

LEASE AGREEMENT

THIS LEASE AGREEMENT, made this 5th day of April, 1993, among J. E. BEARDEN, and his wife, IRENE L. BEARDEN, (hereinafter collectively being referred to as the "Lessor") and CONTEL CELLULAR OF BIRMINGHAM, INC. (hereinafter being referred to as the "Lessee");

WITNESSETH

For and in consideration of the mutual obligations and conditions set forth below, the parties hereto do hereby covenant and agree with each other as follows:

1. **Demise.** The Lessor hereby leases to the Lessee and the Lessee hereby rents from the Lessor that certain piece or parcel of land measuring approximately 100 feet by 100 feet out of a parcel located in the NE 1/4, Section 11, T20S, R3W, Shelby County, Alabama, said parcel being Parcel No. 1 as shown on Map 58-13-01-11-1-2-01 of the Tax Records of Shelby County, Alabama (hereinafter being referred to as the "Premises") together with any necessary easement for ingress and egress and utilities located in Shelby County in the State of Alabama being bounded and described as follows:

See Exhibit A attached hereto.

2. **Term.** The initial term of this Lease (the "Initial Term") shall commence on the later to occur (the "Commencement Date") of (i) March 1, 1993, (ii) the date that all contingencies have been met pursuant to Section 5 hereof as specified by the Lessee to the Lessor in a written notification pursuant to Section 16 hereof, provided that such date shall be no later than May 31, 1993, and end on February 28, 1998. At the end of the Initial Term, and any of the terms thereafter, this Lease shall automatically renew and extend for four separate and successive five-year periods, unless the Lessee gives the Lessor written notice of its intention to terminate not less than 30 days prior to the expiration of the Initial Term or five-year extension thereof then in effect. All terms, covenants and conditions of this Lease shall remain in full force and effect during any extension thereof.

3. **Purpose.** The purposes for which the Premises are demised are for the use by the Lessee to conduct cellular radio telephone and other telecommunications operations from one tower. In no event shall the use of the Premises be such as to create conditions which constitute a nuisance or are harmful to the normal and customary operations of the Lessor and/or neighboring landowner(s).

4. **Rent.** The Lessee during the Initial Term and during each renewal period, shall pay to the Lessor as rent for the Premises described above the sum of Twelve Thousand and No/100 Dollars (\$12,000.00) per year paid annually in advance beginning with the Commencement Date and continuing on each anniversary of the Commencement Date thereafter.

(a) On each anniversary of the Commencement Date, the annual rent for the next year shall be the sum of the then-current annual rental payment, plus the greater of (i) three percent of the annual rent for the preceding year or (ii) the sum determined by multiplying the percentage increase (if any) of the "Consumer Price Index - Seasonally Adjusted U. S. City Average For All Items For All Urban Consumers (1967=100)," published monthly in the "Monthly Labor Review" of the Bureau of Labor Statistics of the United States Department of Labor (herein called the "CPI"), from the first month of the Initial Term to the month immediately preceding the first month of the applicable renewal term, times the then-current annual rental payment; provided that the new base rent as determined herein shall not be increased by more than five percent in any one year over the previous base rent regardless of the extent of the increase in the CPI.

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(b) If the CPI is discontinued, comparable statistics on the purchasing power of the consumer dollar published by the Bureau of Labor Statistics of the United States Department of Labor shall be used for making the computation above. If the Bureau of Labor Statistics shall no longer maintain statistics on the purchasing power of the consumer dollar, comparable statistics published by responsible financial periodical or recognized authority shall be used for making the computation. Rent, during the renewal periods, shall be paid monthly.

5. **Permits and Approvals.** This Lease is specifically contingent upon the Lessee's ability to secure any easements or Federal, State and local permits, and approvals necessary for the Lessee to conduct cellular mobile radio telephone operations and to construct a building and one communications tower upon the Premises, such permits and approvals including, but not limited to, all special use permits, FAA approval, Alabama Public Service Commission, FCC construction permits, local building permits and any applicable rezoning or variances required. The Lessor will provide good title to the Premises free and clear of all liens and encumbrances except as set forth on Exhibit B attached hereto. The Lessor will provide any consent or resolutions as may be required by Lessee's title company. The Lessor agrees to grant all telephone and power easements, including written and recorded deeds, necessary for conducting telecommunication services as described in Section 3 hereof. In the event the Lessee has not received the necessary permits and approvals or title acceptable to the Lessor, the Lessee may, at any time prior to May 31, 1993, declare this Lease null, void and terminated by written notice and payment of a cancellation fee (the "Cancellation Fee") in the amount of One Thousand and No/100 Dollars (\$1,000.00) to the Lessor, and neither party shall have any further obligations under this Lease. In the event the Commencement Date has not occurred prior to May 31, 1993, Lessee shall pay the fee to the Lessor and this Lease shall be null and void.

6. **Subordination.** This Lease is and shall be subject and subordinate to any and all permanent or building loan mortgages or deeds of trust covering the fee of the Premises now existing or hereinafter made by the Lessor and to all advances made or to be made thereon and to all renewals, modifications, consolidations, replacements, or extensions thereof, and the lien of any such mortgage or mortgages shall be superior to all rights hereby or hereunder vested in the Lessee to the full extent of the principal sum secured thereby and interest thereon; provided that each such mortgage (a) shall provide by its terms or by separate agreement that in the event of foreclosure of such mortgage, the Lessee shall remain undisturbed under this Lease so long as the Lessee complies with all of the terms and conditions hereunder; and (b) shall permit, by its terms or by separate agreement, the removal of fixtures or improvements from the Premises by the Lessee.

7. **Buildings, Structures and Improvements.** The Lessee may, at its own costs and expense, erect upon the Premises those buildings and structures necessary for the Lessee to conduct its proposed operations thereon, as described in Section 3 hereof. The Lessee shall enclose the Premises with a chain link fence at least six feet in height. All buildings, structures, and equipment erected on the Premises shall be repaired and maintained by the Lessee, and removed at the Lessee's expense upon termination of this Lease. The Lessee shall maintain the Premises in a neat and orderly manner so as not to detract from the appearance of the property.

8. **Taxes.** The Lessee shall pay any property taxes assessed on, or any portion of such taxes attributable to the Premises.

9. **Liens and Encumbrances.** If because of any act or omission of the Lessee, any mechanic's lien or other lien, charge, or order for the payment of money shall be filed against any portion of the Premises, the Lessee shall, at its own cost and expense, cause the same to be discharged of record or bonded within 90 days after written notice from the Lessor to the Lessee of the filing thereof unless the Lessee shall contest the validity of such liens.

10. **Surrender of Premises.** At the termination of this Lease, the Lessee will surrender the Premises to the Lessor, provided that the Lessee will remove from the Premises all or any part of the buildings, towers or other structures erected by the Lessee on the Premises during the term of the Lease, and restore the Premises to its original condition.

11. **Quiet Possession.** The Lessor hereby covenants that it is seized in fee simple title of and to the Premises, that the Lessee shall have quiet and peaceable possession of the demised Premises, free from all encumbrances (except encumbrances permitted under Sections 5 and 6 hereof), that the Lessor shall defend title to the Premises for and on behalf of the Lessee, and that the Lessor will provide such further assurances of the title as may be necessary or appropriate.

12. **Eminent Domain.** In the event the Premises shall at any time during the term of this Lease be taken by any public authority or agency for any public use, the entire damages which may be awarded for the taking of the Premises shall be equitably apportioned between the Lessor and the Lessee, taking into account the value of their respective interests in the Premises. In case a part only from the Premises shall be so taken for the public use and such taking renders the Premises unsuitable for the Lessee's conduct of cellular mobile radio telephone operations, the Lessee may, at its option, terminate the Lease upon such taking. In such event, the Lessor shall refund to the lessee a pro rata portion of the rent paid upon commencement of this Lease, based on the proportionate amount of the Lease term during which the Premises have then been utilized by the Lease. In the event a part of the Premises shall be taken for public use and such taking does not render the Premises unsuitable for the conduct of cellular mobile radio telephone operations, but such taking does diminish the ability of the Lessee to utilize the Premises as previously utilized, the rent for the remainder of the term of this Lease shall then be reduced and refunded to the Lessee in proportion to the part of the Premises so taken. In the event the Premises become impracticable to be utilized by the Lessee to conduct cellular mobile radio telephone operations thereon as a result of any taking by any governmental authority, the Lessee may at its option, on 30 days notice to the Lessor, terminate this Lease and the Lessor shall then refund to the Lessee the pro rated rent for the remaining term of the Lease.

13. **Representatives Bound.** The covenants, stipulations and conditions herein contained shall inure to the benefit of and shall be binding upon the heirs, personal representatives, successors and assigns of the Lessor and the successors and assigns of the Lessee.

14. **Cooperation.** Both the Lessor and the Lessee agree to provide any further documentation or cooperate in any way necessary to carry out the basic intent of this Lease Agreement.

15. **Notice.** Any notice that either party hereto desires to give to the other shall be deemed given upon placing such notice in U.S. Mail, certified mail, return receipt requested, with postage fully prepaid, addressed as follows:

To Lessor: Mr. J. E. Bearden and Mrs. Irene L. Bearden
 3494 Bearden Lane
 Helena, Alabama 35080

To Lessee: Contel Cellular of Birmingham, Inc.
 3100 West End Avenue
 Suite 1100
 Nashville, Tennessee 37203

Either party may change its mailing address pursuant to the provisions of this Section 16.

16. **Lessee's Obligation to Insure.** During the term of this Lease, the Lessee, at its sole cost and expense, and for the mutual benefit of the Lessor and the Lessee, shall carry and maintain, in amounts reasonably acceptable to Lessor but not less than \$1,000,000.00, comprehensive public liability insurance, including property damage, insuring the Lessor, Lessor's agent and the Lessee against liability for injury to persons or property occurring in or about the Leased Premises or arising out of the ownership, maintenance, use, or occupancy thereof. All policies of insurance (except liability insurance) shall provide by endorsement that any loss shall be payable to the Lessor and the Lessee as their respective interests may appear and shall name Lessor as an additional insured party. The Lessee shall have the privilege of procuring and obtaining all of such insurance through its own sources and shall provide a copy to the Lessor. The Lessor shall be held harmless from damages resulting from claims or lawsuits that may arise out of the use of the Premises or actions by the Lessee. Lessor will be furnished with a certificate by Lessee's insurance carrier annually, evidencing above-referenced insurance.

17. **Lessee's Right to Assign Lease.** At any time during the term of this Lease, the Lessee, at its sole discretion, may assign the Lease; provided that the Lessee shall remain liable for the payment of rent hereunder. Any assignee or sublessee may only use the Premises for the purposes set forth in Paragraph 3 hereof.

18. **Recording.** The parties agree that the Lessee may record this Lease Agreement at its sole expense.

19. **Brokers.** The parties agree that J. H. Berry & Molton Property Company, Inc. is acting as the Lessee's agent in connection with this Lease Agreement and any commission due such agent hereunder shall be paid by the Lessee.

20. **Governing Law.** This Lease shall be construed in accordance with the laws of the State of Alabama, without giving effect to any conflicts-of-law principles.

21. **Entire Agreement.** This Lease represents the entire agreement of the parties concerning the subject matter hereof, and supersedes all prior discussion, negotiations and agreements between the Lessor and the Lessee.

IN WITNESS WHEREOF, the Lessor and the Lessee have caused this Lease Agreement to be executed and sealed as of the day and year first above written.

LESSOR

J. E. Bearden
J. E. Bearden

Irene L. Bearden
Irene L. Bearden

LESSEE

CONTEL CELLULAR OF BIRMINGHAM, INC.

By Margaret Bellville
Margaret Bellville
Vice President

STATE OF ALABAMA)
 :
SHELBY COUNTY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that J. E. BEARDEN, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he executed the same voluntarily on the day the same bears date.

GIVEN under my hand and seal, this 5th day of April, 1993.

[NOTARIAL SEAL]

Helen Martin
Notary Public

MY COMMISSION EXPIRES

My Commission Expires: FEBRUARY 13, 1994.

STATE OF ALABAMA)
 :
SHELBY COUNTY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that IRENE L. BEARDEN, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, she executed the same voluntarily on the day the same bears date.

GIVEN under my hand and seal, this 5th day of April, 1993.

[NOTARIAL SEAL]

Helen Martin
Notary Public

MY COMMISSION EXPIRES

My Commission Expires: FEBRUARY 13, 1994.

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STATE OF TENNESSEE)
 :
COUNTY OF DAVIDSON)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Margaret Bellville, whose name as Vice President of CONTEL CELLULAR OF BIRMINGHAM, INC., a corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

GIVEN under my hand and seal, this 26th day of April, 1993.

[NOTARIAL SEAL]

Donna M. Delaney
Notary Public

My Commission Expires: 11-25-95

This Instrument Prepared By:

Mr. Thomas A. Ansley
Sirote & Permutt, P.C.
2222 Arlington Avenue South
Birmingham, Alabama 35205

EXHIBIT A

A parcel of land lying in the Northwest Quarter of the Northeast Quarter of Section 11, Township 20 South, Range 3 West, Shelby County, Alabama, more particularly described as follows:

Commence at the southwest corner of the Northwest Quarter of the Northeast Quarter of Section 11, Township 20 South, Range 3 West, Shelby County, Alabama; thence South $87^{\circ}55'18''$ East along the south line of said quarter-quarter section for a distance of 649.36 feet to the easterly right-of-way line of Shelby County Highway No. 105 (right-of-way width varies) and the POINT OF BEGINNING; thence North $11^{\circ}41'04''$ West along said right of way line for a distance of 106.58 feet; thence run South $87^{\circ}55'18''$ East for a distance of 102.96 feet to the southwesterly line of an Alabama Power Company right-of-way (right-of-way width: 100 feet); thence leaving said right-of-way run South $11^{\circ}41'04''$ East for a distance of 106.58 feet to the south line of said quarter-quarter section; thence run North $87^{\circ}55'18''$ West along the south line of said quarter-quarter section for a distance of 102.96 feet to the easterly right-of-way line of Shelby County Highway No. 105 and the POINT OF BEGINNING. Containing 10,658 square feet (0.245 acres) more or less.

EXHIBIT B

1. Taxes for 1993 and subsequent years. Taxes for 1993 are not due and payable until October 1, 1993.
2. Permits to Alabama Power Company recorded in Deed Book 179, Page 330; Deed Book 134, Page 207 and Deed Book 105, Page 23 in the Probate Office of Shelby County, Alabama.
3. Easement to Alabama Power Company recorded in Deed Book 320, Page 339 in the Probate Office of Shelby County, Alabama.
4. Right of way to Shelby County recorded in Deed Book 135, Page 356 and Deed Book 253, Page 535 in the Probate Office of Shelby County, Alabama.

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