

**BOARD OF TRUSTEES**  
**McHENRY COUNTY COLLEGE DISTRICT #528**

March 12, 2009  
Special Board Meeting  
7:00 p.m.

Board Room  
8900 U.S. Highway 14  
Crystal Lake, IL 60012

**AGENDA**

1. CALL TO ORDER
- \*RC 2. ROLL CALL
3. PLEDGE OF ALLEGIANCE
4. ACCEPTANCE OF AGENDA
5. PROPOSAL TO SELL APPROXIMATELY 3.67 ACRES OF MCC REAL ESTATE
6. CLOSED SESSION
7. OPEN FOR BOARD MEMBERS
8. ADJOURNMENT



George Lowe  
Chair

\*Roll Call

Proposal to Sell Approximately  
3.67 Acres of MCC Real Estate

Information:

At the Special Board Meeting of February 18, 2009, the Board of Trustees heard a presentation by Mr. John Maguire on behalf of BMB Communications Management, LLC, regarding a proposal to purchase approximately 3.67 acres of McHenry County College real estate for the purpose of constructing a 1,500 foot communications tower. A proposed purchase contract outlining the terms and provisions of the purchase was provided to the Board and made available to the public.

At the request of members of the Board of Trustees, the item is back on the Board's agenda for consideration, along with a revised final purchase contract, a copy of which is attached. Mr. Maguire is unable to attend the March 12 Special Board Meeting. However, Mr. Tom Zanck, Attorney for BMB Communications Management, has a copy of the contract signed by Mr. Maguire and will be at the Special Board Meeting to address questions from the Board of Trustees.

The specific revisions in the proposed final purchase contract include:

1. All references to charitable contributions being made to MCC, the Foundation, or other charities designated by MCC have been revised to delete the Foundation and alternate charities. The contract now provides that the contributions will be made to McHenry County College District No. 528. Please refer to page 2, paragraphs 2a and 2b of the attached revised final purchase contract.
2. Mr. Maguire has agreed to make a non-refundable initial deposit of \$2,500 for the first six months during which time he will petition for approval of the communications tower construction at the project site by the Federal Aviation Administration (FAA). Mr. Maguire believes he will know within six months whether or not the FAA will approve the project site. In the previous version of the contract, all deposits were refundable if the project were cancelled within four, six-month periods (24 months total). Please refer to page 5, paragraph 9f of the attached revised final purchase contract.

An additional consideration is that Illinois Compiled Statutes, specifically 110 ILCS 805/3-41, provide authority for the Board of Trustees *"To sell at private or public sale any personal or real property belonging to the district and not needed for community college purposes."* It is, therefore, incumbent upon the Board to determine that the subject acres of real estate are not needed for College purposes.

Recommendation:

If the Board of Trustees believes the approximately 3.67 acres of real estate identified in the purchase contract is not needed for community college purposes and it is in the best interest of McHenry County College to sell those acres of MCC real estate to BMB Communications Management, LLC, according to the terms and provisions of the attached purchase contract, it is recommended that the Board 1) affirms a finding that the approximately 3.67 acres of real estate provided for in the purchase contract are not needed for community college purposes, specifically for McHenry County College purposes; 2) approves

the sale of the specified acres of real estate to BMB Communications Management, LLC; and 3) authorizes the Chair and Secretary, on behalf of McHenry County College District No. 528, to sign the purchase contract previously signed by Mr. Maguire.

A handwritten signature in black ink, appearing to read "Brian Sager". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Brian Sager, Ph.D.  
Acting President

## PURCHASE CONTRACT – TOWER SITE

THIS PURCHASE CONTRACT (the "Agreement") is made and entered into on \_\_\_\_\_, 2009, by and between McHenry County College District 528 ("Seller") and BMB Communications Management, LLC ("Buyer"). In connection with the execution of this Agreement, (a) Buyer has provided Seller with documentary evidence that it is duly licensed to conduct business in the State of Illinois, and (b) Seller has provided Buyer with documentary evidence that this is a fully-approved and binding agreement of the Seller and that all necessary approvals by its board of trustees have been obtained.

NOW, THEREFORE, for and in consideration of the mutual agreements contained herein, and other good and valuable consideration, the receipt, adequacy, and sufficiency which are hereby expressly acknowledged by the parties hereto, the parties hereto do hereby covenant and agree as follows:

1. Purchase and Sale of Site. Subject to and in accordance with the terms and provisions of this Agreement, Seller hereby agrees to sell to Buyer, and Buyer hereby agrees to purchase from Seller, the real property described on Exhibit A attached hereto and all appurtenances and related mineral and/or water rights, if any, owned by Seller (collectively, the "Property"); together with a perpetual nonexclusive 30-foot wide vehicular access easement to Route 14. Said access easement shall traverse Seller's privately owned Ring Road in such configuration as said Ring Road may, from time to time, be configured for vehicular access to the site from the most southerly entrance to the campus from Route 14. Ring Road shall be maintained by Seller. From Ring Road to the tower site being purchased, a non-exclusive vehicular access easement shall continue as a 30 foot wide driveway easement which Buyer shall construct and maintain at its own expense in the approximate location as depicted on Exhibit A as well as a temporary construction easement in the approximate location indicated on Exhibit A, which temporary easement shall automatically terminate when the tower commences its transmittal operations. The specific dimensions of the Property are as follows: 400 feet by 400 feet (approximately 3.67 acres, more or less) to be determined by survey. The area must be no less than 400 feet by 400 feet, together with such additional footage required so as to deliver a square parcel measured 400 feet by 400 feet together with whatever additional footage is east of the square to reach the Seller's east slanted boundary line.

2. Purchase Price. Subject to adjustment and credits specified in this Agreement, the purchase price (the "Purchase Price") to be paid by Buyer to Seller for the Property shall be the current fair market value of the Property, as determined by an appraiser to be selected by Seller. The Purchase Price shall be paid by Buyer to Seller at the Closing by wire transfer of immediately available federal funds, subject to prorations, adjustments and credits as otherwise specified in this Agreement, provided that Buyer agrees to put \$2,500.00 on deposit as earnest money within ten (10) business days after the date of this Agreement (pursuant to escrow instructions customary in the jurisdiction where the Property is located), all of which will be applied as a credit against the Purchase Price at Closing. The Buyer is purchasing the Property in connection with its development plan for a communications tower (the "Tower") to be constructed on the site. Under the

referenced development plan, the specific permits that the Buyer will need to process and acquire are summarized in Exhibit B attached hereto and will be processed at Buyer's expense. Buyer agrees that it will diligently and expeditiously seek to obtain all such permits.

(a) Charitable Contribution at Closing. As a condition for closing the sale of the Property to Buyer, as a part of the Closing, the Buyer shall pay a total amount of Six Million Dollars (\$6,000,000.00), less the Purchase Price, above, as a charitable contribution to McHenry County College District No. 528. The payment shall be paid by wire transfer or immediately available federal funds. Seller acknowledges that it has been advised that Buyer will not close unless and until it has construction permits for four station subscribers, per Exhibit B, No. 10.

(b) Post-Closing Charitable Contribution. At a future date after Closing, Buyer shall contribute an additional One Million Dollars (\$1,000,000.00) to Seller at such time as Buyer obtains a fifth subscription. At the time when Buyer obtains the fifth subscriber, Buyer shall notify Seller in writing and pay the \$1 million concurrent with Buyer's receipt of the subscription payment from the fifth subscriber. If Buyer fails to obtain a fifth subscriber on or before the fifth anniversary of the closing date, this obligation of Buyer to Seller will automatically terminate.

(c) As used in this contract the subscribers to the Tower shall be each radio station (FM and AM) and TV station which will operate from the Tower. Each will be deemed to be a "subscriber" at such time as it enters a license agreement with Buyer and pays the applicable connection fee to Buyer. If a certain subscriber pays a connection fee for both a TV and radio station, each will be counted as a separate subscriber.

3. No Seller Warranties; "As-Is" Condition. Buyer acknowledges and agrees that Seller has not made, does not make and specifically negates and disclaims any representations, warranties, or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to the Property or any matter related thereto, including, without limitation, the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Property, and compliance with any environmental protection, pollution, or land use laws, rules, regulation, orders or requirements. Buyer acknowledges and agrees that Buyer has or will have, prior to the final closing, inspected and examined the Property to the extent deemed necessary by Buyer in order to enable Buyer to evaluate the purchase of the Property. Buyer acknowledges and agrees that Buyer is relying upon the inspection, examination, and evaluation of the Property by Buyer, and if Buyer acquires the Property from Seller, Buyer acknowledges that it will have no claim against Seller by reason of the condition thereof and will be deemed to have accepted all risks associated with the Property. Nothing contained in this section shall limit the Seller's obligations under the Seller's Deed and/or other closing documents.

4. Buyer's Inspection and Review Rights.

(a) Buyer and its agents, engineers, or representatives, with Seller's reasonable, good faith cooperation, and after giving Seller reasonable advance notice and obtaining Seller's consent, shall have a license to go upon the Property as needed to inspect, examine, test, and survey the Property at all reasonable times. Buyer hereby agrees to hold Seller harmless from any liens, claims, liabilities, and damages incurred as a result of the Buyer's exercise of such license and/or its permitting activities described in Section 2 above, and Buyer further agrees to repair any damage to the Property caused by the exercise of such license. The Buyer will defend and indemnify from claims for mechanics liens caused by its acts or omissions under any circumstances, and such obligation will survive any termination of this Agreement. Before it commences any onsite activities pursuant to the foregoing license, Buyer also agrees to deliver to Seller an appropriate certificate of insurance evidencing that adequate liability coverage is in place and that Seller is protected against general liability claims arising out of the activities of Buyer and/or its contractors.

(b) In connection with the execution of this Agreement, the parties obtained and reviewed an updated title insurance commitment issued by a mutually acceptable title insurance agent (the "Title Agent") and survey for the Property. Exhibit C hereto contains the title exceptions which the Buyer approves for purposes of any closing hereunder.

(c) In the event the transaction described in this Agreement fails to close due to a default by the Buyer, all earnest money will be paid to and retained by Seller as its sole (liquidated) damages. In the event the transaction fails to close for any other reason, the earnest money will be refunded to Buyer.

5. Closing. The consummation of the sale of the Property (herein referred to as the "Closing") shall be held at 10:00 a.m., local time, on the 10th business day after the date on which all conditions to closing have been satisfied; provided, however, that Seller will have the right to terminate this Agreement on the 180th day after the date of this Agreement (the "Outside Closing Date") if closing conditions remain unresolved as of such date and the Buyer is unwilling or unable to close, with all earnest money being refunded to Buyer. The referenced termination right must be exercised in writing on the Outside Closing Date or within two (2) business days thereafter. The Closing shall take place through the concurrent delivery of Seller's deed and other documents of title, the delivery of the title policy (or marked title commitment), and the payment of the Purchase Price. The parties expressly agree that the sale and escrow payments to Seller must be closed and handled in the State of Illinois through the office of the Title Agent.

6. Closing Documents. For and in consideration of, and as a condition precedent to, Buyer's delivery to Seller of the Purchase Price described in Paragraph 2 hereof, Seller shall deliver to Buyer at Closing the following documents, all of which shall be duly executed and acknowledged where required:

- (a) Special Warranty Deed. A Special Warranty Deed conveying to Buyer the Property;
- (b) Closing Memorandum. A Closing Memorandum in a form reasonably acceptable to Seller, in order to ensure that any default by Buyer will enable Seller to terminate the access easement.
- (c) Seller's Lien Affidavit. A customary owner's lien and/or possession affidavit in the form required by the Title Agent;
- (d) Nonforeign Status Affidavit. A customary affidavit satisfying the applicable requirements of the Internal Revenue Code regarding Seller's nonforeign status;
- (e) Settlement Statement. A settlement statement setting forth the amounts paid by or on behalf of and/or credited to each of Buyer and Seller pursuant to this Agreement; and
- (f) Other Documents. Such other documents as shall be reasonably required to consummate the transaction described in this Agreement.

7. Closing Costs. Seller shall pay its attorneys' fees, all expenses incurred in obtaining the title and other due diligence materials described in Paragraph 4(b), any transfer taxes and all other costs and expenses incurred by Seller in closing and consummating the purchase and sale of the Property. Buyer shall pay its attorneys' fees, all recording fees, all title insurance premiums associated with its title insurance policy and all other costs and expenses incurred by Buyer in closing and consummating the purchase and sale of the Property. Notwithstanding the foregoing, each party shall pay one half the closing fee charged by the Title Agent and normal prorations for current year taxes and/or other income or expenses associated with the Property will be included on the final closing statement (and all prorations shall be effective as of the closing date and shall be final as to both parties).

8. Brokerage. Each of the parties represents and warrants to the other that it has dealt with no broker in connection with the sale of the Property. Seller and Buyer each agree to indemnify and hold the other party harmless from any claim, loss or damage arising out of any compensation due or alleged to be due to any broker, finder or other person claiming engagement by such party or any other person claiming association or co-brokerage with any such person. This Paragraph 8 shall survive the Closing or any termination of this Agreement.

9. Closing Conditions. The obligation of Buyer to consummate the transaction hereunder shall be subject to the fulfillment on or before the date of Closing of all of the following conditions (any or all of which may be waived by Buyer):

- (a) Seller shall have delivered to Buyer all of the items required to be delivered to Buyer pursuant to the terms of this Agreement.

- (b) Seller shall have performed and observed, in all material respects, all covenants and agreements of this Agreement to be performed and observed by Seller as of the date of Closing.
- (c) Seller shall have delivered copies of all consents and approvals necessary for its performance, including the approval of the State College Board in Springfield.
- (d) The Title Agent shall be unconditionally obligated to issue a title insurance policy to Buyer in the form approved by Buyer and a mortgagee's policy in a form acceptable to Buyer's mortgage lender, if applicable.
- (e) No material changes or events with respect to the Property occur between the date of the contract and the date of the closing, including casualty or condemnation events (and if any such event occurs and Buyer proceeds to closing, any casualty, condemnation or similar proceeds will be assigned to Buyer).
- (f) The Property shall have been rezoned and/or all other necessary approvals obtained as is reasonably acceptable to Buyer, and as necessary to allow the Property to be developed as a site for the Tower, and all applicable license agreements for Tower installations have been finalized.

To the extent closing conditions remain unresolved as of the Outside Closing Date and Buyer is unwilling or unable to close, Buyer will have three (3) consecutive options to extend the Outside Closing Date, each of which will be for a 180 day extension of the Outside Closing Date (or the last day of the prior extension period, as applicable). For each such extension exercised by the Buyer, Buyer will increase the earnest money deposit by \$15,000. All such deposits will be credited against the Purchase Price at Closing. Notwithstanding anything herein to the contrary, in the event Buyer terminates this Contract under the provisions of Paragraph 9(f) above on or before the initial Outside Closing Date (i.e. the first 180 days from the date of this Contract), then all earnest money shall be refunded to Buyer except the initial \$2,500.00 deposit.

10. Seller's Default. In the event of a default by the Seller under the terms of this Agreement which is not cured within ten (10) days after Seller receives written notice thereof from Buyer, at Buyer's option: (a) Buyer shall have the right to terminate this Agreement by giving written notice of such termination to Seller, whereupon Buyer and Seller shall have no further rights, obligations, or liabilities hereunder, except as may be expressly provided to the contrary herein; or (b) Buyer may elect to seek specific performance of this Agreement. This default provision will not apply to post-closing defaults. The rights and obligations of the parties with respect to post-closing defaults will be governed by the Closing Memorandum to be entered into pursuant to Section 6(b) hereof.

11. Buyer's Default. In the event of a default by the Buyer under the terms of this Agreement which is not cured within ten (10) days after Buyer receives written notice



thereof from Seller, Seller's sole and exclusive remedy shall be to receive the sum of one percent of the Purchase Price as liquidated damages and thereafter the parties hereto shall have no further rights or obligations hereunder, except as may be expressly provided to the contrary herein. It is hereby agreed that Seller's damages in connection with any such default will be difficult to ascertain and that the referenced amount constitutes a reasonable liquidation thereof and is intended not as a penalty, but as fully liquidated damages. This default provision will not apply to post-closing defaults. The rights and obligations of the parties with respect to post-closing defaults will be governed by the Closing Memorandum to be entered into pursuant to Section 6(b) hereof.

12. Miscellaneous.

(a) Assignment. Buyer's rights and duties under this Agreement are assignable without the prior written consent of Seller; provided that no assignment will release the Buyer from its obligations hereunder.

(b) Notices. Wherever any notice or other communication is required or permitted hereunder, such notice or other communication shall be in writing and shall be delivered by overnight courier, by hand, by telecopy (if transmission is confirmed by the transmitting machine), to the addresses set out below or at such other addresses as are specified by written notice delivered in accordance herewith:

SELLER:                      President  
                                    McHenry County College District 528  
                                    8900 US Hwy 14  
                                    Crystal Lake, IL 60012  
                                    Facsimile No. (815) 479-7821

with a copy to:              Sandra Kerrick  
                                    Caldwell, Berner & Caldwell, LLP  
                                    P. O. Box 1289  
                                    100½ Cass Street  
                                    Woodstock, IL 60098  
                                    Facsimile No. (815) 338-0015

PURCHASER:                BMB Communications Management, LLC  
                                    6407 N.W. Grand Blvd.  
                                    Suite 207  
                                    Oklahoma City, OK 73116  
                                    Facsimile No. (405) 463-0546

with a copy to: Thomas C. Zanck  
Zanck, Coen & Wright, P.C.  
40 Brink Street  
Crystal Lake, IL 60014  
Facsimile No. (815) 459-8429

(c) Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules, and regulations. If any provision of this Agreement, or the application thereof to any person or circumstance, shall, for any reason and to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law. Under no circumstances, however, shall Seller be required to close the sale of the Property and grant the perpetual access easement without the Buyer's payment of the total amount of Six Million Dollars (\$6,000,000.00) as described in Section 2(a) hereof at the Closing.

(d) Confidentiality. [intentionally deleted]

(e) No Joint Venture. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third person to create a partnership or joint venture relationship, or any association between Buyer and Seller other than the specific contractual relationship described herein.

(f) Forum Selection; Jurisdiction; Venue; Choice of Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Illinois. For purposes of any action or proceeding arising out of this Agreement, the parties hereto expressly submit to the jurisdiction of the State Circuit Court in McHenry County, Illinois.

(g) General Provisions. No failure of either party to exercise any power given hereunder or to insist upon strict compliance with any obligation specified herein, and no custom or practice at variance with the terms hereof, shall constitute a waiver of either party's right to demand exact compliance with the terms hereof. This Agreement contains the entire agreement of the parties hereto, and no representations, inducements, promises, or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect. Any amendment to this Agreement shall not be binding upon the parties hereto unless such amendment is in writing and executed by all parties hereto. The provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, legal representatives, successors, and assigns. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same agreement. The headings inserted at the beginning of each paragraph are for convenience only, and do not add to or subtract from the meaning of the contents

of each paragraph. This Agreement shall be construed and interpreted under the laws of the jurisdiction where the Property is located.

(h) In the event Seller defaults under the terms of this Contract, all earnest money shall be returned to the Buyer. In the event Buyer terminates this Contract under the provisions of Paragraph 9(f) of this Contract on or prior to the Outside Closing Date, all earnest money shall be refunded to Buyer. The earnest money shall be deposited with a title company of Seller's choice.

(i) Construction Liability. Prior to the construction of the Tower and the initiation of construction of Buyer's driveway, Buyer shall provide Seller a certificate of insurance evidencing the fact that general liability coverage is in place naming the Seller as an additional insured protecting the Seller against general liability claims arising out of the activities of the Buyer and/or its contractors during the construction phase in the amount of no less than \$1,000,000 plus a \$5,000,000.00 umbrella policy.

13. If sewer and water is required by the City of Crystal Lake for the improvements to the site, the Seller will allow the Buyer to hook up to the Seller's sewer and water improvements at Buyer's expense to fulfill the City's requirements.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the day, month and year first shown above.

"SELLER": TRUSTEES OF MCHENRY COUNTY COLLEGE DISTRICT NO. 528

By: \_\_\_\_\_  
Chair of the Board of Trustees

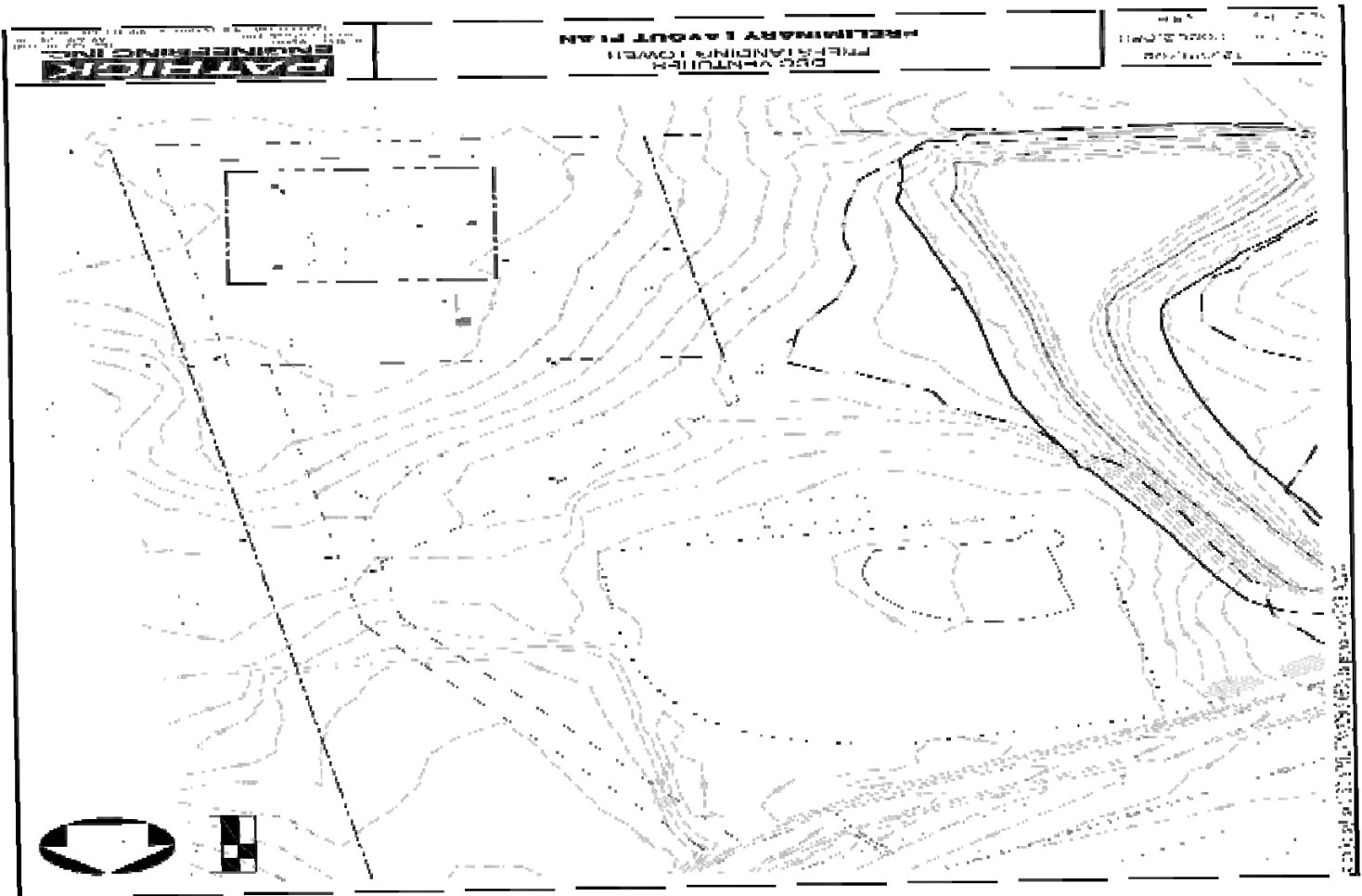
By: \_\_\_\_\_  
Secretary of the Board of Trustees

"BUYER": BMB COMMUNICATIONS MANAGEMENT, LLC

By: \_\_\_\_\_  
Name:  
Title:

## EXHIBIT A

400 ft X 400 ft area as shown by drawing to be more formally defined by a survey conducted immediately after the execution of this document. When such survey and site location are mutually acceptable to both Buyer and Seller then said survey will replace this existing drawing. Together with appropriate easements across the adjacent property owned by the Seller as necessary to allow Buyer to implement its communication tower development plan.



## **EXHIBIT B**

- 1-FAA Determination of no Hazard
- 2-Crystal Lake City Zoning and Platting, as required
- 3-National Environmental Protection Agency (NEPA) approval
- 4-State Historical Officer (SHPO) approval
- 5-All Tribal approvals
- 6-Any County or State Zoning approvals
- 7-FCC Antenna Registration approval
- 8-Soils Testing
- 9-Location of tower approved by both Seller and Buyer after completion of survey
- 10- FCC Construction Permits for at least 4 Tenants to move to the site

## **EXHIBIT C**

### **ACCEPTABLE TITLE EXCEPTIONS**

1. General taxes for the years 2008 and 2009
2. Utility easements
3. Mutual Easement Agreement Document No. 2004R074445
4. Easement rights set forth in the Agreement recorded December 12, 1910 in Book 113 of Mortgages, Page 589
5. Rights of the Crystal Lake Drainage District, if any
6. Rights of adjoining owners to the uninterrupted flow of any stream which may cross the premises
7. Rights of way for drainage, tiles, ditches, feeders, laterals and underground pipes, if any