

Market: VA/WV/NC  
Cell Site: NF469  
Site Name: Magruder Blvd (VA)  
Fixed Asset No.: 10103046

## LEASE AGREEMENT

THIS LEASE (the "Lease") is made as of the 28th day of August, 2023, 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 NEW CINGULAR WIRELESS PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd NE 3<sup>rd</sup> Floor Atlanta, GA 30319 (the "Tenant" and Grantee for indexing purposes) (the "Lease").

### WITNESSETH:

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 (the "Leased Premises") to the Tenant; and

WHEREAS, by motion made and adopted April 30, 2008, the Landlord authorized the lease of the Leased Premises to the Tenant for the purpose of installing and operating thereon an equipment building with appurtenant facilities, to be used to operate a telecommunications facility;

WHEREAS, by motion made and adopted on June 13, 2013, the Landlord authorized a continuation of the lease for five (5) years pursuant to the provisions of the Code of Virginia Sections 15.2-1800 and 15.2-2100;

WHEREAS, the lease approved in 2013 expired on August 18, 2018, and Tenant negotiated a new five (5) year lease with Landlord that was approved and adopted by the Landlord, after a public hearing was duly held on August 8, 2018, in accordance with Virginia law; and

WHEREAS, the lease approved in 2018 expired on August 18, 2023, and Tenant has negotiated a new five (5) year lease with Landlord.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, 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 as shown on the Plat referred to below. The Leased Premises are situated in the City of Hampton, Commonwealth of Virginia, and are more particularly described in Exhibit A, attached hereto.
2. **Term and Renewals:** The Term of this Lease shall be five (5) years (the "Term"), commencing August 18, 2023, (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, Tenant shall pay Landlord, as rent, Eighteen Thousand Seven Hundred Eighty-eight and 74/100 Dollars (\$18,788.74) per year ("Initial Annual Rent").

(2) The amount of Rent to be paid each Lease Year during the Term shall be equal to the amount paid in the last full Lease Year immediately prior to the commencement of such Lease Year times one hundred three percent (103%). The day that 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 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.

(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.

4. **Intentionally Deleted.**

5. **Tenant's Facilities and Landscaping:**

(a) **Facilities:** Tenant agrees that the equipment cabinet and building shall be constructed substantially in conformance with the site layout prepared by Clark Nexsen attached as Exhibit B, or as modified and approved as part of the Use Permit. Landlord agrees that the exhibit does not in any way limit Tenant's ability to change, modify or add equipment.

(b) **Landscaping:** Tenant agrees to maintain landscaping substantially in conformance with the site layout prepared by Clark Nexsen attached as Exhibit B.

6. **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 Subsection 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.

7. **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:

- (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) The City of Hampton;
- (4) Tenant;
- (5) Sub-Tenant(s).

(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. The communications facility shall consist of one or more accessory buildings or cabinets

and related equipment located at a location approved by the Landlord on the Leased Premises (the "Facility" or "Facilities") all as shown on the attached Exhibits A and B. 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; 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 (collectively, the "Permitted Use"). Landlord and Tenant agree that any portion of the Facility that may be conceptually described on Exhibit B will not be deemed to limit Tenant's Permitted Use. If Exhibit B includes drawings of the initial installation of the Facility, Landlord's execution of this Lease will signify Landlord's approval of Exhibit B. 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 agrees to comply with all applicable governmental laws, rules, statutes and regulations, relating to its use of the Facility on the Property. 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's Changes or to ensure that Tenant's Facility complies with all applicable federal, state or local laws, rules or regulations. In the event Tenant desires to modify or upgrade the equipment, 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. Furthermore, by separate deed of easement, the City has granted to Tenant an access easement (the "Access Easement") to provide access to the Leased Premises from Butler Farm Road and utility easements (the "Utility Easement") to provide utility service to the Leased Premises and from the Leased Premises to a communications antennae tower located outside the Leased Premises on another parcel leased by Tenant (collectively the Access Easement and Utility Easement are hereinafter referred to as the "Deeds of Easement"). Said Deeds of Easement govern the installation, purpose, use and maintenance of the Access Easement and the Utility Easement, respectively. Said Deeds of Easement are attached hereto as Exhibit D for reference only.

(c) **Construction:** Before installing its initial Facilities on, or commencing any construction on, or 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 improvements ("Tenant's Plans") Landlord shall notify Tenant in writing within fourteen (14) days of receipt of Tenant's Plans 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

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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. Upon completion of construction of the Facility, 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:** 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 Plans approved by Landlord as required by Section 7(c) hereof. Any damage done to the property of Landlord or any other person during installation or operation of the Facility shall be repaired at Tenant's expense within thirty (30) days. The Facility 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 during hours when it will not disrupt activities of the Teen Center, and except in the event of an emergency, Tenant shall provide written notice to Landlord or its designee not less than twenty-four (24) hours before commencing any maintenance or other construction on Landlord's property. Tenant shall promptly restore Landlord's property to correct any damages or deterioration in condition caused by Tenant or its agents. Any deep ruts which may develop in the gravel road to be installed affording access under the Access Easement to the Leased Premises shall be immediately repaired by Tenant.

(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 7.

(i) **Access:** Tenant, at all times during this Lease, shall use its best efforts to access the Leased Premises during hours when it will not unreasonably disrupt activities of the Teen Center, 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 A. Tenant shall improve the Access Easement shown on the Exhibits and shall maintain said improvements in good condition. Tenant's use of Access Easement shall be non-exclusive and shall not unreasonably interfere with Landlord's use of its property. Access to the Leased Premises for maintenance or construction purposes (but not for routine equipment checks) shall be after twenty-four (24) hours' prior notice to Landlord, except in emergency situations requiring immediate access.

(j) **Utilities:** Tenant shall install utilities to service the Facility at Tenant's sole expense. Such utilities 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.

8. **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.

9. **Additional Maintenance Expenses:** If Tenant fails promptly to restore Landlord's property following Tenant's construction or maintenance of the Facility or to repair any damage in connection therewith, Landlord may, after fifteen (15) days written notice to Tenant, complete any needed restoration or maintenance at Tenant's expense. Tenant will reimburse the cost to Landlord within forty-five (45) days of notice of said cost. Failure to comply with these stated provisions shall constitute cause for termination of this Lease.

10. **Defense and Indemnification:**

(a) Tenant agrees to defend, indemnify and hold harmless Landlord and its elected officials, officers, employees, agents, and representatives, from and against any and all claims, costs, losses, expenses, demands, actions, or causes of action, including reasonable attorney's fees and other costs and expenses of litigation, arising or alleged to arise which may be asserted against or incurred by Landlord or for which Landlord may be liable in the performance of this Lease, except those which arise from the gross negligence, willful misconduct or omissions of Landlord.

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Tenant shall defend all claims arising out of Tenant's use of the Leased Premises and out of the installation, operation, use, maintenance, repair, removal, or presence of Tenant's Facility on the Leased Premises.

(b) To the extent permitted by law, and without waiving its sovereign immunity, Landlord agrees to defend, indemnify and hold harmless Tenant and its officers, employees, agents, and representatives, from and against any and all claims, costs, losses, expenses, demands, actions, or causes of action, and other costs and expenses arising or alleged to arise from the gross negligence or willful acts or omissions of Landlord or any gross negligence or omission of Landlord, its agents, employees, licensees, or independent contractors which occurs during the term of this Lease or alleged to arise from a breach of this Lease by Landlord.

(c) **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 associated with 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. 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 or existing on the Leased Premises prior to the Commencement Date of this Lease. The provisions of this Section 10 will survive the expiration or termination of this Agreement.

(d) **Tenant's Warranty:** 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 Premises Hazardous Materials are discovered to exist on, under or beneath the 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 \$500,000 bodily injury, each occurrence; and \$500,000 bodily injury by disease, each employee and \$1,000,000 per accident.

(b) **General Liability:** Tenant must maintain an occurrence form of commercial general liability coverage per ISO form CG 00 01 or equivalent. Such coverage shall include, bodily injury, property damage, and personal and advertising injury, for the hazards of, contractual liability, independent contractors, and products/completed operations. Tenant must maintain such commercial general liability coverage with limits of liability of \$1,000,000 each occurrence; \$1,000,000, personal and advertising injury, each occurrence; and \$1,000,000 products liability and completed operations, each occurrence with a \$2,000,000 aggregate. Tenant will maintain completed operations coverage for a period 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 \$1,000,000 combined single limit and per accident. 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) **Umbrella Coverage:** In addition to all insurance required in this Section, Tenant shall maintain umbrella coverage in an amount of \$2,000,000.00 per occurrence and general aggregate. Tenant may use any combination of primary and excess insurance to meet the total limits required.

(e) **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. Tenant self-insures this risk.

(f) **Adjustment to Insurance Coverage Limits:** The coverage limits set forth herein shall be increased at the time of any Renewal Term by the greater of the CPI as calculated over the entire preceding Initial Term or Renewal Term, or such other commercially reasonable amount agreed to by Landlord and Tenant.

(g) **Additional Insured - Certificate of Insurance:** Tenant shall provide, prior to tenancy, evidence of the required insurance in the form of a certificate of insurance issued by a company (rated A- VII or better), and eligible 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 by endorsement as respects to this Lease on the general liability and commercial automobile liability policies. Tenant shall also provide at least (30) days' prior written notice to the Landlord of cancellation or non-renewal of any required coverage that is not replaced. Tenant shall provide a current certificate of insurance to the Department of Risk Management annually without demand.



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12. **Damage or Destruction:** Landlord will promptly provide notice to Tenant of any casualty affecting the Property. If any part of the Facility or Property is damaged by fire or other casualty so as to render the Premises unsuitable, in Tenant's sole determination, then Tenant may terminate this Lease by providing written notice to the Landlord, which termination will be effective as of the date of such damage or destruction. If notice of termination is given, or if Tenant undertakes to rebuild the Facility, subject to Va. Code §§ 15.2-1800 and 15.2-2100, Landlord agrees to use its reasonable efforts to permit Tenant to place temporary transmission and reception facilities on the Property at no additional Rent until such time as Tenant is able to activate a replacement transmission facility at another location or the reconstruction of the tower structure is completed.

13. **Lease Termination:**

(a) **Events of Termination:** Except as otherwise provided herein, this Lease may be terminated upon 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 thirty (30) days of receipt of written notice of the default (without, however, limiting any other rights of the parties pursuant to any other provisions hereof);

(2) subject to the provisions of Section 6 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 unacceptable for technological reasons under the Tenant's design or engineering specifications of the communications systems to which the Facility belongs;

(4) by Landlord, if after a public hearing before the Hampton City Council; Landlord determines that, after notice and a reasonable opportunity to cure, 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 written notice to Landlord for any reason or no reason, at any time prior to commencement of construction by Tenant; or

(6) by Tenant upon sixty (60) days prior written notice to Landlord for any reason, so long as Tenant pays Landlord a termination fee equal to three (3) months Rent, at the then current rate, provided, however, that no such termination fee will be payable on account of the termination of this Lease by Tenant under any of the termination rights in this Lease.

(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.

(c) **Tenant's Liability for Early Termination:** If Tenant terminates this Lease other than by right as provided in this Lease, or if Landlord terminates this Lease as its remedy for Tenant's default of its obligations hereunder, Tenant shall pay to Landlord as liquidated damages for early termination 100% of the unpaid 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.

14. **Limitation of Liability:** 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 occupying the Property or 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; provided however, that nothing in this lease shall constitute or be deemed to be a waiver of the sovereign immunity of Landlord or a waiver of the ordinary negligence standard applicable to Landlord. Notwithstanding anything to the contrary in this Lease, 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 omissions, 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 Tenant's service or interference with Tenant's operation of its Facilities if it is of no cause or fault of Landlord. If the discontinuance extends for a period greater than three days, either consecutively or cumulatively, Tenant shall have the right to terminate this Lease in accordance with Section 13 above and without further obligation to Landlord.

16. **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 under the Access Easement. 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 impermissible interference with higher priority users as set forth in Subsection 7(a) above, Tenant shall take all measures necessary to correct and eliminate the interference. If the interference cannot be eliminated within twenty-four (24) hours after receiving Landlord's written notice of the interference, Tenant shall immediately cease operating its Facility and shall not reactivate operation, 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 any equipment necessary to eliminate such interference, or Tenant may cancel this Lease without further obligation to 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 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.

(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 (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 Communication 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 pro rata basis.

20. **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, 6<sup>th</sup> Floor  
Hampton, Virginia 23669  
ATTN: Eric Brockwell

If to Tenant, to:

New Cingular Wireless PCS, LLC  
Attn: Network Real Estate Administration  
Re: Cell Site: NF469; Site Name: NF469 (VA)  
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1025 Lenox Park Blvd NE  
3<sup>rd</sup> Floor  
Atlanta, GA 30319

With a copy to:

New Cingular Wireless PCS, LLC  
Attn: AT&T Legal Department  
Re: Cell Site: NF469; Site Name: NF469 (VA)  
Fixed Asset No.: 10103046  
208 S. Akard Street  
Dallas, Texas 75202-4206

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

21. **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.

22. **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.

Market: VA/WV/NC  
Cell Site: NF469  
Site Name: Magruder Blvd (VA)  
Fixed Asset No.: 10103046

23. **Estoppel:** Each party agrees to furnish to the other, within 10 days after request, such truthful estoppel information as the other may reasonably request.

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

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

(i) 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 (ii) 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: (i) 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 pursuant to completion of such default; or (ii) 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.

25. **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 "C" 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 State 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 Premises 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 confirmed by the parties.

The following Exhibits are attached hereto and incorporated herein:

- |           |                                       |
|-----------|---------------------------------------|
| Exhibit A | Legal Description of Leased Premises  |
| Exhibit B | Site Plan and Landscape Plan          |
| Exhibit C | Form of Memorandum of Lease Agreement |
| Exhibit D | Recorded Deed of Easement             |

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

Market: VA/WV/NC  
Cell Site: NF469  
Site Name: Magruder Blvd (VA)  
Fixed Asset No.: 10103046

IN WITNESS WHEREOF, the parties have executed this Lease to be effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**LANDLORD:**

THE CITY OF HAMPTON, 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, whose name is signed to the foregoing writing bearing date on the \_\_\_\_\_ day of \_\_\_\_\_, 2023, has this day acknowledged the same before me in the City and Commonwealth aforesaid. She/He is personally known to me or has produced \_\_\_\_\_ as identification.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

My Commission Expires: \_\_\_\_\_ Notary Public

ATTEST:

\_\_\_\_\_  
Katherine K. Glass, Clerk

Approved as to Content:

Approved as to Form:

\_\_\_\_\_  
Dept. of Information Technology

\_\_\_\_\_  
City Attorney's Office

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

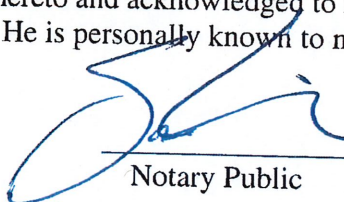
TENANT:  
NEW CINGULAR WIRELESS PCS, LLC  
By: AT&T Mobility Corporation  
Its: Manager

Date: August 28, 2023  
By: Gregory D Ohmer  
Name: Gregory D. Ohmer  
Title: Director Network Planning

STATE OF Georgia  
City/County of Gwinnett to-wit:

I, Sara Kozinskymiller, a Notary Public in and for the State and City/County aforesaid, do hereby certify that Gregory D. Ohmer, in his capacity as Director Network Planning for New Cingular Wireless PCS, LLC, a Delaware limited liability company, whose name is signed to the foregoing writing bearing date on the 28<sup>th</sup> day of August, 2023, 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 is personally known to me.

My Commission Expires: 10/17/23

  
\_\_\_\_\_  
Notary Public (SEAL)

Sara Kozinskymiller  
Notary Public, Gwinnett County, Georgia  
My Commission Expires 10/17/2023



Market: VA/WV/NC  
Cell Site: NF469  
Site Name: Magruder Blvd (VA)  
Fixed Asset No.: 10103046

## EXHIBIT A

### DESCRIPTION OF LEASED PREMISES

The Leased Premises with a site address of 300 Butler Farm Road, Hampton, VA 23666, is described and/or depicted as follows:

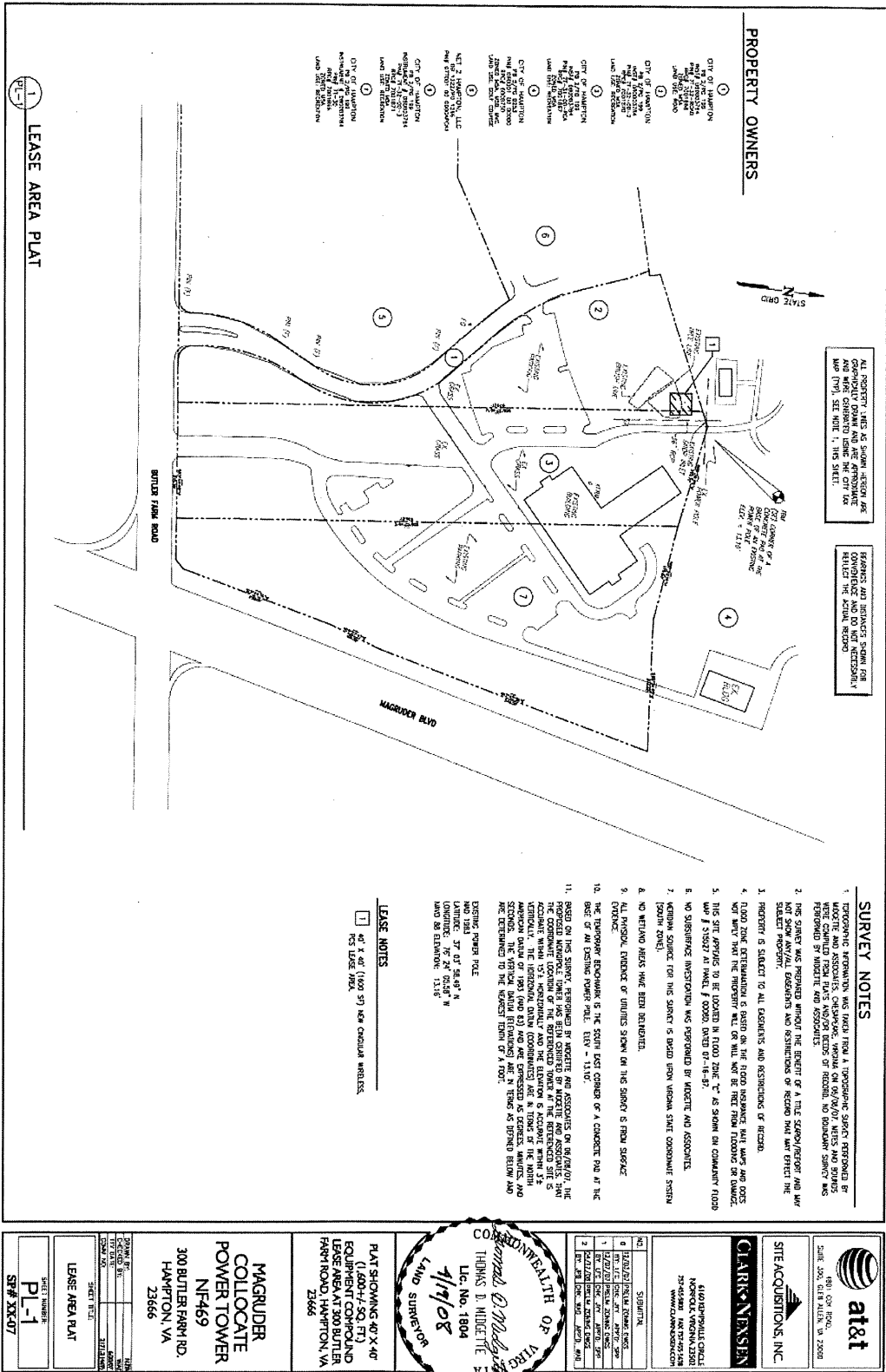
40' X 40' LEASE AREA:

COMMENCING AT THE SOUTHWESTERN-MOST RIGHT-OF-WAY ANGLE POINT, LOCATED AT THE APPARENT NORTHWEST CORNER OF THE RIGHT-OF-WAY LINES, AT THE INTERSECTION OF MAGRUDER BOULEVARD AND BUTLER FARM ROAD; THENCE CONTINUING ALONG THE NORTHERN RIGHT-OF-WAY LINE OF SAID BUTLER FARM ROAD ON A VIRGINIA STATE PLANE (SOUTH ZONE) BEARING OF S83D38'11"W FOR A DISTANCE OF 482.06 FEET TO A PIPE FOUND. SAID PIPE MARKING THE APPARENT SOUTHWEST CORNER OF AN EXISTING RIGHT-OF-WAY LEADING ONTO PROPERTY NOW OR FORMERLY OWNED BY THE HAMPTON TRAINING SCHOOL FOR NURSES AS DESCRIBED IN DEED BOOK 1251 AT PAGE 1909 AND DEED BOOK 773 AT PAGE 626 IN THE REGISTER OF DEED'S OFFICE IN THE CITY OF HAMPTON, VIRGINIA; SAID PROPERTY ALSO BEING PRESENTLY REFERRED TO AS ENCOMPASSING TAX MAP PIN NUMBERS 07T032 00 00000, 07T032 00 00002, 07T031 00 00000PCA AND 06D001 00 00000 (BEING THE CITY OF HAMPTON GOLF COURSE AS SHOWN ON PLAT BOOK 5 AT PAGE 253); THENCE CONTINUING ONTO THE PROPERTY ALONG A TIE LINE ON A BEARING OF N05D45'44"E FOR A DISTANCE OF 949.48 FEET TO THE TRUE POINT OF BEGINNING OF A NEW CINGULAR WIRELESS, PCS 40 FOOT X 40 FOOT LEASE AREA; SAID POINT ALSO REFERRED TO AS HAVING A VIRGINIA STATE PLANE COORDINATE VALUE OF N3554402.19 AND E12095089.41 (CORRECT TO WITHIN 0.5 FEET, MORE OR LESS); THENCE CONTINUING AROUND THE SAID LEASE AREA IN A CLOCKWISE DIRECTION THE FOLLOWING COURSES AND DISTANCES; S06D16'41"E FOR A DISTANCE OF 10.00 FEET TO A POINT; THENCE S83D43'19"W FOR A DISTANCE OF 40.00 FEET TO A POINT; THENCE N06D16'41"W FOR A DISTANCE OF 40.00 FEET TO A POINT; THENCE N83D43'19"E FOR A DISTANCE OF 40.00 FEET TO A POINT; THENCE S06D16'41"E FOR A DISTANCE OF 30.00 FEET TO THE TRUE POINT OF ENDING. SAID LEASE AREA CONTAINING 1,600 SQUARE FEET OR 0.037 OF AN ACRE.

EXHIBIT A-1  
Site Survey

ATTACHED

Market: VA/WV/NC  
 Cell Site: NF469  
 Site Name: Magruder Blvd (VA)  
 Fixed Asset No.: 10103046



**PROPERTY OWNERS**

- ① CITY OF HANPTON  
 1000 W. MAIN ST.  
 HANPTON, VA 23060
- ② CITY OF HANPTON  
 1000 W. MAIN ST.  
 HANPTON, VA 23060
- ③ CITY OF HANPTON  
 1000 W. MAIN ST.  
 HANPTON, VA 23060
- ④ CITY OF HANPTON  
 1000 W. MAIN ST.  
 HANPTON, VA 23060
- ⑤ CITY OF HANPTON  
 1000 W. MAIN ST.  
 HANPTON, VA 23060
- ⑥ CITY OF HANPTON  
 1000 W. MAIN ST.  
 HANPTON, VA 23060

ALL PROPERTY LINES OF BOUNDARY ARE APPROXIMATELY SHOWN AND ARE APPROXIMATE AND WILL CORRECTED UPON THE CITY TAX MAP (TM), SEE PAGE 1, THIS SHEET.

BOUNDARY AND INTEREST FROM THE SURVEY COULD NOT BE DETERMINED AND DO NOT NECESSARILY REFLECT THE ACTUAL RECORD.

**SURVEY NOTES**

1. PROPERTY INFORMATION WAS OBTAINED FROM A PERIODIC SURVEY PERFORMED BY THE CITY OF HANPTON AND IS SUBJECT TO THE CITY OF HANPTON'S PERIODIC SURVEYS PERFORMED BY WRIGHT AND ASSOCIATES.
2. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE SEARCH/REPORT AND MAY NOT SHOW ANY/ALL EASEMENTS AND RESTRICTIONS OF RECORD THAT MAY AFFECT THE SUBJECT PROPERTY.
3. PROPERTY IS SUBJECT TO ALL EASEMENTS AND RESTRICTIONS OF RECORD.
4. FLOOD ZONE DETERMINATION IS BASED ON THE FLOOD HAZARD MAP AND DOES NOT SHOW ANY/ALL EASEMENTS AND RESTRICTIONS OF RECORD THAT MAY AFFECT THE SUBJECT PROPERTY.
5. THIS SITE APPEARS TO BE LOCATED IN FLOOD ZONE "C" AS SHOWN ON COMPLIANT FLOOD MAP # 51027 AT SCALE 1:50,000, DATED 01-14-97.
6. NO SUBSURFACE INVESTIGATION WAS PERFORMED BY WRIGHT AND ASSOCIATES.
7. AERIAL SOURCE FOR THIS SURVEY IS SPAN 1000 VERTICAL SATELLITE CORNER SYSTEM (SPAN 1000).
8. NO RETURN MARKS WERE BEEN OBSERVED.
9. ALL VERTICAL EVIDENCE OF TULLIES STAKES ON THE SURVEY IS FROM SURFACE CORNER.
10. THE TOPGRAPH BENCHMARK IS THE CORNER EAST CORNER OF A CONCRETE PAD AT THE CORNER OF THE SURVEY.
11. BASED ON THIS SURVEY, WRIGHT AND ASSOCIATES ON BEHALF OF THE CITY OF HANPTON, HAS DETERMINED THAT THE SURVEY IS ACCURATE WITHIN 1/4" (0.00254 M) HORIZONTAL AND 1/8" (0.003175 M) VERTICAL. THE VERTICAL DATUM (ELEVATION) IS BASED ON THE MEAN SEA LEVEL DATUM AS DETERMINED BY THE NATIONAL BUREAU OF STANDARDS AND NATIONAL OCEANOGRAPHIC ADMINISTRATION (NOAA) AND IS REFERRED TO AS "MEAN SEA LEVEL".
12. THE SURVEY WAS PERFORMED ON 04/11/07.

**LEASE NOTES**

- 1. 1/4" x 1/4" (0.00254 M) 100 CIRCULAR MARKERS.
- 2. 1/4" x 1/4" (0.00254 M) 100 CIRCULAR MARKERS.



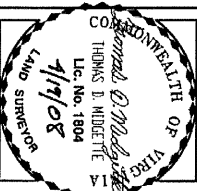
1801 COM FORD  
 SUITE 300, 618 N. MAIN ST. 23060

**SITE ACQUISITIONS, INC.**

**CLARK & NENSEN**

4101 BIRCHMOUNT CIRCLE  
 NORFOLK, VIRGINIA 23502  
 757-644-1100

| NO. | DESCRIPTION            | DATE    |
|-----|------------------------|---------|
| 0   | 1/12/07 INITIAL SURVEY | 4/11/07 |
| 1   | 1/12/07 INITIAL SURVEY | 4/11/07 |
| 2   | 1/12/07 INITIAL SURVEY | 4/11/07 |



PLAT SHOWING 40' X 40'  
 (1,600' x 1,600' FT.)  
 150' (45.72 M) CORNER  
 LEASE AREA PLAT  
 PART ROAD, HANPTON, VA  
 23060

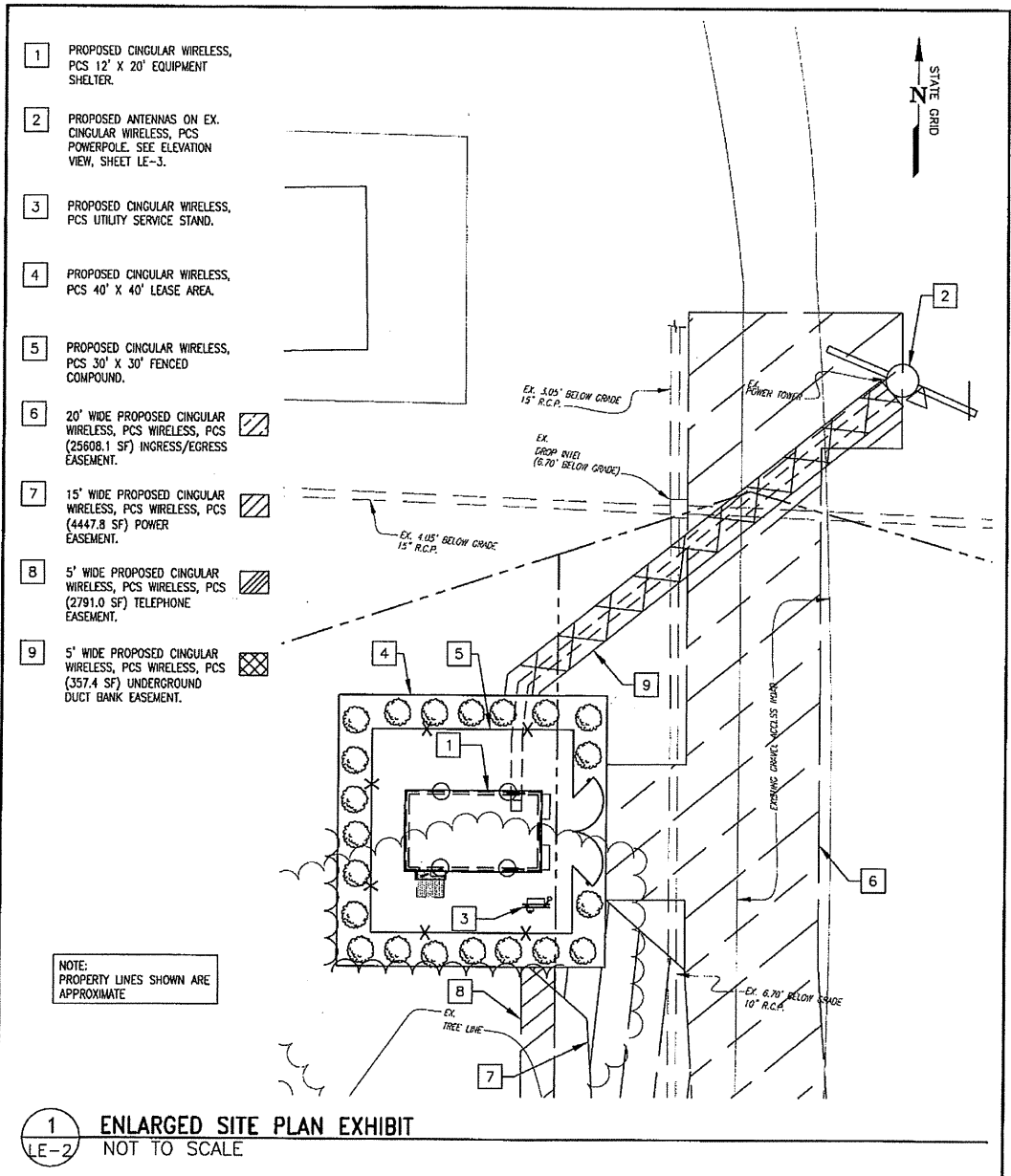
**MAGRUDER COLLOCATE POWER TOWER NF469**  
 300 BUTLER FARM RD.  
 HANPTON, VA 23060

DATE: 04/11/07  
 SHEET NO. 1  
 SHEET TITLE: LEASE AREA PLAT

PL-1  
 SP# XX-07

EXHIBIT B  
Site plan and Landscaping plan  
ATTACHED

Market: VA/WV/NC  
 Cell Site: NF469  
 Site Name: Magruder Blvd (VA)  
 Fixed Asset No.: 10103046



| SUBMITTALS  |          |
|-------------|----------|
| DESCRIPTION | DATE     |
| PRELIMINARY | 06-20-07 |
| REVISED     | 10-2-07  |
| REVISED     | 11-27-07 |
| REVISED     | 12-07-07 |
| REVISED     | 04-03-08 |

**CLARK NEXSEN**  
 Architecture & Engineering  
 5510 Cherokee Ave., Suite 230  
 Alexandria, Virginia 22312  
 Fax 703/256-6622  
 703/256-3344  
<http://www.clarknexsen.com>

**LEASE EXHIBIT**  
 MAGRUDER  
 NF469  
 300 BUTLER FARM RD.  
 HAMPTON, VA 23666  
 CITY OF HAMPTON  
 SHEET 2 OF 3



**LIBERTY PLAZA 1**  
 4801 COX ROAD, SUITE 300  
 GLEN ALLEN, VA 23060  
 TEL (804)360-3511  
 FAX (804)360-5793

EXHIBIT C

See attached Form of Memorandum of Lease Agreement

Market: VA/WV/NC  
Cell Site: NF469  
Site Name: Magruder Blvd (VA)  
Fixed Asset No.: 10103046

**MEMORANDUM  
OF  
LEASE**

This Memorandum of Lease is dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between CITY OF HAMPTON, a municipal corporation of the Commonwealth of Virginia, having a mailing address of 22 Lincoln Street, Hampton, Virginia 23669 (hereinafter referred to as "**Landlord**") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd NE 3<sup>rd</sup> Floor Atlanta, GA 30319 (hereinafter referred to as "**Tenant**").

1. Landlord and Tenant entered into a certain Lease Agreement ("Lease") dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for the purpose of installing, operating and maintaining a communications facility and other improvements. The Lease is effective as of \_\_\_\_\_, 20\_\_\_\_ ("Effective Date"). All of the foregoing is set forth in the Lease.
2. The Term of this Lease shall be five (5) years (the "Term"), commencing on August 18, 2023, and expiring on the five (5) year anniversary date. The 365-day period of time starting with the commencement of the Term of this Lease and each 365-day period thereafter shall be known as a Lease Year.
3. The portion of the land being leased to Tenant (the "Premises") is described in **Exhibit 1** annexed hereto.
4. This Memorandum of Lease is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Lease, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum of Lease and the provisions of the Lease, the provisions of the Lease shall control. The Lease shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Lease.

**IN WITNESS WHEREOF**, the parties have executed this Memorandum of Lease as of the day and year first above written.

[SIGNATURES ON FOLLOWING PAGES]

**LANDLORD:**

THE CITY OF HAMPTON, 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 of Hampton, whose name is signed to the foregoing writing bearing date on the \_\_\_\_ day of \_\_\_\_\_, 2023, has this day acknowledged the same before me in the City and Commonwealth aforesaid. She/He is personally known to me or has produced \_\_\_\_\_ as identification.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

My Commission Expires: \_\_\_\_\_ Notary Public \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, 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 \_\_\_\_\_, Clerk of Council for the City of Hampton, whose name is signed to the foregoing writing bearing date on the \_\_\_\_ day of \_\_\_\_\_, 2023, has this day acknowledged the same before me in the City and Commonwealth aforesaid. She/He is personally known to me or has produced \_\_\_\_\_ as identification.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

My Commission Expires: \_\_\_\_\_ Notary Public \_\_\_\_\_





**EXHIBIT 1**

Page 1 of 2

**DESCRIPTION OF LEASED PREMISES**

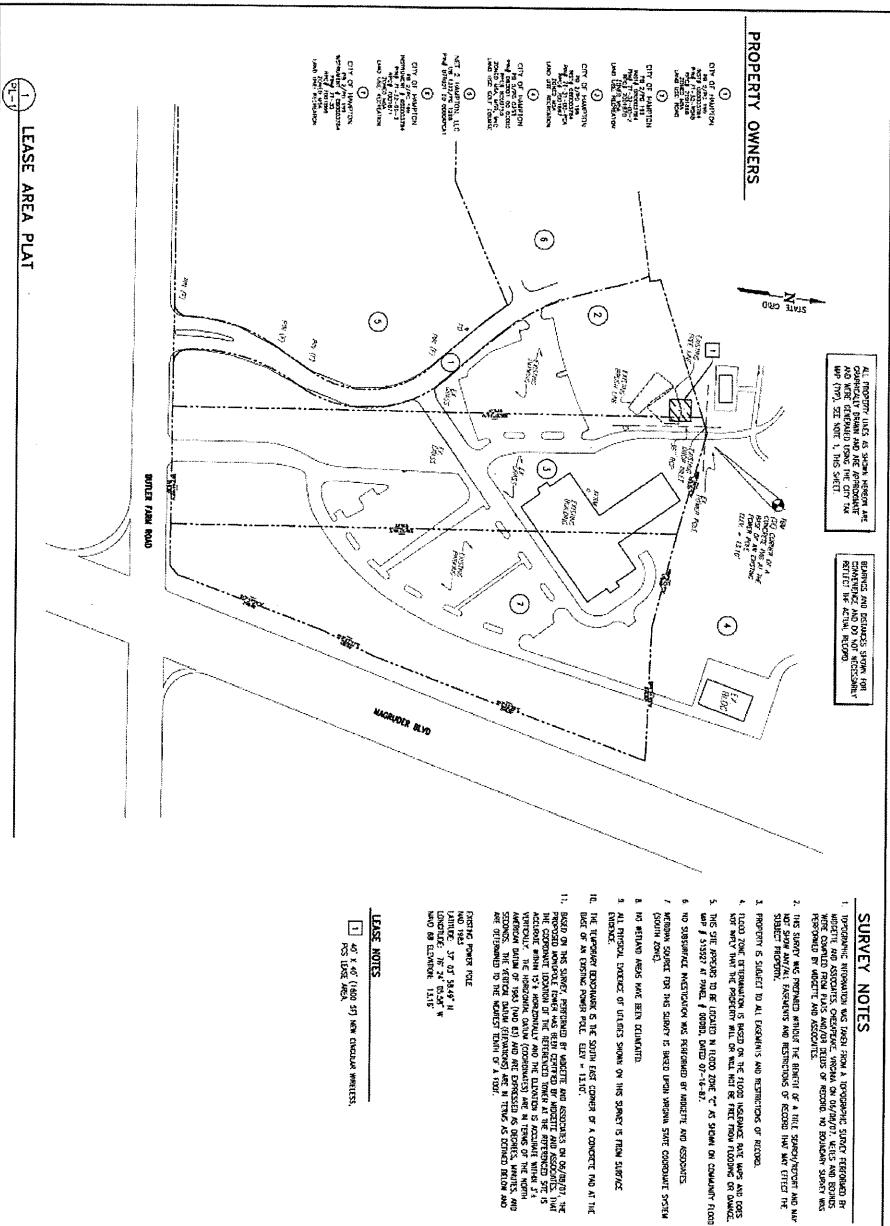
The Leased Premises with a site address of 300 Butler Farm Road, Hampton, VA 23666, is described and/or depicted as follows:

40' X 40' LEASE AREA:

COMMENCING AT THE SOUTHWESTERN-MOST RIGHT-OF-WAY ANGLE POINT, LOCATED AT THE APPARENT NORTHWEST CORNER OF THE RIGHT-OF-WAY LINES, AT THE INTERSECTION OF MAGRUDER BOULEVARD AND BUTLER FARM ROAD; THENCE CONTINUING ALONG THE NORTHERN RIGHT-OF-WAY LINE OF SAID BUTLER FARM ROAD ON A VIRGINIA STATE PLANE (SOUTH ZONE) BEARING OF S83D38'11"W FOR A DISTANCE OF 482.06 FEET TO A PIPE FOUND. SAID PIPE MARKING THE APPARENT SOUTHWEST CORNER OF AN EXISTING RIGHT-OF-WAY LEADING ONTO PROPERTY NOW OR FORMERLY OWNED BY THE HAMPTON TRAINING SCHOOL FOR NURSES AS DESCRIBED IN DEED BOOK 1251 AT PAGE 1909 AND DEED BOOK 773 AT PAGE 626 IN THE REGISTER OF DEED'S OFFICE IN THE CITY OF HAMPTON, VIRGINIA; SAID PROPERTY ALSO BEING PRESENTLY REFERRED TO AS ENCOMPASSING TAX MAP PIN NUMBERS 07T032 00 00000, 07T032 00 00002, 07T031 00 00000PCA AND 06D001 00 00000 (BEING THE CITY OF HAMPTON GOLF COURSE AS SHOWN ON PLAT BOOK 5 AT PAGE 253); THENCE CONTINUING ONTO THE PROPERTY ALONG A TIE LINE ON A BEARING OF N05D45'44"E FOR A DISTANCE OF 949.48 FEET TO THE TRUE POINT OF BEGINNING OF A NEW CINGULAR WIRELESS, PCS 40 FOOT X 40 FOOT LEASE AREA; SAID POINT ALSO REFERRED TO AS HAVING A VIRGINIA STATE PLANE COORDINATE VALUE OF N3554402.19 AND E12095089.41 (CORRECT TO WITHIN 0.5 FEET, MORE OR LESS); THENCE CONTINUING AROUND THE SAID LEASE AREA IN A CLOCKWISE DIRECTION THE FOLLOWING COURSES AND DISTANCES; S06D16'41"E FOR A DISTANCE OF 10.00 FEET TO A POINT; THENCE S83D43'19"W FOR A DISTANCE OF 40.00 FEET TO A POINT; THENCE N06D16'41"W FOR A DISTANCE OF 40.00 FEET TO A POINT; THENCE N83D43'19"E FOR A DISTANCE OF 40.00 FEET TO A POINT; THENCE S06D16'41"E FOR A DISTANCE OF 30.00 FEET TO THE TRUE POINT OF ENDING. SAID LEASE AREA CONTAINING 1,600 SQUARE FEET OR 0.037 OF AN ACRE.

**EXHIBIT 1**

Page 2 of 2



**PROPERTY OWNERS**

- 1. CITY OF HARRISON  
1000 HARRISON BLVD  
HARRISON, VA 22845
- 2. CITY OF HARRISON  
1000 HARRISON BLVD  
HARRISON, VA 22845
- 3. CITY OF HARRISON  
1000 HARRISON BLVD  
HARRISON, VA 22845
- 4. CITY OF HARRISON  
1000 HARRISON BLVD  
HARRISON, VA 22845
- 5. CITY OF HARRISON  
1000 HARRISON BLVD  
HARRISON, VA 22845
- 6. CITY OF HARRISON  
1000 HARRISON BLVD  
HARRISON, VA 22845
- 7. CITY OF HARRISON  
1000 HARRISON BLVD  
HARRISON, VA 22845
- 8. CITY OF HARRISON  
1000 HARRISON BLVD  
HARRISON, VA 22845

ALL DIMENSIONS SHOWN ARE APPROXIMATE AND NOT TO BE USED FOR CONSTRUCTION PURPOSES. THE ACTUAL DIMENSIONS SHALL BE DETERMINED BY A SURVEYOR.

ALL DIMENSIONS SHOWN ARE APPROXIMATE AND NOT TO BE USED FOR CONSTRUCTION PURPOSES. THE ACTUAL DIMENSIONS SHALL BE DETERMINED BY A SURVEYOR.

**SURVEY NOTES**

1. THE PROPERTY BOUNDARIES WERE DETERMINED FROM A TOPOGRAPHIC SURVEY CONDUCTED BY THE SURVEYOR ON 01/14/2007. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE SURVEYING ACT OF 1968 AND THE SURVEYING REGULATIONS OF THE BOARD OF SURVEYING AND MAPPING.
2. THE SURVEY WAS CONDUCTED UNDER THE BEST OF THE AVAILABLE INFORMATION AND THE SURVEYOR HAS NO KNOWLEDGE OF ANY UNRECORDED EASEMENTS OR ENCUMBRANCES AFFECTING THE PROPERTY.
3. THE SURVEYOR HAS NOT CONDUCTED A VISUAL INSPECTION OF THE PROPERTY TO VERIFY THE ACCURACY OF THE SURVEY DATA.
4. THE SURVEYOR HAS NOT CONDUCTED A VISUAL INSPECTION OF THE PROPERTY TO VERIFY THE ACCURACY OF THE SURVEY DATA.
5. THE SURVEYOR HAS NOT CONDUCTED A VISUAL INSPECTION OF THE PROPERTY TO VERIFY THE ACCURACY OF THE SURVEY DATA.
6. THE SURVEYOR HAS NOT CONDUCTED A VISUAL INSPECTION OF THE PROPERTY TO VERIFY THE ACCURACY OF THE SURVEY DATA.
7. THE SURVEYOR HAS NOT CONDUCTED A VISUAL INSPECTION OF THE PROPERTY TO VERIFY THE ACCURACY OF THE SURVEY DATA.
8. THE SURVEYOR HAS NOT CONDUCTED A VISUAL INSPECTION OF THE PROPERTY TO VERIFY THE ACCURACY OF THE SURVEY DATA.

**LEASE NOTES**

1. THE LEASE AREA IS SHOWN BY A DASHED LINE.

|  |   |  |  |  |  |  |
|--|---|--|--|--|--|--|
| <p>4601 EISENBLATT<br/>SUITE 200, OAK RIDGE, VA, 22969</p> | <p><b>CLAIMS REVIEW</b></p> <p>6668 STATE STREET<br/>NORFOLK, VIRGINIA 23502<br/>WWW.ATANDT.COM</p> | <p><b>SITE ACQUISITIONS, INC.</b></p> <p>4601 EISENBLATT<br/>SUITE 200, OAK RIDGE, VA, 22969</p> | <p><b>LAND SURVEYORS</b></p> <p>THOMAS D. HODGETT<br/>Lic. No. 1804<br/>04-18-08</p> | <p>PLAT SHOWING 40' X 40' EOL (1,600) SQ. FT. LEASE AREA AT 200 BUTLER FARM ROAD, HARRISON, VA 22845</p> | <p>MAGNOLIA COLLOCATE POWER TOWER NF469 300 BUTLER FARM RD. HARRISON, VA 22845</p> | <p>STATE OF VIRGINIA<br/>COUNTY OF HARRISON<br/>PLAT NO. 1-1<br/>SHEET NO. 33-07</p> |
|--|---|--|--|--|--|--|

EXHIBIT D  
RECORDED DEED OF EASMENT

080013065

After Recording Return to:

Carrie A. Christy, Esq.  
Phillips Lytle LLP  
3400 HSBC Center  
Buffalo, New York 14203

PG0319 JUL 14 08

NF469

~~Prepared by/Return to:~~  
City Attorney's Office  
22 Lincoln Street, Hampton, VA 23669  
(757) 727-6127 (VTV)

RPC: 6000750, 7001867, 7001868 & 70011870

EXEMPTION CLAIMED: Virginia Code (1950) as amended, §§ 58.1-811

THIS EASEMENT AGREEMENT ("**Agreement**") is made this 30<sup>th</sup> day of APRIL, 2008, by and between the CITY OF HAMPTON, VIRGINIA, a municipal corporation of the Commonwealth of Virginia (the "City") for indexing purposes "**Grantor**" and NEW CINGULAR WIRELESS PCS, LLC, a Delaware limited liability company for indexing purposes ("**Grantee**") with offices at 6100 Atlantic Blvd., Norcross, Georgia 30071.

RECITALS:

1. City is the owner of those certain lots, pieces, or parcels of land RPC Nos.: 6000750, 7001867, 7001868 & 70011870 located in the City of Hampton, Virginia, ( the "**Property**") as shown on that certain plat entitled "PLAT SHOWING ACCESS AND UTILITY EASEMENTS BEING ACQUIRED BY NEW CINGULAR WIRELESS PCS, LLC, FROM: THE CITY OF HAMPTON, VIRGINIA AT 300 BUTLER FARM ROAD, HAMPTON, VA 23666 FOR POWER TOWER CO-LOCATION # NF469 dated April 17, 2008" made by Clark Nexin (the "**Plat**") attached hereto as **Exhibit A**.

2. Grantee desires to enter the Property and use portion of the Property for the purpose of (i) access from Butler Farm Road to a power equipment power box ("**Power Equipment Compound**") located in an area leased by the Grantee, (ii) the installation, construction, maintenance, operation, use, repair, and replacement of telephone and power lines to the Power Equipment Compound, and (iii) the installation, construction, maintenance, operation, use, repair, and replacement of wiring from the "Power Tower" located on Parcel Number 2 as shown on the Plat to the Power Equipment Compound via an underground duct bank.

3. The City has agreed to grant to Grantee certain perpetual, non-exclusive easements in certain areas of the Property shown on the Plat on the terms and conditions set forth in this Agreement.

WITNESSETH:

NOW, THEREFORE, for and in consideration of the mutual benefits accruing or to be accrued to the above mentioned parties, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Grantee do hereby agree as follows:

1. Grant of Easement. Subject to the terms and conditions of this Agreement, the City hereby grants unto Grantee (i) a perpetual, nonexclusive ingress/egress easement (the "**Access Easement**"), (ii) a perpetual, nonexclusive utility easement (the "**Utility Easement**"), and (iii) a perpetual, nonexclusive duct bank easement ( the "**Duct Bank Easement**"). The

Access Easement, the Utility Easement, and the Duct Bank Easement (collectively, the "Easements") are for the use and benefit of Grantee and its licensees, over, under, upon and across those portions of the Property (such areas are collectively referred to as the "Easement Property") as shown on the Plat and described as follows:

- a. PROPOSED 20' WIDE NEW CINGULAR INGRESS/EGRESS EASEMENT (25,608.1 S.F.)
- b. PROPOSED 15' NEW CINGULAR POWER EASEMENT (4,447.8 S.F.)
- c. PROPOSED 5' WIDE NEW CINGULAR TELEPHONE EASEMENT (2,791.0 S.F.)
- d. PROPOSED 5' WIDE NEW CINGULAR UNDERGROUND DUCT BANK EASEMENT (357.4 S.F.)

2. City's Reserved Rights. The Easements are subject to the following rights reserved by the City:

a. The City reserves the right to use the Property for any purpose that does not interfere with Grantee's use of the Easements and the Easement Property as set forth herein;

b. The City reserves the right to grant additional easements and other rights to third parties over, under and within the Property, on the condition that such easements and other rights do not interfere with Grantee's use of the Easements and the Easement Property as set forth herein: and

c. The City reserves the right to restrict access temporarily to all or any portion of the Property it owns at any time and from time to time in connection with construction, maintenance and repair activities on the Property, so long as such restricted access does not unreasonably interfere with Grantee's use of the Easements and the Easement Property as set forth herein.

d. The City, its agents, successors, and/or assigns shall have the right to inspect the Easement Property with or without notice to the Grantee.

3. Grantee's Use.

a. Grantee, its employees, licensees, contractors and subcontractors may utilize the Access Easement solely for ingress and egress from Butler Farm Road to the Power Equipment Compound. The Utility Easement shall be used solely for the installation, construction, maintenance, operation, use, repair, and replacement of telephone and power lines to the Power Equipment Compound, and the Duct Bank Easement shall be used solely for the installation, construction, maintenance, operation, use, repair, and replacement of wiring from the "Power Tower" located on Parcel Number 2 as shown on the Plat to the Power Equipment Compound. The City acknowledges that the Easements also include the installation,

construction, maintenance, operation, repair and replacement of any and all improvements within the Easement Property (collectively, the “**Utility Improvements**”) reasonably necessary or reasonably appropriate for the operation of the Power Tower, and all reasonably necessary ingress and egress thereto and therefrom. In connection with the exercise of its rights pursuant to this Easement Agreement, Grantee may permit its contractors, subcontractors, licensees, employees and agents to enter upon the Easement Property for the purposes set forth herein and Grantee may grant licenses so long as Grantee remains responsible and liable for all obligations set forth in this Easement Agreement.

Any unauthorized use is strictly prohibited, and Grantee shall neither use the Easements or the Easement Property, nor permit the use of the Easements or the Easement Property, in such a manner as to constitute a public nuisance.

b. Grantee shall limit its activities to the Easement Property and shall properly maintain the Easement Property and repair and restore any damage to the Property or any improvements located thereon caused by its use of the Property to install, construct, maintain, operate, repair or replace any Utility Improvements.

4. Insurance. Grantee agrees to secure and maintain in full force and effect at all times during the term of this Easement Agreement Commercial General Liability Insurance, including contractual liability and products and completed operations liability coverages with limits of One Million Dollars (\$1,000,000) per occurrence and One Million dollars (\$1,000,000) in the aggregate. Such insurance shall include the City as an additional insured. Grantee agrees to secure and maintain in full force and effect at all times during the term of this Easement Agreement, or require its contractors performing services in the Easement Property to secure and maintain in full force and effect at all times during any service contract is in effect the following policies of insurance:

a. Workers’ Compensation Insurance as required under Title 65.2 of the Code of Virginia.

b. Automobile Liability Insurance including coverage for non-owned and hired vehicles with a One Million Dollars (\$1,000,000) combined single limit. (CSL).

All policies of insurance required herein shall be written by insurance companies licensed to conduct the business of insurance in the Commonwealth of Virginia and shall carry the provision that the insurance will not be canceled or materially modified without thirty(30) days prior written notice to the City. Grantee shall submit a certificate or certificates of insurance to the City’s Risk Management Administrator prior to the commencement of activities within the Easements or the Easement Property.

5. Indemnity. Grantee expressly agrees to indemnify, defend and hold harmless the City, and 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 reasonable attorney’s fees and litigation costs, resulting from negligence, misfeasance, malfeasance, or nonfeasance, arising out of, or in any way connected with activities in the

Easements or the Easement Property by Grantee, its employees, contractors, subcontractors, licensees, consultants, subconsultants or by any other persons, corporations, or legal entities retained by Grantee to perform any activities in the Easements or the Easement Property. In connection with Grantee's activities in the Easements or the Easement Property, any costs associated with violations of the law including, but not limited to, remediation, clean up costs, fines, administrative, criminal or civil penalties or charges, and third party claims imposed on the City 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 Grantee or by contractors, subcontractors, licensees, consultants, subconsultants, or any other persons, corporations, or legal entities retained by Grantee, shall be paid by Grantee. This provision shall survive the termination of this Easement Agreement.

6. Notice. Any and all notices required or permitted to be given under this Easement Agreement to Grantee or the City, shall be in writing, postage and/or shipping and delivery pre-paid and shall be sent (i) by U.S. Postal Service Certified Mail with Return Receipt requested, (ii) via a national overnight (or 2<sup>nd</sup> day) courier service requiring a signature upon delivery (such as Federal Express), or (iii) hand-delivery (if receipt is evidenced by a signature of the addressee or authorized agent) to the addresses set forth below. The parties hereto shall each have the right to specify, from time to time, as its address for purposes of this Easement Agreement, upon giving fifteen (15) days' written notice thereof to each other person then entitled to receive notices, instruments or communications hereunder.

The City: City of Hampton, Virginia  
22 Lincoln Street  
Hampton, Virginia 23669  
Attn: City Manager

With copy to: Department of Parks & Recreation  
City of Hampton  
22 Lincoln Street, 5<sup>th</sup>  
Hampton, Virginia 23669  
Attn: Art Thatcher, Superintendent

Grantee: New Cingular Wireless, PCS, LLC t/a AT&T  
Attn: Network Real Estate Administration  
Re: Cell Site #NF469 Magruder Blvd., (VA/WVA MKT)  
Fixed Asset No: 10103046  
6100 Atlantic Boulevard  
Norcross, Georgia 30071

With copy to: New Cingular Wireless PCS, LLC  
Attn: Legal Department  
Re: Cell Site #NF469 Magruder Blvd., (VA/WVA MKT)  
Fixed Asset No: 10103046  
5 Wood Hollow Road  
Parsippany, NJ 07054



7. Binding Agreement. All the terms, covenants, representations, warranties and conditions of this Easement Agreement shall be binding upon, and inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns, whether or not specifically set forth in any paragraph or section of this Easement Agreement. Failure of any party at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce the provisions. No waiver by either party of any condition, or the breach of any term, covenant, representation or warranty contained in this Easement Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed a further or continuing waiver of any condition or covenant, representation or warranty of this Easement Agreement. The captions and paragraph headings are for convenience only and shall not be used in construing or enforcing any of the provisions of this Easement Agreement. Wherever used herein, the singular shall include the plural, the plural shall include the singular and the use of any gender shall include all other genders.

8. Governing Law/Severability/Venue. This Easement Agreement shall be deemed to be a Virginia contract and shall be governed as to all matters whether of validity, interpretations, obligations, performance or otherwise exclusively by the laws of the Commonwealth of Virginia, and all questions arising with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this Agreement shall be deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia. The provisions of this Easement Agreement shall be severable and if any phrase, clause, sentence or provision is declared unconstitutional, or the applicability thereof is held invalid by a court of competent jurisdiction, the remainder of this Easement Agreement shall not be affected thereby. Any and all suits for any claims or for any and every breach or dispute arising out of this Easement Agreement shall be maintained in the appropriate court of competent jurisdiction of in the City of Hampton, Virginia.

9. Amendment. This Easement Agreement may be amended only by a written instrument (i) duly authorized, executed and delivered by the City and Grantee, or their respective successors or assigns; and (ii) recorded among the land records of the Clerk's Office.

10. Recording. This Easement Agreement shall be recorded at the Clerk's Office of the Circuit Court of the City of Hampton, Virginia.

11. Entire Agreement. This Easement Agreement constitutes the entire agreement between the City and Grantee concerning the subject matter hereof, and supersedes any prior or contemporaneous agreements among the parties concerning the specific subject matter hereof.

WITNESS the following duly authorized signatures:

(Signatures on following pages)

GRANTOR:

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

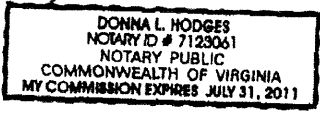
By: *Jesse T. Wallace, Jr.*  
Jesse T. Wallace, Jr.  
Title: City Manager

COMMONWEALTH OF VIRGINIA  
City of Hampton, to-wit:

*ms. Dale Peterson* The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of April, 2008, by Jesse T. Wallace, Jr., City Manager of the City of Hampton on the City's behalf. He is personally known to me.

*Donna L. Hodges*  
Notary Public

My Commission Expires: July 31, 2011  
Registration No.: 7123061



ATTEST:

*Katherine Glass*  
Katherine Glass, Clerk of Council

COMMONWEALTH OF VIRGINIA  
City of Hampton, to-wit:

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of April, 2008, by Katherine Glass, Clerk of Council for the City of Hampton on the City's behalf. She is personally known to me.

*Sharon N. Snyder*  
Notary Public

My Commission Expires: August 31, 2010  
Registration No.: 7043357



GRANTEE:

NEW Cingular Wireless PCS LLC,  
By: AT&T Mobility Corporation  
Its: Manager

By: [Signature]  
Its: Robert D. Young  
Director of Network Engineering  
and Operations

Commonwealth of Virginia  
City/County of Henrico, to-wit:

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of April, 2008, by Robert D. Young, Manager of New Cingular Wireless, PCS, a Delaware limited liability company, on its behalf. He/She is personally known to me or has produced Drivers license as identification.

[Signature]  
Notary Public

My Commission Expires June 30 2011  
Registration No. 7142593

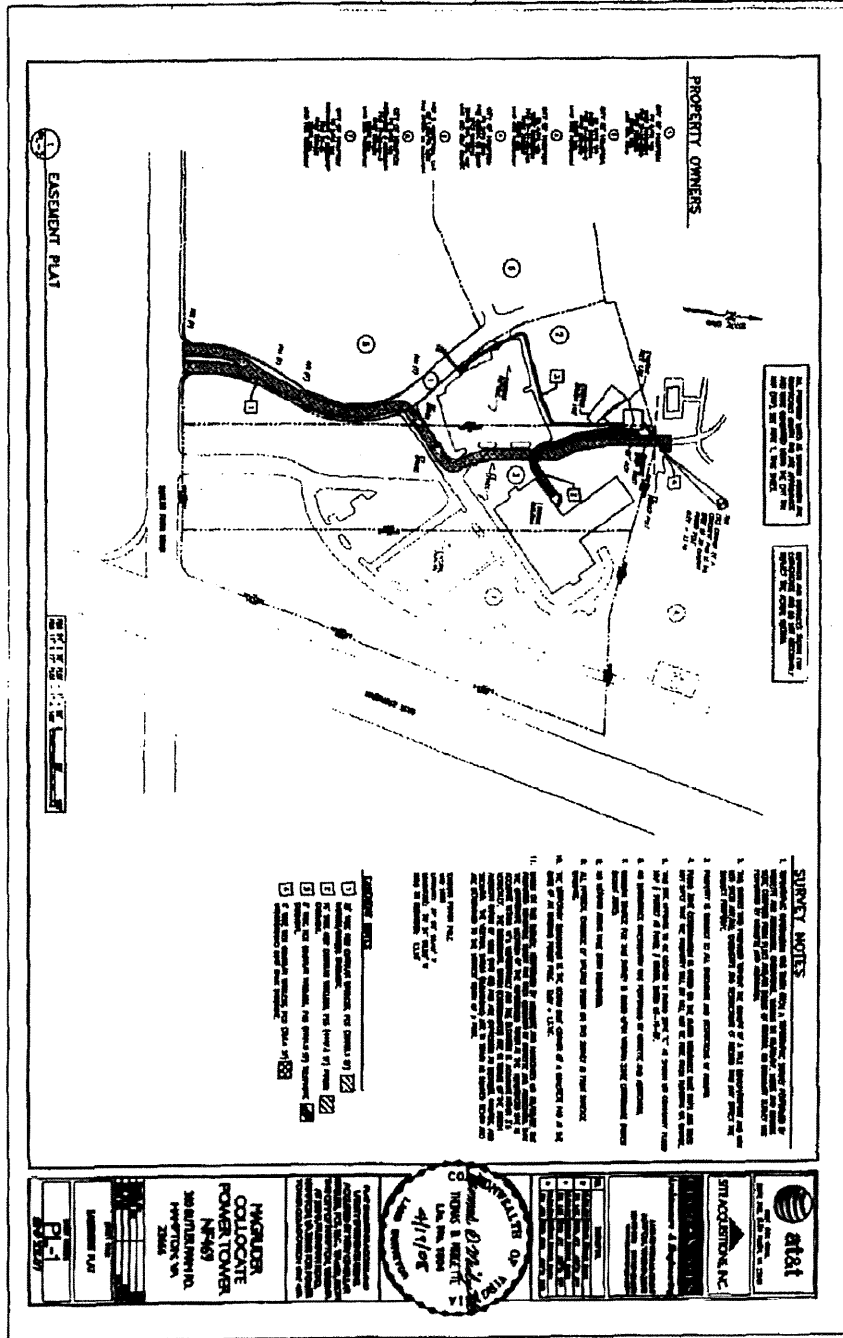
Approved as to Legal Sufficiency:

[Signature]  
Sr. Deputy City Attorney

Approved as to Content:

[Signature]  
Real Estate Manager

Exhibit A  
Page 1 of 2  
(the "Plat")





PG0328 JUL 14 08

INSTRUMENT #080013065  
RECORDED IN THE CLERK'S OFFICE OF  
HAMPTON ON  
JULY 14, 2008 AT 12:41PM

LINDA B. SMITH, CLERK  
RECORDED BY: CLS