



City Council/Community Redevelopment
Agency Staff Report

DATE: October 7, 2009

UNFINISHED BUSINESS

SUBJECT: APPROVAL OF A LEASE AGREEMENT WITH VERIZON WIRELESS, FOR A NON-EXCLUSIVE USE OF FLOOR SPACE, ROOFTOP SPACE, ANTENNA SPACE AND CABLING SPACE ON THE TOP DECK OF THE CITY-OWNED PARKING STRUCTURE LOCATED AT 295 SOUTH INDIAN CANYON DRIVE

FROM: David H. Ready, City Manager/Executive Director

BY: Community & Economic Development Department

SUMMARY:

The approval of this Lease Agreement will allow for the installation, operation and maintenance of Verizon Wireless communications equipment to be installed on the top deck of the City-owned parking structure located at 295 South Indian Canyon Drive.

This item was initially presented to Council on October 15, 2008 and was voted down 3-2 due to concerns with the quality of the proposed structures and exposed equipment with limited opportunities to use screening or landscaping to cover this equipment. Since that time, Verizon has revised the concept plans to ensure that all equipment, conduits, etc. are enclosed and not visible from the parking structure and also improved the quality of the enclosure using masonry block that will match the existing elevator shaft structure. The Architectural Advisory Committee (AAC) has also had the opportunity to review the concept plans on June 8, 2009 and voted 5-0 to support the proposed location and general concept of this proposal.

The facilities to be constructed by Verizon Wireless include a small building enclosure with a floor area of approximately 400 square feet (three or less parking spaces) to be located along the north side of the stairwell adjacent to the existing north-west elevator shaft structure, and an additional tower to be constructed on top of the existing elevator shaft building (shown on Attachment Item 2).

RECOMMENDATION:

1. Approve Agreement No. _____, Lease by and between Verizon Wireless, and the Community Redevelopment Agency of the City of Palm Springs for non-exclusive use of the City-owned parking structure to provide floor, rooftop, antenna, and cabling space on the top deck of the parking structure.
2. Authorize the City Manager/Executive Director or his designee to execute all the necessary documents.

BACKGROUND:

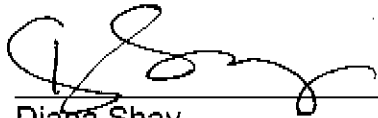
This Lease is for the non-exclusive use of floor space and rooftop space on the top deck of the parking structure at 295 South Indian Canyon Drive by Verizon Wireless for the purpose of installing, operating and maintaining communications equipment. The facilities to be constructed by Verizon include a small building enclosure with a floor area of approximately 400 square feet (three parking spaces or less), and an additional tower to be constructed on top of the existing northwest elevator shaft building as shown on the conceptual photograph simulations (Attachment Item 2). Verizon will equip the facilities with antennas, wires, cables, conduits and pipes to operate their wireless communication systems. Also, Verizon will install or have the local utility install an electrical meter/sub-meter to measure the electrical power used by Verizon's installation and will pay for their power usage either directly to the utility or to the Agency. In addition the Lease will allow Verizon the non-exclusive right of ingress and egress over the property 24 hours per day seven days a week, from a public right-of-way, for the purpose of installation, operations and maintenance of their communications facilities.

The City transferred a sublease interest in the parking structure to the Agency in an action approved by Council and the Agency on February 6, 2008; (Res. No. 22153). Under that Agreement, the Agency may not assign, sublet or otherwise transfer its interest under this Sublease without City's prior consent, which consent may be withheld, conditioned or delayed in City's sole and absolute discretion.

The concept plans were presented to the Architectural Advisory Committee (AAC) on June 8, 2009. AAC supports the proposed location of these facilities, and the general design concept but did make some recommendations that additional details be provided, height of proposed structures be clarified and that the original architect for the downtown parking structure be consulted during the detailed design phase. The proposed communications building and antenna tower, (Attachment Item 2) would need to go to back to Architectural Advisory Committee (AAC) and Planning Commission (PC), once the design is completed in detail. This Lease is going to the Agency first, however, to confirm that there is Council/Agency interest before having them complete the planning process and detailed designs.

FISCAL IMPACT:

The Lease Agreement would provide the Agency revenue of \$2,500.00/month.



Diana Shay
Redevelopment Coordinator



Tom Wilson
Assistant City Manager

DAVID H. READY
City Manager/Executive Director
Attachments:

1. Wireless Communications Facilities Site Lease Agreement
2. Photograph Simulations – Conceptual
3. Minutes of June 6, 2009 Architectural Advisory Committee Meeting

CITY OF PALM SPRINGS

WIRELESS COMMUNICATIONS FACILITIES SITE LEASE

This Communications Site Facilities Lease (the "Lease") is made and entered into this ____ day of _____, 2009, by and between the COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF PALM SPRINGS (herein "LESSOR" or "Agency"), and _____, d/b/a VERIZON WIRELESS (herein "LESSEE") (LESSOR and LESSEE are at times hereinafter collectively referred to as "Parties" or individually as the "Party").

RECITALS

WHEREAS, LESSOR is the fee title owner of property located at 295 South Indian Canyon Drive in the City of Palm Springs, California (the "Property") described more particularly in Exhibit A attached hereto, which description is fully incorporated herein by this reference; and

WHEREAS, LESSEE desires to lease space on the Property from said LESSOR on the terms and conditions herein in order to install and operate a digital mobile radio telecommunications site as more fully described hereinbelow and Exhibit C (the "Facilities").

LEASE

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants, conditions, and agreements contained herein, the receipt and sufficiency of which is hereby acknowledged, the Parties to this Lease do hereby agree as follows:

1. **LEASED PREMISES:**

1.1 **DEMISE:** LESSOR leases to LESSEE a portion of the Property as more particularly described in Exhibit B (the "Premises") attached hereto and incorporated herein by this reference.

1.2 **LESSEE ACCESS:** LESSOR shall provide LESSEE, LESSEE's employees, agents, and subcontractors' access to the Premises after LESSEE provides LESSOR with 24 hours notice. Provided, however, that in the event of an "emergency or special circumstance", which would leave the Facilities inoperable during normal non-business hours, LESSEE may access the Property to make necessary repairs and shall provide notice to LESSOR as soon as reasonably practicable. For purposes of this Lease, the phrase "emergency or special circumstance" shall be interpreted to mean automobile accidents and natural disasters, including, but not limited to flooding, wind, and earthquakes.

2. **USE OF LEASED PREMISES:** To the extent provided in this Lease, LESSEE may use the Premises to facilitate provision of wireless communication services, including the transmission and the reception of communication signals of various frequencies. Subject to the terms and conditions of this Lease, LESSEE may install, construct, maintain, repair, replace and operate on

the Premises the communications and other facilities depicted and/or described in general in Exhibit C, as approved by LESSOR in writing prior to taking such actions. To the extent reasonable, LESSOR shall cooperate with LESSEE in applying for and obtaining all licenses, permits, and any and all other necessary approvals that may be required for LESSEE's use of the Premises.

3. LEASE TERM:

3.1 INITIAL TERM: The initial term of this Lease shall commence on the date LESSEE obtains all permits necessary allowing LESSEE the right to construct the Facilities (the "Commencement Date") and shall continue for five (5) years from that date (the "Initial Term") unless terminated earlier pursuant to Section 8 hereinbelow.

3.2 RENEWAL TERM: LESSOR grants LESSEE an option to renew this Lease for an additional five (5) years ("Renewal Term"). This Lease shall automatically renew for the Renewal Term unless LESSEE provides LESSOR notice of its intention not to renew not less than thirty (30) days prior to the expiration of the Initial Term. The Initial Term and the Renewal Term shall be collectively referred to herein as the "Term."

4. PAYMENT OF RENT: At the Commencement Date, LESSEE agrees to pay to LESSOR, the amounts set forth in this section, each month in advance, on the first of each month, as rental for said Premises for the Initial Term of the Lease and the Renewal Term, payable to the City of Palm Springs, 3200 East Tahquitz Canyon Way, Palm Springs, California 92262, Attn: Accounts Receivable, Finance Department. In addition, LESSEE agrees to do and perform all other covenants and agreements contained in this Lease.

4.1 BASE RENTAL PAYMENT: The Base Rental Payment under this Lease shall be TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) per month ("Base Rental"). If the Commencement Date is a date other than the first day of the month, the Base Rental for the first calendar month shall be paid on the Commencement Date and prorated on the basis of the number of actual days in such partial month.

4.2 COST OF LIVING ADJUSTMENT: The Base Rental shall be automatically adjusted on each anniversary of the Commencement Date in i) an amount equal to the increase in the Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics (1982-1984 = 100) [the "CPI"] for "All Items - All Urban Consumers", for the Los Angeles-Anaheim-Riverside Metropolitan Statistical Area, during the preceding twelve (12) month period, or ii) three percent (3%), whichever is greater. The base month for increases under this section shall be the most recently measured twelve (12) month period prior to the commencement of each annual anniversary of the Commencement Date.

4.3 LATE CHARGE: LESSEE acknowledges that late payment by LESSEE to LESSOR of Base Rental will cause LESSOR to incur costs not contemplated by

this Lease, the exact amount of such costs being extremely difficult and impracticable to fix. Such costs include, without limitation, processing and accounting charges. Therefore, if any installment of Base Rental due from LESSEE is not received by LESSOR within ten (10) days after written notice is received from LESSOR that the same is due and payable, LESSEE shall pay to LESSOR an additional sum of three percent (3%) per month of the overdue Base Rental as a late charge. The Parties agree that this late charge represents a fair and reasonable estimate of the costs that LESSOR will incur by reason of such late payment by LESSEE. Acceptance of any late charge shall not prevent LESSOR from exercising any of the other rights and remedies available to LESSOR.

4.4 ADDITIONAL CONSIDERATION: As consideration to the LESSOR for entering into this Lease, in addition to the rental payments specified above, within sixty (60) days of the Commencement Date of this Lease, LESSEE shall pay to the LESSOR the one-time sum of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500), which shall be deemed the cost to LESSOR of the legal fees and administration required to consider, negotiate, and enter into this Lease. Such payment shall not be refunded or reimbursed to LESSEE for any reason, regardless of whether LESSEE terminates the Lease pursuant to its provisions or proceeds with construction of the Facilities.

5. PROPERTY TAXES: LESSEE recognizes and understands that this Lease may create a possessory interest subject to property taxation pursuant to Revenue and Taxation Code section 107.7 and that LESSEE may be subject to the payment of property taxes levied on such interest. LESSEE shall timely pay all property taxes and assessments directly attributable to LESSEE's possessory interest. In no event shall LESSOR be liable for any taxes owed as a result of this Lease.

6. LESSOR INSPECTION AND ENTRY; ACCESS FOR INSPECTIONS:

6.1 LESSOR and/or its authorized representatives shall have the right to enter the Premises upon reasonable prior notice to LESSEE (which shall not be less than twenty-four (24) hours unless the LESSOR's Public Works Director determines that exigent circumstances warrant a shorter period of time, so long as such entrance does not unreasonably interfere with LESSEE's use of the Premises):

- A. To determine whether the Premises are in good condition and whether LESSEE is complying with its obligations under this Lease.
- B. To do any necessary maintenance and to make any restoration to the Premises that LESSOR has the right or obligation to perform.
- C. To serve, post, or keep posted any notices required or allowed under the provisions of this Lease.
- D. To run electric or telephone conductors, pipes, conduits, or ductwork where

necessary or desirable over, under, or through the Premises in a manner which will not unreasonably interfere with LESSEE's use of the Premises.

6.2 LESSOR shall not be liable in any manner for any inconvenience, disturbance, loss of business, or nuisance arising out of LESSOR's entry on the Premises as provided in this section, except for damage resulting from the acts or omissions of LESSOR or its authorized representatives. LESSEE shall not be entitled to an abatement or reduction of rent if LESSOR exercises any rights reserved in this section.

7. CONSTRUCTION AND MAINTENANCE OF FACILITIES AND PREMISES:

7.1 LESSEE'S CONSTRUCTION: LESSEE shall have the right to install, construct, maintain, repair, replace, and operate the Facilities on the Premises that are depicted in Exhibit C. The Parties intend that the antennas and appurtenances related thereto which are a part of the Facilities shall be constructed _____ [on an artificial pine/palm tree, particular paint color, etc.] in such manner as to make the cabinetry blend into the surroundings, i.e., LESSEE shall screen the equipment. Therefore, construction by LESSEE of any improvement, structure or work on the Premises, shall be permitted only upon the express written consent of the LESSOR, which LESSOR may either grant or withhold in its reasonable discretion.

7.2 CONSTRUCTION OF IMPROVEMENTS: All improvements to the Premises shall be made in a good and workmanlike manner, at LESSEE's expense, in accordance with the requirements of all laws, ordinances, and regulations applicable thereto, including zoning requirements and building code requirements of the City of Palm Springs, and any municipal or other governmental agency having jurisdiction over the Premises and Facilities at the time the improvements are constructed. LESSOR agrees to cooperate with LESSEE in connection with applying for any municipal permits for the construction of the aforementioned improvements. It is understood and agreed that such cooperation shall not be implied to include any expenditures of funds on the part of LESSOR or any implied promise or warranty that such permits, discretionary, or otherwise, will be issued to LESSEE. LESSEE shall provide reasonable notice to the LESSOR prior to entering the Premises for purposes of constructing the Facilities, and shall coordinate the scheduling and logistics of same with the Public Works Director to avoid any interference with the LESSOR's operations. Once commenced, any and all improvements made by LESSEE with respect to the installation of the Facilities shall be diligently pursued to completion.

7.3 MECHANIC'S LIENS: LESSEE shall not allow or permit to be enforced against the Premises, or any part thereof, and shall defend, indemnify, and hold LESSOR harmless from any mechanic's, material suppliers', contractors', tax, or subcontractors' liens arising from any claim, for damage, or growing out of the work of any construction, repair, restoration, replacement, or improvement made by or alleged to have been made by or on behalf of LESSEE. LESSEE shall pay or cause to be paid all of such liens, claims, or demands before any action is brought

to enforce the same against the Premises. If LESSEE shall in good faith contest the validity of any such claim, lien, or demand, then LESSEE shall, at its expense, defend itself and LESSOR against same and shall pay and satisfy any settlement or adverse judgment that may be entered thereupon prior to the execution thereof. In the event of any such contest, LESSEE shall provide LESSOR with a security bond in a form and amount LESSOR deems sufficient to allow the lien of record to be discharged as a matter of law.

7.4 CARE DURING CONSTRUCTION: LESSEE shall exercise great care during construction. All applicable City standards and specifications shall be followed. LESSOR's Public Works Director shall approve all work in writing prior to commencement.

7.5 LESSEE MAINTENANCE OF FACILITIES AND PREMISES: LESSEE's maintenance of the Facilities and Premises shall include, but is not limited to:

- A. Maintenance of all landscaping installed by LESSEE, if any;
- B. Repairs and/or replacements to LESSEE's Facilities caused by acts of third parties, including theft, graffiti, and intentional acts;
- C. Maintaining, in good, clean, safe, and sanitary condition and repair, all of LESSEE's personal property. All Facilities on the Property must be maintained in a first-class condition without rust, paint, or surface deterioration. All maintenance must conform to the standards utilized by LESSOR; and
- D. All work necessary to comply with Federal, State, County, municipal, and other governmental agencies and bodies having jurisdiction.

7.6 RELOCATION: In the event relocation is necessary due to public improvements, LESSEE will pay for relocation, provided that LESSOR provides a suitable alternate location for the Facilities at the Property. LESSEE shall relocate the Facilities within six (6) months of LESSOR's notice thereof.

7.7 ABANDONMENT: If use of the Facilities is abandoned for at least two (2) months, LESSEE or its designee shall be responsible for removing the Facilities and returning the Premises to their original condition as approved by the Public Works Director. LESSOR shall provide notice to LESSEE of said abandonment. In the event LESSEE fails to comply with this provision in regard to the removal of the Facilities and restoration of the Premises within ten (10) days of said notice, LESSOR shall have the right to remove the Facilities and LESSEE relinquishes any and all rights thereto, said Facilities shall become the property of LESSOR by virtue of LESSEE's abandonment hereunder.

8. TERMINATION:

8.1 LESSOR'S RIGHT TO TERMINATE:

- A. LESSOR may pursue any remedies available to it under applicable law, including, but not limited to, the right to terminate this Lease, upon the earliest of any of the following events:
1. LESSEE's failure to pay rent within fifteen (15) days following nonpayment;
 2. LESSEE's failure to comply with any term, covenant, or condition of this Lease after LESSEE has been given written notice of the violation and has had thirty (30) days to cure same or, if such default is not curable within such thirty (30) day period, has not proceeded to commence such cure within such thirty (30) day period and diligently proceeds to completion;
 3. Interference by the Facilities with other electrical or radio frequency equipment installed on or around the Property, which interference is not cured by LESSEE within ten (10) days following written notice thereof; or
 4. Interfere with LESSOR's operations, or use of the Property by LESSOR or third parties after LESSEE has been given written notice of the violation and has had thirty (30) days to cure same or, if such default is not curable within such thirty (30) day period, has not proceeded to commence such cure within such thirty (30) day period and diligently proceeds to completion.
- B. Additionally, upon a finding by LESSOR's City Council that the Premises are needed for other public purposes, LESSOR shall have the right, after the expiration of the Initial Term, to terminate this Lease without liability upon one (1) year's written notice of termination to LESSEE.

8.2 LESSEE'S RIGHT TO TERMINATE: LESSEE may terminate this Lease without further liability for any reason whatsoever upon ninety (90) days written notice to LESSOR. Upon termination, all prepaid rent will be retained by LESSOR unless such termination is due to LESSOR's failure of proper ownership or authority, or such termination is a result of LESSOR's default hereunder. In the event LESSEE terminates the Lease prior to commencement of construction of the Facilities, all LESSEE's obligations under this Lease shall terminate without further liability.

8.3 RETURN OF PREMISES UPON TERMINATION: Except as otherwise provided herein, LESSEE shall at its sole expense remove all of LESSEE's Facilities, within sixty (60) days following expiration or termination of this Lease. Upon the expiration or termination of this Lease, LESSEE shall surrender the Premises to

LESSOR in a condition at least as good as existed on the date LESSEE executes this Lease, less ordinary and reasonable wear and tear. The Parties intend that LESSEE shall not remove or destroy any improvements to the Premises that, subsequent to surrender of the Premises by LESSEE, will benefit or be of use to LESSOR. Therefore, upon expiration or termination of this Lease, LESSOR may request that LESSEE not remove or destroy all or any portion of the LESSEE's Facilities, and, except for any electrical (other than lighting), mechanical, computer, or similar equipment (including antennas), LESSEE shall not remove the portion of the LESSEE's Facilities that is the subject of LESSOR's request. LESSEE shall thereafter execute any and all documents as are reasonably required to evidence that title to such improvements have been transferred to LESSOR, in their "as-is" condition.

9. INTERFERENCE:

9.1 LESSEE'S OBLIGATIONS: Prior to occupancy of the Premises and operation of the Facilities by LESSEE or its agents, assigns or LESSEE's employees, LESSEE agrees to:

- A. Submit to LESSOR, within forty-five (45) days prior to operation, proposed plans for antenna type and size, along with operating frequencies, effective radiated power, and other necessary on-air technical data at LESSOR's discretion for LESSOR's review and approval. If LESSOR does not respond in writing to LESSEE within ten (10) days following LESSEE'S request for approval, such request will be deemed to have been approved by LESSOR.
- B. Install or cause to be installed, all equipment according to generally accepted standard engineering practices and in a good and workmanlike manner.
- C. Use reasonable efforts to investigate the cause of, and mitigate any interference caused by, LESSEE on existing radio frequency equipment of LESSOR following written notification of interference from LESSOR.

9.2 SUBSEQUENT PROPERTY LEASES: LESSOR agrees to include in all leases between LESSOR and future lessee's of the Property a covenant that the lessee shall not interfere with other electrical or radio frequency equipment previously installed on the Property and that if the lessee is not able to mitigate the interference, the lease shall provide for termination thereof. Likewise, LESSOR will not permit or allow the installation of any future equipment which (i) results in technical interference problems with LESSEE's then existing equipment or (ii) encroaches onto the Premises.

9.3 NON-INTERFERENCE: The communication equipment and the use thereof shall not interfere with the use of any other communication or similar equipment of any

kind and nature owned or operated by LESSOR or other occupants of the Property existing as of the Commencement Date, except as may be permitted by applicable laws; provided, however that subsequent to the installation by LESSEE of the Facilities, LESSOR agrees not to install and to exercise commercially reasonable effort to not allow installation of new equipment on the Premises if such equipment causes interference with LESSEE's operations. All interference claims shall be settled in accordance with the then prevailing interference rules and regulations promulgated by the Federal Communications Commission.

10.0 DESTRUCTION OF PREMISES: If either the Premises or the Property is destroyed or damaged as a result of a catastrophic event to the extent that, in LESSEE's reasonable discretion, LESSEE may no longer use the Premises for the intended purposes, LESSEE may elect to either:

- A. Terminate this Lease, effective upon the date of the damage or destruction, by delivering written notice within ninety (90) days of the date of the damage or destruction and a request to terminate; or
- B. Upon consent of LESSOR, which shall not be unreasonably withheld, conditioned or delayed, use a portion of the Premises specified by LESSOR for provision of Communication Services on a temporary basis until such time as the LESSEE's Facilities on the Premises are repaired or reconstructed so that LESSEE can resume the provision of Communication Services from the Premises. If LESSEE elects to continue this Lease and in the event that LESSOR unreasonably delayed its consent for LESSEE to install the temporary facility in order for LESSEE to continue its operation, Rent shall abate for the period of non-use. Any such repair or reconstruction shall be completed in an expeditious manner.

11. UTILITIES AND PROVISION OF SERVICE: LESSEE shall determine the availability of and shall, at its sole cost and expense, cause to be installed in, on, and about the Premises all facilities necessary to supply thereto all electricity, telephone, and other similar services required to service the Premises. LESSOR shall allow LESSEE to have its own electrical metering equipment installed. LESSEE shall obtain all necessary approvals for the installation of the meter. An electrical plan shall be submitted to LESSOR for approval, which approval shall not be unreasonably withheld, conditioned or delayed prior to commencement of such work. LESSOR agrees to cooperate with LESSEE in its efforts to obtain such utility service. During the Initial Term and the Renewal Term, LESSEE agrees to pay directly to the servicing utility when due all charges for electricity, telephone and all other utility services of every kind and nature supplied to and used by LESSEE on the Premises. LESSOR shall be responsible for its electrical and other utility service and for the regular payment of electrical and other utility charges attributable to the Property other than the Premises.

12. INDEMNIFICATION AND INSURANCE:

12.1 INDEMNIFICATION: Neither LESSOR nor any other officer or employee of LESSOR shall be responsible for any damage or liability occurring by reason of any acts or omissions on the part of LESSEE or its officers or employees under or in

connection with any activities under this Lease. It is also understood and agreed that to the fullest extent permitted by law, LESSEE shall indemnify, defend (with counsel reasonably acceptable to LESSOR), protect and hold harmless LESSOR and its officers, agents and employees ("LESSOR's Parties") from and against any and all claims, demands, judgments, actions, damages, losses, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees and court costs) arising at any time directly or indirectly from or in connection with (i) any default in the performance of any obligation by LESSEE to be performed under the terms of this Lease, (ii) LESSEE's use of the Premises, or (iii) the conduct of LESSEE's business or any activity, work or things done, permitted or allowed by LESSEE in or about the Premises, except to the extent caused by LESSOR's, LESSOR's Parties' or LESSOR's contractors', LESSEEs', guests', invitees', or licensees' negligence or willful misconduct. The obligations of LESSEE under this section shall survive the expiration or earlier termination of this Lease.

12.2 ASSUMPTION OF RISK: LESSEE, as a material part of the consideration to LESSOR, hereby assumes all risk of damage to the Premises, including, without limitation, injury to persons in, upon or about the Premises during LESSEE's use of the Premises, arising from any use of the LESSEE's Facilities or other activities of LESSEE or LESSEE's agents, employees, guests, or invitees (collectively "LESSEE's Parties") on the Premises. LESSEE hereby waives all claims with respect thereof against LESSOR, except as otherwise stated in this Lease. LESSOR shall not be liable for any injury to LESSEE's Facilities, Premises, or injury to or death of any of LESSEE's Parties, or injury to LESSEE's Facilities, or injury to or death of any other person in or about the Premises from any cause except to the extent such is caused by the negligence or willful misconduct of the LESSOR, LESSOR's Parties, or LESSOR's agents, contractors, tenants, guests, invitees, or licensees.

12.3 INSURANCE:

- A. Casualty Insurance: During the term of this Lease, LESSEE shall, at its sole cost and expense, keep LESSEE's interest in the Premises and the Facilities, including any improvements thereon both in the course of construction and through the remainder of any term of this Lease, insured by responsible insurance companies, licensed to do business in the State of California or self insurer, against loss or damage by fire and other such casualties as are included in extended coverage. Such coverage shall include stipulated value, vandalism and malicious mischief endorsements, in such amounts so as to provide for the then actual replacement cost of all improvements on the Premises.
- B. LESSEE agrees, at its sole expense, and at all times during the term of this Lease, to maintain in full force, or cause to be maintained in full force, a policy or policies of comprehensive general liability insurance in an amount of ONE MILLION DOLLARS (\$1,000,000.00), including property damage,

written by one or more responsible insurance companies licensed to do business in the State of California or a self insurer. LESSEE shall ensure that LESSOR is named as an additional insured and such additional insured certificate shall be provided to LESSOR prior to the commencement of any work. Such policies shall insure against liability for injury to persons and/or property and death of any person or persons which may occur as a result of or in connection with the existence of the Facilities and improvements in, on or about the Premises.

13. DAMAGE OR DESTRUCTION OF IMPROVEMENTS TO PREMISES: LESSOR shall have no duty or obligation to rebuild the Facilities or the improvements thereon if such Facilities or improvements are substantially damaged during the Term, in whole or in part by any casualty. LESSOR will give LESSEE (a) notice of such casualty within thirty (30) days after the date of the casualty and (b) the right to terminate in sixty (60) days from said casualty date. In the event LESSOR chooses not to rebuild the Facilities or improvements thereon, LESSEE shall be entitled to terminate the Lease.

14. ASSIGNMENT AND SUBLEASING:

14.1 ASSIGNMENT: LESSEE shall not voluntarily assign or transfer its interest under this Lease or in the Premises without first obtaining the prior written consent of LESSOR, which consent shall be not unreasonably withheld, delayed or conditioned. The transfer of the rights and obligations of LESSEE to a parent, subsidiary, or other affiliate of LESSEE, or to any successor in interest or entity acquiring fifty-one (51%) or more of LESSEE's membership interests or assets, shall not be deemed an assignment and LESSOR's consent shall not be required for such transfer. Any assignment without LESSOR's consent (when such consent is required) shall be voidable and, at LESSOR's election, shall constitute cause for exercise of LESSOR's remedies under applicable law, including termination of the Lease. No consent to any assignment shall constitute a further waiver of the provisions of this section. Notwithstanding the foregoing, it is understood that LESSEE shall not be released from liability hereunder by virtue of any assignment. As a condition precedent to any such assignment which requires LESSOR's consent, LESSEE agrees to provide written notice to LESSOR of its intention to assign at least thirty (30) days before the proposed effective date of any such proposed assignment which notice shall include the identity of the proposed assignee, copies of the proposed assignment documentation and current financial statements of the proposed assignee. As a further condition precedent to any assignment, the assignee must assume, in writing, all of LESSEE's obligations under this Lease.

14.2 SUBLEASING: LESSEE shall not sublease any portion of the Premises except as expressly provided herein. LESSEE shall be permitted to sublease portions of the Premises to a wholly-owned subsidiary of LESSEE, provided LESSEE provides LESSOR with express written notice of such sublease.

14.3 COLLOCATION: LESSEE shall cooperate with future communications operators that would request collocation as long as there is no adverse impact on LESSOR from an operational, maintenance, and repair standpoint.

15. RENEWAL/HOLDING OVER: Upon the expiration or termination of this Lease, LESSEE shall surrender the Premises to LESSOR. If LESSEE shall remain in possession of the Premises after the expiration or termination of the Lease, with the consent of LESSOR, either express or implied, such holding over shall be construed to create a month to month tenancy subject to all the covenants, conditions, and obligations hereof, and LESSEE hereby agrees to pay LESSOR, as monthly rental, an amount equal to one hundred twenty-five percent (125%) of the most recent monthly rental price. Nothing above shall be construed to give LESSEE any rights to so hold over and to continue in possession of the Premises after the expiration of the Term without the express consent of LESSOR.

16. ENVIRONMENTAL: LESSEE and its agents, employees, or contractors subcontractors or other representatives shall not bring upon the Premises, or permit or authorize any other person or entity to bring upon the Property, including the Premises, any hazardous materials, hazardous substances, hazardous wastes, pollutants, asbestos, polychlorinated biphenyls (PCBs), petroleum or other fuels (including crude oil or any fraction or derivative thereof). Notwithstanding the foregoing, LESSEE may bring such fuels and lubricants onto the Premises as may be required for operation of construction vehicles during construction and backup power for generators during, maintenance or repair of the LESSEE's Facilities. In addition, LESSEE may also bring onto the Premises, any lead-acid batteries, cleaning solvents, and other chemicals necessary for proper utilization and maintenance of the LESSEE's Facilities. In bringing any materials or substance onto, or using any materials and substances on, the Premises, LESSEE shall comply with all federal, State, and local government laws, regulations, and rules. LESSEE shall be solely responsible for any damages or costs incurred by LESSOR due to any environmental contamination, arising from the presence or use on LESSEE's behalf of any hazardous materials or substances that LESSEE, its agents, employees, contractors, subcontractors or other representatives bring onto the Premises.

17. MISCELLANEOUS:

17.1 NO WAIVER: No covenant, term, or condition thereof shall be deemed waived, except by written consent of the Party against whom the waiver is claimed. Any waiver or the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term, or condition. Acceptance by LESSOR of performance other than full performance by LESSEE after the time the performance shall have become due shall not constitute a waiver by LESSOR of the breach or default of any covenant, term, or condition unless otherwise expressly agreed to by LESSOR in writing.

17.2 ATTORNEY'S FEES AND COSTS: If either Party hereto shall bring any action for any relief against the other, declaratory or otherwise, arising out of this Lease, including any suit by LESSOR for the recovery of rent or possession of the Premises, the prevailing Party shall be entitled to have and recover from the other

Party the prevailing Party's reasonable fees and costs (including attorneys' fees), which shall be deemed to have accrued on the commencement of such action and shall be paid whether or not such action is prosecuted to a judgment.

- 17.3 NO JOINT VENTURE: Neither LESSOR nor any of its employees shall have any control over the manner, mode or means by which LESSEE, its agents or employees, use the Premises or Facilities described herein, except as otherwise set forth herein. LESSOR shall have no voice in the selection, discharge, supervision or control of LESSEE's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. LESSEE shall perform all covenants herein as a tenant of LESSOR and shall remain at all times as to LESSOR a tenant with only such obligations as are consistent with that role. LESSEE shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of LESSOR. LESSOR shall not in any way or for any purpose become or be deemed to be a partner of LESSEE in its business or otherwise or a joint venturer or a member of any joint enterprise with LESSEE.
- 17.4 INTERPRETATION: The Parties hereto agree that all provisions hereof are to be construed as both covenants and conditions as though the words imparting such covenants and conditions were used in each separate section hereof. The captions of the sections and subsections of this Lease are for convenience only and shall not be deemed to be relevant in resolving any questions of interpretation or construction.
- 17.5 INTEGRATION AND GOVERNING LAW: This Lease represents the entire understanding of LESSOR and LESSEE as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered by this Lease. This Lease shall be governed by the laws of the State of California and construed as if drafted by both LESSOR and LESSEE. Any action, arbitration, mediation, hearing or other proceeding related to this Lease shall be conducted only in the County of Orange.
- 17.7 LEASE BINDING ON HEIRS AND ASSIGNS: Each of the terms, covenants, and conditions of this Lease shall extend to, be binding upon, and inure to the benefit of not only LESSOR and LESSEE, but each of their respective heirs, representatives, administrators and assigns. Whenever in this Lease reference is made to either LESSOR or LESSEE, the reference shall be deemed to include, whenever applicable, the heirs, legal representatives, and assigns of each of the Parties, the same as if in every case expressed.
- 17.8 CORPORATE AUTHORITY: Each party executing this Lease on behalf of a corporation represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of said corporation and that this Lease is binding upon said corporation in accordance with its terms.

17.9 NOTICES: Any written notices required pursuant to this Lease shall be made by certified or registered mail, return receipt requested, or reliable overnight courier and delivered to the following address:

To LESSOR: City of Palm Springs
3200 East Tahquitz Canyon Way
Palm Springs, CA 92262
Attn: City Clerk

Copy to: Woodruff, Spradlin & Smart
555 Anton Blvd. Suite 1200
Costa Mesa, CA 92626
Attn: Douglas C. Holland, City Attorney

To LESSEE:

Copy to:

17.10 AMENDMENTS: This Lease may not be modified, altered, or amended except in writing signed by both LESSOR and LESSEE. The Agency assigns to the City Manager signature authority to execute future Lease Amendments and extensions for periods not more than two (2) years each and provided that the City Manager shall not have the authority to approve a decrease in the rental rate without the prior approval of the City Council.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have caused this Lease to be executed by their duly authorized officers.

LESSOR

LESSEE

COMMUNITY REDEVELOPMENT
AGENCY OF THE CITY OF
PALM SPRINGS

By: _____
Executive Director

Date: _____

TAX ID#: _____

ATTEST

City Clerk

APPROVED AS TO FORM:

Counsel

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A
DESCRIPTION OF THE PROPERTY

EXHIBIT B

DESCRIPTION OF THE LEASED PREMISES

LESSOR leases to LESSEE approximately three hundred (300) square feet of space ("Floor Space") and approximately two hundred twenty five (225) square feet on the roof ("Rooftop Space") of the building ("Building") located on the Property (Building and Property are hereinafter sometimes collectively referred to as the "Property"), for the installation, operation and maintenance of communications equipment; together with such additional space on the roof of the Building sufficient for the installation, operation, and maintenance of antennas ("Antenna Space"); together with such additional space within the Building and on the roof of the Building for the installation, operation, and maintenance of wires, cables, conduits, and pipes ("Cabling Space") running between and among the Floor Space, Rooftop Space, and Antenna Space, and to all necessary electrical and telephone utility sources located within the Building or on the Property subject to the provisions of the Lease related thereto; together with the non-exclusive right of ingress and egress from a public right-of-way, seven (7) days a week, twenty four (24) hours a day, over the Property and in and through the Building to and from the Premises for the purpose of installation, operation, and maintenance of LESSEE's communications facility.

EXHIBIT C

DESCRIPTION OF THE FACILITIES

PROJECT DRAWINGS

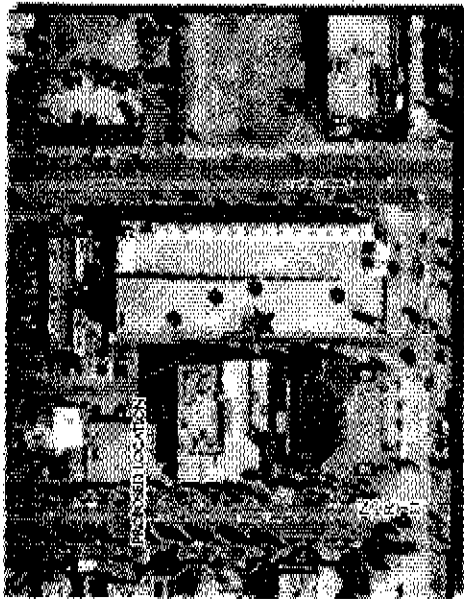
(See Attached)

Attachment 2

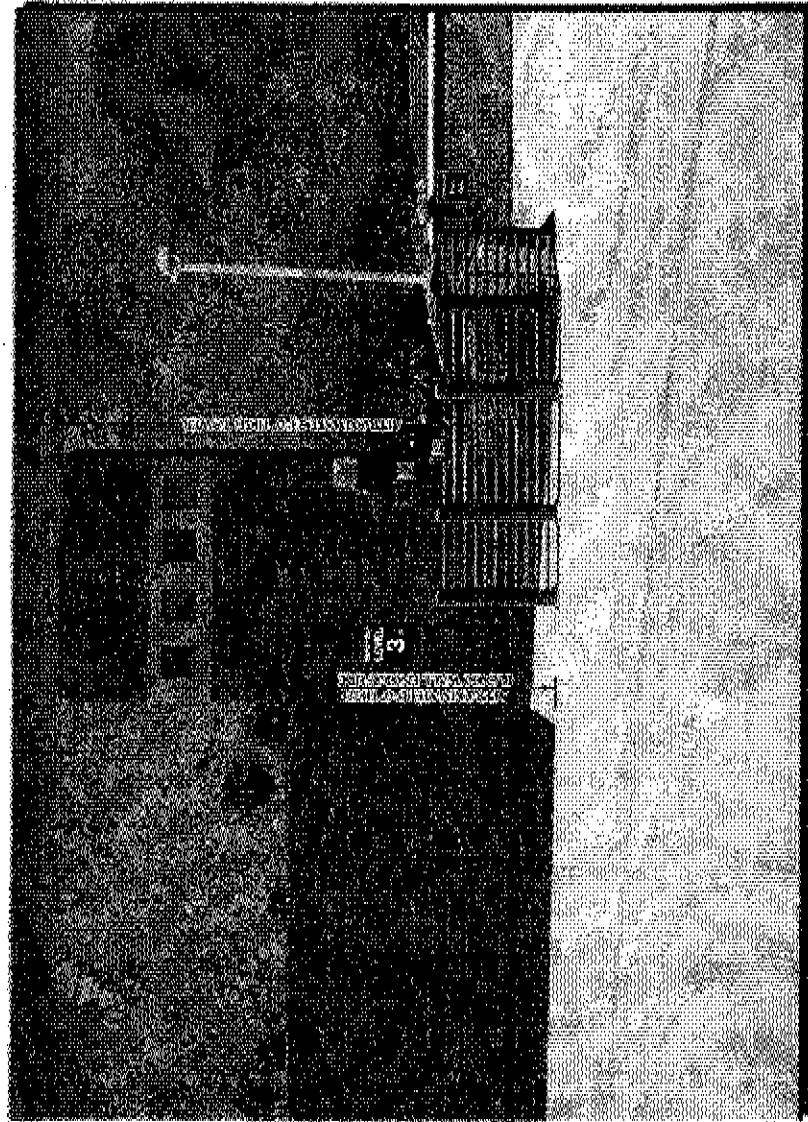
Photograph Simulations-Conceptual

VERIZON WIRELESS - PROPOSED TOWER SITE

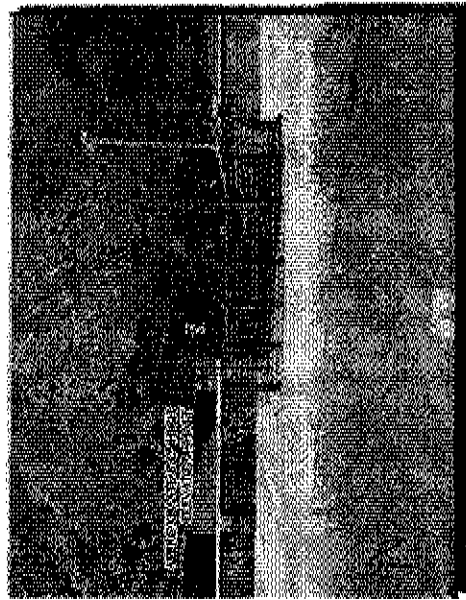
295 SOUTH INDIAN CANYON DRIVE PALM SPRINGS, CALIFORNIA 92262



LOCATION MAP



VIEW 1



EXISTING VIEW



WEST COAST
SPECTRUM
COMMUNICATIONS
CORPORATION
PALMDALE, CA 91326

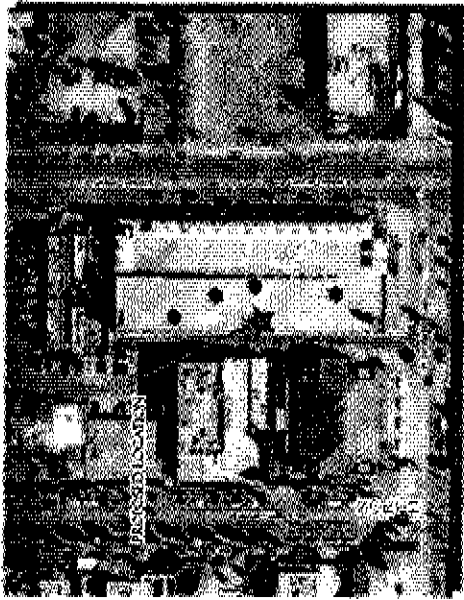


WEST COAST AREA
SPECTRUM
COMMUNICATIONS
CORPORATION
PALMDALE, CA 91326

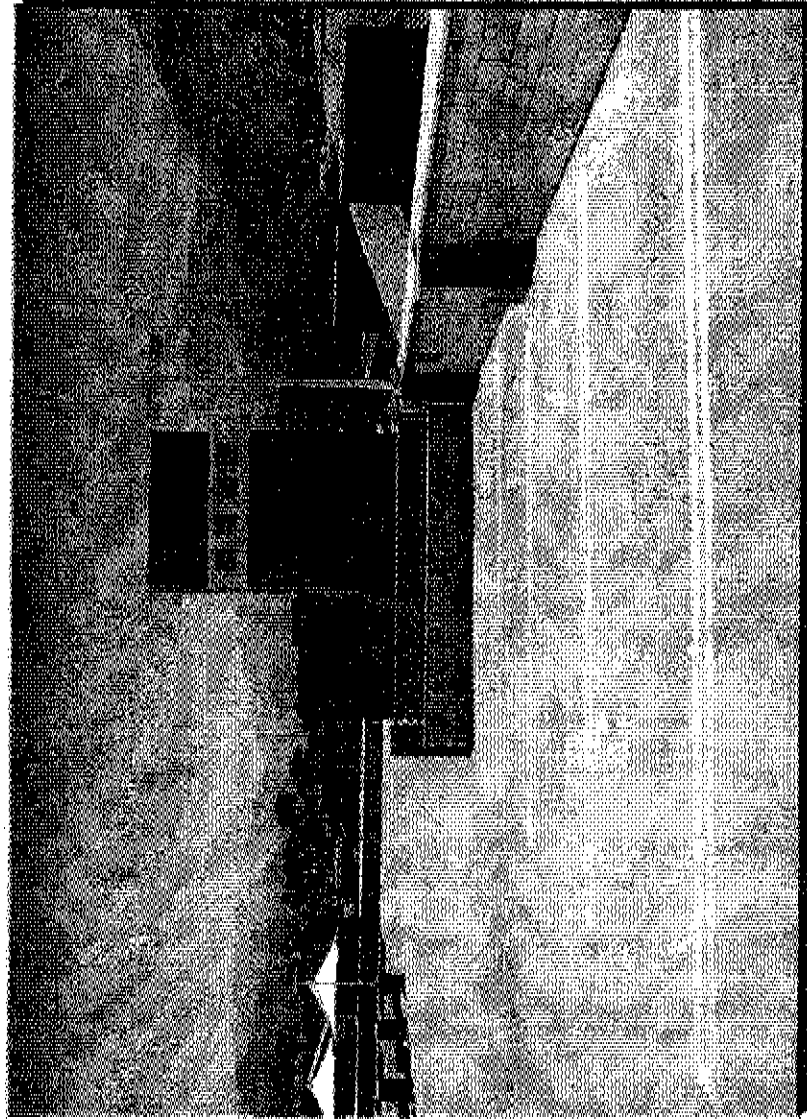
LOOKING WEST

VERIZON WIRELESS - PROPOSED TOWER SITE

295 SOUTH INDIAN CANYON DRIVE PALM SPRINGS, CALIFORNIA 92262



LOCATION MAP



VIEW 2



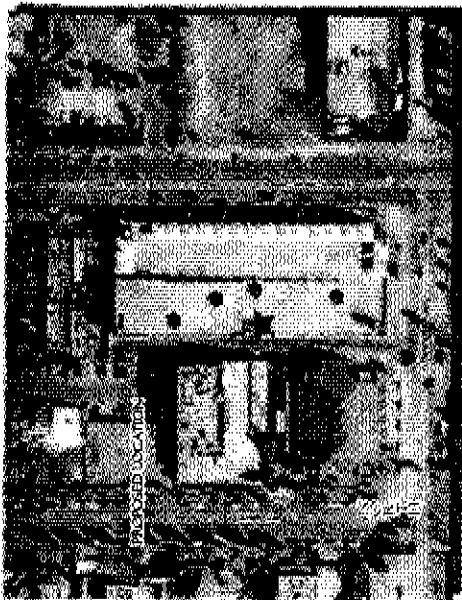
LOOKING SOUTH



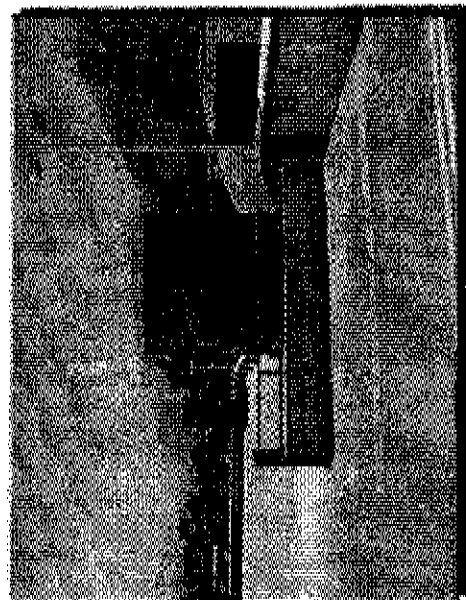
EXISTING VIEW

VERIZON WIRELESS - PROPOSED TOWER SITE

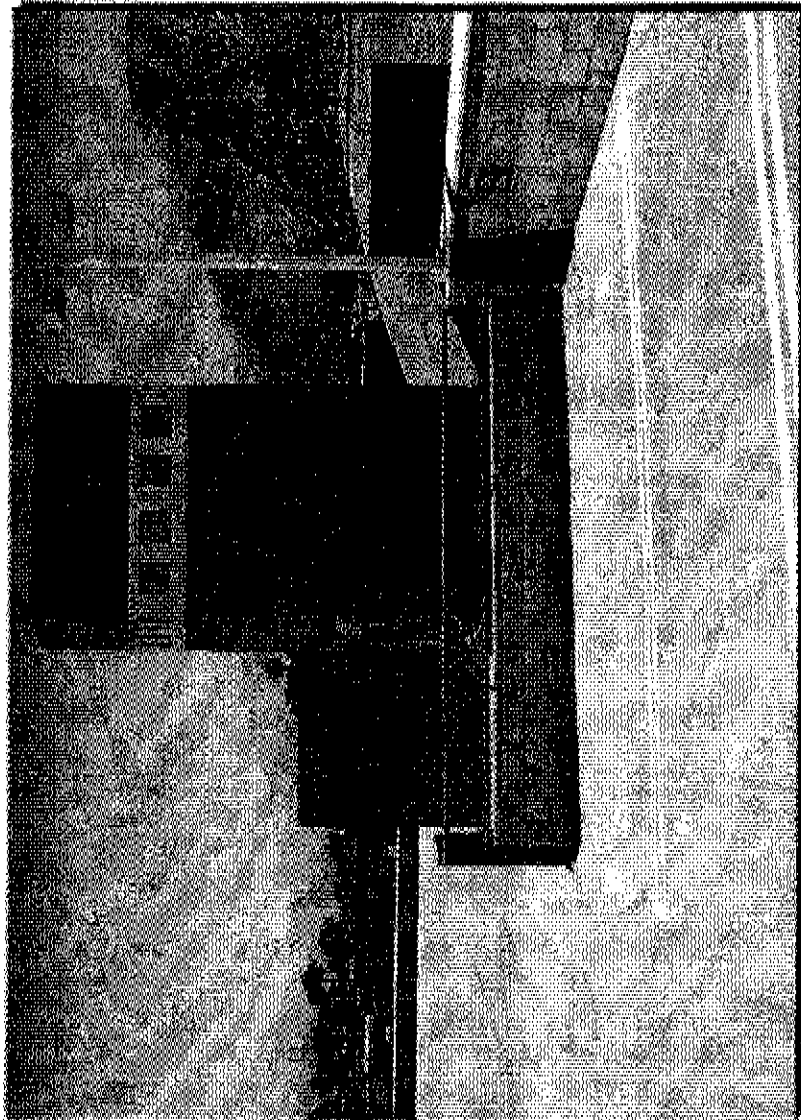
295 SOUTH INDIAN CANYON DRIVE PALM SPRINGS, CALIFORNIA 92262



LOCATION MAP



EXISTING VIEW



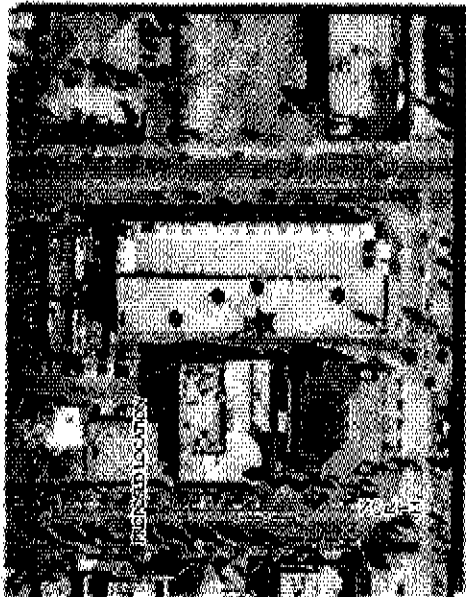
VIEW 3



LOOKING SOUTH
(CLOSER THAN VIEW 2)

VERIZON WIRELESS - PROPOSED TOWER SITE

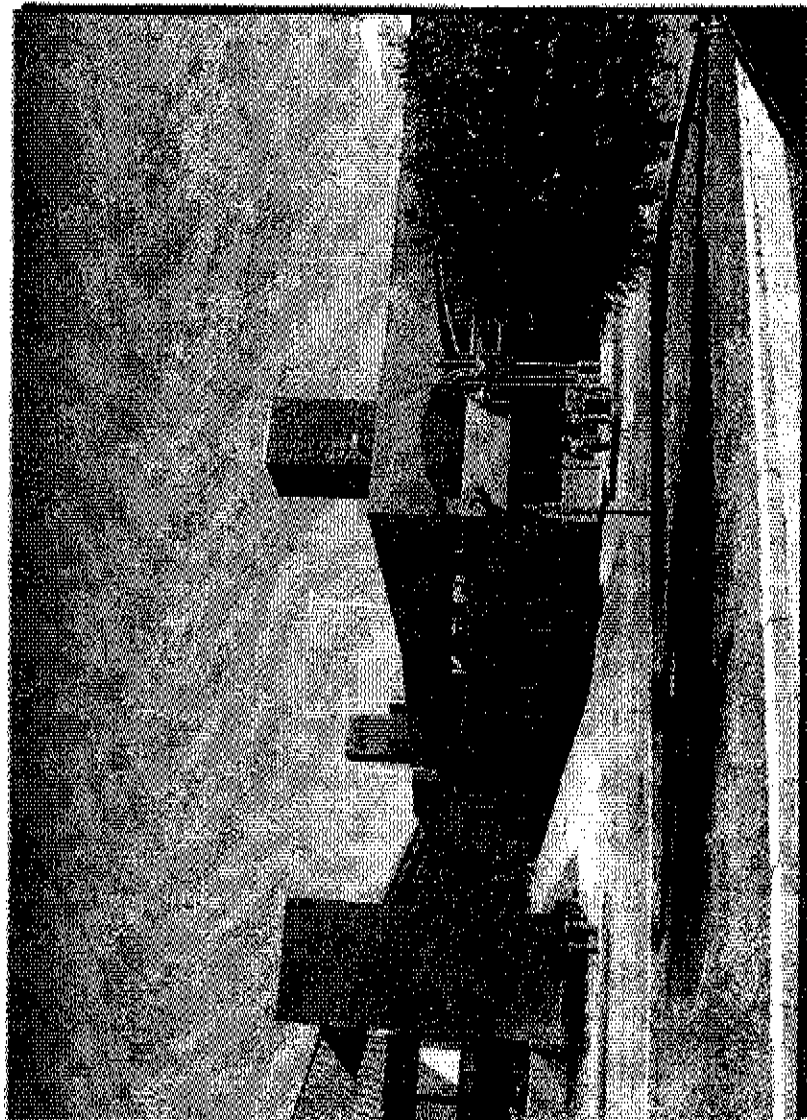
295 SOUTH INDIAN CANYON DRIVE PALM SPRINGS, CALIFORNIA 92262



LOCATION MAP



EXISTING VIEW



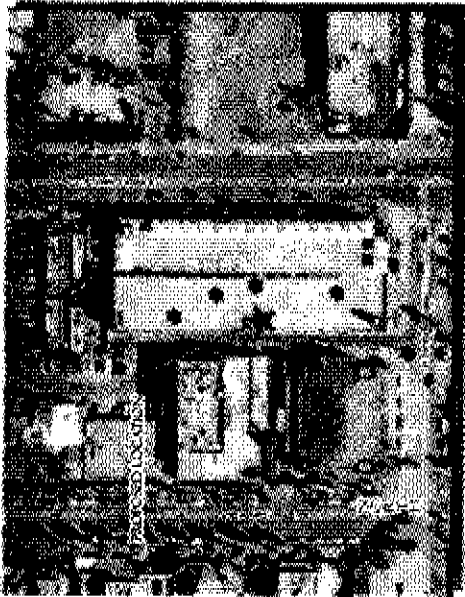
VIEW 4



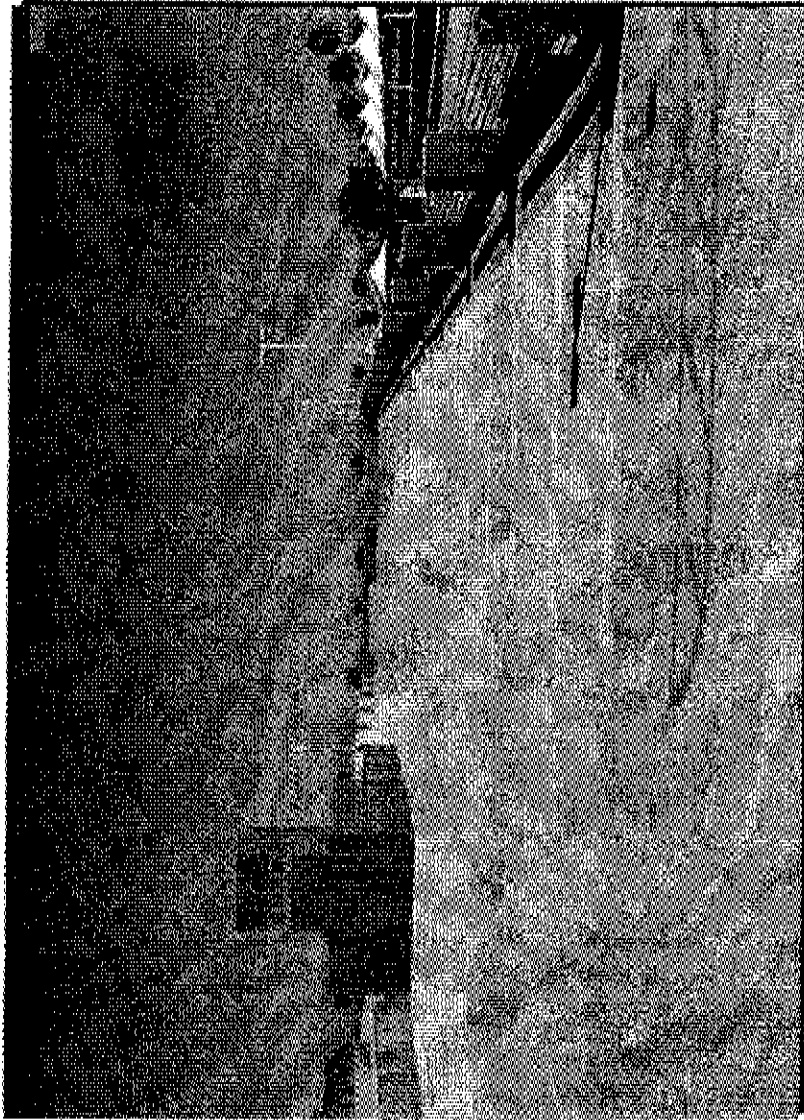
LOOKING NORTH
FROM BARCSTO

VERIZON WIRELESS - PROPOSED TOWER SITE

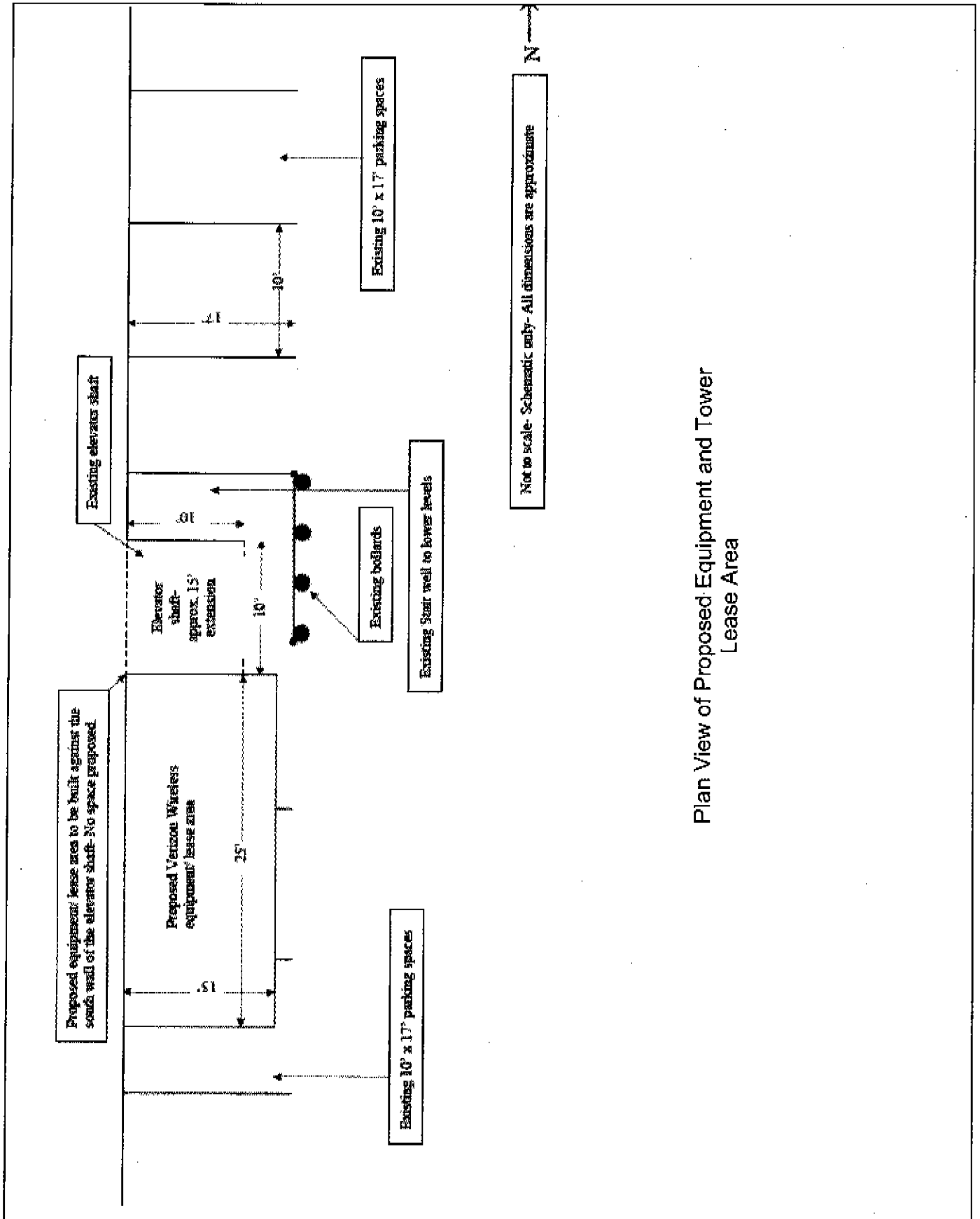
295 SOUTH INDIAN CANYON DRIVE PALM SPRINGS, CALIFORNIA 92262



LOCATION MAP



LOOKING NORTH
FROM TOP OF PARKING
STRUCTURE



Plan View of Proposed Equipment and Tower Lease Area

Attachment 3

Minutes of June 8, 2009 AAC Meeting

- 3.c Still too dense, courtyards and back to back patios still don't work. (Patios too tight)
- 3.d Gates to streets from back yard patios is a good move.
- 3.e Scoring in stucco was well received.
- 3.f Fabric Shade structure in courtyard is very nice.
- 3.g Outstanding landscaping (like the geometric design relating to the bldgs.)

ACTION: M/S/C (O'Donnell/Sahlin) 3-1 to approve with condition to create pedestrian path between back to back courtyards and lower parapets at least 9 to 12 inches.

AGENDA ITEM # 4: Case # 5.1037-PD-309 Amendment

Vista San Jacinto, an amendment to a previously submitted PDD changing from single-family to multi-family residential units on approximately 5.9 acres at 301 Rosa Parks Road, Zone R2, Section 34/T3/R4. GP Mixed Use. (KL)

AAC members offered the following comments and recommendations:

- 4.a Consider a method of screening the northwesterly facing doors from the prevailing winds.

ACTION: M/S/C 4-0

AGENDA ITEM # 5: Case # 5.0901 MAA

Verizon to add a wireless tower and construct a 400 s.f. support enclosure on top of the existing northwest elevator shaft located on the top deck of the City parking structure at 295 South Indian Canyon Drive, Zone CBD, Section 15. (D.Shay)

Staff presentation was made by Assistant Planner, Glenn Mlaker who described the proposal to add a telecommunication facility on the top deck of the City parking garage. The submitted plans show the height of the new tower to be 23 feet above the top parking deck. All of the new buildings to be constructed of slump stone block painted to match the existing structure.

Todd Fisher of Verizon was present and gave a brief description of the project mentioning that a previous plan was presented to the City Council. At that meeting the Council instructed Verizon to revise the plans and re-submit a better design. The plan presented at the AAC is a reaction to the City Council request.

Diana Shay, Redevelopment Coordinator mentioned that the City is seeking AAC conceptual approval for the purpose of entering into lease negotiations with Verizon. A formal submission will be forthcoming to the AAC after a lease is signed.

AAC members offered the following comments and recommendations:

- 5.a Overall height from the ground and parking deck must be part of detailed plans.
- 5.b Light pole locations on the top deck may need to be revised.
- 5.c Elevations of new buildings must include materials, door locations, and color.
- 5.d Tower location on top deck OK.

ACTION: M/S/C (King/ O'Donnell) 5-0-0 to recommend preliminary approval, with final detailed plans to be re-submitted to AAC at a future date.

4. AGENDA ITEM # 6: Case # 3.1613

Von's Grocery store for review of traffic calming plan and landscaping in front of store at the Rimrock Shopping Center, 4733 East Palm Canyon Drive, Zone CDN, Section 30. (DN)