

LAND LEASE AGREEMENT

This Land Lease Agreement ("Agreement") entered into as of the latter of the dates set forth on the signature page hereof, by and between **Town of Marlborough**, a New York municipal corporation maintaining its office at Town Hall, 21 Milton Turnpike, Milton, NY 12547 ("Owner") and **Tarpon Towers II, LLC**, a Delaware limited liability company, duly authorized to transact business in the State of New York, 1001 3rd Ave West, Ste. 420, Bradenton, FL, 34205 ("Tenant"), provides for the granting and leasing of certain property interests on the following terms:

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **PROPERTY.** The property interests hereby leased and granted by Owner ("Premises") shall include the following:
 - a) Real property comprised of approximately two thousand five hundred (2,500) square feet of land
 - b) Non – exclusive easement required to run utility lines and cables
 - c) Non – exclusive easement across Owner's Property (hereinafter defined) for access

IN OR UPON THE Owner's real property ("Owner's Property") located at 7 Woodcrest Lane, Marlborough, Ulster County, New York (Tax Parcel ID: 103.3-3-66.100), which Owner's Property is more particularly described on Exhibit "A" and the Premises which are more particularly described on Exhibit "B" both exhibits of which are attached hereto and incorporated herein by this reference as if fully set forth.

2. **OPTION.** In consideration of the sum of One Thousand Five Hundred and 00/100 Dollars (\$1,500.00) (the "Option Money"), to be paid by Tenant to Owner within thirty (30) days of Tenant's execution of this Agreement, Owner hereby grants to Tenant the exclusive right and option (the "Option") to lease the Premises in accordance with the terms and conditions set forth herein.

Tenant's obligation to pay the Option Money is contingent upon Tenant's receipt of a W-9 form setting forth the tax identification number of Owner, to whom the Option Money is to be made payable as directed in writing by Owner.

OPTION PERIOD. The Option may be exercised at any time within Twelve (12) months of execution of this Agreement by all parties (the "Option Period"). In the event Tenant is unable to obtain all necessary government approvals for construction of the Communications Facility, as defined below, within the Option Period, through no fault of Tenant, then Tenant shall have the right to extend the Option Period for an additional period of twelve (12) months provided Tenant provides notice of the extension to Owner prior to the expiration of the Option Period and an additional payment of One Thousand Five Hundred and No/100 Dollars (\$1,500.00) If Tenant fails to exercise the Option within the Option Period as it may be extended as provided herein, the Option shall terminate and all rights and privileges granted hereunder shall be deemed surrendered. Owner shall retain all money paid for the Option, and no additional money shall be payable from either party to the other.

CHANGES IN PROPERTY DURING THE OPTION PERIOD. If during the Option Period or any extension thereof, or during the term of this Agreement if the Option is exercised, Owner decides to sell, subdivide, or change the status of the zoning of the Premises or Owner's Property, Owner shall immediately notify Tenant in writing. Any sale of Owner's Property shall be subject to Tenant's rights under this Agreement. Owner agrees that during the Option Period or any extension thereof, or during the term of this Agreement if the Option is exercised, Owner shall not initiate or consent to any change in the zoning of Owner's Property or consent to any other restriction that would prevent or limit Tenant from using the Premises for the uses intended by Tenant as hereinafter set forth in this Agreement.

3. **TERM.** The term of this Agreement shall be five (5) years commencing on the date (“Commencement Date”) specified in Tenant’s written notice to Owner that Tenant is exercising the Option, and terminating on the fifth annual anniversary of the Commencement Date (the “Term”), unless otherwise terminated as provided in Paragraph 14. In no event will the Commencement Date be any later than the date that Tenant begins construction of the Communications Facility (as such term is defined in Paragraph 5 below). Tenant shall have the right to extend the Term for eight (8) successive five (5) year periods (each a “Renewal Term” and collectively the “Renewal Terms”) on the same terms and conditions as set forth herein. This Agreement shall automatically be extended for the first four (4) successive Renewal Term unless Tenant notifies Owner, in writing, of its intention not to renew prior to commencement of the succeeding Renewal Term. This Agreement shall automatically be extended for the second four (4) Renewal Terms unless either Tenant or Owner notifies the other, in writing, of its intention not to renew prior to commencement of the succeeding Renewal Term. In no event shall this Agreement continue for longer than forty nine (49) years from the Commencement Date unless otherwise negotiated by the parties at the expiration of this Agreement.
4. **RENT.** (a) Tenant shall pay to Owner an annual lease fee of EIGHTEEN THOUSAND and 00/100 DOLLARS (\$18,000.00) (“Rent”) in monthly payments of ONE THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$1,500.00) on the first day of each month. If the obligations to pay Rent commences or ends on a day other than the first day of the month, then the Rent shall be prorated for that month. The Rent shall increase on each anniversary of the Commencement Date by an amount equal to Two Percent (2.0%) over the Rent in existence for the immediately preceding year. The first Rent payment shall be delivered within twenty (20) business days of the Commencement Date.
- (b) In addition to Rent, Tenant shall pay Owner a fee (each, a “Sublease Fee”) for each third-party user (a “Subtenant”) of the Premises, except as provided for below. The Sublease Fee shall be THREE HUNDRED FIFTY and NO/DOLLARS (\$350.00) per month per Subtenant, payment with Rent. The Sublease Fee for each Subtenant shall commence with the next Rent payment following receipt of the first rent payment by the Subtenant to Tenant pursuant to the agreement (the “Sublease”) between said parties. The Sublease Fee for a Subtenant shall terminate upon the termination or cancellation of the Sublease. Owner acknowledges and agrees that the Rent under Section 4(a), above, includes payment for the first Subtenant and therefore, no Sublease Fee shall be due for the earliest existing Subtenant to use the Premises, as determined by the full execution date of the Subleases. Should the Sublease for such Subtenant expire or be terminated or cancelled, then no Sublease Fee shall be due for the next earliest existing Subtenant, and so forth, and Tenant may cease to pay the Sublease Fee for such Subtenant upon the expiration, cancellation or termination of the prior Subtenant’s Sublease.
- (c) Owner shall also be entitled to a one-time payment of TEN THOUSAND and NO/DOLLARS (\$10,000.00) upon the Commencement Date, which Tenant shall pay with, or before, the first payment of Rent.
5. **USE.** (a) Tenant may use the Premises for the purpose of constructing, installing, removing, replacing, maintaining and operating a communications facility including a one hundred fifty (150) foot tower, subject to such modifications and alterations as required by Tenant (collectively, the “Communications Facility”), provided that Tenant shall not be required or permitted to occupy the Premises. The Communications Facility may include, without limitation, a tower, antenna arrays, dishes, cables, wires, temporary cell sites, equipment shelters and buildings, electronics equipment, generators, and other accessories. Owner shall provide Tenant with twenty – four (24) hour, seven (7) day a week, year-round access to the Property. Tenant shall have the right to park its vehicles on Owner’s Property when Tenant is constructing, removing, replacing, and/or servicing its Communications Facility, but only in a manner which does not interfere with or impede Owner’s use of Owner’s Property which is not subject to this Agreement
- (b) Owner shall timely pay all real property taxes and assessments against the Owner’s Property. Tenant shall pay any increase in real property taxes, directly or via reimbursement to Owner, attributed to the Premises and any improvements thereon upon receipt from Owner of a copy of said tax bill evidencing

such an increase. Tenant shall pay all personal property taxes attributed to the Premises and any improvements thereon.

(c) Tenant, its agents and contractors, are hereby granted the right, at its sole cost and expense, to enter upon the Owner's Property and conduct such studies, as Tenant deems necessary to determine the Premises' suitability for Tenant's intended use. These studies may include surveys, soil tests, environmental evaluations, radio wave propagation measurements, field strength tests and such other analyses and studies, as Tenant deems necessary or desirable or as may be required by any governmental entity which has approval or permitting jurisdiction over the Premises or the intended use. Tenant shall not be liable to Owner or any third party on account of any pre-existing defect or condition on or with respect to Owner's Property, whether or not such defect or condition is disclosed by Tenant's analyses.

(d) Throughout the term of this Agreement, Owner shall cooperate with Tenant and execute all documents required to permit Tenant's intended use of the Premises in compliance with zoning, land use, utility service, and for building regulations except to the extent that Owner (or any of Owner's Boards, employees and/or representatives) has approval and/or permitting jurisdiction over the intended use of the Premises. Owner shall not take any action that would adversely affect Tenant's obtaining or maintaining any governmental approval.

(e) Owner shall have the right to lease space on the Communications Facility from Tenant subject to the following conditions: (i) Owner shall submit an application on Tenant's form detailing the equipment Owner would like to install; (ii) approval of the application shall be subject to the space being available at the time of the application and structural capacity being available to be determined by Tenant's structural engineering vendor with the costs of the analysis to be paid by Owner; (iii) prior to installing any equipment, Owner, as "lessee" shall execute a tower lease agreement with Tenant, as "lessor" and shall provide Tenant with detailed plans and specifications and a certificate of insurance from the contractor performing the installation for Owner. The aforementioned lease agreement shall not include any obligation on the part of Owner to pay rent to Tenant and Owner agrees that despite the execution of the "sublease" for Owner's use, Tenant shall not be required to pay any amounts otherwise required by Section 4(b) for the installation by "Subtenants." Owner further acknowledges that Owner will be utilizing tower capacity that would otherwise be available to lease to Subtenants who would be paying rent to Tenant, and therefore, Tenant shall be permitted to include a reasonable amount of tower capacity for up to three (3) Subtenants, besides Owner, when ordering Owner's structural analysis.

6. **SUBLEASING.** Tenant has the right to sublease all or any portion of the Premises during the Term and Renewal Terms of this Agreement, without Owner's consent, subject to the following conditions (i) the term of the sublease may not extend beyond the Term and any Renewal Terms of this Agreement, (ii) all subleases are subject to all the terms, covenants, and conditions of this Agreement, and (iii) Tenant shall provide notice to Owner upon execution of any sublease.
7. **ASSIGNMENT.** (a) Tenant shall have the right to freely assign or transfer its rights under this Agreement, in whole or in part, to its holding company, at any time, without Owner consent, provided that said holding company has a net worth of at least Twenty Million Dollars (\$20,000,000.00). Tenant shall have the right to assign or transfer its rights under this Agreement, in whole or in part, to any person or any business entity at any time, provided that such person or business entity has a net worth of at least Twenty Million Dollars (\$20,000,000). After delivery by Tenant of an instrument of assumption by an assignee that assumes all of the obligations of Tenant under this Agreement to Owner, along with proof of the above defined net worth, Tenant will be relieved of all liability thereafter.

(b) Tenant may assign, pledge, mortgage or otherwise encumber its interest in this Agreement to any third party (a "Leasehold Lender") as security for any loan to which Owner hereby consents to without requirement of further evidence of such consent, provided, however, that any such Leasehold Lender shall be expressly subject to the terms and conditions of this Agreement. The Leasehold Lender may secure its interest in such a loan by Tenant's grant of (i) a leasehold mortgage and assignment of rents, leases, contracts, etc. (the "Leasehold Mortgage") encumbering all of Tenant's interest in this Agreement and the Premises; (ii) a security agreement and other security documents (the "Security Agreements") that will

encumber and grant a security interest in all of Tenant's now or hereafter existing tangible or intangible personal property located on, derived from, or utilized in connection with the Premises and the Lease (collectively the "Personal Property").

1. **Successors.** Any Leasehold Lender under any note or loan secured by a Leasehold Mortgage on Tenant's interest (or any successor's interest to Tenant's interest) who succeeds to such interest by foreclosure, deed in lieu of foreclosure, or otherwise, may take title to and shall have all of the rights of Tenant under this Agreement including the right to exercise any renewal option(s) or purchase option(s) set forth in this Agreement, and to assign this Agreement as permitted hereunder.

2. **Default Notice.** Owner shall deliver to the initial Leasehold Lender and any subsequent Leasehold Lender(s) a copy of any default notice given by Owner to Tenant under this Agreement. No default notice from Owner to Tenant shall be deemed effective against the Leasehold Lender unless sent to the notice address for Leasehold Lender (if provided to Owner as set forth herein) or as amended from time to time. Until such time as Tenant has notified Owner of the notice address of the Leasehold Lender, it shall be Tenant's obligation to notify any of its lenders. The foregoing sentence shall in no way alleviate Owner's obligations under this section upon Tenant's notification to Owner of the address of the Leasehold Lender, at which time Owner's obligations under this paragraph shall be in full force and affect.

3. **Notice and Curative Rights.** If Tenant defaults on any obligations under this Agreement then Owner shall accept a cure thereof by the Leasehold Lender within the same time periods proscribed for Tenant's cure of a default, commencing upon Leasehold Lender receipt of written notice of such default. If curing any non-monetary default requires possession of the Tenant's interest in Premises then Owner agrees to give the Leasehold Lender a reasonable time to obtain possession of the Premises and to cure such default, provided all monetary defaults and any defaults not requiring possession are timely cured and Leasehold Lender remains current in the payment of rent and other monetary obligations under this Agreement. Notwithstanding the foregoing, until such time as Tenant has notified Owner of the address of the initial Leasehold Lender, the time periods for any Leasehold Lender to cure a default shall run concurrently with the time periods for Tenant to cure a default.

4. **No Amendment.** This Agreement may not be amended in any respect which would be reasonably likely to have a material adverse effect on Leasehold Lender's interest therein and this Agreement will not be surrendered, terminated or cancelled without the prior written consent of the Leasehold Lender.

5. **New Lease.** If this Agreement is terminated for any reason or otherwise rejected in bankruptcy then Owner will enter into a new lease with Leasehold Lender (or its designee) on the same terms as this Agreement as long as Leasehold Lender pays all past due amounts under this Agreement within thirty (30) calendar days of notice of such termination.

6. **Subordination.** Owner hereby agrees that all right, title and interest of the Owner in and to any collateral encumbered by the Leasehold Mortgage or Security Agreements in favor of Leasehold Lender, is hereby subordinated and made subject, subordinate and inferior to the lien and security interest of the Leasehold Mortgage and Security Agreements which subordination shall remain in effect for any modifications or extensions of the Leasehold Mortgage and Security Agreements, provided, however, that Owner's fee simple ownership of the real property defined as Owner's Property under this Agreement is in no way impaired or subordinated..

7. **Initial Leasehold Lender/Third Party Beneficiary.** Any Leasehold Lender shall be considered a third party beneficiary of the terms and conditions of this Agreement. Until such time as Tenant provides notice to Owner of the address of Leasehold Lender, Owner's obligations under section 7(b)(2), above, shall not apply and the time periods for any Leasehold Lender to cure a default shall commence upon Tenant's receipt of a notice of default.

8. **Notice.** Notices to Leasehold Lender shall be sent to such address as affirmatively provided in a later writing to Owner by Tenant and may be updated from time to time by subsequent notices from Tenant to Owner concerning a new address for the initial Leasehold Lender or any subsequent Leasehold Lender.

8. **TRANSFER WARRANTY.** During the term of this Agreement, Owner covenants and agrees that it will not grant, create, or suffer any claim, lien, encumbrance, easement, restriction, or other charge or exception to title to the Owner's Property and the Premises without the prior written consent of Tenant, which consent shall not be unreasonably withheld. Upon Tenant's prior written consent, which consent shall not be unreasonably withheld, Owner may sell, lease, transfer, grant a perpetual easement or otherwise convey all or any part of the Owner's Property to a transferee and such transfer shall be under and subject to this Agreement and all of Tenant's rights hereunder. It is agreed that in no event will Owner allow any sale, lease, transfer, or grant of easement that adversely affects Tenant's rights under this Agreement.
9. **RIGHT OF FIRST REFUSAL.** If at any time after the Effective Date, Owner receives a bona fide written offer from a third party seeking (a) an assignment of this Agreement or the rental stream associated with this Agreement, or (b) to purchase the Premises or Owner's Property (each being a "Purchase Offer"), Owner shall immediately furnish Tenant with a copy of the Purchase Offer, together with a representation that the Purchase Offer is valid, genuine and true in all respects. Tenant shall have thirty (30) days after it receives such copy and representation to match the Purchase Offer and agree in writing to match the terms of the Purchase Offer, or to request additional information. Owner shall provide any reasonably requested additional information, after which Tenant shall have an additional fifteen (15) days to match the Purchase Offer and agree in writing to match the terms of the Purchase Offer. Such writing shall be in the form of a contract similar to the Purchase Offer. If Tenant chooses to exercise this right, Owner shall be obligated to consummate the transaction with Tenant on the terms and conditions of the Purchase Offer and shall not have the right to seek additional offers from new parties or a new offer from the original third party. If Tenant chooses not to exercise this right of first refusal or fails to provide written notice to Owner within the timeframes outlined above, Owner may consummate the transaction pursuant to the Purchase Offer, subject to the terms of this Agreement (including without limitation the terms of this Paragraph 9), to the person or entity that made the Purchase Offer provided that (i) the assignment is on the same terms contained in the Purchase Offer. If such third party modifies the Purchase Offer, Owner shall re-offer to Tenant, pursuant to the procedure set forth in this Paragraph 9, the assignment or purchase on the terms set forth in the Purchase Offer, as amended. The right of first refusal hereunder shall (i) survive any transfer of all or any part of the Property or assignment of all or any part of the Agreement; (ii) bind and inure to the benefit of, Owner and Tenant and their respective heirs, successors and assigns; (iii) run with the land; and (iv) terminate upon the expiration or earlier termination of this Agreement.
10. **UTILITIES.** Tenant shall have the right, at its sole cost and expense, to install or improve utilities servicing Owner's Property (including, but not limited to, the installation of emergency power generators, power lines and utility poles), provided that any such installation or improvement does not interfere with Owner's use of the portions of Owner's Property which are not subject to this Agreement and further provided that Tenant shall, at its sole cost and expense, cause to be installed all meters and sub-meters required for such utilities. Payment for electric service and for telephone or other communication services to the Communications Facility shall be Tenant's responsibility. Owner agrees to cooperate with Tenant in its efforts to obtain, install and connect the Communications Facility to existing utility service at Tenant's expense. In the event that a utility company requires a separate easement for its use, Owner agrees to execute, within fifteen (15) business days of receipt, whatever documents are reasonably necessary to evidence such easement and agrees to the recording of any such easement in the public records for the town or county where Owner's Property is located.
11. **REMOVAL OF COMMUNICATIONS FACILITY.** All portions of the Communication Facility brought onto Owner's Property by Tenant will be and remain Tenant's personal property and, at Tenant's option, may be removed by Tenant at any time during the Term or any Renewal Term. Owner covenants and agrees that no part of the Communication Facility constructed, erected or placed on the Premises by Tenant will become, or be considered as being affixed to or a part of, Owner's Property, it being the specific intention of the Owner that all improvements of every kind and nature constructed, erected or placed by Tenant on the Premises (except for utility improvements pursuant to Paragraph 10 above) will be and remain the property of the Tenant and may be removed by Tenant at any time during the Term or any

Renewal Term. Upon written request of Owner, to be given within ten (10) days of the expiration or earlier termination of this Agreement, or at Tenant's option, all personal property and trade fixtures of Tenant, specifically including towers and buildings, shall be removed by Tenant within sixty (60) days after the expiration or earlier termination of this Agreement. Notwithstanding the foregoing, upon expiration or earlier termination of this Agreement, Tenant shall not be required to remove any foundation more than two (2) feet below grade level. If any governmental entity requires security for such removal as a condition of an approval or permit, Tenant shall post, provide and cause to be maintained such security.

12. **INSURANCE.** Tenant shall maintain commercial general liability insurance and commercial auto liability insurance insuring Tenant against liability for personal injury, death or damage to personal property arising out of use of the Premises by Tenant or use of owned, non-owned or hired automobiles, as the case may be, with combined single limits of not less than One Million Dollars (\$1,000,000) which shall include Owner as an additional insured. Tenant shall also maintain Workers' Compensation insurance providing the statutory benefits and not less than One Million Dollars (\$1,000,000) of Employer's Liability Coverage.
13. **CONDITION OF PROPERTY.** Owner represents that the Owner's Property and all improvements thereto, are in compliance with all building, life/safety, and other laws of any governmental or quasi-governmental authority.
14. **TERMINATION.** Tenant may terminate this Agreement at any time, in its sole discretion by giving written notice thereof to Owner not less than thirty (30) days prior to the Commencement Date. Further, this Agreement may be terminated by Tenant immediately, at any time, upon giving written notice to Owner, if (a) Tenant cannot obtain all governmental certificates, permits, leases or other approvals (collectively, "Approvals") required and/or any easements required from any third party, or (b) any Approval is canceled, terminated, expired or lapsed, or (c) Owner fails to deliver any required non-disturbance agreement or subordination agreement, or (d) Owner breaches a representation or warranty contained in this Agreement, or (e) Owner fails to have proper ownership of the Owner's Property and/or authority to enter into this Agreement, or (f) Tenant determines that the Owner's Property contains substances of the type described in Section 16 of this Agreement, or (g) Tenant determines that the Premises is not appropriate for its operations for economic, environmental or technological reasons.
15. **INDEMNITY.** Owner shall indemnify Tenant and Tenant shall indemnify Owner against, and holds harmless from any and all costs (including reasonable attorney's fees and expenses) and claims, actions, damages, obligations, liabilities and liens which arise out of (a) the breach of this Agreement by the indemnifying party; and (b) the use and/or occupancy of the Premises, or the balance of the Owner's Property, by such indemnifying party. This indemnity shall not apply to any claims, actions, damages, obligations, liabilities and liens arising from any negligent or intentional misconduct of the indemnified party and shall survive the termination of this Agreement.
16. **HAZARDOUS SUBSTANCES.** Owner represents that Owner has no knowledge of any substance, chemical, or waste on the Owner's Property that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Owner shall hold Tenant harmless from and indemnify Tenant against any damage, loss, expense, response costs, or liability, including consultant fees and attorneys' fees resulting from the presence of hazardous substances on, under or around the Owner's Property or resulting from hazardous substances being generated, stored, disposed of, or transported to, on, under, or around the Owner's Property as long as the hazardous substances were not generated, stored, disposed of, or transported by Tenant or its employees, agents or contractors, except for any such substances discovered during Tenant's conduct of due diligence on the Premises and/or Owner's Property which lead Tenant not to proceed further with its Option and with this Agreement.
17. **CASUALTY/CONDEMNATION.** (a) If any portion of the Owner's Property or Communication Facility is damaged by any casualty and such damage adversely affects Tenant's use of the property, or if a

condemning authority takes any portion of the Owner's Property and such taking adversely affects Tenant's use of the Owner's Property, this Agreement shall terminate as of the date of casualty or the date the title vests in the condemning authority, as the case may be if Tenant gives written notice of the same within thirty (30) days after Tenant receives notice of such casualty or taking. The parties shall be entitled to make claims in any condemnation proceeding for value of their respective interests in the Property (which for Tenant may include, where applicable, the value of the Communications Facility, moving expenses, prepaid Rents, and business dislocation expenses). Sale of all or part of the Owner's Property including the Premises to a purchaser with the power of eminent domain in the face of the exercise of the power shall be treated as a taking by condemnation.

(b) Notwithstanding anything in this Agreement to the contrary, in the event of any casualty to or condemnation of the Premises or any portion thereof during such time as any Leasehold Mortgage shall remain unsatisfied, the Leasehold Lender shall be entitled to receive all insurance proceeds and/or condemnation awards (up to the amount of the indebtedness secured by the Leasehold Mortgage) otherwise payable to Tenant or Owner or both and apply them in accordance with the Leasehold Mortgage and shall have the right, but not the obligation, to restore the Premises.

18. **WAIVER OF LANDLORD'S LIEN.** To the extent permitted by law, Owner hereby waives any and all lien rights it has or may have, statutory or otherwise, concerning the Communications Facility or any portion thereof, regardless of whether or not the same is deemed real or personal property under applicable law.
19. **QUIET ENJOYMENT.** Tenant, upon payment of the Rent, shall peaceably and quietly have, hold and enjoy the Property. If, as of the date of execution of this Agreement or hereafter, there is any mortgage, or other encumbrance affecting Owner's Property, then Owner agrees to obtain from the holder of such encumbrance a Non-Disturbance and Attornment Agreement that Tenant shall not be disturbed in its possession, use, and enjoyment of the Property. Owner shall not cause or permit any use of Owner's Property that interferes with or impairs the quality of the communication services being rendered by Tenant from the Premises. Owner shall not grant any other person or entity the right to operate a wireless communication facility on Owner's Property without the express written consent of Tenant. Except in cases of emergency, Owner shall not have access to the Premises unless accompanied by Tenant personnel except in cases of emergency threatening life and/or personal property.
20. **DEFAULT.** Except as expressly limited herein, Owner and Tenant shall each have such remedies for the default of the other party hereto as may be provided at law or equity following written notice of such default and failure to cure the same within thirty (30) days. Notwithstanding anything in this Agreement to the contrary, if, pursuant to the provisions of this Agreement or as a matter of law, Owner shall have the right to terminate this Agreement, then (i) Owner shall take no action to terminate the Agreement without first giving to the Leasehold Lender written notice of such right, a description of the default in reasonable detail, and a reasonable time thereafter in the case of a default susceptible of being cured by the Leasehold Lender, to cure such default or (ii) in the case of a default not so susceptible of being cured, to institute, prosecute and complete foreclosure proceedings to otherwise acquire Tenant's interest under this Agreement; provided however, that the Leasehold Lender shall not be obligated to continue such possession or continue such foreclosure proceedings after such default shall have been cured.
21. **ESTOPPEL CERTIFICATES.** Owner shall from time to time, within thirty (30) days after receipt of request by Tenant, deliver a written statement addressed to Tenant or any Leasehold Lender certifying:
 - (a) that this Agreement is unmodified and in full force and effect (or if modified that this Agreement as so modified is in full force and effect);
 - (b) that the agreement attached to the certificate is a true and correct copy of this Agreement, and all amendments hereto;

(c) that to the knowledge of Owner, Tenant has not previously assigned or hypothecated its rights or interests under this Agreement, except as described in such statement with as much specificity as Owner is able to provide;

(d) the term of this Agreement and the Rent then in effect and any additional charges;

(e) the date through which Tenant has paid the Rent;

(f) that Tenant is not in default under any provision of this Agreement (or if in default, the nature thereof in detail) and a statement as to any outstanding obligations on the part of Tenant and Owner; and

(g) such other matters as are reasonably requested by Tenant.

Without in any way limiting Tenant's remedies which may arise out of Owner's failure to timely provide an estoppel certificate as required herein, Owner's failure to deliver such certificate within such time shall be conclusive (i) that this Agreement is in full force and effect, without modification except as may be represented by Tenant; (ii) that there are no uncured defaults in Tenant's or Owner's performance hereunder; and (iii) that no Rent for the then current month, has been paid in advance by Tenant.

22. MISCELLANEOUS

(a) Owner represents and warrants that Owner has full authority to enter into and sign this Agreement and has good and indefeasible fee simple title to the Owner's Property. Owner represents that the person executing on behalf of Owner has the authority to execute this Agreement on behalf of Owner.

(b) Tenant warrants and represents that it is duly authorized to do business in the state in which the Premises is located and that the undersigned is fully authorized by Tenant to enter into this Agreement on behalf of Tenant.

(c) This Agreement supersedes all prior discussions and negotiations and contains all agreements and understandings between the Owner and Tenant. A writing signed by both parties may only amend this Agreement..

(d) The parties may sign this Agreement in counterparts hereto.

(e) The terms and conditions of this Agreement shall extend to and bind the heirs, personal representatives, successors and assigns of Owner and Tenant.

(f) The prevailing party in any action or proceeding in court to enforce the terms of this Agreement shall be entitled to receive its reasonable attorneys' fees and other reasonable enforcement costs and expenses from the non-prevailing party.

(g) Owner shall execute and acknowledge and deliver to Tenant for recording a Memorandum of this Agreement ("Memorandum") upon Tenant's reasonable request to properly memorialize and give notice of this Agreement in the public records. Tenant will record such Memoranda at Tenant's sole cost and expense.

(h) Rent payments and notices, requests, and other communication shall be in writing and sent by United States Mail, postage prepaid, certified or registered with return receipt requested or by any nationally recognized overnight courier service to the address set forth beneath the signature of each party

below. Any such notice shall be deemed given when deposited in the United States Mail or delivered to such courier service. Notices shall be sent to:

For Tenant: Tarpon Towers II, LLC
1001 3rd Ave W., Ste. 420
Bradenton, FL 34205
Attn: Site Administration
Re: Site ID: NY1138 Marlborough Hwy Dept.

For Owner: Town of Marlborough
c/o Supervisor and Town Clerk
Town Hall
21 Milton Turnpike
Milton, NY 12547

(i) This Agreement shall be construed in accordance with the laws of the state in which the Owner's Property is located.

(j) Each party agrees to furnish to the other, within thirty (30) days after request, such truthful estoppel information as the other may reasonably request.

(k) Owner and Tenant each represent that a real estate broker or other agent in this transaction has not represented them. Each party shall indemnify and hold harmless the other from any claims for commission, fee or other payment by such broker or any other agent claiming to have represented a party herein.

(l) Owner agrees to pay when due all taxes, charges, judgments, liens, claims, assessments, and/or other charges outstanding which are levied upon Owner or the Owner's Property and which are or in the future could become liens upon the Owner's Property, in whole or in any part (individually or collectively, "Liens"). Upon failure of the Owner to pay the Liens when due as provided above, Tenant at its option, may pay said Liens. Tenant shall have the right to setoff and offset any sum so paid by Tenant and any and all costs, expenses and fees (including reasonable attorney's fees) incurred in effecting said payment, against Rents or against any other charges payable by Tenant to Owner under the terms of this Agreement. In the event that Tenant elects not to set off or offset the amounts paid by Tenant against Rents or in the event that the amounts paid by Tenant exceed the Rents payable to Owner for the then term of the Agreement, Owner shall reimburse Tenant for all amounts paid by Tenant (or not offset) immediately upon demand. Any forbearance by Tenant in exercising any right or remedy provided in this paragraph or otherwise afforded by law shall not be deemed a waiver of or preclude the later exercise of said right or remedy.

(m) Since Owner is a municipal corporation, this Agreement is a public document subject to inspection, copying and distribution pursuant to a FOIL request.

(n) Notwithstanding any provision to the contrary in this Agreement, any action or proceeding commenced in relation to this Agreement or any alleged breach of it shall be commenced and maintained in either a federal court based in New York State or a New York State court with a venue of Ulster County.

(Remainder of Page Intentionally Blank. Signature Page to Follow)

IN WITNESS WHEREOF, the parties hereto bind themselves to this Agreement effective as of the latter of the signature dates, below.

OWNER:

Town of Marlborough,
a New York municipal corporation

Witnesses for Owner:

By: _____
Print: _____
Title: _____
Date: _____

Sign: _____
Print: _____

Sign: _____
Print: _____

TENANT:

Tarpon Towers II, LLC
a Delaware limited liability company

Witnesses for Tenant:

By: _____
Print: Brett Buggeln
Title: COO
Date: _____

Sign: _____
Print: _____

Sign: _____
Print: _____

EXHIBIT "A" TO LAND LEASE AGREEMENT

OWNER'S PROPERTY

PARCEL 1:

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, WITH THE BUILDINGS AND IMPROVEMENTS THEREON ERECTED, SITUATE, LYING AND BEING IN THE TOWN OF MARLBOROUGH, COUNTY OF ULSTER, STATE OF NEW YORK BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT A FOUND NEW YORK STATE CONCRETE MONUMENT ON THE EASTERLY SIDE OF U.S. ROUTE 9W AND ON THE NORTHERLY SIDE OF WOODCREST LANE, THENCE ALONG THE EASTERLY SIDE OF ROUTE 9W NORTH 13 DEGREES 57 MINUTES 00 SECONDS EAST 364.08 FEET TO A POINT ON THE SOUTHERLY BOUNDS OF LANDS OF THE TOWN OF MARLBOROUGH, THENCE ALONG THE SOUTHERLY BOUNDS OF LANDS OF THE TOWN OF MARLBOROUGH SOUTH 68 DEGREES 23 MINUTES 00 SECONDS EAST 325.37 FEET TO A POINT ON THE WESTERLY BOUNDS OF LANDS OF NOW OR FORMERLY RUSK, THENCE ALONG THE WESTERLY BOUNDS OF RUSK SOUTH 15 DEGREES 16 MINUTES 40 SECONDS WEST 399.01 FEET TO A POINT IN A STONE WALL ON THE NORTHERLY SIDE OF WOODCREST LANE, THENCE FOLLOWING THE STONE WALL IN PART AND ALONG THE NORTHERLY SIDE OF WOODCREST LANE THE FOLLOWING FOUR (4) COURSES AND DISTANCES: (1) NORTH 70 DEGREES 54 MINUTES 16 SECONDS WEST 34.30 FEET, (2) NORTH 67 DEGREES 56 MINUTES 19 SECONDS WEST 61.20 FEET, (3) NORTH 64 DEGREES 26 MINUTES 11 SECONDS WEST 104.76 FEET, AND (4) NORTH 54 DEGREES 30 MINUTES 20 SECONDS WEST 124.43 FEET TO THE POINT AND PLACE OF BEGINNING.

CONTAINING 2.860+ ACRES OF LAND.

AND BEING THE SAME PROPERTY CONVEYED TO TOWN OF MARLBOROUGH FROM CARLOS DE SIMONE AND OTTILIE DE SIMONE BY BARGAIN AND SALE DEED DATED OCTOBER 21, 1999 AND RECORDED OCTOBER 27, 1999 IN DEED BOOK 02980, PAGE 0075.

PARCEL 2:

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, WITH THE BUILDINGS AND IMPROVEMENTS THEREON ERECTED, SITUATE, LYING AND BEING IN THE TOWN OF MARLBOROUGH, COUNTY OF ULSTER AND STATE OF NEW YORK, BEING A PORTION OF PREMISES DESIGNATED AS TAX MAP NO. 103.3-3-15.3 ON THE TAX MAP OF THE TOWN OF MARLBOROUGH, CONSISTING OF 1.140± ACRES DESIGNATED AS "LANDS OF HEPWORTH TO BE CONVEYED TO THE TOWN OF MARLBOROUGH" ON A MAP DATED FEBRUARY 02, 2008 ENTITLED "MAP OF SHOWING LOT LINE REVISION OF LANDS OF LOIS G. HEPWORTH AND TOWN OF MARLBOROUGH" PREPARED BY JOHN J. POST, JR. THE PREMISES IS ALSO CONVEYED AS FOLLOWS:

ALL THAT CERTAIN PLOT, PIECE OF LAND, SITUATE, LYING AND BEING IN THE TOWN OF MARLBOROUGH AND STATE OF NEW YORK BEING BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHERLY SIDE OF WOODCREST LANE, SAID POINT BEING THE SOUTHEAST CORNER OF THE HEREIN DESCRIBED PARCEL, THENCE ALONG THE NORTHERLY SIDE OF WOODCREST LANE THE FOLLOWING

Site #: NY1138

Site Name: Marlborough Hwy Dept

BEGINNING AT A POINT ON THE NORTHERLY SIDE OF WOODCREST LANE, SAID POINT BEING THE SOUTHEAST CORNER OF THE HEREIN DESCRIBED PARCEL, THENCE ALONG THE NORTHERLY SIDE OF WOODCREST LANE THE FOLLOWING

COURSES AND DISTANCES:

1) NORTH 73 DEGREES 01 MINUTE 14 SECONDS WEST, 32.29 FEET TO A POINT.
2) THENCE NORTH 70 DEGREES 35 MINUTES 48 WEST, 56.60 FEET TO A POINT;
3) THENCE NORTH 69 DEGREES 02 MINUTES 48 SECONDS WEST, 22.41 FEET TO AN IRON BAR, SAID IRON BAR BEING THE SOUTH EAST CORNER OF LANDS OF THE TOWN OF MARLBOROUGH L.2980-P.76;
THENCE ALONG THE BOUNDS OF THE TOWN OF MARLBOROUGH AND LANDS OF HEPWORTH L.1455-P.291,
THE FOLLOWING COURSES AND DISTANCES:

1) NORTH 15 DEGREES 16 MINUTES 40 SECONDS EAST, 448.88 FEET TO A POINT;
2) THENCE SOUTH 68 DEGREES 23 MINUTES 00 SECONDS EAST, 111.71 FEET TO A POINT, SAID POINT BEING THE NORTHEAST CORNER OF THE HEREIN DESCRIBED PARCEL;

THENCE SOUTH 15 DEGREES 16 MINUTES 40 SECONDS WEST, 443.79 FEET TO THE POINT AND PLACE OF BEGINNING.

AND BEING THE SAME PROPERTY CONVEYED TO TOWN OF MARLBOROUGH, A MUNICIPAL CORPORATION FROM LOIS G. HEPWORTH BY BARGAIN AND SALE DEED DATED JUNE 25, 2010 AND RECORDED JULY 06, 2010 IN INSTRUMENT NO. 2010-00009138.

Tax Parcel No. 103.3-3-66.1

Owner and Tenant agree that the precise legal description for the Owner's Property will be corrected, if necessary, and that Tenant may place the correct legal description on this Exhibit "A".

EXHIBIT "B" TO LAND LEASE AGREEMENT

PREMISES

- a) Real property comprised of approximately two thousand five hundred (2,400) square feet of land
- b) Non – exclusive easement required to run utility lines and cables
- c) Non – exclusive easement across Owner’s Property (hereinafter defined) for access

SITE SKETCH:

APPROVED Owner: _____ (Initial)
APPROVED Tenant: _____ (Initial)

Notes:

1. *This Exhibit may be replaced by a land survey of the Premises at Tenant’s sole cost and expense, together with non-exclusive easements for utility lines and cables to service the Premises, and a non-exclusive easement for ingress and egress across Owner’s Property to the Premises.*
2. *Setback of the Premises from the Owner’s Property lines shall be the distance required by the applicable governmental authorities.*
3. *Width of access road, if any, shall be the width required by the applicable governmental authorities, including police and fire departments.*