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Shelby Cnty Judge of Probate, AL
02/15/2011 12:59:12 PM FILED/CERT

PREPARED BY AND
WHEN RECORDED MAIL TO:

John P. Lemmon, Esq.

iMortgage Services LLC
2570 Boyce Plaza Road
Pittsburgh, PA 15241

_____ SPACE ABOVE THIS LINE FOR RECORDER'S USE _____

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT ("Agreement") is made as of the 9th day of February, 2011 ("Effective Date") by and between **BENJAMIN NORRIS HOUSE, SR., a/k/a BENJAMIN NORRIS HOUSE AND JAMIE S. HOUSE**, husband and wife ("Grantor") and **ARCTURUS LAND ENTERPRISES, LLC**, a Delaware limited liability company ("Grantee"). Grantor and Grantee are at times collectively referred to hereinafter as the "Parties" or individually as a "Party".

RECITALS:

WHEREAS, Grantor is the owner of that certain real property located in the City of Wilsonville, County of Shelby, State of Alabama, commonly known as Blue Springs Road, Wilsonville, Alabama 35186, Tax ID#58-20-01-01-001-001 ("Property"), which Property is more particularly described on Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, Grantor and Grantee have entered into that certain Letter Agreement last executed the 24th day of January, 2011 ("Letter Agreement"), in which Grantor has agreed to grant to Grantee certain easement rights to a portion of the Property in accordance with the terms herein.

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) in hand paid, the mutual promises hereinafter set forth and other good and valuable consideration, the

Shelby County, AL 02/15/2011
State of Alabama
Deed Tax: \$.50

receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Grantor and Grantee hereby agree and covenant to and with each other the following:

1. **Recitals.** The recitals set forth above and the Letter Agreement are incorporated herein by reference and made a part of this Agreement.

2. **Grant of Easement.**

(a) Grantor grants, bargains, sells, transfers and conveys to Grantee:

(i) an easement in, to, under and over the portions of the Property, as shown or described on Exhibit "B" attached hereto ("Communication Easement"), for the transmission and reception of any and all wireless communication signals and the construction, maintenance, repair, replacement, improvement, operation and removal of towers, antennas, cabinets, buildings, ice bridges, fences, gates and all related facilities (collectively "Facilities"), and any and all activities and uses of the Communication Easement related to the operation of a wireless communications site, which Communication Easement shall be exclusive except for any contrasting rights granted prior to the Effective Date via the leases or other agreements listed on Exhibit "C" ("Current Agreements") and exclusive upon the expiration or earlier termination of such Current Agreements; and

(ii) non-exclusive easements in, to, under and over portions of the Property ("Access and Utility Easements") for ingress and egress to and from the Communication Easement and a publicly dedicated roadway, and for the installation, repair, replacement, improvement, maintenance and removal of utilities providing service to the Communication Easement and the Facilities, and any related activities and uses; the Communication Easement and Access and Utility Easements are collectively referred to herein as the "Easement".

(b) The Parties agree that the Easement shall be modified to include any additional areas utilized by the lessee or any assignees or sublessees under the Current Agreements at the time of expiration of such respective Current Agreements if any such areas extend beyond those areas described in Exhibit "B". Such additional areas may be documented by a survey acquired by Grantee at Grantee's cost. Grantee shall have the right to replace any site plan or description provided in Exhibit "B" or on any ancillary documents with a survey.

3. **Current Agreements.** Grantor shall not transfer or assign to Grantee all or any portion of its rights, obligations, title and interest in, to and under the Current Agreements. Grantor covenants and agrees that Grantor remains the fee owner of the Property and Grantor is not assigning and shall continue to comply with all of Grantor's obligations as lessor under the Current Agreements. Grantor shall have the right to enter upon the Easement to the extent necessary to comply with Grantor's obligations under the Current Agreements. During the term of the Current Agreements, maintenance of the Easement is the responsibility of any tenants under the Current Agreements. In the event of a default by a tenant with respect to any maintenance obligation under any of the Current Agreements, Grantee shall not be responsible for such default nor obligated to cure or seek remedy for such default, and Grantor may pursue such remedies from the defaulting tenant as may be available to Grantor under the

Current Agreements or at law or equity. Grantor shall not extend the Current Agreements and/or otherwise revise the Current Agreements in any manner that further burdens the Easement without Grantee's prior written consent, which consent may be denied in Grantee's sole discretion. Grantor shall, upon request of Grantee, provide any notice(s) required by the Current Agreements to avoid renewal term(s) thereunder. Grantor hereby irrevocably constitutes and appoints Grantee as Grantor's true and lawful attorney-in-fact, with full power of substitution and resubstitution, to deliver on behalf of Grantor (i) any notice(s) required by the Current Agreements to avoid renewal term(s) under such Current Agreements and (ii) any notice(s) waiving tower removal and/or site restoration obligations under the Current Agreements.

4. **Use of Easement.** Grantor shall provide to Grantee the quiet enjoyment and use of the Easement. Grantee shall have the exclusive, unrestricted right to lease, sublease, license, transfer, assign or encumber, in whole or in part, or grant the use of the Easement and/or its rights under this Agreement to any third parties, including but not limited to (i) communication service providers or tower owners or operators, (ii) any lessee, sublessee or licensee under the Current Agreements, (iii) the affiliates, subsidiaries, parents, successors, purchasers in whole or in part, agents, contractors, invitees and employees of Grantee, and (iv) Grantee's present or future lessees, sublessees or licensees (collectively "Customers"). Grantee and its Customers shall have the right to enter and access the Easement at any time, twenty-four (24) hours a day, seven (7) days a week.

5. **Term.** This Agreement and the Easement shall be perpetual commencing on the Effective Date, except if terminated in accordance with the terms herein.

6. **Termination.** In the event Grantee and Customers cease all use of all portions of the Easement for a period of more than five (5) consecutive years (for reasons other than casualty or force majeure) subsequent to the expiration or earlier termination of the Current Agreements, the Easement shall be deemed abandoned. Limited or partial use of the Easement by Grantee or any Customers shall not be deemed a surrender or abandonment of the Easement or any unused portion thereof, nor prevent Grantee from benefiting from the full use and enjoyment of the entirety of the Easement. Grantee may abandon the Easement upon thirty (30) days notice to Grantor. This Agreement may not be terminated by Grantor. Upon abandonment, this Agreement shall be terminated, and Grantee and Grantor shall cooperate in the execution and recordation of such documents reasonably required to evidence such termination.

7. **Improvements.** Grantee and its Customers may, at their discretion and expense, construct improvements in, to, under and over the Easement, all of which shall be deemed part of the Facilities. The Facilities shall remain the personal property of Grantee and its Customers, as applicable, and Grantor shall possess no right, title or interest therein. Grantee and its Customers may from time to time temporarily utilize additional portions of the Property contiguous to the Easement to the minimum extent necessary for installation, maintenance or other work on the Facilities, or for the placement of mobile facilities to maintain service during periods of repair or replacement of the Facilities. Grantor shall be under no obligation to reserve any such additional Property. Any such additional Property that is used hereunder shall be returned to the condition which existed prior to such use promptly upon the completion of such use.

8. **Taxes.** Upon the expiration of the Current Agreements, Grantee shall thereafter be responsible for all taxes directly attributable to the Facilities as evidenced by an applicable tax bill. Grantor shall pay all other taxes that are not directly attributable to the Facilities.

9. **Exclusive Use.** Except for Grantee's use or the use of any Customers or third parties with Grantee's permission or as otherwise permitted by the Current Agreements, no portion of the

Property or any other property owned by Grantor and located within a five (5) mile radius of the Property shall be used for the purpose of or in connection with communications towers and/or facilities without the prior written consent of Grantee, which consent may be withheld in Grantee's sole discretion. Grantor shall not install or permit to be installed any structure or equipment which causes measurable interference to the equipment of Grantee or its Customers, or otherwise permit any portion of the Property to be used in a manner which materially interferes with the operations of Grantee and/or any Customers. Grantor and Grantee acknowledge that there will not be an adequate remedy at law for non-compliance with the provisions of this section and therefore, Grantee shall have the right to specifically enforce the provisions herein in a court of competent jurisdiction.

10. Environmental Covenants and Indemnity. Grantor represents that it has no knowledge of any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation ("Hazardous Materials") located on, under or about, or otherwise affecting, the Property or the Easement. Neither Grantor nor Grantee will introduce or use any Hazardous Materials on, under or about the Property or the Easement in violation of any applicable law or regulation. Grantor and Grantee shall indemnify, defend and hold the other Party harmless from and against any and all demands, claims, enforcement actions, costs and expenses, including reasonable attorneys' fees, arising out of the presence of Hazardous Materials upon or affecting the Property or the Easement and caused by the indemnifying Party. The foregoing indemnity shall survive any termination of this Agreement.

11. General Indemnity. Grantor and Grantee shall each indemnify, defend and hold the other harmless against any and all costs and claims of liability or loss arising (i) due to the breach of any representation, warranty or covenant of such indemnifying Party set forth herein, or (ii) out of the use and/or occupancy of the Property or the Easement by the indemnifying Party, except to the extent arising from the negligence or intentional misconduct of the indemnified Party. The foregoing indemnity shall survive any termination of this Agreement.

12. Transfer of the Property; Assignment. The provisions and covenants contained in this Agreement shall run with the land and shall bind and inure to the benefit of the Parties and their respective successors, heirs and assigns. Should Grantor sell or otherwise convey all or any part of the Property to a purchaser or transferee other than Grantee, such sale or conveyance shall be under and subject to the terms contained in this Agreement and Grantee's rights hereunder. Notwithstanding the foregoing, this Agreement and the Easement are for the benefit of Grantee, its Customers, successors and assigns, rather than for the benefit of any other tract of land, and may be assigned freely, in whole or in part, by Grantee and its successors and assigns.

13. Mortgages. At Grantor's option, this Agreement and the Easement shall be subordinate to any mortgage or other security interest by Grantor which from time to time may encumber all or part of the Easement so long as Grantor's lender shall agree in writing in a form reasonably acceptable to Grantee that such lender will not disturb Grantee's possession and rights under this Agreement so long as Grantee remains in compliance with this Agreement.

14. Secured Parties. Grantee shall have the unrestricted right to assign, mortgage or grant a security interest in Grantee's interest in and to this Agreement and the Easement, and may assign this Agreement and the Easement to any such assignees, mortgagees or holders of security interests, including their successors and assigns ("Secured Parties"). If Grantee fails to perform any of its obligations under this Agreement, Grantor agrees to provide written notice of such default to Grantee and all Secured Parties of which Grantor has been notified, and to give Grantee and/or such Secured Parties the right to cure such default within a period of not less than sixty (60) days from receipt of the written default notice.

15. **Estoppel Certificate.** Each Party shall, within ten (10) days after request by the other Party, execute and deliver to the requesting Party, or the Party designated by the requesting Party, a statement certifying (i) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, stating the modifications and that the modified Agreement is in full force and effect); (ii) whether either Party is in default in performance of any of its obligations under this Agreement, and, if so, specifying each default; and (iii) any other information reasonably requested concerning this Agreement.

16. **Condemnation.** In the event of any condemnation of the Easement in whole or in part, Grantee shall be entitled to file claims against the condemning authority for, and to receive, the entire value of the portion of the Property so taken on which the Easement is located, business dislocation expenses and any other award or compensation to which Grantee may be legally entitled.

17. **Notices.** All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given one (1) day after posting with a nationally recognized overnight courier service, or the earlier of receipt or ten (10) days after posting by registered or certified mail, return receipt requested, to the addresses of Grantor and Grantee as set forth on the signature page. Either Party may change its notice address by providing notice as set forth herein.

18. **Miscellaneous.**

- (a) This Agreement, including all Exhibits attached hereto and the Letter Agreement which is incorporated herein by reference, constitutes the entire agreement and understanding of Grantor and Grantee with respect to the subject matter of this Agreement, and supersedes all offers, negotiations and any other written or verbal agreements, and any amendments to this Agreement must be in writing and executed by both Parties;
- (b) this Agreement is governed by the laws of the State in which the Property is located;
- (c) in the event that either Party fails to pay when due any taxes, loans, judgments or payments attributable to or encumbering the Property, Easement or this Agreement, the other Party shall have the right, but not the obligation, to pay such sums on behalf of the non-paying Party, and the non-paying Party shall thereafter reimburse the paying Party for the full amount of such sums paid within five (5) business days of the non-paying Party's receipt of an invoice from the paying Party, or at the Paying party's option the paying Party may offset such amount, plus reasonable interest thereon, against any sums due from the paying Party to the non-paying Party;
- (d) if any term of this Agreement is found to be void, invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed modified to the minimum extent necessary to be operative, valid and enforceable to most closely reflect the intent of the Parties as expressed herein, or if such modification is not practicable, such provision shall be deemed deleted from this Agreement, and the other provisions of this Agreement shall remain in full force and effect;
- (e) the Parties shall perform, execute and/or deliver promptly any and all such further acts and documents as may be reasonably required to consummate and

continue to effectuate the transaction contemplated hereby, including any documents required for Grantee to acquire title insurance on the Easement;

- (f) the section headings of this Agreement have been inserted for convenience of reference only, and shall in no way modify or restrict the terms of this Agreement;
- (g) this Agreement has been negotiated at arm's-length, and in the event of any ambiguity in any of the terms and provisions, this Agreement shall be interpreted in accordance with the intent of the Parties and shall not be interpreted against or in favor of either Grantor or Grantee;
- (h) each Party acknowledges that neither Party has provided any legal or tax advice to the other regarding the transaction contemplated hereby or in connection with the execution of this Agreement or any ancillary documents hereto, and each of Grantor and Grantee has had the full opportunity to avail itself of legal and financial representation;
- (i) if either Grantor or Grantee files an action for the enforcement or breach of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and court costs;
- (j) Grantee, at Grantee's expense, may record this Agreement upon the full execution hereof; and
- (k) this Agreement may be executed in any number of counterparts, each of which shall, when executed, be deemed to be an original and all of which shall be deemed to be one and the same instrument.

[Signatures to immediately follow.]

IN WITNESS WHEREOF, and intending to be legally bound, Grantor and Grantee have executed this Agreement.

GRANTOR:

**Benjamin Norris House, Sr., a/k/a Benjamin
Norris House, and Jamie S. House,
husband and wife**

Benjamin Norris House, Sr.
Benjamin Norris House, Sr.

Jamie S. House
Jamie S. House

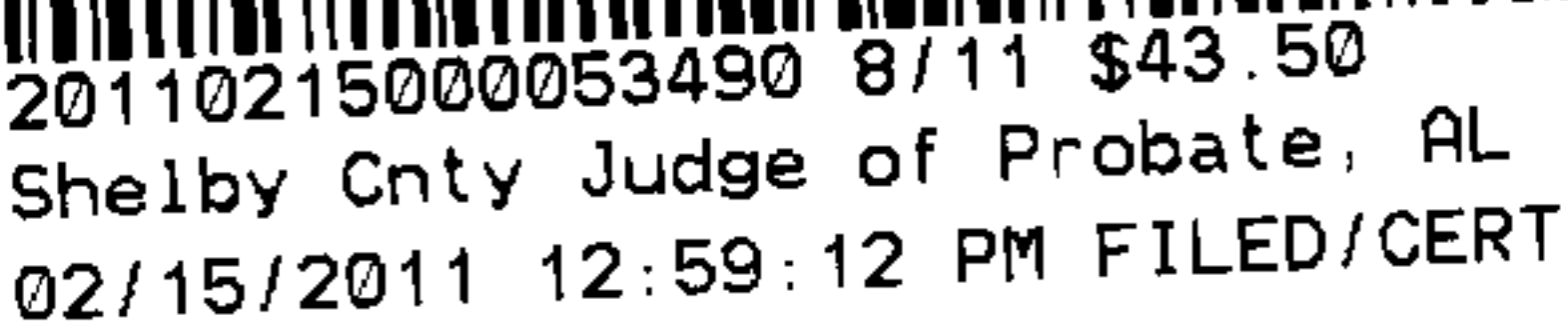
P.O. Box 560
Wilsonville, AL 35186
Tel.: (205) 669-6485

STATE OF Alabama)
)
COUNTY OF Shelby) SS:

On this 18th day of January, 2011, before me, a Notary Public, the undersigned officer, personally appeared Benjamin Norris House, Sr., a/k/a Benjamin Norris House, and Jamie S. House, husband and wife, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same as his/her free act and deed for the purposes and consideration therein expressed.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.


Jessaw. Ray
Notary Public
My Commission Expires: 1/6/2014

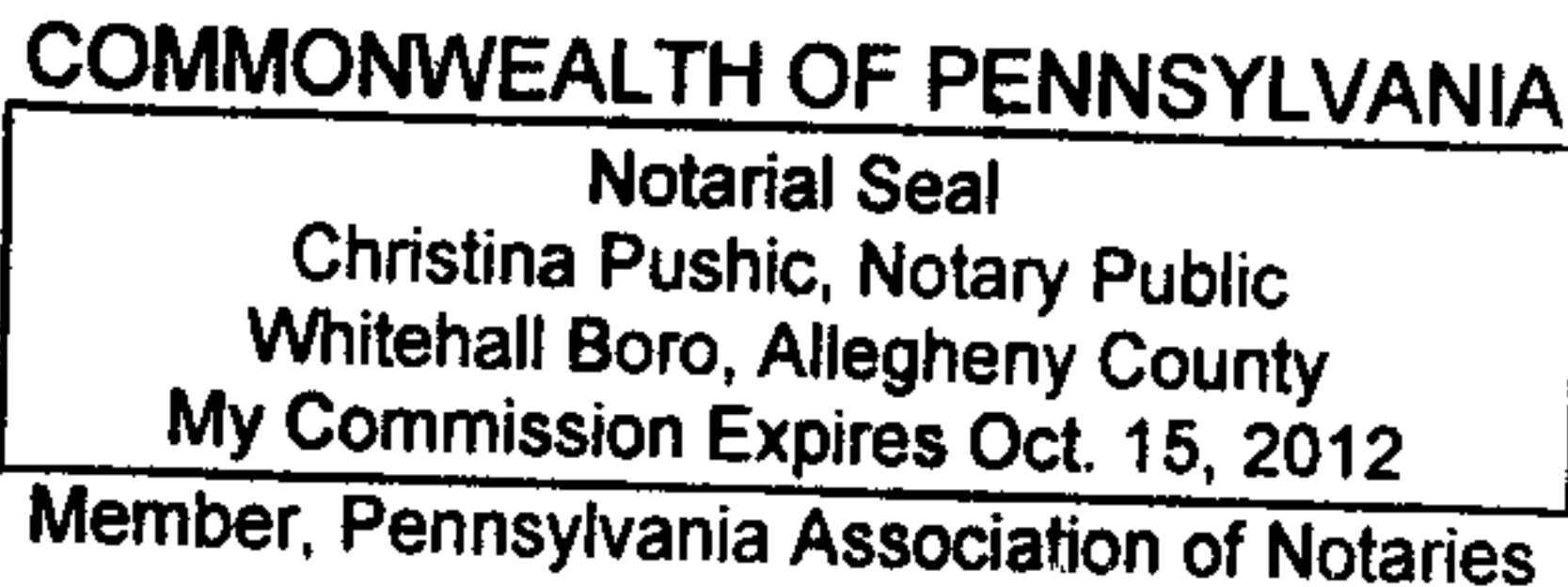


**Arcturus Land Enterprises, LLC,
a Delaware limited liability company**

Whitehall Towers, 3rd Floor
470 Streets Run Road
Pittsburgh, PA 15236
Tel.: (412) 882-4630

On this 9th day of February, 2011, before me, a Notary Public, the undersigned officer, personally appeared John P. Lemmon who acknowledged himself to be the Vice President and General Counsel of Arcturus Land Enterprises, LLC, a Delaware limited liability company, and that he, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing his name on behalf of said limited liability company by himself as such officer.


Notary Public
My Commission Expires:





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Exhibit “A”

The Property

In the County of Shelby, Alabama

Legal Description:

The Northeast Quarter (NE $\frac{1}{4}$) of Northwest Quarter (NW $\frac{1}{4}$) of Section 1, Township 21,
Range 1 East, Shelby County, Alabama.

Known as: Blue Springs Road, Wilsonville, Alabama 35186

Parcel/Tax Number: 58-20-01-01-001-001

Exhibit "B"

The Easement

Those premises and access/utility easements previously leased pursuant to the Current Agreements as defined herein, including those portions of the Property further described as follows, being subject to revision for error:

Communication Easement:

A parcel of land situated in the Northeast Quarter of the Northwest Quarter of Section 1, Township, 21 South, Range 1 East, Shelby County, Alabama, and being more particular described as follows:

Commence at the Southwest Corner of said Quarter-Quarter; thence run North 83°-22'-09" East for a distance of 665.33 feet to a point; thence run North 01°-37'-51" West for a distance of 137.48 feet to the point of Beginning:

**thence run North 00°-00'-00" West for a distance of 100.00 feet to a point;
thence run North 90°-00'-00" East for a distance of 100.00 feet to a point;
thence run South 00°-00'-00" East for a distance of 100.00 feet to a point;
thence run South 90°-00'-00" West for a distance of 100.00 feet to the point of Beginning.**


Said lease parcel contains 0.2296 acres are more or less.

Access/Utility Easement:

Those premises and access/utility easements previously leased pursuant to the Current Agreements as defined herein.

Exhibit "C"

Current Agreements


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1. That certain Communications Site Lease Agreement entered into by and between Benjamin Norris House, a married man, as lessor and Nextel South Corp., d/b/a Nextel Communications, as lessee, dated May 18, 2000, including any amendments thereto.
2. Any other leases, licenses or agreements respecting the Easement to which Grantor is a party.