

## OPTION AND LEASE AGREEMENT

THIS OPTION AND LEASE AGREEMENT ("**Hub Site Agreement**") is made effective as of the date of the latter signature hereof ("**Execution Date**") and is by and between ATC Outdoor DAS, LLC, a Delaware Limited Liability Company ("Optionee/Tenant") and Town of Chilmark, by and through its Board of Selectmen and Executive Secretary "Optionor/Landlord".

### RECITALS

WHEREAS, Optionor is the owner of that certain parcel of land ("**Property**") located in the County of Dukes, Commonwealth of Massachusetts, as more particularly described on Exhibit A; and

WHEREAS, Optionor desires to grant to Optionee an option to lease from Optionor a portion of the Property ("**Premises**"), together with easements for ingress and egress and the installation and maintenance of utilities ("**Easement**") both being located as shown on Exhibit B (the Premises and the Easement will collectively be referred to herein as the "**Site**").

WHEREAS, there is an agreement between the Towns of Chilmark, Aquinnah and/or West Tisbury, Massachusetts and ATC Outdoor DAS, LLC regarding the Installation of an Up Island Distributed Antenna System and Right of Way License (the "DAS Agreement"), which necessitates this Hub Site Agreement.

NOW, THEREFORE, in consideration of the sum of \$10.00, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt, adequacy and sufficiency of all of which are hereby acknowledged, the parties hereto hereby agree as follows:

**1. Business Terms.** For the purposes of this Hub Site Agreement, the following capitalized terms have the meanings set forth in this paragraph 1.

(a) **Optionee/Tenant:** ATC Outdoor DAS, LLC, a Delaware limited liability company.

(b) **Optionee's/Tenant's Notice Address:** ATC Outdoor DAS, LLC  
10 President Way  
Woburn, MA 01810  
Attn: Land Management

with a copy to: American Tower Corporation  
116 Huntington Ave.  
Boston, MA 02116  
Attn: General Counsel

(c) **Optionor/Landlord:** Town of Chilmark

(d) **Optionor's/Landlord's Address:** Office of the Chilmark Board of Selectmen  
  
401 Middle Road  
  
Chilmark, MA 02535-0119

(e) **Option Commencement Date:** The Execution Date of this Hub Site Agreement by both parties.

(f) **Option Consideration (Initial Option Term):** \$10.00

(h) **Initial Option Term:** 3 years from the Option Commencement Date.

(i) **Commencement Date:** The date specified in the written notice by Optionee to Optionor exercising the Option constitutes the Commencement Date of the Lease. The Commencement Date cannot be later than three (3) years from the Option Commencement Date, and cannot be more than 30 days from the date of the written notice specifying the Commencement Date.

(j) **Rent:** The annual amount of \$14,000.00, increased on the anniversary of the Commencement Date by an amount equal to 3% over the Rent payable during the immediately preceding year, plus such additional consideration as provided in Section 3.

(k) **Initial Base Rent:** Rent due to Landlord from Tenant first Lease Year.

(l) **Lease Year:** The first Lease Year will be the period commencing on the Commencement Date and ending on the day immediately preceding the one-year anniversary of the Commencement Date. Each Lease Year thereafter will be a 12 successive calendar month period.

(m) **Term:** The Term shall commence on the Commencement Date and expire upon the date that the DAS Agreement between the Towns of Chilmark, Aquinnah and/or West Tisbury, Massachusetts and ATC Outdoor DAS, LLC regarding the Installation of an Up Island Distributed Antenna System and Right of Way License expires or is terminated.

## I. OPTION

2. **Grant of Option.** Optionor hereby gives and grants unto Optionee and its assigns, an exclusive and irrevocable option to lease the Premises and use the Easement pursuant to the terms of this Hub Site Agreement (“**Option**”). Optionor agrees and acknowledges that Optionee may, at Optionee’s sole cost, have a metes and bounds survey of the Site prepared and that the legal description of the Site as shown on such survey will thereafter become the legal description of the Site.

3. **Initial Option Term.** The Initial Option Term is as set forth in paragraph 1(h).

4. **Intentionally Omitted.**

5. **Consideration for Option.** Option Consideration is due and payable in full within 30 days of the Option Commencement Date.

6. **Optionor’s Representations and Warranties.** As an inducement for Optionee to enter into and be bound by the terms of this Option, Optionor represents and warrants to Optionee and Optionee’s successors and assigns that:

(a) Optionee may at Optionee's sole cost and expense procure an abstract of title or a commitment to issue a policy of title insurance (collectively “**Title**”) on the Property. In the event that Optionee reasonably objects to any defect or cloud on Title, which would, or could, reasonably be expected to have a material adverse effect on Optionee’s use of the Property as contemplated herein,

Optionee may declare this Option to be void and of no further force or effect whereupon this Option will terminate and there will be no further liability of Optionee to Optionor accruing hereunder;

(b) Optionor has the authority to enter into and be bound by the terms of this Option;

(c) There are no pending or threatened administrative actions including bankruptcy or insolvency proceedings under state or federal law, suits, claims or causes of action against Optionor or which may otherwise affect the Property; and

(d) The Property is not presently subject to an option, lease or other contract which may adversely affect Optionor's ability to fulfill its obligations under this Option and Optionor covenants that it will not grant an option or enter into any contract which will materially affect the Optionee's use of the Property as contemplated herein, until this Option expires or is terminated by Optionee.

7. **Taxes.** Optionee will pay any ad valorem taxes or other special assessment taxes attributable to the Property and the Easement during the Initial Option Term and any further renewal option term of this Option that may be agreed upon by the parties.

8. **Liquidated Damages.** Optionee is not obligated to exercise this Option. In the event the Option is not exercised, Optionor's sole compensation and damages will be fixed and liquidated to the sums paid by Optionee to Optionor as consideration for this Option. Furthermore, Optionor hereby expressly waives any other remedies it may have for a breach of this Option by Optionee including specific performance and damages for breach of contract.

9. **Inspections and Investigations.** After the date of this Option, Optionor hereby grants to Optionee, its officers, agents, employees and independent contractors the right and privilege to enter upon the Property, during normal business hours and with reasonable prior notice by Optionee to Optionor, which may be given by telephone or email, to perform or cause to be performed environmental audits, engineering studies and to conduct a survey of the Property and/or the Site. Optionor will provide Optionee with any necessary keys or access codes to the Property if needed for ingress and egress, and Optionee will not unreasonably interfere with Optionor's use of the Property in conducting these activities. Notwithstanding any provision contained herein to the contrary, Optionee will not perform any test borings of the soil without the prior written consent of Optionor, which consent will not be unreasonably withheld, delayed or conditioned.

10. **Further Acts.** Optionor and Optionee will reasonably cooperate with each other in executing any further documents reasonably necessary to effectuate the intent and purposes of this Hub Site Agreement, including the execution and delivery of a Memorandum of Option and Lease in a form acceptable to Optionee and Optionor

11. **Exercise of Option.** Optionee may exercise its Option granted hereunder by tendering written notice to Optionor of Optionee's intent to exercise the Option, and setting forth the Commencement Date. From and immediately after the Commencement Date, the terms and conditions of the Hub Site Agreement applying to the leasing of the Premises and use of the Easement governs the relationship of the parties, and this Hub Site Agreement will thereafter be referred to as the "***Lease***", Optionor will thereafter be referred to as "***Landlord***" and Optionee will thereafter be referred to as "***Tenant***".

## II. GROUND LEASE

### 1. Use.

(a) Tenant shall be permitted to use the Premises in accordance with the Town of Chilmark's Special Permit, for the purpose of constructing, maintaining, securing and operating a communications facility, including the construction or installation and maintenance of communications equipment, equipment cabinets or shelters, radio transmitting and receiving antennas, and related facilities on the Premises (collectively, "*Communications Facilities*"), to facilitate the use of the Premises as a site for the transmission and receipt of wireless communication signals including by way of example, but not limited to, voice, data and internet transmissions and for any other uses which are incidental thereto ("*Intended Use*"). Tenant may, at its sole expense, use any and all reasonable and appropriate means of restricting access to the Premises or the Communications Facilities, which are permitted by applicable laws, rules and regulations, including, without limitation, construction of a fence. Tenant may, at Tenant's sole expense, construct Tenant's Communications Facilities on the Premises and Tenant shall maintain the Premises in a reasonable condition throughout the Term, reasonable wear and tear and damage from casualty and condemnation excepted. Landlord shall cooperate with Tenant in executing any documents necessary to facilitate Tenant's and Tenant's permitted sublessees' and permitted licensees' use of the Premises in accordance with this Lease and will take such further action as Tenant may be reasonably required to effect the intent of this Lease.

(b) Tenant's obligations hereunder are expressly conditioned upon Tenant's ability to obtain, maintain, renew and reinstate all of the certificates, permits, licenses, zoning, variances and other approvals which may be required from any federal, state, county, or local authority, including the Town of Chilmark in its governmental capacity, as well as any necessary easements from any third-party (collectively, "*Approvals*"). Landlord shall cooperate with Tenant, at no out-of-pocket expense to Landlord, in its efforts to obtain the Approvals, and Landlord shall take no action which would adversely affect the status of the Premises with respect to Tenant's Intended Use thereof. If (i) any application by Tenant for any one of the Approvals is finally denied or rejected, or is otherwise withdrawn or terminated or (ii) if there shall exist any matters affecting Landlord's title to the Property which prevent Tenant from using the Premises for Tenant's Intended Use, then Tenant shall have the right to terminate this Lease upon written notice to Landlord and Landlord shall, within 30 days of such termination, refund to Tenant any Rent paid by Tenant applicable to the period subsequent to such termination.

(c) Landlord agrees to act reasonably and cooperate with Tenant to execute within 15 days after receipt of a written request from Tenant any and all documents reasonably necessary in Tenant's reasonable judgment to protect the rights of Tenant's permitted sublessees or permitted licensees under this Lease and to facilitate Tenant's use of the Premises and the Easement as contemplated under this Lease or to allow Tenant to obtain, maintain, renew or reinstate the Approvals. All documents provided by Tenant for execution shall be prepared by Tenant on Tenant's standard forms and acceptable to Landlord, in its reasonable judgment, or, in the case of zoning applications or other situations regulated by governmental bodies, on forms specified by such governmental body. Documents provided for execution may include without limitation, affidavits relating to title curative measures, non-disturbance agreements, memorandums of lease, memorandums of amendment, and zoning applications and other related documents required to obtain zoning approval.

(d) At the Tenant's expense, Tenant shall install and maintain a vegetative screen around the Site, as required by the Special Permit.

2. Term. The Term of this Lease shall be as set forth in paragraph 1(m).

### 3. Consideration.

(a) Commencing on the Commencement Date, Rent shall be due and payable in advance on the first day of each calendar month to Landlord at Landlord's Payment Address. Rent shall be prorated for any partial months, including, without limitation, the month in which the Commencement Date occurs.

(b) If this Lease is terminated at a time other than on the day immediately preceding the anniversary of the Commencement Date, Rent shall be prorated as of the effective date of such termination ("**Termination Date**"). If this Lease is terminated for any reason other than nonpayment of Rent or default by the Tenant, all Rent paid in advance for the period after the Termination Date shall be refunded to Tenant by Landlord within 30 days of the Termination Date.

(c) As additional consideration, Tenant may provide additional supplies and services for the installation and maintenance of the municipal fiber network of Landlord, the Town of West Tisbury, and/or the Town of Aquinnah, and as may be agreed to by Tenant, the Landlord, the Town of West Tisbury and/or the Town of Aquinnah, the reasonable value of which will be calculated in accordance with this Paragraph 3(d) and in no event will it exceed the sum of \$200,000.00 ("**Additional Consideration**"). The Additional Consideration will only be due if Tenant executes a Collocation Agreement with a Permitted TC Provider (as defined in the DAS Agreement) and such Permitted TC Provider commences operations utilizing the Communications Facilities within two years of the Commencement Date. The amount of Additional Consideration will be determined by the number of nodes Tenant installs in accordance with the DAS Agreement. In the event that Tenant installs less than 55 nodes, the Additional Consideration will be prorated and the amount of the Additional Consideration will equal \$3636.36 multiplied by the number of nodes actually installed, but in no event will the Additional Consideration be less than \$50,909.04. Prior to the first anniversary of the Commencement Date, Tenant will provide Landlord with a statement calculating the amount of the Additional Consideration due, the amount already expended, and the balance of the Additional Consideration due as of the first anniversary of the Commencement Date. On the first anniversary of the Commencement Date, the balance of the Additional Consideration will be increased by 3%. If the balance of the Additional Consideration is not expended by the third anniversary of the Commencement Date, the balance will accrue until the next point in time that Tenant is performing construction on the DAS in accordance with the DAS Agreement, provided, however that the balance will not be subject to any additional annual escalation.

(d) As Additional Rent, Tenant will pay Landlord an annual payment of \$600.00 for each node tenancy on the DAS installed pursuant to the DAS Agreement according to the schedule below. The number of node tenancies for the DAS will be determined annually as of the date that is 45 days prior to the date the Rent is due, (the "**Determination Date**") and will be calculated by Tenant by determining the actual number nodes on the DAS each Permitted TC Provider (as defined in the DAS Agreement) has entered into a Collocation Agreement (as defined in the DAS Agreement) and has commenced its operations as of the Determination Date. The annual payment will be determined in accordance with the following schedule:

(i) If the DAS nodes installed pursuant to the DAS Agreement are located in each of Aquinnah, Chilmark and West Tisbury, Tenant will pay Landlord the annual payment of \$600.00 for each node tenancy in excess of 110 node tenancies; or

(ii) If the DAS nodes installed pursuant to the DAS Agreement are located only in Chilmark, Tenant will pay the Landlord an annual payment of \$600.00 for each node tenancy in excess of 48 node tenancies; or

(iii) In the event that DAS nodes installed pursuant to the DAS Agreement are located only in Aquinnah and Chilmark, Tenant will pay the Landlord an annual payment of \$600.00 for each node tenancy in excess of 64 node tenancies on the DAS Agreement.

4. **Landlord's Representations and Warranties.** Landlord represents and warrants to the best of its knowledge that (i) Tenant's Intended Use of the Premises is not prohibited by any covenants, restrictions, reciprocal easements, servitudes, or subdivision rules or regulations; (ii) there are no easements, licenses, rights of use or other encumbrances on the Premises which will interfere with or constructively prohibit Tenant's Intended Use of the Premises; and (iii) the execution of this Lease by Landlord will not cause a breach or an event of default of any other agreement to which Landlord is a party.

5. **Conditions Subsequent.** If Tenant's Intended Use of the Premises is actually or constructively prohibited through no fault of Tenant, then without limiting any other remedy in law or equity, Tenant shall have the option to terminate this Lease upon written notice to Landlord.

6. **Interference.** Landlord shall not use, nor shall Landlord permit its tenants, licensees, invitees or agents (individually, a "Landlord Party") to use any portion of the Property in any way which interferes with Tenant's Intended Use of the Premises. Interference by a Landlord Party shall be deemed a material breach of this Lease by Landlord and Landlord shall have the responsibility to terminate said interference immediately upon written notice from Tenant. Anything to the contrary in this Lease notwithstanding, the cure periods provided for in paragraph 9 hereof shall not be applicable to failure by Landlord to fulfill its obligations under this paragraph 7. If any such interference does not cease or is not rectified as soon as possible, but in no event longer than 5 business days after Tenant's written notice to Landlord, Landlord acknowledges that continuing interference will cause irreparable injury to Tenant, and Tenant shall have the right, in addition to any other rights that it may have at law or in equity, to bring action to enjoin such interference or to terminate this Lease immediately upon notice to Landlord.

7. **Improvements; Utilities; Access.**

(a) Tenant shall have the right, at Tenant's sole cost and expense, to erect and maintain on the Premises improvements, personal property and facilities, including without limitation, the Communications Facilities and other related facilities. The Communications Facilities shall remain the exclusive property of the Tenant throughout the term as well as upon the expiration or termination of this Lease. Tenant shall remove all of the aboveground portions of the Communications Facilities, and upon the written request of Landlord, any other improvements, including the removal of any underground elements, within 60 business days following the expiration or termination of this Lease. Landlord grants Tenant the right to clear all trees, undergrowth or other obstructions and to trim, cut, and keep trimmed and cut all tree limbs or undergrowth which may interfere with or fall upon the Communications Facilities, the Premises or the Easement. Landlord grants Tenant a temporary, non-exclusive easement in, over, across and through the Property and other real property owned by Landlord as may be reasonably required for construction, installation, maintenance, and operation of the Communications Facilities as coordinated with the Landlord.

(b) Tenant shall have the right to install utilities, at Tenant's expense, and to improve present utilities on the Premises. Tenant may also install, at Tenant's expense a single emergency power generator. Tenant shall have the right to permanently place utilities on (or to bring utilities across or under) the Easement and Premises to service the Premises and the Communications Facilities. If utilities necessary to serve the equipment of Tenant or the equipment of Tenant's licensee(s) or sublessee(s) cannot be located within the Premises or the Easement, Landlord agrees to cooperate with Tenant and to act reasonably in its consideration of alternate locations for utilities on the Property or other real property owned by Landlord, without requiring additional compensation from Tenant or Tenant's licensee(s) or

sublessee(s). Landlord shall, upon Tenant's request, execute a separate recordable written easement or lease to the utility company providing such service evidencing this right.

(c) Landlord represents and warrants to Tenant that Tenant shall at all times during this Lease enjoy ingress, egress, and access from the Premises 24 hours a day, 7 days a week, to an open and improved public road which shall be adequate to service the Premises and the Communications Facilities. If no such public road exists or if such public road ceases to exist in the future, Landlord will cooperate with Tenant to grant an appropriate easement to Tenant, Tenant's licensee(s), sublessee(s) and assigns so that Tenant may, at its own expense, construct a suitable access drive to the Premises and the Communications Facilities. To the degree such access is across other property owned by Landlord, Landlord will act reasonably to execute an easement evidencing this right without requiring additional compensation from Tenant. Landlord shall maintain access to such easement and the Easement in a free and open condition so that no interference is caused to Tenant by other Tenants, licensees, invitees or agents of Landlord which may utilize the easement. To the extent damage (including wear and tear caused by normal usage) to the Easement or any other route contemplated hereunder intended to provide Tenant with access to the Premises and the Communications Facilities is caused by Landlord or Landlord's Tenants, licensees, invitees or agents, Landlord shall repair same at its own expense.

**8. Termination.** This Lease may be terminated, without any penalty or further liability upon written notice as follows:

(a) By either party upon a default of any covenant or term hereof by the other party which default is not cured within 60 days of receipt of written notice of default (without, however, limiting any other rights available to the parties in law or equity); provided, that if the defaulting party commences efforts to cure the default within such period and diligently pursues such cure, the non-defaulting party shall no longer be entitled to declare a default;

(b) Upon 30 days' written notice by Tenant to Landlord if Tenant is unable to obtain, maintain, renew or reinstate through no fault of Tenant any agreement, permit or other Approvals necessary to the construction and operation of the Communications Facilities or to Tenant's Intended Use; or;

(c) By Tenant upon 30 days' written notice from Tenant to Landlord for economic reasons.

**9. Licenses; Subleases.** Tenant at its discretion shall have the right, with prior notice to Landlord, to license or sublease all or portion of the Premises, Easement or the Communications Facilities to a Permitted TC Provider for the Intended Use. Tenant's licensee(s) and sublessee(s) shall enjoy the same rights to modify the Communications Facilities and to erect additional improvements on the Premises as the Tenant under this Hub Site Agreement. Tenant's licensee(s) and sublessee(s) shall be entitled to all rights of ingress and egress to the Premises and the right to install utilities on the Premises as if said licensee(s) or sublessee(s) were Tenant under this Lease. Tenant's license or sublease of all or portion of the Premises, Easement or the Communications Facilities shall not relieve Tenant of any of its responsibilities, obligations or commitments under this Hub Site Agreement.

**10. Taxes.** Tenant shall pay any personal property taxes assessed on or attributable to the Communications Facilities.

**11. Damage or Destruction.** If the Premises or the Communications Facilities are destroyed or damaged, through no fault of the Tenant, so as to hinder the Intended Use of the Communications Facilities in Tenant's reasonable judgment, Tenant may elect to terminate this Lease as of the date of the

damage or destruction by written notice to Landlord. In such event, all obligations of Tenant to Landlord shall cease to accrue as of the date of the damage or destruction and Tenant shall be entitled to the reimbursement of any Rent paid by Tenant applicable to the period subsequent to such damage or destruction upon the completion of its removal obligations in accordance with Paragraph 7(a) above.

**12. Insurance.** Tenant shall purchase and maintain in full force and effect throughout the Term such insurance as required in the DAS Agreement. In addition, upon commencement, Tenant will provide Landlord with a bond in the amount of \$25,000.00 for the projected removal costs of its Communications Facilities, and will keep such a bond in effect throughout the Term.

**13. Environmental Compliance.** Landlord represents, warrants and covenants that Landlord will not, and will not permit any third party, in violation of any Law, to use, generate, store or dispose of any contaminants, oils, asbestos, PCB's, hazardous substances or wastes as defined by federal, state or local environmental laws, regulations or administrative orders or other materials the removal of which is required or the maintenance of which is prohibited, regulated or penalized by any federal, state or local government authority having jurisdiction over the Property ("*Hazardous Materials*") on, under, about or within the Property in violation of any applicable laws, regulations or administrative orders.

**14. Indemnification.**

(a) General. Except as provided in Section 15(b) below, the Parties' indemnification obligations to one another are set forth in the DAS Agreement, and to the extent applicable to the Hub Site Lease, incorporated herein by reference.

**15. Quiet Enjoyment.** Landlord warrants and represents that it has the full right, power, and authority to execute this Lease. Landlord covenants that Tenant shall have the quiet enjoyment of the Premises during the term of this Lease.

**16. Assignment.**

(a) This Lease shall not be transferred or assigned without the prior written consent of the Landlord, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Tenant may assign this Lease to an affiliate (including an entity owned or controlled by Tenant, an entity which owns or controls Tenant, and/or an entity owned or controlled by an entity which owns or controls Tenant) upon prior notice to Landlord and upon reasonably acceptable demonstration that affiliate has adequate financial and other resources necessary to perform all the Tenant's obligations pursuant to this Lease.

(b) Landlord may not sell, transfer or assign its rights or delegate its duties under this Lease without the prior written consent of Tenant, which consent shall not be unreasonably withheld or delayed.

(c) Any transfer or assignment of Lease shall by its terms be expressly subject to the terms and conditions of this Lease. Any transferee or assignee of this Lease shall be subject to the terms and conditions of this Lease.

**17. Security Interests.** Tenant may mortgage or grant a security interest in this Lease and the Communications Facilities, and may assign this Lease and the Communications Facilities to any such mortgagees or holders of security interests including their successors and assigns (hereinafter collectively referred to as "*Secured Parties*"). If requested by Tenant, Landlord shall execute such consent to such financing as may reasonably be required by Secured Parties. In addition, if requested by Tenant, Landlord agrees to notify Tenant and Tenant's Secured Parties simultaneously of any default by Tenant and to give Secured Parties the same right to cure any default as Tenant. If a termination, disaffirmance or rejection of the Lease by Tenant pursuant to any laws (including any bankruptcy or insolvency laws)



shall occur, or if Landlord shall terminate this Lease for any reason, Landlord will give to Secured Parties prompt notice thereof and Secured Parties shall have the right to enter upon the Premises during a 30-day period commencing upon Secured Parties' receipt of such notice for the purpose of removing any Communications Facilities, provided, however that Secured Parties may not remove any portion of the Communications Facilities that are a part of the Municipal Fiber Network or would render the Municipal Fiber Network inoperable.

18. **Successors and Assigns.** This Lease shall run with the Premises and shall be binding upon and inure to the benefit of the parties, their respective heirs, successors, personal representatives and assigns.

19. **Waiver of Landlord's Lien.** Landlord hereby waives any and all lien rights it may have, statutory or otherwise, in and to the Communications Facilities or any portion thereof, regardless of whether or not same is deemed real or personal property under applicable laws, except to the extent that the Communications Facilities are also a part of the Municipal Fiber Network.

20. **Waiver of Incidental and Consequential Damages.** Neither Landlord nor Tenant shall be responsible or liable to the other party for any loss or damage arising from any claim to the extent attributable to any acts of omissions of other licensees or tower users occupying the Communications Facilities or vandalism or for any structural or power failures or destruction or damage to the Communications Facilities except to the extent caused by the negligence or willful misconduct of such party. EXCEPT AS SPECIFICALLY PROVIDED IN THIS LEASE, IN NO EVENT SHALL LANDLORD OR TENANT BE LIABLE TO THE OTHER FOR, AND TENANT AND LANDLORD EACH HEREBY WAIVE THE RIGHT TO RECOVER INCIDENTAL, CONSEQUENTIAL (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF USE OR LOSS OF BUSINESS OPPORTUNITY), PUNITIVE, EXEMPLARY AND SIMILAR DAMAGES.

23. **Miscellaneous.**

- a) A breach or violation of any material provision of this Hub Site Agreement shall be deemed a breach or violation of the entire Hub Site Agreement and shall entitle either party to exercise any and all remedies available to it.
- b) **Notice.** Whenever any party shall desire to give or provide any notice, demand, request or other communication with respect to this Hub Site Agreement, each such notice, demand, request, or other communication shall be in writing and shall not be effective for any purpose unless same shall be given or sent by personal delivery to the party or parties to whom such notice, demand, request or other communication is directed or by mailing the same to such party or parties by certified mail, postage prepaid, return receipt requested, or via a nationally recognized overnight courier service, addressed as follows:

If to the Town of Chilmark:

Office of the Chilmark Board of Selectmen  
401 Middle Road  
Chilmark, MA 02535-0119

If to ATC Outdoor DAS, LLC:

ATC Outdoor DAS, LLC

116 Huntington Avenue  
Boston, MA 02116  
Attn: Law Department

With a copy to:

ATC Outdoor DAS, LLC  
400 Regency Forest Drive  
Cary, NC 27518  
Attn: Director, DAS Solutions

Service may also be in the manner permitted for service of civil process. Any change in an address must include a valid street address in order for said change to be effective.

- c) **Dispute Resolution.** This Lease shall be construed under and governed by the laws of the Commonwealth of Massachusetts, without regard to its rules regarding choice of laws. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this Lease. Unless otherwise expressly provided for in this Lease, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under this Lease between the Parties.

Any dispute that arises under or with respect to this Lease shall in the first instance be the subject of informal negotiations between the Landlord and the Tenant, who shall use their respective best efforts to resolve such dispute. The period for informal negotiations shall not exceed fourteen (14) calendar days from the time the dispute arises, unless it is modified by written Lease of the Parties. The dispute shall be considered to have arisen when one Party sends the other a written notice that identifies with particularity the nature, and the acts(s) or omission(s) forming the basis of, the dispute.

In the event that the Parties cannot resolve a dispute by informal negotiations, either Party may seek judicial enforcement. Notwithstanding the foregoing, injunctive relief may be sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this Lease. In any judicial proceeding, the "Prevailing Party" shall be entitled to payment from the opposing party of its reasonable costs and fees, including but not limited to attorneys' fees and travel expenses, arising from the civil action. As used herein, the phrase "Prevailing Party" shall mean the party who, in the reasonable discretion of the finder of fact, most substantially prevails in its claims or defenses in the civil action. Venue for any judicial proceeding involving a dispute arising from this Lease shall be Dukes County Superior Court, Massachusetts. This Section shall not be construed to limit any rights a Party may have to intervene or join in any action, whether litigation or alternative dispute resolution, wherever pending, relating to the work in any way in which the other is a Party.

The Tenant shall diligently carry on its obligations under this Lease during any dispute resolution proceedings, unless otherwise agreed to by the Landlord in writing. No dispute under this Lease shall give the Tenant the right to terminate its obligations under this Lease pending dispute resolution.

- d) Each party agrees to furnish to the other, within 30 days after request, such estoppel information as the other may reasonably request.

- e) Except for the terms of the DAS Agreement specifically incorporated herein, this Lease constitutes the entire agreement and understanding of Landlord and Tenant with respect to the subject matter of this Lease, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease must be in writing and executed and delivered by Landlord and Tenant.
  
- f) If either Landlord or Tenant is represented by a real estate broker in this transaction, that party is fully responsible for any fees due such broker and will hold the other party harmless from any claims for commission by such broker.  
If any term of the Lease is found to be void or invalid, such invalidity will not affect the remaining terms of the Lease, which will continue in full force and effect.
- g) Landlord agrees to execute a Memorandum of Lease in a form supplied by Tenant which Tenant may file of record in the property records in the county in which the Property is located. Landlord shall also execute all other documents necessary and/or required by law to record the Memorandum of Lease in the pertinent county records. If the information included the memorandum of lease changes or if it becomes clear that such information is incorrect or incomplete or if the Lease is amended, Landlord agrees to execute and return to Tenant a recordable amended memorandum of lease in form supplied by Tenant.
  
- h) (Tenant may obtain title insurance on its interest in the Premises, and Landlord shall cooperate by executing any documentation reasonably required by the title insurance company.
  
- i) This Lease may be executed in two or more counterparts, all of which are considered one and the same agreement and become effective when one or more counterparts have been signed by each of the parties, it being understood that all parties need not sign the same counterpart.
  
- j) Failure or delay on the part of either party to exercise any right, power or privilege hereunder will not operate as a waiver thereof and waiver of breach of any provision hereof under any circumstances will not constitute a waiver of any subsequent breach.
  
- k) Each party executing this Lease acknowledges that it has full power and authority to do so and that the person executing on its behalf has the authority to bind the party.
  
- l) Tenant reserves the right to survey the Property and/or the Premises, and the survey of the Property, Premises and/or Easement will then become Exhibit B-1, which will be attached hereto and made a part hereof, and will control in the event of discrepancies between Exhibit B-1 and Exhibit A and/or Exhibit B. Landlord agrees to execute an amended memorandum of lease in recordable form containing the new legal descriptions of the Premises and the Easement if so requested by Tenant. The parties agree that a scanned or electronically reproduced copy or image of this Hub Site Agreement will be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence hereof notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Hub Site Agreement and without the requirement that the unavailability of such original, executed counterpart of this Hub Site Agreement first be proven.
  
- m) Unless expressly provided to the contrary in this Hub Site Agreement, each and every one of the rights, remedies, and benefits provided by this Hub Site Agreement shall be cumulative and shall not be exclusive of any other such rights, remedies, and benefits allowed by law or in equity.

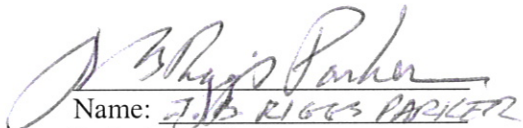
- n) The failure of any party to enforce against the other any term, covenant, or condition of this Hub Site Agreement shall not be deemed a waiver thereof, nor void or affect the right of the aggrieved party to enforce the same term, covenant, or condition on the occasion of any subsequent breach or default; nor shall the failure of either party to exercise any option in this Hub Site Agreement upon any occasion arising therefore be deemed or construed to be a waiver of the right to exercise that same kind of option upon any subsequent occasion.
- o) It is hereby acknowledged and agreed that nothing contained in this Hub Site Agreement or the documents incorporated herein by reference shall be deemed or construed as creating the relationship of principal and agent, partnership or joint venture between the parties hereto, it being agreed that no provision herein contained nor any acts of the parties herein shall be deemed to create any relationship between the parties hereto other than the relationship of Landlord and Tenant.
- p) This Hub Site Agreement shall be construed without regard to the identity of the party who drafted the various provision hereof. Moreover, each and every provision of this Hub Site Agreement shall be construed as though all parties hereto participated equally in the drafting thereof. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting party shall not be applicable hereto.
- q) The headings, titles and captions in this Hub Site Agreement have been inserted only for convenience and in no way define, limit, extend, or describe the scope or intent of this Hub Site Agreement.
- r) There are no third party beneficiaries to this Hub Site Agreement.

-[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, Landlord and Tenant have each executed this Lease as of the respective dates written below.

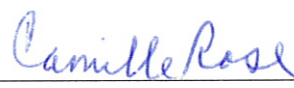
LANDLORD:

**Town of Chilmark**  
**By its Board of Selectmen**

  
Name: J. B. RIGGS PARKER  
Duly Authorized  
2-11-10  
Date

**Joined for purposes of Paragraph 3(d):**

**Town of Aquinnah**  
**By its Board of Selectmen**

  
Name: \_\_\_\_\_  
Duly Authorized  
26 April 2010  
Date

**Town of West Tisbury**  
**By its Board of Selectmen**

\_\_\_\_\_  
Name: \_\_\_\_\_  
Duly Authorized  
\_\_\_\_\_  
Date

NOTARY ACKNOWLEDGMENT FOR CORPORATION:

STATE OF \_\_\_\_\_ Commonwealth of Massachusetts  
County of Dukes County, ss.  
COUNTY OF \_\_\_\_\_ SUBSCRIBED AND SWORN TO, BEFORE ME  
This 26 of April, 20 10 AD.

Before me, Timothy R. Carroll the undersigned, a Notary Public for the Commonwealth State, personally appeared J. G. Riggs Parker & Samille Rose who are the Selectman of Chatham + Aquinnah a \_\_\_\_\_ corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that help he executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official stamp or seal, this 26 day of April, 2010.

Timothy R. Carroll  
Notary Public

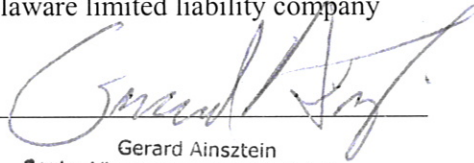
[AFFIX NOTARY SEAL]

My commission expires: \_\_\_\_\_



TENANT:

ATC Outdoor DAS, LLC  
a Delaware limited liability company



By: Gerard Ainsztein  
Senior Vice President-DAS Solutions  
Title: \_\_\_\_\_  
Date: 4-28-10.

STATE OF NORTH CAROLINA

COUNTY OF WAKE

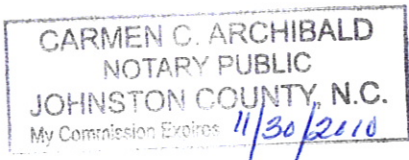
Before me, Carmen C. Archibald the undersigned, a Notary Public for the State, personally appeared Gerard Ainsztein, who is the SVP of ATC Outdoor DAS, LLC, a Delaware limited liability company, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal, this 28<sup>th</sup> day of April, 2010.

Carmen C. Archibald  
Notary Public

[AFFIX NOTARY SEAL]

My commission expires: November 30, 2010



The following exhibits are attached hereto and incorporated herein:

- Exhibit A Description or Depiction of Property
- Exhibit B Description or Depiction of Premises
- Exhibit C Description of Access and Utility Easement



EXHIBIT "A"

DESCRIPTION OR DEPICTION OF PROPERTY

The Property is described and/or depicted as follows:

55 Tabor House Rd, Chilmark, MA.

Map 13 lot 28



