

**GOSNOLD HOPE PARK
LEASE AGREEMENT**

THIS LEASE is made as of the _____ day of _____, 2020, by and between the CITY OF HAMPTON, a municipal corporation of the Commonwealth of Virginia (the "Landlord" or the "City" and Grantor for indexing purposes) and ALLTEL COMMUNICATIONS, LLC D/B/A VERIZON WIRELESS, having a mailing address of One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 (the "Tenant" and Grantee for indexing purposes) (the "Fourth Lease" or "Lease").

WITNESSETH THAT:

WHEREAS, the Landlord is the sole owner of the real estate described hereinafter (the "Property");

WHEREAS, the Landlord has the power to lease a portion of the Property described hereinafter (the "Leased Premises") to the Tenant;

WHEREAS, on September 22, 2004, the City entered into a lease for the Leased Premises with ALLTEL Communications, Inc., together with the grant of related access and utility easements for a power equipment compound and a communications tower (the "Original Lease");

WHEREAS, the Original Lease expired on October 1, 2009 and on March 10, 2010 Landlord authorized a new five-year lease (the "Second Lease") for the Leased Premises with ALLTEL Communications, LLC d/b/a Verizon Wireless, Inc., the successor to ALLTEL Communications, Inc., together with the grant of the related access and utilities easements to run concurrently with the Second Lease;

WHEREAS, the Second Lease expired September 30, 2014 and Landlord and Tenant entered into a third lease (the "Third Lease") for the Leased Premises, together with the grant of the related access and utilities easements to run concurrently with the Third Lease, which expires December 31, 2019; and

WHEREAS, the Parties desire to enter into a fourth lease (the "Fourth Lease") for the Leased Premises together with the grant of the related access and utilities easements to run concurrently with the Fourth Lease.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Description of the Leased Premises:** The Landlord hereby leases to the Tenant and the Tenant hereby leases from the Landlord the Leased Premises, known as a portion of Gosnold Hope Park at 901 E. Little Back River Road and designated as LRSN 13003533. The Leased Premises are situated in the City of Hampton, Commonwealth of Virginia, and are more particularly described in Exhibit A, attached hereto. Together with the Leased Premises, the Landlord grants

unto the Tenant by separate Deed of Easement an Ingress/Egress Easement and a Utility Easement [further described in Section 6(i)] as shown on the plats referred to below and more particularly described in **Exhibit B** attached hereto.

2. **Term:** The Term of this Lease shall be five (5) years (the "Term"), commencing January 1, 2020, (the "Commencement Date") and expiring on the five (5) year anniversary of the Commencement Date. The 365 day period of time starting with the Commencement Date and each 365 day period thereafter shall be known as a "Lease Year."

3. **Rent:**

(a) **Amount Adjustments.** As consideration for this Lease, Tenant shall pay Landlord rent ("Rent") in the amounts and in the manner described herein.

(1) From and after the Commencement Date, pursuant to Section 3(b) below, Tenant shall pay Landlord, as rent, \$30,402 per year ("Annual Rent").

(2) The amount of Annual Rent to be paid each Lease Year during the Term shall increase at a rate of 3% per year. The day the Rent increase becomes effective shall be referred to as the "Rent Adjustment Date." The first Rent Adjustment Date shall be the first anniversary of the Commencement date.

(3) In no event shall the adjusted rent be less than the Initial Annual Rent.

(b) **Time of Payment:** On the first day of each year's term of this Lease following the initial year, Tenant shall pay in advance the full Annual Rent for the current Lease Year. In the event of a termination of this Lease for any reason other than Tenant's uncured default, any unearned prepaid Rent shall be refunded to Tenant. The initial Annual Rent payment will be forwarded by Tenant to Landlord within thirty (30) days after the Commencement Date.

(c) **Taxes:** In addition to Rent, Tenant shall timely pay all ad valorem real property and personal property taxes with respect to the Leased Premises, or payment in lieu of taxes arising directly as a result of this Lease. Tenant shall have the right, at its sole option and at its sole cost and expense, to appeal, challenge or seek modification of any tax assessment or billing for which Tenant is wholly or partly responsible for payment.

(d) All charges payable under this Lease such as taxes shall be billed by Landlord within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by Landlord, and shall not be payable by Tenant. The foregoing shall not apply to monthly Rent which is due and payable without a requirement that it be billed by Landlord. The provisions of the foregoing sentence shall survive the termination or expiration of this Lease.

(e) **Rental Documentation:** Landlord hereby agrees to require its successors and assigns, if any, to provide to Tenant certain documentation (the "Rental

Documentation”) evidencing such successors’ and/or assigns’ interest in, and right to receive payments under, this Lease, including without limitation: (i) documentation, acceptable to Tenant in Tenant’s reasonable discretion, evidencing Landlord’s successors’ and/or assigns’ good and sufficient title to and/or interest in the Property and right to receive rental payments and other benefits hereunder; (ii) a complete and fully executed Internal Revenue Service Form W-9, or equivalent, in a form acceptable to Tenant, for any party to whom rental payments are to be made pursuant to this Lease; and (iii) other documentation requested by Tenant in Tenant’s reasonable discretion. Within thirty (30) days of obtaining an interest in the Property or this Lease, Landlord agrees to require its successors and assigns to provide updated Rental Documentation in a form reasonably acceptable to Tenant. The Rental Documentation shall be provided to Tenant in accordance with the provisions of and at the address given in Section 21. Delivery of Rental Documentation to Tenant shall be a prerequisite for the payment of any rent by Tenant and notwithstanding anything to the contrary herein, Tenant shall have no obligation to make any rental payments until Rental Documentation has been supplied to Tenant as provided herein.

4. **Tenant’s Facilities and Landscaping:**

- (a) **Facilities:** Tenant confirms that the Facilities, as defined below, have been constructed substantially in conformance with the site layout prepared by Timmons Group pursuant to the Original Lease or as modified by the Hampton Planning Commission during its recommendation process.
- (b) **Landscaping:** Tenant confirms that landscaping has been installed substantially in conformance with the site layout prepared by Timmons Group pursuant to the Original Lease or as modified by the Hampton Planning Commission during its recommendation process.

5. **Governmental Approval Contingency:**

- (a) **Tenant Application:** Tenant's right to use the Leased Premises is contingent upon Tenant obtaining all certificates, permits, zoning and other approvals that may be required by any federal, state, or local authority, for Tenant's use to take place at the Leased Premises ("Governmental Approvals"). Landlord agrees to reasonably cooperate with Tenant (at no cost to Landlord) in its efforts to obtain such approvals, except that Landlord's agreement to cooperate shall not in any way limit or interfere with the authority or discretion of any regulatory agency, governmental body or authority, affiliated with the City of Hampton, or of any employee, agent, or official of the City in the conduct of their responsibility, authority, jurisdiction or decision-making with respect to any such Governmental Approval.
- (b) **Non-approval:** If any application necessary under Section 6(a) above is finally rejected, or if any certificate, permit, license or other Governmental Approval

issued to Tenant is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority so that Tenant, in its sole discretion, will be unable to use the Leased Premises for Tenant's intended purpose, Tenant shall have the right to terminate this Lease by written notice to Landlord, and upon such termination, this Lease shall become null and void and the parties shall have no further obligations to each other.

6. **Use:**

(a) **Use Priority:** Tenant agrees that the following priorities of use, in descending order, shall apply in the event of communication interference while this Lease is in effect, and Tenant's use shall be subordinate accordingly, provided that the following users are operating within their licensed frequencies:

- (1) Landlord, including but not limited to public safety agencies, including law enforcement, fire and ambulance services;
- (2) Public safety agencies, including law enforcement, fire and ambulance services, that are not part of the Landlord;
- (3) Tenant;
- (4) Sub-Tenant(s), as defined herein.

(b) **Purpose:** Tenant and any Sub-Tenant shall use the Leased Premises for the purpose of installing, maintaining, and operating a communications facility, equipment, cabinets and accessory building(s), and uses incidental thereto for the transmission and reception of communication signals which Tenant, and any Sub-Tenant are legally authorized to provide to the public (collectively, the "Permitted Use"). The proposed communications facility shall consist of one or more, communication towers, accessory buildings or cabinets and related equipment located within the Leased Premises (the "Facility" or "Facilities") all as shown on the attached **Exhibit C.**

- (1) Tenant shall use the Facilities and the Leased Premises in compliance with all applicable ordinances, statutes and regulations of local, state and federal governmental agencies, as well as the right to test, survey and review title on the Property.
- (2) Tenant further has the right but not the obligation to add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including, but not limited to, emergency 911 communication services, at no additional cost to Tenant or Landlord. Landlord and Tenant agree that any portion of the Facility that may be conceptually described in the exhibits hereto will not be deemed to limit Tenant's Permitted Use. Landlord's execution of this Lease will signify Landlord's approval of the exhibits hereto.

- (3) For a period of ninety (90) days following the start of construction, Landlord grants Tenant, its Sub-Tenants, licensees and sublicensees, the right to use such portions of Landlord's contiguous, adjoining or surrounding property (the "Surrounding Property"), as may reasonably be required during construction and installation of the Facility.
 - (4) Tenant has the right to make Property improvements, alterations, upgrades or additions appropriate for Tenant's use ("Tenant Changes"). Tenant Changes include the right to construct a fence around the Leased Premises and undertake any other appropriate means to secure the Leased Premises, at Tenant's expense. Tenant has the right to modify, supplement, replace, upgrade, expand the equipment or relocate the Facility within the Premises at any time during the term of this Lease. Tenant will be allowed to make such alterations to the Property in order to accomplish Tenant Changes or to ensure that Tenant's Facility complies with all applicable federal, state or local laws, rules or regulations.
 - (5) In the event Tenant desires to modify or upgrade the Facilities, and Tenant requires an additional portion of the Property (the "Additional Premises") for such modification or upgrade, Landlord agrees to submit Tenant's request to the City Council of the City of Hampton pursuant to Va. Code §§ 15.2-1800 and 15.2-2100. If such lease for Additional Premises is approved by the City Council of the City of Hampton, Landlord agrees to lease to Tenant the Additional Premises, upon the same terms and conditions set forth herein, except that the Rent shall increase, in conjunction with the lease of the Additional Premises, by a reasonable amount consistent with rental rates then charged for comparable portions of real property being in the same area. Landlord agrees to take such actions and enter into and deliver to Tenant such documents as Tenant reasonably requests in order to effect and memorialize the lease of the Additional Premises to Tenant.
- (c) **Construction:** Before commencing any construction on, or new external improvements to, the Leased Premises, Tenant shall submit to the Landlord site plans and construction drawings in adequate detail for Landlord to be able to determine the location, nature, materials, appearance and construction detail of the new external improvements ("Tenant's Plans") Landlord shall notify Tenant in writing within fourteen (14) days of receipt of Tenant's Plan's that Landlord (1) approves Tenant's Plans as submitted, (2) approves Tenant's Plans with specified revisions, or (3) rejects Tenant's Plans. The reasons for any such rejection must be stated in detail along with a statement of the action or measures needed to obtain approval. Should any equipment associated with the Tenant's Facility and any subsequent operator or Sub-Tenant be found to interfere with public safety communications, the Tenant shall be responsible for the elimination of such interference, at no expense to the Landlord. Ownership of Tenant's Facility shall be vested in the Tenant. Tenant shall not install any additional improvements on the Leased Premises (other than installation of related equipment which is to be

accomplished using installation and attachment methods which are consistent with the installation and attachment methods described in Tenant's Plans) without the prior written consent of the Landlord which consent shall not unreasonably be withheld, conditioned, or delayed.

- (d) **Drawings**: Following completion of any new external improvements, Tenant shall provide Landlord with as-built drawings of the equipment and improvements installed on the Leased Premises showing the actual location of the Facility and of any other improvements installed on the Landlord's property. The drawings shall be accompanied by a complete and detailed inventory of all equipment, and personal property to be placed on the Leased Premises by Tenant.
- (e) **Operation**: Tenant shall, at its sole cost and expense, operate and maintain the Facility in accordance with good engineering practices, and all applicable FCC rules and regulations. Tenant's installation of the Facility shall be in accordance with Tenant's Plans approved by Landlord as required by Section 6(c) hereof. Any damage done by the Tenant to the property of Landlord or any third party during installation or operation of the Facility shall be repaired at Tenant's expense within thirty (30) days of receipt of notice thereof. The Facility and other personal property of Tenant shall remain the property of Tenant.
- (f) **Maintenance, Improvement, Expenses**: All modifications to the Leased Premises, and all improvements to Landlord's Property made for Tenant's benefit, shall be at the Tenant's expense and such improvements shall be maintained in a good state of repair by Tenant at Tenant's sole expense. Tenant shall use its best efforts to perform routine maintenance in a manner that will not disrupt activities of the park, and except in the event of an emergency, Tenant shall provide written notice to Landlord or its designee not less than ten (10) days before commencing any maintenance or other construction on Landlord's Property. Access to the Leased Premises for purposes of said maintenance shall be in accordance with Section (i) and the Access Easement attached hereto as **Exhibit B**.
- (g) **Replacements**: Before Tenant may update or replace any exterior equipment that is part the Facility (other than an update or replacement which is to be accomplished using installation and attachment methods which are consistent with the installation and attachment methods described in Tenant's Plans), Tenant must provide to Landlord a detailed proposal of any such replacement facilities, obtain City Design Review approval, and provide any other information reasonably requested by Landlord concerning the requested update replacement. Landlord agrees that approval of any updated or replacement equipment will not be conditioned upon the payment of additional Rent.
- (h) **No Interference**: Tenant shall, at its own expense, maintain any equipment on or attached to the Leased Premises in a safe condition, in good repair and in accordance with Section 16.

- (i) **Access:** Tenant, at all times during this Lease, shall use its best efforts to access the Leased Premises in a manner that will not unreasonably disrupt activities within the park, for the purpose of installing, operating, and maintaining its Facility: provided, however, that Tenant shall have twenty-four (24) hour access thereto in the event of emergency. Vehicular and pedestrian access shall use the Access Easement delineated on the attached **Exhibit B**.

Subject to the following limitations, Tenant shall not generally be required to maintain the Access Easement, including the internal Gosnold's Hope Park road known as Shelby Avenue, except that Tenant shall be responsible for any damage or deterioration to the Access Easement caused by Tenant's use of the Access Easement. Any such damage shall be repaired within thirty (30) days of receipt of notice thereof. If Tenant fails to repair any such damage, Landlord may complete needed repairs at Tenant's expense. Tenant shall then reimburse the cost of said repairs to Landlord within thirty (30) days of receipt of an invoice for said cost.

Furthermore, in its use of the Access Easement, Tenant shall use only light and medium duty trucks. For purposes of this Lease, "light and medium duty trucks" shall be those with a gross vehicle weight rating (GVWR) of 26,000 pounds or less (those not considered a "commercial motor vehicle" by the Virginia Commercial Motor Vehicle Safety Act). In the event that Tenant requires the use of a vehicle in excess of the permitted weight range, Tenant shall notify Landlord at least thirty (30) days in advance of the date and time of the required use of the vehicle.

Notwithstanding the foregoing, Tenant shall be required to generally maintain that portion of the Access Easement which is a gravel road, including repair of any deep ruts which may develop in the gravel road within thirty (30) days of receipt of notice thereof.

- (j) **Utilities:** Tenant shall install utilities to service the Facility at Tenant's sole expense. Such utilities installed on the Property shall be installed underground. Following installation of utilities and maintenance thereof, Tenant shall promptly restore Landlord's Property to the same condition as prior to such installation or maintenance. Tenant shall separately meter all utilities required on the Leased Premises and shall promptly pay all costs for such utilities. In the event any public utility is unable to use the Access or Utility Easement provided to Tenant, then the Landlord agrees to seek approval from the City of Hampton City Council to grant additional access or utility easements either to Tenant or to the public utility, for the benefit of Tenant, at no cost to Tenant.
- (k) **Co-Location Site:** It is the intent of the Landlord that the Facilities shall be used for communications facilities belonging not only to Tenant but also for the operations of Sub-Tenants, as well as Landlord.

- (1) Subject to the Landlord's approval, which shall not be unreasonably withheld, Tenant, at its expense, may use any appropriate means permitted

by Hampton City Code to restrict access to the Facilities. Perimeter six (6)' fencing shall be used in conjunction with plant material per the City of Hampton Landscape Guidelines to screen the Tower compound.

- (2) **Additional Structures:** Tenant acknowledges that Landlord may permit additional structures to be installed on Landlord's Property adjacent to the Leased Premises. Such installations or uses shall not interfere with Tenant's rights of access to the Leased Premises or Tenant's ability to install and maintain utilities to serve the Leased Premises.

7. **Emergency Facilities:** In the event of a natural or man-made disaster, in order to protect the health, welfare, and safety of the community, Tenant may install additional equipment on a temporary basis on the Leased Premises to assure continuation of service. Such temporary operation shall not exceed thirty (30) days; provided, however, that Landlord may grant additional thirty (30) day extensions upon request by Tenant.

8. **Additional Maintenance Expenses:** If Tenant fails promptly to restore Landlord's Property following Tenant's construction or maintenance of the Facility, any driveway improvement, or any utility servicing the Leased Premises, or to repair any damage in connection therewith, Landlord may, after fifteen (15) days written notice thereof Tenant, complete any needed restoration or maintenance at Tenant's expense. Tenant will reimburse the cost to Landlord within thirty (30) days of notice of receipt of an invoice for said cost. Failure to comply with these stated provisions shall constitute cause for termination of this Lease.

9. **Advances in Technology:** Landlord and Tenant acknowledge that as technology advances improved antennas may be developed that will be used in Tenant's business. Accordingly, at the end of the term of this Fourth Lease and before commencement of a subsequent lease, Landlord may require that Tenant replace existing antennas with new antennas if the new antennas are more aesthetically pleasing or otherwise foster a desirable public purpose, as long as the installation and use of the improved antennas are practical and technically feasible at the location of the Leased Premises and the antenna tower. In the event that Tenant declines to replace the existing antennas with said new antennas, no new lease shall be considered by the City Council in accordance with Virginia Code § 15.2-1800.

10. **Defense and Indemnification:**

- (a) **Indemnity.** Except to the extent caused by the negligence or willful misconduct of the City, its agents, employees, volunteers, servants, and officials, Tenant expressly agrees to indemnify, defend, and hold harmless Landlord, its agents, employees, volunteers, servants, and officials from and against any and all claims, loss, damage, injury, and liability however caused, including but not limited to reasonably attorney's fees and litigation costs, resulting from negligence, misfeasance, malfeasance, or nonfeasance arising out of or in any way connected with activities on the Leased Premises by Tenant, its employees, contractors, subcontractors, licensees, consultants, subconsultants, or by any other persons, corporations, or legal entities retained by Tenant to perform any activities on the

Leased Premises. In connection with Tenant's activities on the Leased Premises, clean-up costs, fines, administrative, criminal or civil penalties or charges, and third party claims imposed on the Landlord by any regulatory agency or by any third party as a result of the noncompliance with federal, state, or local environmental laws and regulations or nuisance statutes by Tenant or by contractors, subcontractors, licensees, consultants, subconsultants, or any other persons, corporations, legal entities retained by Tenant, shall be paid by Tenant.

- (b) **Hazardous Materials:** Without limiting the scope of Subsection 10(a) above, Tenant agrees to hold harmless and indemnify Landlord, from and against any and all claims, costs and liabilities, including attorney's fees and costs, arising out of or in connection with the cleanup or restoration of the Leased Premises as required by law, to the extent caused by Tenant's use of hazardous materials after the commencement date of this Lease. For purposes of this Lease, "hazardous materials" shall be interpreted broadly and specifically include, without limitation, asbestos, fuels, batteries or any hazardous substance, waste, or materials as defined in any federal, state, or local environmental or safety law or regulations including, but not limited to, CERCLA. Tenant shall not be responsible for pre-existing environmental conditions, including the existence of hazardous materials at the Leased Premises that existed on the date of commencement of the Original Lease or that resulted from the activities of any party other than Tenant or a party acting on behalf of Tenant. To the extent permitted by law and without waiving its sovereign immunity, Landlord agrees to assume all duties, responsibilities and liabilities for any adverse environmental condition caused by Landlord on the Property. The provisions of this Section 10 will survive the expiration or termination of this Lease.
- (c) **Tenant's Warranties:** Tenant represents, warrants and agrees that, to the best of its knowledge and belief, it will conduct its activities on the Leased Premises in compliance with all applicable environmental laws. Landlord represents, warrants and agrees that to the best of its knowledge and belief, it has in the past and will in the future conduct its activities on the Leased Premises in compliance with all applicable environmental laws and that the Leased Premises is free of any hazardous substance as of the date of this Lease. As used herein, the term "environmental laws" shall mean any and all local, state or federal statutes, regulations or ordinances pertaining to the environment or natural resources. As used herein, the term "hazardous substance" shall mean any toxic or hazardous waste or substance (including, without limitation, asbestos and petroleum products) that is regulated by environmental laws. If after Tenant takes possession of the Leased Premises Hazardous Materials are discovered to exist on, under or beneath the Leased Premises, Tenant may terminate this Lease and Tenant shall owe no further duties, obligations or liability to Landlord.

11. **Insurance:**

- (a) **Workers' Compensation.** Tenant must maintain workers' compensation insurance in compliance with all applicable statutes. The policy shall also provide employer's

liability coverage with limits of not less than \$500,000 bodily injury, each occurrence; and \$500,000 bodily injury by disease, each employee and \$500,000 per accident.

- (b) **General Liability:** Tenant must maintain an occurrence form of comprehensive commercial general liability coverage. Such coverage shall include, but not be limited to, bodily injury, property damage, and personal injury, for the hazards of, contractual, independent contractors, and products/completed operations. Tenant must maintain such commercial comprehensive general liability coverage with limits of liability not less than \$5,000,000 each occurrence; \$5,000,000, personal and advertising injury, each occurrence; and \$5,000,000 products liability and completed operations, each occurrence and in the aggregate. Tenant will maintain completed operations coverage for a minimum of two years after construction of the Facility is completed.
- (c) **Automobile Liability:** Tenant must carry automobile liability coverage. Coverage shall afford total liability limits for bodily injury liability and property damage liability in the amount of \$5,000,000 per occurrence. The liability limits may be afforded under commercial policy, or in combination with an umbrella or excess liability policy provided coverage or coverages afforded by the umbrella excess policy are no less than the underlying commercial automobile coverage. Coverage shall be provided for bodily injury and property damage for the ownership, use, maintenance or operation of all owned, non-owned and hired automobiles. The commercial automobile policy shall include at least statutory personal injury protection, uninsured motorists' and underinsured motorists' coverage.
- (d) **Tenant Property Insurance:** Tenant must keep in force for the duration of the Lease a policy covering damages to its property at or on the Leased Premises. The amount of coverage shall be sufficient to replace the damaged property, loss of use and comply with any ordinance or legal requirements.
- (e) **Hazardous Materials Coverage:** Tenant must carry sufficient coverage, to the reasonable satisfaction of Landlord, for damage caused by hazardous materials.
- (f) **Additional Insured - Certificate of Insurance:** Tenant shall provide prior to the Commencement Date of the Fourth Lease, evidence of the required insurance in the form of a certificate of insurance issued by a company (rated A- VII or better), licensed to do business in the State of Virginia, which includes all coverages required in this Section 11. Tenant will include Landlord as an additional insured on the general liability and commercial automobile liability policies Tenant shall provide a current certificate of insurance to the City Attorney's Office annually without demand.
- (g) It is the responsibility of Tenant to notify Landlord if any of the above insurance policies are canceled or materially modified thirty (30) days' prior to such

cancellation or modification. Failure to notify Landlord shall be considered a material breach of this Fourth Lease.

12. **Damage or Destruction**. Landlord will promptly provide notice to Tenant of any casualty affecting the Property. If any part of the Facilities or the Property is destroyed or damaged so as to, in Tenant's judgment, substantially impair Tenant's effective use of the Leased Premises, Tenant may terminate this Lease upon thirty (30) days' written notice to Landlord, which notice must be given within thirty (30) days of the date of such destruction or damage. If said notice is given, Termination of the lease shall be effective from the date of such destruction or damage. If Tenant so terminates this Lease, Tenant shall restore the Leased Premises as set forth in Section 13(d) below. Upon such termination, Tenant will be entitled to collect all insurance proceeds payable to Tenant on account thereof and to be reimbursed for any prepaid rent on a prorated basis.

13. **Lease Termination:**

- (a) **Events of Termination:** Except as otherwise provided herein, this Fourth Lease may be terminated upon sixty (60) days' written notice to the other party as follows:
- (1) by either party upon a default of any covenant or term hereof by the other party, which default is not cured within the time periods set forth in Section 25 (without, however, limiting any other rights of the parties pursuant to any other provisions hereof);
 - (2) subject to the provisions of Section 5 of this Lease, by Tenant for cause if it is unable to obtain or maintain any license, permit or other Governmental Approval necessary for the construction and/or operation of the Facility or of Tenant's business;
 - (3) by Tenant, in its sole discretion, if the Leased Premises is or becomes technically incompatible for Tenant's use;
 - (4) by Landlord, if after a public hearing before the Hampton City Council; Landlord determines that, after notice and a reasonable opportunity to cure pursuant to Section 25(a)(2), Tenant has failed to comply with applicable ordinances, or state, or federal law, or any conditions of any of the Government Approvals. Such failure shall be a default of Tenant's obligations under the terms of this Lease;
 - (5) by Tenant upon sixty (60) days prior written notice to Landlord for any reason, so long as Tenant pays Landlord, as compensation for loss or injury, three (3) months' worth of Annual Rent, at the then current rate for the Lease Year;
 - (6) by Landlord for Tenant's failure to cooperate with proposals from Landlord or from third parties to co-locate on the antenna tower. In order for Landlord to terminate the Lease under this Section, the proposal to Tenant shall be

technically feasible, shall not cause unreasonable interference, shall not adversely affect the structural integrity of the antenna tower, shall not require any movement of Tenant's equipment configuration, and shall provide reasonable market-rate compensation to the Tenant or the owner of the tower.

- (b) **Notice of Termination**: The parties shall give notice of termination in writing sent by certified mail, return receipt requested, or by a nationally recognized overnight courier to the address listed in the Notice Section below. Tenant shall be liable for Landlord for all rent, additional consideration and taxes as set forth in Section 3 for the period of the Lease prior to said termination date.
- (c) **Tenant's Responsibility Upon Early Termination or Default**: If Tenant terminates this Lease other than by right in accordance with Section 13, or if Landlord terminates this Lease due to Tenant's default of its obligations hereunder as provided in Section 25, Tenant shall pay to Landlord, as compensation for loss or injury resulting from the default, 100% of the unearned prepaid Annual Rent for the Lease Year in which the termination occurs.
- (d) **Site Restoration**: If this Lease is terminated, Tenant shall have one hundred twenty (120) days from the termination or expiration date to remove its Facility from the Leased Premises, to repair the site and restore the surface of the Leased Premises, and to remove any utilities installed by or for Tenant on Landlord's property, unless Landlord consents to Tenant not removing such utilities, and to restore the surface of the Leased Premises and Landlord's property used for access and for utilities. In lieu of the above, Tenant may elect to post bond sufficient to execute same.

14. **Limitation of Liability**:

- (a) If Landlord terminates this lease other than as of right as provided in this Lease, or if Landlord causes interruption of the business of the Tenant, or otherwise breaches this Lease, Landlord's liability for damages to Tenant shall be limited to the actual and direct cost of equipment removal, reasonable relocation or repairs and shall specifically exclude any recovery for value of the business of Tenant as a going concern, future expectation of profits, loss of business or profits, or related damages of Tenant.
- (b) Neither Landlord nor Tenant shall be responsible or liable to the other party for any loss or damage arising from any claim to the extent attributable to any acts or omissions of other licensees or tower users occupying the Property, vandalism to the Facility or Property, or for any structural or power failures or destruction or damage to the Property or Facility, except to the extent caused by the negligence or willful misconduct of such party as set forth in Section 10(a). Except as provided in Section 13, in no event shall Landlord or Tenant be liable to the other for, and Landlord and Tenant each hereby waive the right to recover, incidental,

consequential (including lost profits, loss of use or loss of business opportunity), punitive, exemplary and similar damages.

15. **Temporary Interruption of Service:** If Landlord and Tenant determine that continued operation of the Facility would cause or contribute to an immediate threat to public health and/or safety (except for any issues associated with human exposure to radio frequency emissions, which is regulated by the federal government), Landlord may order Tenant to discontinue its operation. Tenant shall immediately comply with such order. Service shall be discontinued only for the period that the immediate threat exists. Landlord shall not be liable to Tenant or any other party for any interruption in or interference with Tenant's Permitted Use of its Facilities if it is of no cause or fault of Landlord. If the discontinuance extends for a period greater than three (3) days, either consecutively or cumulatively, Tenant shall have the right to terminate this Lease in accordance with Section 12 above and without further obligation to Landlord.

16. **Tenant's Interference:**

- (a) **With Landlord's Property:** Tenant shall not interfere with Landlord's use of Landlord's property adjacent to the Leased Premises or Landlord's use of its property, subject to Tenant's rights of access and to install and maintain utilities. Tenant shall cease all such actions which unreasonably and materially interfere with Landlord's use thereof no later than forty-eight (48) hours after receipt of written notice of the interference from Landlord. If Tenant's cessation of such action is material to Tenant's use of the Leased Premises and such cessation limits Tenant's use of the Leased Premises as determined by Tenant in its sole discretion, Tenant shall have the immediate right to terminate this Lease without further obligation to Landlord.
- (b) **With Higher Priority Users:** If Tenant's Facility causes interference with higher priority users as set forth in Subsection 6(a) above, Tenant shall take all measures necessary to correct and eliminate the interference. If the interference cannot be eliminated within forty-eight (48) hours after receiving Landlord's written notice of the interference, Tenant shall immediately cease operating the interfering equipment, except intermittent operation for the purpose of testing, until the interference has been eliminated. If Tenant causes any such interference, Tenant shall, at its own expense, provide and install any equipment necessary to eliminate such interference, or Tenant may cancel this Lease without further obligation to Landlord.
- (c) **Interference Study – New Occupants:** Upon written notice by Landlord that it has a bona fide request from any other party to lease an area in close proximity to the Leased Premises, Tenant agrees to provide Landlord, within thirty (30) days of receipt of the notice, frequencies currently in operation or to be operated in the future of each transmitter and receiver installed and operational on the Leased Premises at the time of such request. Landlord may then have, or may require the new occupant/subtenant to engage an independent, registered professional engineer of Landlord's or new occupant/subtenant's choosing, subject to Tenant's approval

(which shall not be unreasonably withheld), to perform the necessary interference studies to determine if the new occupant/subtenant's frequencies will cause harmful radio interference to Tenant's Permitted Use. Upon Tenant's receipt of the name of such engineer, Tenant shall have five (5) business days to notify Landlord if it does not approve of the engineer chosen or such approval shall otherwise be deemed to be given. Tenant shall bear no part of the expense of any such studies. In addition, intermodulation testing must be performed (coordinated through the Hampton Information Technology Department) which demonstrates that the proposed antenna operation is designed in a manner to eliminate interference with public safety communications. Such testing shall also be required from each subsequent new occupant/subtenant, at the expense of said new occupant/subtenant, prior to any building permits to add or modify antennae on Tenant's Facility. Should any equipment associated with such new occupant/subtenant's antennae be found to interfere with public safety communications, the new occupant/subtenant shall be responsible for the elimination of such interference within forty-eight (48) hours after receiving Landlord's written notice of the interference. The new occupant/subtenant shall immediately cease operating its transmitters and receivers and shall not reactivate operation, except intermittent operation for the purpose of testing, until the interference has been eliminated.

- (d) **Interference – New Occupants:** Landlord agrees that it will not grant a future lease to any party who is of equal or lower priority to Tenant, if such party's use is reasonably anticipated to interfere materially with the operation of the Facilities. Landlord agrees further that any future lease of Landlord's property will prohibit a user of equal or lower priority from materially interfering with Tenant's use of the Facilities. Landlord shall have the obligation to eliminate any interference with the operations of Tenant caused by such subsequent occupants within forty-eight (48) hours after receiving Tenant's written notice of the interference. If such interference is not eliminated, Tenant shall have the right to terminate this Lease, or, at Tenant's expense, to seek injunctive relief against the interfering lessee of Landlord.

17. **Quiet Enjoyment, Title and Authority:** Landlord covenants and warrants that (i) it has full right, power and authority to execute this Lease and has the power to grant all rights hereunder; (ii) it has good, marketable and insurable and unencumbered title to the Leased Premises free and clear of any liens, mortgages, deeds of trust, restrictions or other encumbrances that will interfere with Tenant's operations or the permitted use of the Leased Premises; (iii) its execution and performance of this Lease will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease or other agreement binding on Landlord; (iv) Tenant shall have the quiet enjoyment of the Leased Premises, and Tenant shall not be disturbed as long as Tenant is not in default beyond any applicable grace or cure period; and (v) if the Leased Premises are encumbered by a deed of trust, mortgage or other security interest, Landlord will use its best efforts to provide promptly to Tenant a subordination, non-disturbance and attornment agreement, duly executed by the holder of such security instrument.

18. **Assignment and Subleasing:**

- (a) Tenant may assign or transfer its rights and obligations arising under this Lease to any affiliate of Tenant or to any corporation, partnership, or other entity that shall merge or consolidate with or into Tenant or shall succeed to all or substantially all of the assets, property and business of Tenant or shall succeed to all or substantially all of Tenant's Norfolk-Peninsula service area, as defined by the Federal Communications Commission. No change of stock ownership, partnership interest or control of Tenant or transfer upon partnership or corporate dissolution of Tenant shall constitute an assignment hereunder.
- (b) Tenant shall own the Facility and control the Leased Premises as provided herein. Tenant shall have the right to sublease ground space in the Leased Premises to other wireless service providers, subtenants, or licensees (“Sub-Tenant” or “Sub-Tenants”) subject to Landlord’s right to enter into an access easement with any Sub-Tenant and to charge any Sub-Tenant an access easement fee equal to at least the amount of Rent payable by the Tenant as provided in Section 3. All payments from Sub-Tenants to sublease ground space shall be made payable to and belong to Tenant. All payments from Sub-Tenants for the access easement shall be made payable to and belong to Landlord.

19. **Conditions:** In the event the whole of the Leased Premises is taken by eminent domain, this Lease shall terminate as of the date title to the Leased Premises vests in the condemning authority. If a portion of the Leased Premises is taken by eminent domain, either party shall have the right to terminate this Lease as of the date of transfer of title, by giving thirty (30) days' written notice to the other party . The parties will each be entitled to pursue their own separate awards in the condemnation proceeds, which for Tenant will include, where applicable, the value of its Facility, moving expenses, prepaid Rent, and business dislocation expenses, provided that any award to Tenant will not diminish Landlord’s recovery. Tenant will be entitled to reimbursement for any prepaid Rent on a prorata basis.

20. **Enforcement and Attorneys’ Fees:** If either party to this Lease commences a court action to enforce its rights hereunder, the prevailing party shall be entitled to recover costs and reasonable attorneys’ fees incurred as a result of such claim.

21. **Notices:** All notices hereunder must be in writing sent by certified mail, return receipt requested, or by a nationally recognized overnight courier, addressed as follows (or to any other address that the party to be notified may have designated to the sender by like notice):

If to Landlord, to:
City of Hampton
22 Lincoln Street
Hampton, Virginia 23669
ATTN: City Manager

With copies to:
City Attorney’s Office
22 Lincoln Street
Hampton, Virginia 23669
ATTN: City Attorney

With copies to:

Dept. of Information Technology
22 Lincoln Street, 6th Floor
Hampton, Virginia 23669
ATTN: Director of I.T.

With copies to:
Parks & Recreation
22 Lincoln Street, 5th Floor
Hampton Virginia 23669
ATTN: Director of Parks

If to Tenant, to:

Alltel Communications, LLC d/b/a Verizon Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
Attn: Network Real Estate

Notice shall be effective upon the date of personal service, or upon receipt by the addressed party.

22. **Waiver of Landlord's Lien.** Landlord hereby waives any and all lien rights it may have, statutory or otherwise, in and to the Facility or any portion thereof, regardless of whether or not same is deemed real or personal property under applicable laws.

23. **Holding Over.** In the event Tenant remains in possession of the Premises after the expiration of the Term without executing a new Lease, Tenant shall occupy the Premises month-to-month, subject to all of the terms and conditions of this Lease insofar as consistent with such a tenancy.

24. **Estoppel.** Each party agrees to furnish to the other, within 30 days after request, such truthful estoppel information as the other may reasonably request.

25. **Default and Right to Cure:**

(a) The following will be deemed a default by Tenant and a breach of this Lease:

- (1) Non-payment of Rent if such Rent remains unpaid for more than thirty (30) days after receipt of written notice from Landlord of such failure to pay; or
- (2) Tenant's failure to perform any other term or condition under this Lease within forty-five (45) days after receipt of written notice from Landlord specifying the failure. No such failure, however, will be deemed to exist if Tenant has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond

the reasonable control of Tenant. If Tenant remains in default beyond any applicable cure period, Landlord will have the right to exercise any and all rights and remedies available to it under law and equity.

- (b) The following will be deemed a default by Landlord and a breach of this Lease:
 - (1) Failure to provide access to the Premises as set forth in the Access Easement or to initiate corrective action of an interference problem within forty-eight (48) hours after receipt of written notice; or
 - (2) Landlord's failure to perform any term, condition or breach of any warranty or covenant under this Lease within forty-five (45) days after receipt of written notice from Tenant specifying the failure. No such failure, however, will be deemed to exist if Landlord has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord. If Landlord remains in default beyond any applicable cure period, Tenant will have the right to exercise any and all rights available to it under law and equity, including the right to cure Landlord's default and to deduct the costs of such cure from any monies due to Landlord from Tenant.

26. **Miscellaneous:**

- (a) This Lease constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease must be in writing and executed by both parties.
- (b) If either party is represented by a real estate broker in this transaction, that party shall be fully responsible for any fee due such broker, and shall hold the other party harmless from any claims for Commission by such broker.
- (c) Each party agrees to cooperate with the other in executing any documents (including a Memorandum of Lease in substantially the form attached as **Exhibit D**) necessary to protect its rights or use of the Leased Premises. Either party may record the Memorandum of Lease, but neither party may record the Lease.
- (d) This Lease shall be construed in accordance with the laws of the Commonwealth of Virginia. Any and all suits for or claims or for every breach or dispute arising out of this Lease shall be maintained in the appropriate court of competent jurisdiction in the City of Hampton, Virginia, or, if applicable, the United States District Court for the Eastern District of Virginia, Norfolk Division.
- (e) If any term of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and

effect. The parties intend that the provisions of this Lease be enforced to the fullest extent permitted by applicable law. Accordingly, the parties agree that if any provisions are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable.

- (f) The persons who have executed this Lease represent and warrant that they are duly authorized to execute this Lease in their representative capacities as indicated.
- (g) The submission of this document for examination does not constitute an offer to lease or a reservation of or option for the Leased property and the Lease shall become effective only upon execution by both Tenant and Landlord.
- (h) This Lease may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument.
- (i) The parties understand and acknowledge that the attached Exhibits showing the Leased Premises, the location of access to the Leased Premises, the site plan, and antenna location on the Tower Structure may be attached to this Lease in preliminary form. Accordingly, the parties agree that upon the preparation of final, more complete exhibits, any exhibits which may have been attached hereto in preliminary form may be replaced by the parties with such final, more complete exhibit(s), which Exhibits shall be agreed to and conformed to by the parties.

The following Exhibits are attached hereto and incorporated herein:

- Exhibit A Legal Description of Leased Premises
- Exhibit B Legal Description and Plat of Access and Utility Easement
- Exhibit C Site Plan
- Exhibit D Memorandum of Lease Agreement

27. **Prior Terminated Agreement:** Landlord and Tenant agree that the Fourth Lease replaces the Third Lease. Landlord and Tenant acknowledge that notwithstanding the termination of the Third Lease, Tenant may continue to make, and the Landlord may continue to receive, rental and other payments pursuant to the Third Lease until commencement of the Fourth Lease pursuant to the holding over provisions in paragraph 23. In such event, any rental or other payments made pursuant to the Third Lease after its termination shall not be construed to be agreement by the Landlord to enter into any new lease with the Tenant, nor shall acceptance of payments by the Landlord be construed to be a waiver of any of its other rights under the Third Lease or any new lease with the Tenant.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties have executed this Lease to be effective as of the _____ day of _____, 2020.

LANDLORD:

THE CITY OF HAMPTON, VIRGINIA, a municipal corporation of the Commonwealth of Virginia

By: _____
City Manager/Authorized Designee

COMMONWEALTH OF VIRGINIA
City of Hampton, to wit:

I, _____, a Notary Public in and for the City and Commonwealth aforesaid, do hereby certify that _____ City Manager/Authorized Designee of the City Manager of the City of Hampton, Virginia, whose name is signed to the foregoing writing bearing date on the _____ day of _____, 2020, has this day acknowledged the same before me in the City and Commonwealth aforesaid. He is personally known to me or has produced _____ as identification

Given under my hand this _____ day of _____, 2020.

My Commission Expires: _____ Notary Public
Registration Number: _____

ATTEST:

Katherine K. Glass, Clerk

COMMONWEALTH OF VIRGINIA
City of Hampton, to wit:

I, _____, a Notary Public in and for the City and Commonwealth aforesaid, do hereby certify that Katherine K. Glass, Clerk of Council for the City of Hampton, Virginia, whose name is signed to the foregoing writing bearing date on the _____ day of _____, 2020, has this day acknowledged the same before me in the City and Commonwealth aforesaid. She is personally known to me or has produced _____ as identification.

Given under my hand this _____ day of _____, 2020.

My Commission Expires: _____ Notary Public
Registration Number: _____

TENANT:

ALLTEL COMMUNICATIONS, LLC
D/B/A VERIZON WIRELESS

By: _____
Name: David R. Heverling
Title: Area Vice President Network
Date: _____

COMMONWEALTH OF VIRGINIA
City/County of _____ to-wit:

I, _____, a Notary Public in and for the State and City/County aforesaid, do hereby certify that David R. Heverling, in his capacity as Area Vice President Network for Alltel Communications, LLC D/B/A Verizon Wireless a Delaware limited liability company, whose name is signed to the foregoing writing bearing date on the ____ day of _____, 2020, has this day acknowledged the same before me in the City/County and State aforesaid. He further acknowledged in due form of the law that he is authorized on behalf of said entity to execute all documents pertaining hereto and acknowledged to me the same as his voluntary act and deed on behalf of said company. He/she is personally known to me or has produced _____ as identification.

My Commission Expires: _____

Notary Public

Registration Number: _____

Approved as to Content:

Approved as to Legal Sufficiency:

Dep't of Information Technology

City Attorney

Back River
BMW/8.14.14

EXHIBIT A
DESCRIPTION OF LAND

Back River
BMW/8.14.14

EXHIBIT B
Legal Description and Plat of Access and Utility Easement

Back River
BMW/8.14.14

EXHIBIT C
Site Plan

Back River
BMW/8.14.14

EXHIBIT D
MEMORANDUM
OF
LEASE