

**THE CORPORATION OF THE TOWN OF AMHERSTBURG**

**BY-LAW NO. 2010 -11**

**Being a By-law authorizing the execution of a Lease Agreement**

**WHEREAS** The Town of Amherstburg considers it desirable to lease the municipally owned lands described as 6744 6<sup>th</sup> Concession, Road, Malden and legally described as Concession 5, Part Lot 52, RP 12R-18156, Parts 4, 5, 7-13, 16 & 17, Concession 6 South W/S, Amherstburg;

**AND WHEREAS** the Town of Amherstburg and TELUS Mobility wish to enter into an Agreement for a period of ten (10) years to set out the terms and conditions upon which the lands may be leased;

**AND WHEREAS** the specifics of such Lease Agreement have been negotiated and are set out in the Lease Agreement attached to and forming part of this bylaw;

**NOW THEREFORE THE CORPORATION OF THE TOWN OF AMHERSTBURG HEREBY ENACTS AS FOLLOWS:**

- 1) An Agreement between The Corporation of the Town of Amherstburg and TELUS Mobility is attached hereto and is hereby approved and the Mayor and Clerk are hereby authorized to execute the Agreement on behalf of the municipality.
- 2) This By-law shall come into force and take effect immediately upon the final passing thereof.

Read a first, second and third time and finally passed this 25th day of January, 2010.

  
\_\_\_\_\_  
WAYNE HURST, MAYOR

  
\_\_\_\_\_  
BRENDA M. PERCY, CLERK

**SITE LEASE**

This Lease is made on this 18th day of January, 2010

BETWEEN: The Corporation of the Town of Amherstburg (the "Lessor") and TM Mobile Inc. ("TELUS")

The Lessor represents and warrants that it is the owner or lessee of the real property described in Schedule "A" (the "Premises") or is the duly authorized agent of such owner or lessee and has the authority to enter into this Lease.

The Lessor has agreed to grant to TELUS a lease of a portion of the Premises, being the area(s) described in Schedule "B" (the "Site")..

NOW THEREFORE in consideration of the rent payable by TELUS to the Lessor, the Lessor hereby leases to TELUS the Site together with its appurtenances herein described, subject to the covenants and obligations contained in the attached Terms and Conditions, and to such further specifications as are contained in Schedules A, B, C, D and E attached hereto, the whole forming the lease between the parties (the "Lease").

The Lessor grants to TELUS for the duration of the Lease:

- (i) the right to construct, install, maintain and use on the Site such equipment, devices, and facilities (collectively, the "Equipment") as may be necessary or useful from time to time for the purpose of carrying on the business of TELUS as a telecommunications service provider;
- (ii) the right to install concrete moorings as required in order to ensure the stability of certain exterior Equipment;
- (iii) the right to build, maintain, occupy and use on the Site such enclosed structures as are required from time to time for the purpose of housing any part of the Equipment (the "Shelter"), including the right to renovate for such purpose any interior space included in the Site;
- (iv) the right to access the Site, the Equipment and the Shelter on a 24/7 basis, on, over and through the Premises, with personnel, vehicles and equipment, as required, and to register such easements, servitudes and rights of ways as are necessary to give effect thereto, and;
- (v) the right to use the Site, including the Shelter and the Equipment, for the purpose of carrying on a telecommunications business.


TO HAVE AND TO HOLD for a term of ten (10) years commencing on March 1, 2010 (the "Commencement Date") and ending on the day immediately preceding March 1, 2020 and any extension term as provided herein (the "Term").

**Address of the Lessor:**

271 Sandwich Street South  
Amherstburg, Ontario N9V 2A5  
Attention: Pamela Malott  
Facsimile: 519-736-5403  
Telephone: 519-736-9860  
GST Registration Number:

**THE CORPORATION OF THE TOWN OF  
AMHERSTBURG**

  
\_\_\_\_\_  
Wayne Hurst  
Mayor

  
\_\_\_\_\_  
Brenda Percy  
Clerk

**Address of TELUS:**

200 Consilium Place, Suite 1600  
Scarborough, Ontario M1H 3J3  
Attention: Real Estate Department  
Facsimile: 1-800-788-6622  
Telephone: 1-800-815-5715  
Emergency 24 hour #: 1-800-391-1391

**TM MOBILE INC.**

  
\_\_\_\_\_  
Donald Allan  
Manager, Real Estate

TERMS AND CONDITIONS

1. **Rental Rate.** For the rights granted by the Lessor to TELUS, TELUS shall pay to the Lessor rent in the amount of Four Thousand Eight Hundred Dollars and Zero Cents (\$4,800.00) per annum (the "Rent") plus any applicable provincial sales tax and goods and services tax, in equal monthly instalments of \$400 on or before the first day of each month during the Term. Rent, and any other amount payable by TELUS to the Lessor under the terms of this Lease, shall be tendered at the address of the Lessor specified herein, or at such other address as may be duly notified to TELUS by the Lessor.

2. **Right of Extension.** The Lessor hereby grants to TELUS the right to extend the initial term of this Lease for one (1) further and consecutive period of ten (10) years. Such extension shall take effect automatically and without further notice, unless TELUS gives notice to the Lessor, at least ninety (90) days prior to the end of the current term of this Lease, that it shall not exercise such right of extension. The extension term will be subject to the same terms and conditions as apply during the initial term.

3. **Termination by TELUS.** If, at any time during the Term, TELUS determines that operating the Site for the purposes declared herein is or has become commercially impractical, for any reason, TELUS may terminate this Lease without damages or penalty upon sixty (60) days prior written notice to the Lessor. In the event of such termination, the Lessor shall refund to TELUS any rent paid in advance for any period of time subsequent to the effective date of termination.

4. **Covenants of TELUS.**

(a) **Safety and Maintenance** - TELUS shall install, operate, and maintain its Equipment and the Shelter, in a good, safe and workmanlike manner.

(b) **Taxes, Rates and Assessments** - TELUS will pay as and when due all applicable taxes, rates and assessments, that are levied, charged or assessed with respect to any business carried on by TELUS on or from the Premises.

(c) **Electricity Charges** - TELUS shall pay for the electricity charges attributable to the operation of the Equipment at the Site either by having installed a separately metered electrical service or, in circumstances where the local utility will not install a separate meter, by installing a submeter and paying the Lessor's invoices for electricity based on the submeter readings and the actual tolls of the local utility. The Lessor is responsible for reading the submeter once every three months and invoicing TELUS accordingly no less frequently than on an annual basis, failing which TELUS may fully discharge its obligation to compensate the Lessor for electricity consumption by tendering payment of a reasonable estimate of the electricity charges for usage in the previous year. No claim may be made for electricity charges with respect to usage not invoiced more than one year in the past.

(d) **Government Regulation** - TELUS shall, at its own expense, at all times ensure that the installation, operation and maintenance of its Equipment, and Shelter, comply with all required laws, directions, rules and regulations of relevant governmental authorities, including all applicable building codes, and Industry Canada and Transport Canada requirements.

(e) **Removal of Equipment** - TELUS shall quit and surrender possession of the Site within ninety (90) days after the expiration or termination of this Lease and shall remove its Equipment and Shelter from the Premises within that time.

(f) **Interference** - TELUS covenants that TELUS' operation of its radio system(s) shall not cause material interference or degradation of any other signals lawfully transmitted or received within or on the Premises. TELUS shall use all reasonable efforts to correct such interference or degradation, where reasonably demonstrated, upon receiving written notice from the Lessor.

(g) **Insurance** - TELUS shall at all times throughout the Term maintain insurance coverage for: (i) All-Risk Property loss covering the full insurable replacement cost of the Equipment and the Shelter without deduction for depreciation and with reasonable deductibles; and (ii) Commercial General Liability in an amount not less than Five Million Dollars (\$5,000,000) per occurrence for bodily injury and property damage. The Lessor shall be included as an additional insured in all such policies, but solely with respect to liability arising out of the operations of TELUS at the Premises. At the Lessor's reasonable request, TELUS shall provide a memorandum of insurance confirming that policies as required herein are in force, and shall notify the Lessor of the cancellation of any such policy.

5. **Covenants of the Lessor.**

(a) **Quiet Possession** - The Lessor covenants that TELUS shall peaceably and quietly hold and enjoy the Site and its appurtenances, subject to the terms and conditions of this Lease. The Lessor shall not make any change to the Premises and its appurtenances that could adversely affect access to or use of the Site by TELUS at any time throughout the duration of this Lease without the prior written consent of TELUS, which consent may not be unreasonably withheld.

(b) **Access** - The Lessor shall provide to TELUS and its authorized representatives and agents such additional rights of access as are necessary from time to time to construct, install, maintain, repair, replace, reconfigure and operate the Equipment and the Shelter, including but not limited to the right to connect the Equipment to local utilities, to install underground or overhead telephone or power lines in any combination, and to install conduits for fibre or telephone cabling or both of them.

(c) **Emergency Power** - The Lessor shall allow TELUS to install electrical connections to the Lessor's emergency power generator on the Premises for emergency use by TELUS in the case of any failure of public electrical service to the Site. TELUS shall have the right to install and operate an emergency power generator on the Premises, including such cabling as may be required to connect the generator to the Equipment, for its own use while public utility service is not available for any reason. TELUS shall pay all costs attributable to such installation and operation.

(d) **Premises Maintenance** - The Lessor hereby agrees to provide not less than thirty (30) days prior written notice to TELUS of any repairs, additions or maintenance (collectively the "Work") to take place at the Premises, which may have an impact on the Shelter or the operation of the Equipment. The Lessor further agrees to meet on-site with TELUS and to make available the contractor(s) involved with the Work, not less than fifteen (15) business days prior to the commencement of the Work to review the Work and the related impact on the Shelter or the Equipment, except in the case of an emergency situation requiring



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immediate intervention to preserve the structural integrity of the Premises. The Lessor further agrees to make a reasonable effort to inform TELUS as soon as possible of an emergency situation that may have an adverse effect on the Shelter or the Equipment.

(e) **Interference** - The Lessor may subsequently to this Lease grant rights to third parties to install other or additional telecommunications transmission equipment on the Premises, provided that the operation of such other or additional equipment does not interfere with the operation of the Equipment. The Lessor shall provide TELUS with sixty (60) days written notice of the proposed new installation, and TELUS shall thereafter work with the installer and operator of the new equipment to ensure that the proposed new installation does not interfere with the operation of the Equipment. The Lessor shall, as a condition of the grant of any rights to third parties to install other or additional telecommunications transmission equipment, stipulate that such party must collaborate with TELUS as described above and must refrain from installing and operating any such equipment until TELUS has determined, acting reasonably, that no material interference with the operation of the Equipment will result. The Lessor shall include an interference clause substantially the same as this subsection in any instrument used to grant rights to third parties to install other or additional telecommunications equipment on the Premises.

6. **TELUS' Equipment**. The Equipment and the Shelter shall remain at all times the personal and moveable property of TELUS, and not become fixtures, notwithstanding the attachment to any degree or in any manner of any part of the Equipment or the Shelter to the Premises. TELUS shall have the right to make alterations or improvements or both at the Site at any time during the Term including, but are not limited to, the replacement, expansion, reconfiguration or addition of transmission facilities of any kind, towers and/or antenna mounts, equipment shelters and/or additional radio equipment as deemed necessary by TELUS.

7. **Lessor not Liable**. Except for the negligent acts or omissions or the willful and wrongful acts or omissions of the Lessor or the Lessor's employees or those persons authorized by the Lessor to be on the Premises, the Lessor shall not be liable to or indemnify TELUS for any inconvenience to the operations of TELUS at the Site, or damage to the Equipment or the Shelter, or injury to any person occupying the Site.

8. **TELUS not Liable**. Except for the negligent acts or omissions or the willful and wrongful acts or omissions of TELUS or TELUS 's employees and those persons authorized by TELUS to be on the Premises, TELUS shall not be liable to or indemnify the Lessor for any costs incurred or losses or damages or injury suffered by the Lessor.

9. **Confidentiality**. Except as otherwise provided herein, the parties agree that all information relating to the use of the Premises pursuant to this Lease is confidential and proprietary, and shall not be disclosed to any third party unless required by lawful authority. Each party will take all reasonable steps to protect the confidentiality of such information, and in particular shall hold the terms and conditions of this Lease in the strictest confidence. This provision shall survive any termination or expiration of this Lease.

10. **Default**. Either party may at its option and without further liability to the other party terminate this Lease: (i) upon the material default by such other party in the performance of any of its covenants or obligations under this Lease, if such default is not remedied within thirty (30) days of the party in default receiving written notice of such default, or within such longer period as is reasonable in the circumstances so long as the party in default is diligently moving to implement remedial action; or (ii) subject to the rights granted by TELUS' financing arrangements, as authorized herein, if such other party becomes insolvent, ceases to do business as a going concern, is adjudged a bankrupt or made subject to the appointment of a receiver-manager, makes a general assignment for the benefit of creditors, or takes the benefit of any statute in force for the winding up or liquidation of business enterprises.

11. **TELUS' Financing Arrangements**. The Lessor acknowledges that TELUS has entered into, and will be entering into, certain financing arrangements which may require an assignment or hypothecation of TELUS' rights and obligations under this Lease, or the creation of security interests in the personal or moveable property of TELUS located at the Premises. The Lessor consents to any such assignment, hypothecation or grant of security interests, and to any transfers occurring on the enforcement of same. The Lessor shall, at the request of TELUS, acknowledge in writing the foregoing in such form as the relevant financier may reasonably require. For the purposes of this section, TELUS is executing this Lease for itself and as agent for the financiers with whom TELUS may be entering into financing arrangements from time to time as acknowledged herein.

12. **Registration**. TELUS may register a notice of lease or caveat or appropriate instrument in the land registry office of the province in which the Premises are situated, stipulating TELUS 's interest, the Term, any rights to extend and, when applicable, a short form of lease, and the Lessor will execute any documents required to effect such registration. Such registration may be effected on behalf of TELUS by an affiliated corporation, partnership or other entity as bare nominee for registration purposes only, at TELUS' expense. The Lessor also agrees to obtain a non-disturbance agreement at TELUS' expense from any mortgagee on the Premises in such form as TELUS may reasonably require.

13. **Encumbrances**. TELUS may, at its option, pay or discharge any arrears owing under any encumbrance upon the Premises which has priority over the interest of TELUS under this Lease, or any arrears of any property taxes, local improvement charges and any other rates, duties, levies and assessments levied or assessed by any competent government authority upon or in respect of the Premises or that affect the Premises in any way, in which event TELUS shall be subrogated to the rights of the creditors of such discharged obligations and may, at its option, apply the rent or any other amounts owing to the Lessor under this Lease to the repayment of any arrears so paid or discharged.

14. **Assignment**. Except as otherwise permitted herein, this Lease shall not be assigned by TELUS without the prior written consent of the Lessor, such consent not to be unreasonably withheld or delayed. Notwithstanding the foregoing, TELUS may, without consent of the Lessor: (i) assign its rights and obligations under this Lease to any affiliated entity including a partnership; (ii) sublet all or any portion of the Site and its appurtenances to any affiliated entity including a partnership; and (iii) license all or any portion of the Site and its appurtenances to a third party, for use as a telecommunications site. Whenever the Lessor's consent is required by virtue of these provisions, such consent is deemed granted if Lessor does not respond within fifteen (15) days to the written request of TELUS for such consent.

15. **Successors and Assigns**. This Lease shall enure to the benefit of and be binding upon the successors and assigns of the Lessor and the successors and permitted assigns of TELUS, and no assignee or successor of the Lessor shall challenge the validity or enforceability of any provision of this Lease and every assignee or successor of the Lessor shall be bound by all the obligations of the Lessor hereunder. Upon a conveyance or assignment of its interest in the Premises, the Lessor shall provide TELUS with written notice of the identity of the successor or assign and the address at which the rent shall be tendered and notices given pursuant to the conveyance or assignment.



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16. **Overholding.** In the event that TELUS remains in possession of the Site after the expiration of the Term, TELUS shall be deemed to be occupying the Site as a tenant from month to month at the current monthly rent, or if the rent is payable annually, one twelfth (1/12) of the annual rent. The rent shall thereafter be payable monthly in advance on the first day of each month following the expiration of the Term, with all other rights and obligations of this Lease remaining in force to the extent they may apply to a month to month tenancy, subject to the proviso that neither party may terminate the month to month tenancy except by giving ninety (90) days written notice to the other party. No extension of the Term, nor any new Term, nor any tenancy from year to year will be created by implication of law through overholding.
17. **Expropriation.** If during the Term, the whole or any part of the Premises is expropriated, the Lessor shall not accept any award for compensation without TELUS' written consent. TELUS shall be entitled to receive such part of the award as compensates for the loss of its interest in the leased Site.
18. **Governing Law and Jurisdiction.** The provisions of this Lease shall be governed by and interpreted in accordance with the laws of the province in which the Premises are located. The parties hereby attorn to the exclusive jurisdiction of the courts of that province.
19. **Entire Lease; Survey.** This Lease cancels and replaces all other agreements between the parties with respect to the Premises. This Lease contains the entire agreement between the Lessor and TELUS with respect to the Premises and expressly excludes all prior representations and discussions, either oral or written, between the parties other than those set forth in this Lease. Each party acknowledges having obtained adequate explanation of the nature and scope of each of the clauses of this Lease, and having had the opportunity to consult legal counsel with respect thereto. Except as otherwise provided herein, this Lease may not be amended or modified except by written instrument executed by both parties. TELUS may elect to obtain, at its discretion, technical drawings or a survey of the Premises and the Site, and give written notice of such technical drawings or survey to the Lessor, which once so delivered shall replace and become Schedule "C", and take precedence over the plans exhibited at Schedule "B".
20. **Facsimile Transmissions; Notices.** This Lease may be executed, amended or renewed by either party by facsimile transmission, and receipt of a copy of the document so executing, amending or renewing this Lease shall bind the transmitting party to all the terms and conditions contained therein. Any notice required or authorized by this Lease shall be deemed to have been properly given if by personal delivery at any place, or by registered mail, courier or facsimile transmission to the address or fax number specified herein or to any other address or fax number duly notified by one party to the other.
21. **Severability.** Any provision of this Lease that is determined to be void or unenforceable in whole or in part, shall be deemed unwritten and shall not affect or impair the validity or enforceability of any other provision of this Lease, which shall all remain binding on the parties.
22. **Authorization.** The Lessor hereby authorizes TELUS for the entire duration of the Term, to use the correspondence attached at Schedule "D" (the "Authorization Letter"), to obtain from any person, corporation or government authority, any information regarding the Premises that TELUS may require for the purposes of exercising its rights under this Lease, and the Lessor agrees to execute the Authorization Letter from time to time as reasonably requested by TELUS for these purposes.
23. **Environmental.** During the Term, the Lessor represents and warrants continuously that there are not contained, within or under the Premises, any toxic material or hazardous substances or any other contaminants (collectively "Hazardous Substances") as defined under all applicable provincial or federal legislation, regulation or orders of any kind. The Lessor shall indemnify and hold TELUS harmless from and against any liability arising from the presence of Hazardous Substances on the Premises. TELUS shall have the right to conduct environmental testing at the Site at any time during the Term and to terminate this Lease immediately without damages or penalty should the results of such environmental testing demonstrate the presence of Hazardous Substances at levels not acceptable to TELUS acting reasonably. TELUS shall comply with all applicable provincial or federal environmental legislation, regulation or orders of any kind.

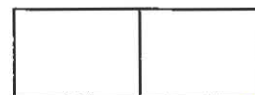


**SCHEDULE "A"**

**DESCRIPTION OF PREMISES**

Real property located in the County of Essex, in the province of Ontario, known municipally as 6744 6th Concession Rd and with the following legal description:

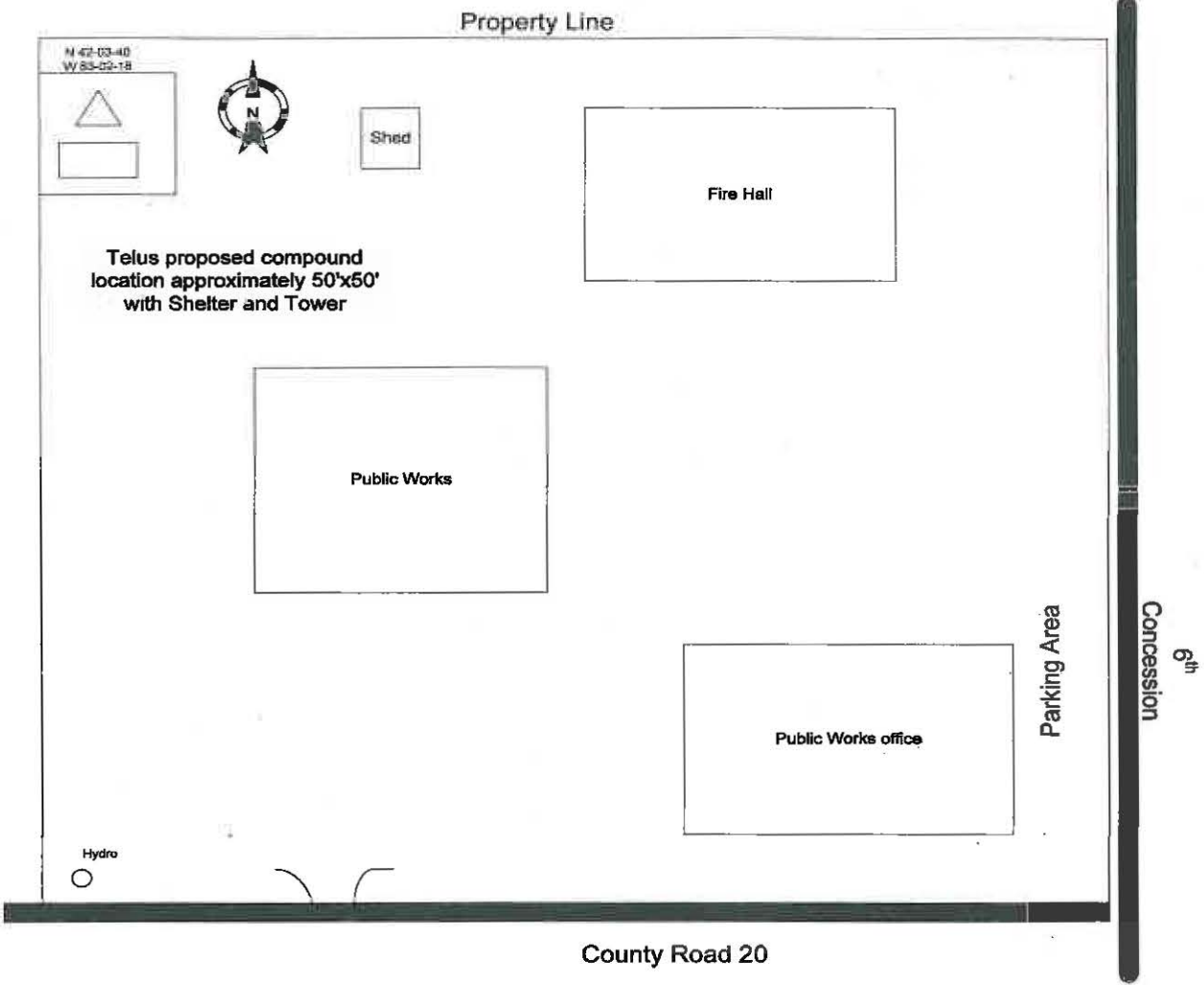
Part of Lot 52, Concession 5, Former Township of Malden now in the Town of Amherstburg, County of Essex



*BP*  
*WA*

**SCHEDULE "B"**  
**IDENTIFICATION OF SITE**

NOTE: Plan is not to scale. Boundary lines, easements, servitudes and rights of way identified in the plan are approximations which may be further specified in technical drawings or a survey, to be added as required through Schedule C. Plan is subject to all terms and conditions of the Lease.



**Site description and Sketch:** **ON 1420 Malden**  
 6744 6<sup>th</sup> Concession Rd  
 4Malden Center  
 Town of Amherstbury/Malden fire Department Richard Murray Fire Chief  
 Business 519-736-6500 Cell 519-791-9087

**Notes:** Plan not to scale  
 Antenna mount locations are "proposed only", locations are subject to change.  
 Notwithstanding any antenna mounts currently shown (or not shown).  
 Lease allows for modification, addition or reconfiguration.  
 Easements identified in the sketch are approximations to be confirmed on a survey.

**TELUS**  
INTEGRITY

**Schedule B**

**ON1420-1**

Drawn By: Bryan Kennedy  
 Date Created: March 6, 2008

Initials

*BMO cel*

**SCHEDULE "C"**

**TECHNICAL DRAWINGS OR SURVEY OF PREMISES AND SITE**

NOTE: Technical drawings and surveys are subject to all terms and conditions of the Lease.



*POB*  
*[Handwritten signature]*



**SCHEDULE "D"**  
**AUTHORIZATION LETTER**

**FROM:** THE CORPORATION OF THE TOWN OF AMHERSTBURG  
271 Sandwich Street South  
Amherstburg, Ontario  
N9V 2A5

**TO WHOM IT MAY CONCERN:**

**Re:**  
**Site: ON1420**

We/I, The Corporation of the Town of Amherstburg, the owners of the above mentioned property, hereby give TM Mobile Inc. (TELUS) and its agents permission to act as our agent to acquire the necessary permits, drawings and/or buildings structural blue-prints, hydro information from the public utility and information from the municipality or other authorities concerned, needed to approve the construction of the telecommunications site at the address indicated above and as shown on the attached plans.

Sincerely,

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Wayne Hurst  
Mayor

---

Brenda Percy  
Clerk

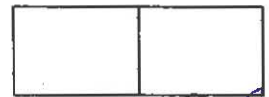


*BMP*  
*lll*

**SCHEDULE "E"**  
**AMENDMENT TO TERMS AND CONDITIONS**

**1. Section 1 of the terms and conditions of this Lease is amended by adding the following sentence:**

The rent is to be increased by the percentage change in the Canadian Consumer Price Index, All Items (CPI) over the previous calendar year on an annual basis.



*Bob-Alt*