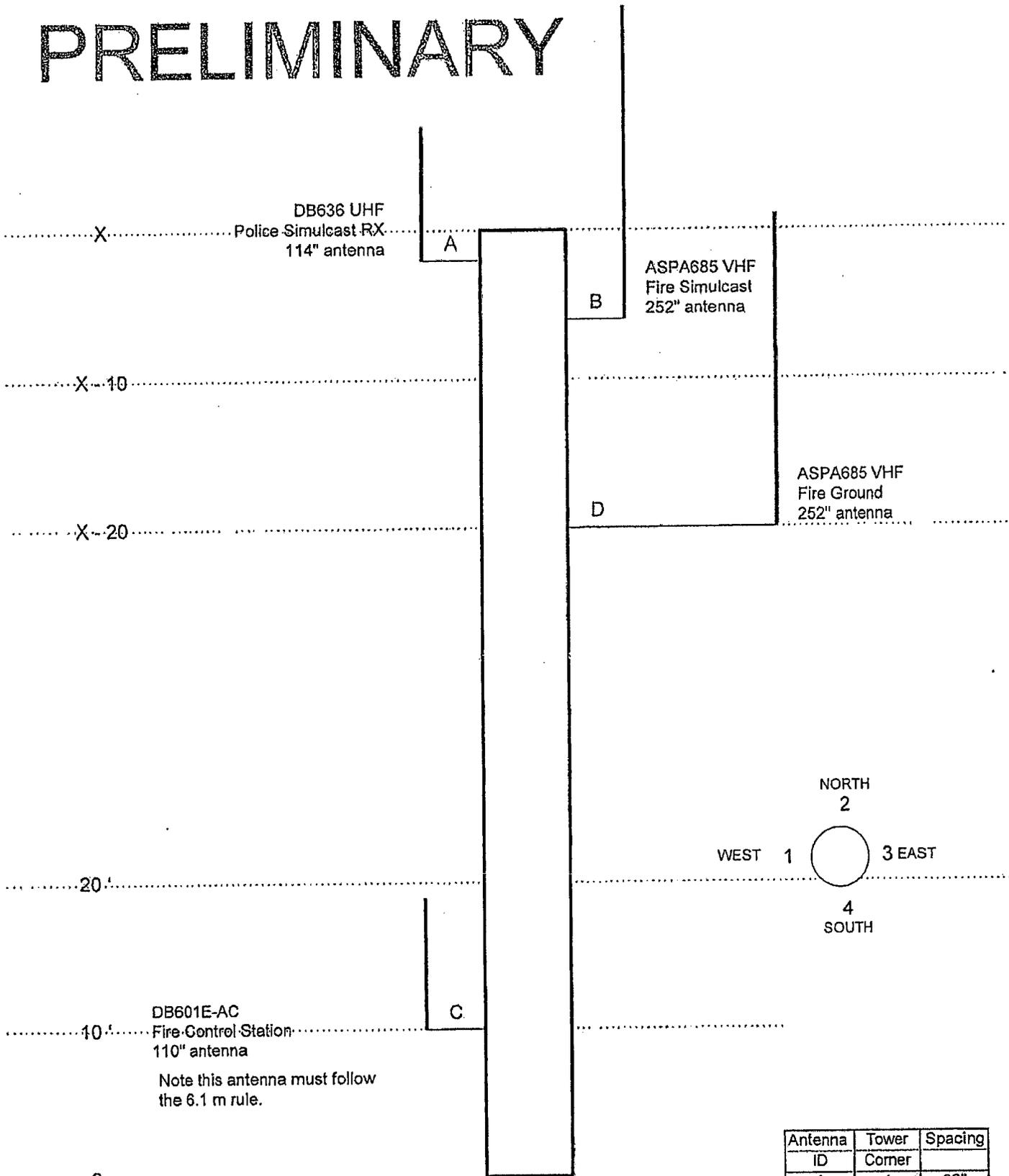
[Attached.]

EXHIBIT C

LAYOUT

[Attached.]

PRELIMINARY



Antenna ID	Tower Corner	Spacing
A	1	36"
B	4	36"
C	3	36"
D	2	36"

**City of Evanston Proposed
Pole Layout Station 5
MAB 10-08-07**

EXHIBIT D

WORK PLAN

[This page intentionally left blank.]

EXHIBIT E

MEMORANDUM OF LEASE

Assessor's Parcel Number 10-11-202-008-0000, 10-11-202-030-0000

Between the City of Evanston, an Illinois municipal corporation ("Landlord") and Clear Wireless LLC, a Nevada limited liability company ("Tenant")

A SITE LEASE (the "Lease") by and between the City of Evanston, an Illinois municipal corporation ("Landlord") and Clear Wireless LLC, a Nevada limited liability company ("Tenant") was made regarding a portion of the following property:

See Attached Exhibit "A" incorporated herein for all purposes

The Lease is for a term of five (5) years and will commence on the date as set forth in the Lease (the "Commencement Date"). Tenant shall have the right to extend this Lease for five (5) additional and successive five-year terms.

IN WITNESS WHEREOF, the Parties hereto have respectively executed this memorandum effective as of the date of the last Party to sign.

LANDLORD: City of Evanston, an Illinois municipal corporation

By: 
Printed Name: Wally Bobkiewicz
Title: City Manager
Date: 26 January 2010

TENANT: Clear Wireless LLC, a Nevada limited liability company

By: 
Printed Name: Jason Caliento
Title: Director - Network Deployment
Date: 6/1/10

[Notary block for Landlord]

[Landlord Notary block for a Corporation, Partnership, or Limited Liability Company]

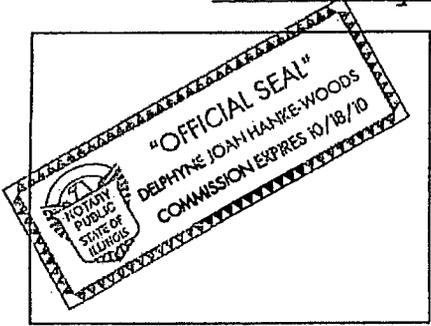
STATE OF Illinois)
) ss.
COUNTY OF Cook)

This instrument was acknowledged before me on 26 January 2010 by Wally Bobkiewicz, [title] City Manager of the City of Evanston, a municipal [type of entity], on behalf of said City of Evanston [name of entity], corporation

Dated: 26 January 2010

Delphyne Joan Hanke-Woods

Notary Public
Print Name Delphyne Joan Hanke-Woods
My commission expires 18 October 2010



(Use this space for notary stamp/seal)

[Notary block for Tenant]

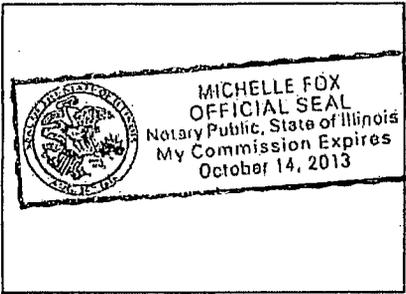
STATE OF Illinois)
) ss.
COUNTY OF Cook)

I certify that I know or have satisfactory evidence that Jason Caliente is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Director of Clear Wireless LLC, a Nevada limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 6/1/10

Michelle Fox

Notary Public
Print Name _____
My commission expires _____



(Use this space for notary stamp/seal)

**Memorandum of Lease Exhibit A
Legal Description**

The Property is legally described as follows:

LOT 6 AND THE WEST 45 FEET OF THE NORTH 100 FEET OF LOT 5 IN BLOCK 4 IN E.T. PAUL'S ADDITION TO EVANSTON, IN COOK COUNTY, ILLINOIS. (IN THE WEST ¼ OF THE NORTHEAST ¼ OF SECTION 11, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN.)

COMMONLY KNOWN AS: 2830 CENTRAL ST., EVANSTON, ILLINOIS.