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Shelby Cnty Judge of Probate, AL
06/05/2012 03:55:25 PM FILED/CERT

PREPARED BY AND
WHEN ~~RECORDED MAIL TO:~~

John P. Lemmon, Esq.
Arcturus Land Enterprises, LLC
Whitehall Towers, 3rd Floor
470 Streets Run Road
Pittsburgh, PA 15236

_____ SPACE ABOVE THIS LINE FOR RECORDER'S USE _____

Return to
Accurate Title Group, LLC
9013 Perimeter Woods Dr., Ste H
Charlotte, North Carolina 28216

EASEMENT AGREEMENT

635820

THIS EASEMENT AGREEMENT ("Agreement") is made as of the 14th day of March, 2012 ("Effective Date") by and between **CITY OF MONTEVALLO**, a municipal corporation ("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 at 135 Waller Street, Montevallo, Shelby County, Alabama 35115 ("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 21st day of September, 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 Five Hundred and No/100 Dollars (\$500.00), other good and valuable consideration and the mutual promises hereinafter set forth, the 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 and definitions 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

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) notice(s) to terminate the Current Agreements and/or avoid renewal term(s) under such Current Agreements, and (ii) notice(s) to waive 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 commence on the Effective Date and shall extend for thirty (30) years following the date of expiration or earlier termination of the Current Agreements ("Term"), except if earlier terminated in accordance with the terms herein. Notwithstanding the foregoing, to the extent that the Easement granted herein is deemed, by operation of law or legal proceeding, to be a sale or transfer of title of a portion of the Property due to the length of the Term, the Term shall automatically be shortened to the maximum term permissible for this transaction to be considered a grant of easement for a defined period rather than a sale or transfer of title; and in the event of such determination and reduction in Term for conformance, upon the expiration of the Term, this Agreement shall automatically be extended upon the same covenants, terms and conditions set forth herein for an extension term of five (5) years, and for five (5) year extension terms thereafter (each an "Extension Term"), not to exceed a total of ninety nine (99) years for the Term and each Extension Term, unless either Party terminates this Agreement by giving to the other written notice of its intention to so terminate at least one (1) year prior to the end of the then current Extension Term.

6. **Termination.** In the event Grantee and Customers cease all use of all portions of the Easement for a period of more than one (1) year (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.

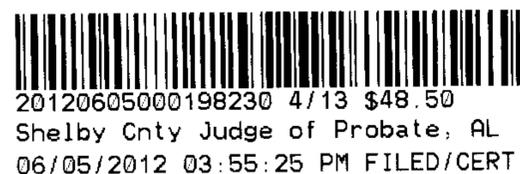
9. **Exclusive Use.** Except for Grantee's use or the use of any Customers or third parties with Grantee's permission or as otherwise permitted by the Current Agreements, no portion of the Property shall be used for the purpose of or in connection with communications towers and/or facilities without 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. Notwithstanding the language herein, Grantor's limit in connection with the indemnity contemplated herein shall be no more than such an amount as not to exceed the maximum amount set by applicable law for claims against a Governmental Entity.

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.

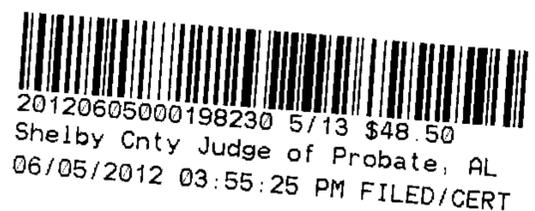
16. **Condemnation.** In the event of any condemnation of the Easement in whole or in part, Grantee shall be entitled to file claims against the condemning authority for, and to receive, the entire value of the portion of the Property so taken on which the Easement is located, business dislocation expenses 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. **Guaranty.** TriStar Investors, Inc., the parent corporation of Grantee herein, irrevocably guarantees the payment and performance of the obligations of Grantee hereunder.

19. **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.]

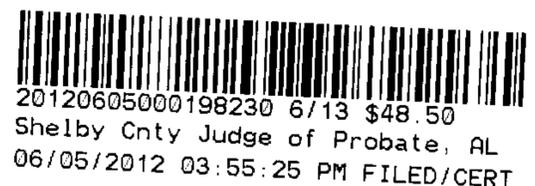


Exhibit "A"

The Property

In the County of Shelby, Alabama

Legal Description:

That property described on, but not limited to, the hereto attached Exhibit "A-1" and also described as:

Begin at the Northwest intersection of Waller and Graham Streets and proceed westward along the South side of Lot 6 of Block "L" of Reynolds Addition to South Montevallo as shown by the map recorded in Map Book 3, Page 41, in the Judge of Probate Office, Shelby County, Alabama, a distance of 57.47 feet to an iron pipe; thence 92 degrees 31 minutes 51 seconds right run northerly along an existing fence 184.93 feet to a chain link fence corner found; thence 86 degrees 50 minutes 35 seconds right run easterly along said chain link fence 50.90 feet to a chain link fence corner found on the westerly right of way of said Waller Street; thence 91 degrees 09 minutes 39 seconds right run southerly along said right of way line for 185.35 feet to the point of beginning. Containing 0.23 acres (10,021.6 SQ. FT) Situated in Shelby County, Alabama. According to the survey of Thomas E. Simmons, II, dated November 16, 2011.

Known as: 135 Waller Street, Montevallo, Shelby County, Alabama 35115

Parcel/Tax Number: 58-36-2-04-1-001-078.000

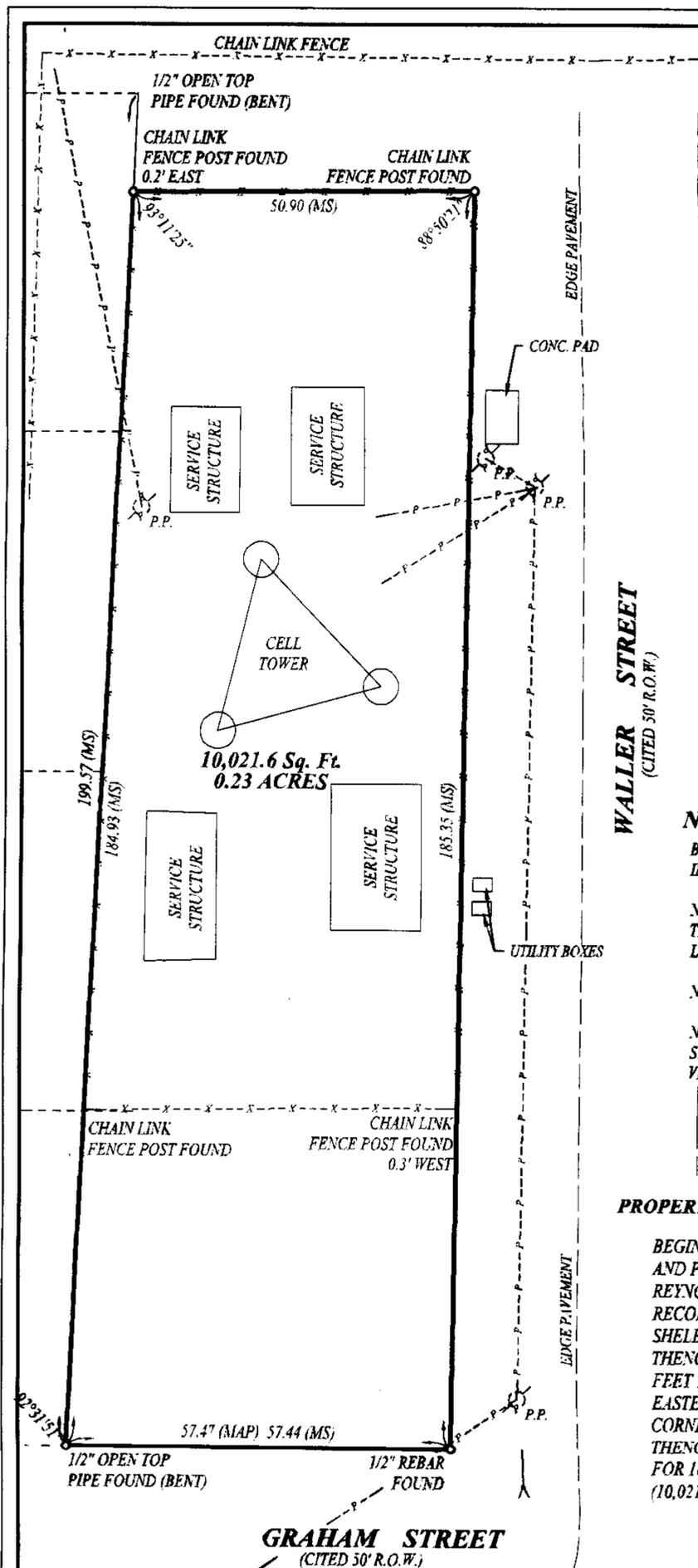
This being the same Property conveyed by Deed to City of Montevallo, a municipal corporation recorded on 07-10-1970 from Hampton D. Lee and Exie R. Lee recorded 7-10-1970 in the office of the Clerk of the Court for Shelby County State of Alabama. Book 263 Page 37


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EXHIBIT "A-1"



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TRUE NORTH BASED ON ASSUMED DATUM



BOUNDARY SURVEY

DATE: NOVEMBER 16TH, 2011

NOTES:

BOUNDARY SURVEY BASED ON INFORMATION PROVIDED BY CLIENT, EXISTING IMPROVEMENTS, AND ON EVIDENCE FOUND.

NO UNDERGROUND UTILITY HAVE BEEN LOCATED BY THIS SURVEY OTHER THAN THOSE SHOWN. ANY SHOWN UTILITIES TAKEN FROM FIELD MEASUREMENTS, LOCAL AND COUNTY RECORDS, AND SHOULD BE CONSIDERED APPROXIMATE.

NO CERTIFICATION OF OWNERSHIP IS MADE BY THE SURVEYOR.

NO ACCESS TO INTERIOR FENCED IN SITE. POSITON AND SIZE OF INTERIOR STRUCTURES SHOWN APPROXIMATED FROM AERIAL PHOTOGRAPHY AND ONSITE VISUAL INSPECTION ONLY.

PROPERTY DESCRIPTION:

BEGIN AT THE NORTHWEST INTERSECTION OF WALLER AND GRAHAM STREETS AND PROCEED WESTWARD ALONG THE SOUTH SIDE OF LOT 6 OF BLOCK "L" OF REYNOLDS ADDITION TO SOUTH MONTEVALLO AS SHOWN BY THE MAP RECORDED IN MAP BOOK 3, PAGE 41, IN THE JUDGE OF PROBATE OFFICE, SHELBY COUNTY, ALABAMA, A DISTANCE OF 57.47 FEET TO AN IRON PIPE, THENCE 92°31'51" RIGHT RUN NORTHERLY ALONG AND EXISTING FENCE 184.93 FEET TO A CHAIN LINK FENCE CORNER FOUND, THENCE 86°50'35" RIGHT RUN EASTERLY ALONG SAID CHAIN LINK FENCE 50.90 FEET TO A CHAIN LINK FENCE CORNER FOUND ON THE WESTERLY RIGHT-OF-WAY OF SAID WALLER STREET, THENCE 91°09'39" RIGHT RUN SOUTHERLY ALONG SAID RIGHT-OF-WAY LINE FOR 185.35 FEET TO THE POINT OF BEGINNING. CONTAINING 0.23 ACRES (10,021.6 SQ. FT.)

STATE OF ALABAMA
 SHELBY COUNTY

I HEREBY CERTIFY (OR STATE) THAT ALL PARTS OF THIS SURVEY AND DRAWING HAVE BEEN COMPLETED IN ACCORDANCE WITH THE CURRENT REQUIREMENTS OF THE STANDARDS OF PRACTICE FOR SURVEYING IN THE STATE OF ALABAMA TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

ACCORDING TO MY FIELD SURVEY PERFORMED ON THE GROUND THIS 16TH DAY OF NOVEMBER, 2011

DRAWING NO.: SSB111102 DRAFTSMAN: T.E.S. II DATE: 01/04/2012

Simmons Surveying
 Precision Mapping since 1982
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 P.O. BOX 895 112 PINSON PLAZA - PINSON, ALABAMA 35126
 PHONE: (205) 680-0518 - FAX: (205) 681-3597
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NOTE: THIS DRAWING IS FOR INFORMATION PURPOSES ONLY AND DOES NOT CONSTITUTE AS AN AUTHENTIC SURVEY OR DESIGN IF NOT ACCOMPANIED BY SIGNATURE AND RED INK STAMPED OR EMBOSSED REGISTERED PROFESSIONAL SEAL.

[Signature]
 THOMAS E. SIMMONS II
 P. O. BOX 895 PINSON, AL 35126
 TEL: (205) 680.0518

Exhibit "B"

The Easement

Those premises and access/utility easements previously leased pursuant to the Current Agreements as defined, but not limited to, that herein.

This Exhibit "B" may be replaced by a survey in accordance with the terms of the Agreement.



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Exhibit "C"

Current Agreements

1. That certain Communications Site Lease Agreement (Ground) entered into by and between Grantor as lessor and Nextel South Corp., a Georgia corporation, d/b/a Nextel Communications, as lessee, dated March 2, 2000, including any amendments thereto.
2. Any other leases, licenses or agreements respecting the Easement to which Grantor is a party.


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Shelby County, AL 06/05/2012
State of Alabama
Deed Tax: \$.50