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Shelby Cnty Judge of Probate, AL
08/30/2013 12:50:13 PM FILED/CERT

Return To:
iMortgage Services LLC
2570 Boyce Plaza Road
Pittsburgh, PA 15241

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 _____

~~Consideration: \$500.00~~

LEASE

THIS LEASE ("Lease") is made as of the 10th day of JUNE, 2013 ("Effective Date") by and between **WAYNE M. ELLISON and EDNA L. ELLISON**, as tenants-in-common (individually and collectively, "Lessor") and **ARCTURUS LAND ENTERPRISES, LLC**, a Delaware limited liability company ("Lessee"). Lessor and Lessee are at times collectively referred to hereinafter as the "Parties" or individually as a "Party".

RECITALS:

WHEREAS, Lessor is the owner of that certain real property located off of Parkview Drive in Pelham, Shelby County, Alabama ("Property"), which Property is more particularly described on Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, Lessor and Lessee have entered into that certain Letter Agreement last executed the 1st day of MAY, 2013 ("Letter Agreement"), in which Lessor has agreed to lease to Lessee 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 receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Lessor and Lessee hereby agree and covenant to and with each other the following:

Shelby County, AL 08/30/2013
State of Alabama
Deed Tax: \$156.50

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

2. **Lease.**

(a) In accordance with the term as set forth herein:

(i) Lessor leases to Lessee those portions of the Property, as shown or described on Exhibit "B" attached hereto ("Communication Premises"), 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 Premises related to the operation of a wireless communications site, which Communication Premises 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) Lessor grants to Lessee non-exclusive easements in, to, under and over portions of the Property ("Access and Utility Easements") for ingress and egress to and from the Premises and a publicly dedicated roadway, and for the installation, repair, replacement, improvement, maintenance and removal of utilities providing service to the Premises and the Facilities, and any related activities and uses; the Communication Premises and Access and Utility Easements are collectively referred to herein as the "Premises".

(b) The Parties agree that the Premises 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 Lessee at Lessee's cost. Lessee 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.** Lessor shall not transfer or assign to Lessee all or any portion of its rights, obligations, title and interest in, to and under the Current Agreements. Lessor covenants and agrees that Lessor remains the fee owner of the Property and Lessor is not assigning and shall continue to comply with all of Lessor's obligations as lessor under the Current Agreements. Lessor shall have the right to enter upon the Premises to the extent necessary to comply with Lessor's obligations under the Current Agreements. During the term of the Current Agreements, maintenance of the Premises 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, Lessee shall not be responsible for such default nor obligated to cure or seek remedy for such default, and Lessor may pursue such remedies from the defaulting tenant as may be available to Lessor under the Current Agreements or at law or equity. Lessor shall not extend the Current Agreements and/or otherwise revise the Current Agreements in any manner that further burdens the Premises without Lessee's prior written consent, which consent may be denied in Lessee's sole discretion. Lessor hereby irrevocably constitutes and

appoints Lessee as Lessor's true and lawful attorney-in-fact, with full power of substitution and resubstitution, to deliver on behalf of Lessor (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 Premises.** In accordance with the term as set forth herein, Lessor shall provide to Lessee the quiet enjoyment and use of the Premises. Lessee 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 Premises and/or its rights under this Lease 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 Lessee, and (iv) Lessee's present or future lessees, sublessees or licensees (collectively "Customers"). Lessee and its Customers shall have the right to enter and access the Premises at any time, twenty-four (24) hours a day, seven (7) days a week.

5. **Term.** This Lease and the terms herein shall commence on the Effective Date and shall extend forty (40) years following the date of expiration or earlier termination of the Current Agreements ("Initial Term"), except that the lease of the Premises and Lessee's right to occupy and sublease the Premises, and all terms herein which inherently require Lessee's possession of the Premises to be effective, shall commence on the expiration or earlier termination of the Current Agreements and extend through the remainder of the Initial Term. Upon the expiration of the Initial 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"), unless either Party terminates this Agreement effective at the end of the then current Initial Term or Extension Term 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 Initial Term or Extension Term.

6. **Termination.** In the event Lessee and Customers cease all use of all portions of the Premises 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 Premises shall be deemed abandoned. Limited or partial use of the Premises by Lessee or any Customers shall not be deemed a surrender or abandonment of the Premises or any unused portion thereof, nor prevent Lessee from benefiting from the full use and enjoyment of the entirety of the Premises. Lessee may abandon the Premises upon thirty (30) days notice to Lessor. This Lease may not be terminated by Lessor except if (i) Lessee fails to timely pay any sums due to Lessor and such default continues for fifteen (15) days after receipt of written notice of non-payment, or (ii) Lessee fails to observe or perform any of the other covenants, conditions or provisions of this Agreement and Lessee fails to cure such default within sixty (60) days after notice thereof in writing to Lessee or if such default cannot be reasonably cured within sixty (60) days, unless Lessee begins such cure within sixty (60) days and diligently pursues such cure to completion. Upon abandonment, this Lease shall be terminated, and Lessee and Lessor shall cooperate in the execution and recordation of such documents reasonably required to evidence such termination.

7. **Improvements.** Lessee and its Customers may, at their discretion and expense, construct improvements in, to, under and over the Premises, all of which shall be deemed part of the Facilities. The Facilities shall remain the personal property of Lessee and its Customers, as applicable, and Lessor shall possess no right, title or interest therein. Lessee and its Customers may from time to time temporarily utilize additional portions of the Property contiguous to the Premises 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. Lessor 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, Lessee shall thereafter pay as a site expense all taxes directly attributable to the Facilities as evidenced by an applicable tax bill. Lessor shall pay all other taxes that are not directly attributable to the Facilities.

9. **Exclusive Use.** Except for Lessee's use or the use of any Customers or third parties with Lessee's permission or as otherwise permitted by the Current Agreements, no portion of the Property or any other property owned by Lessor 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 Lessee, which consent may be withheld in Lessee's sole discretion. Lessor shall not install or permit to be installed any structure or equipment which causes measurable interference to the equipment of Lessee or its Customers, or otherwise permit any portion of the Property to be used in a manner which materially interferes with the operations of Lessee and/or any Customers. Lessor and Lessee acknowledge that there will not be an adequate remedy at law for non-compliance with the provisions of this section and therefore, Lessee shall have the right to specifically enforce the provisions herein in a court of competent jurisdiction.

10. **Environmental Covenants and Indemnity.** Lessor 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 Premises. Neither Lessor nor Lessee will introduce or use any Hazardous Materials on, under or about the Property or the Premises in violation of any applicable law or regulation. Lessor and Lessee 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 Premises and caused by the indemnifying Party. The foregoing indemnity shall survive any termination of this Lease.

11. **General Indemnity.** Lessor and Lessee 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 Premises 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 Lease.

12. **Transfer of the Property; Assignment.** The provisions and covenants contained in this Lease shall run with the land and shall bind and inure to the benefit of the Parties and their respective successors, heirs and assigns. Should Lessor sell or otherwise convey all or any part of the Property to a purchaser or transferee other than Lessee, such sale or conveyance shall be under and subject to the terms contained in this Lease and Lessee's rights hereunder. Notwithstanding the foregoing, this Lease and the Premises are for the benefit of Lessee, 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 Lessee and its successors and assigns.

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

14. **Secured Parties.** Lessee shall have the unrestricted right to assign, mortgage or grant a security interest in Lessee's interest in and to this Lease and the Premises, and may assign this Lease and the Premises to any such assignees, mortgagees or holders of security interests, including their successors and assigns ("Secured Parties"). If Lessee fails to perform any of its obligations under this Lease, Lessor agrees to provide written notice of such default to Lessee and all Secured Parties of which Lessor has been notified, and to give Lessee 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.

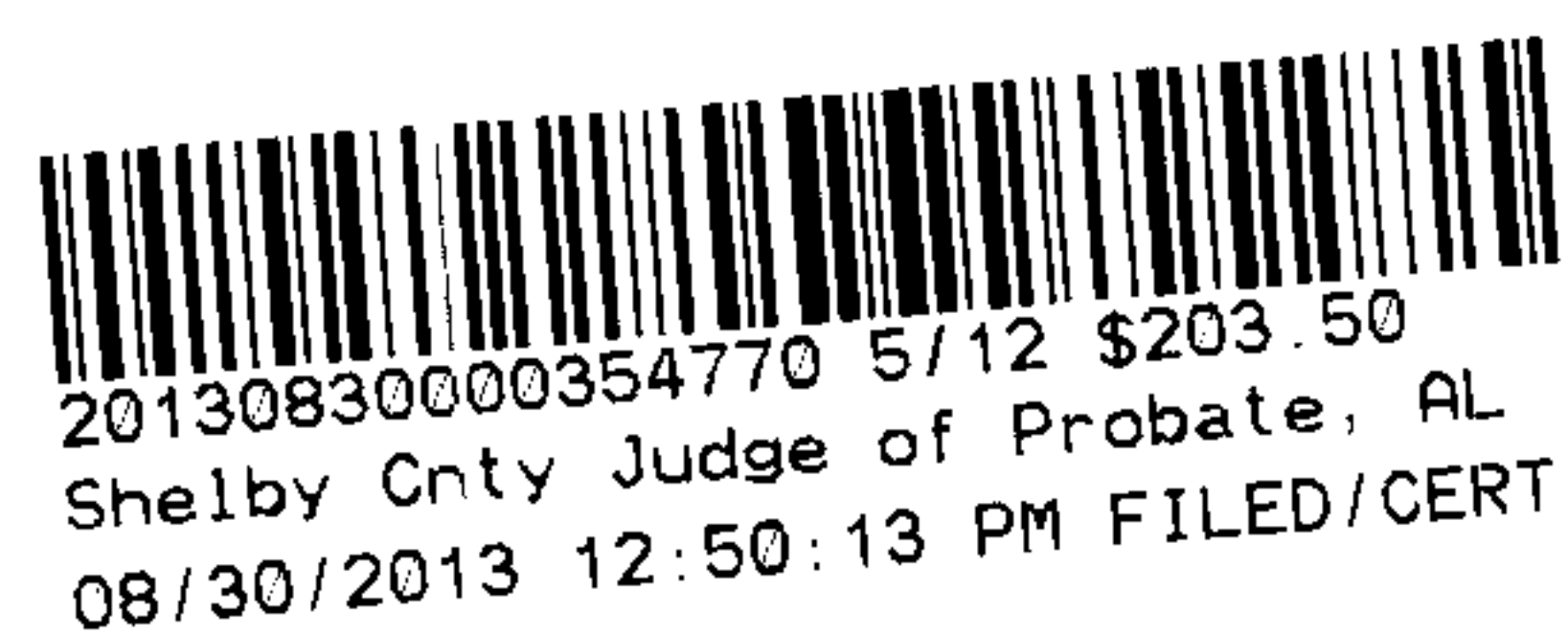
15. **Estoppel Certificate.** Each Party shall, within ten (10) days after request by the other Party, execute and deliver to the requesting Party, or the Party designated by the requesting Party, a statement certifying (i) that this Lease is unmodified and in full force and effect (or, if there have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

16. **Condemnation.** In the event of any condemnation of the Premises in whole or in part, Lessee 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 Premises is located, business dislocation expenses and any other award or compensation to which Lessee 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 Lessor and Lessee as set forth on the signature page. Either Party may change its notice address by providing notice as set forth herein.

18. **Miscellaneous.**

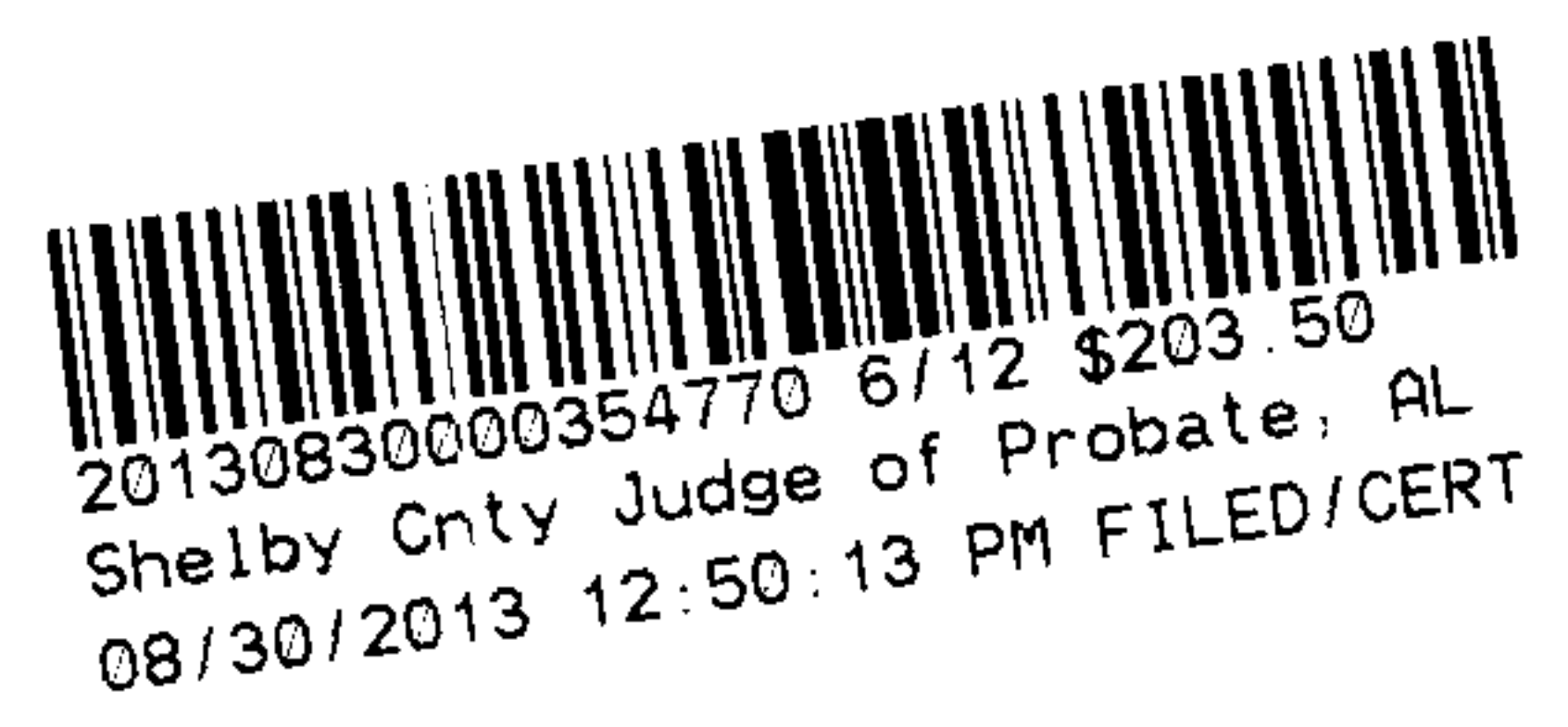
- (a) This Lease, including all Exhibits attached hereto and the Letter Agreement which is incorporated herein by reference, constitutes the entire agreement and understanding of Lessor and Lessee with respect to the subject matter of this Lease, and supersedes all offers, negotiations and any other written or verbal agreements, and any amendments to this Lease must be in writing and executed by both Parties;
- (b) this Lease 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, Premises or this Lease, 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 Lease 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 Lease, and the other provisions of this Lease 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 Lessee to acquire title insurance on the Premises;
- (f) the section headings of this Lease have been inserted for convenience of reference only, and shall in no way modify or restrict the terms of this Lease;
- (g) this Lease has been negotiated at arm's-length, and in the event of any ambiguity in any of the terms and provisions, this Lease shall be interpreted in accordance with the intent of the Parties and shall not be interpreted against or in favor of either Lessor or Lessee;
- (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 Lease or any ancillary documents hereto, and each of Lessor and Lessee has had the full opportunity to avail itself of legal and financial representation;
- (i) if either Lessor or Lessee files an action for the enforcement or breach of this Lease, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and court costs;
- (j) Lessee, at Lessee's expense, may record this Lease upon the full execution hereof; and
- (k) this Lease 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, Lessor and Lessee have executed this Lease.

LESSOR:

**Wayne M. Ellison and Edna L. Ellison,
as tenants-in-common**

Wayne M. Ellison
Wayne M. Ellison

Edna L. Ellison
Edna L. Ellison

101 Parkview Drive
Pelham, AL 35124
Tel.: (205) 663-3733

STATE OF ALABAMA)
COUNTY OF Shelby) SS:

On this 12th day of May, 2013, before me, a Notary Public, the undersigned officer, personally appeared Wayne M. Ellison and Edna L. Ellison, known to me or satisfactorily proven to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same as their free act and deed for the purposes and consideration therein expressed.

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

Markita Lane Green
Notary Public
My Commission Expires:


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



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

COUNTY OF ALLEGHENY

SS:

On this 10th day of June, 2013, 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.

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


Notary Public

Notary Public
My Commission Expires:

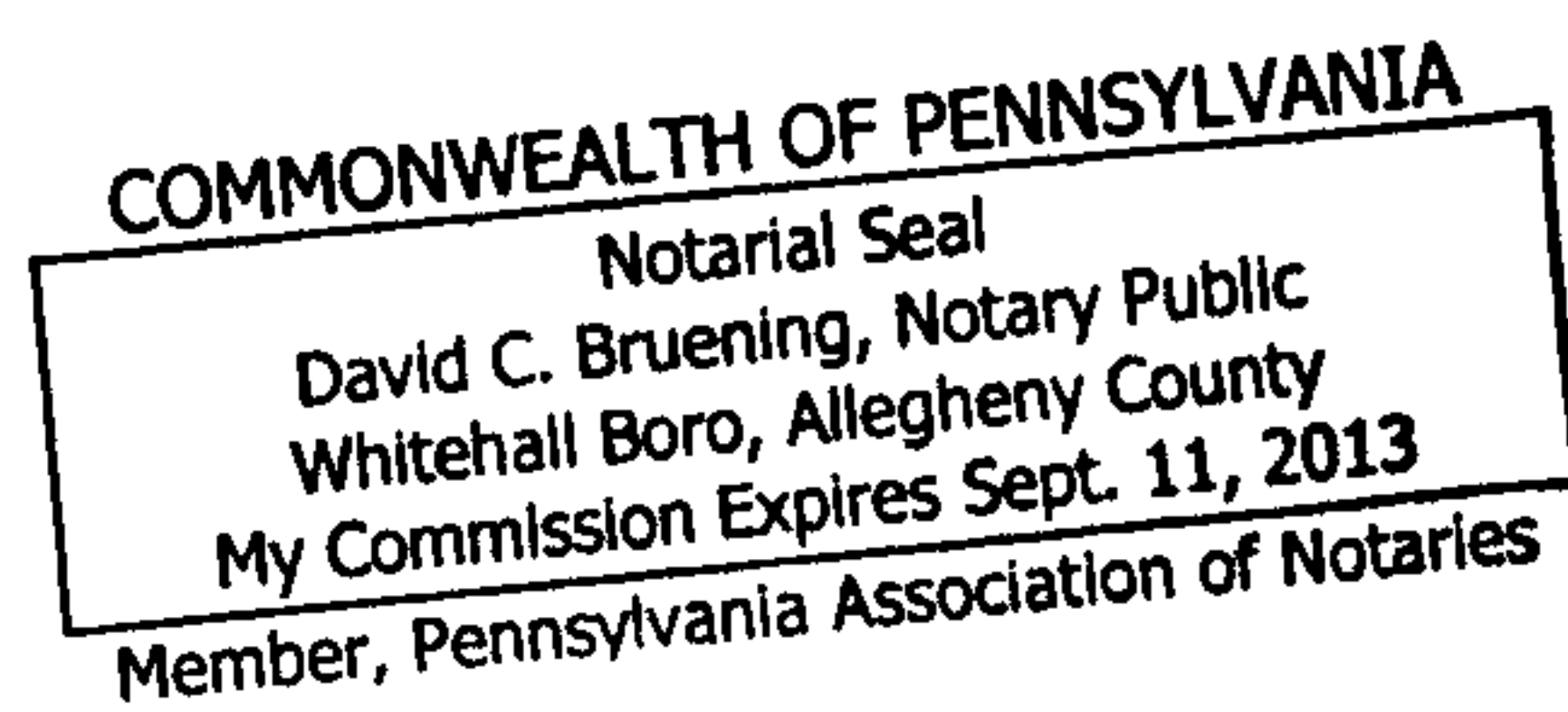
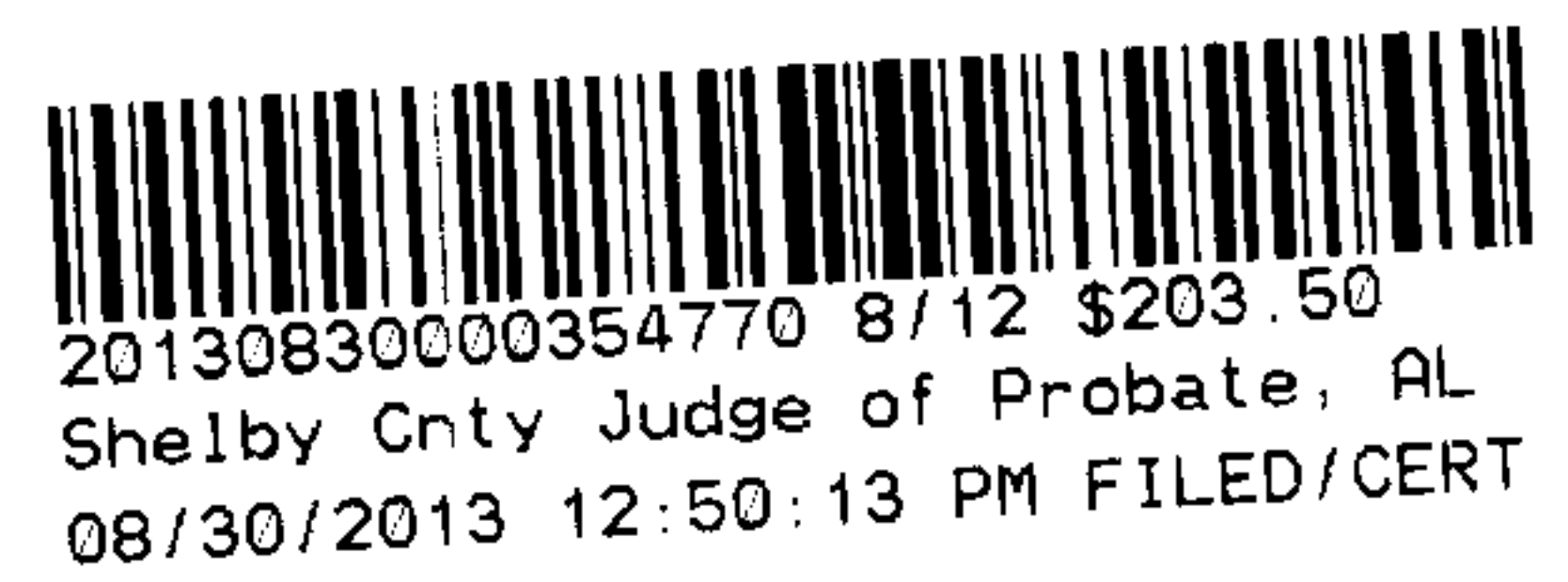


Exhibit "A"

The Property

In the County of Shelby, Alabama

Legal Description:

SE 1/4 of NW 1/4 and the SW 1/4 of NE 1/4 of Section 19, Township 20 South, Range 2
West

Parcel/Tax Number: 14-4-19-1-000-001-001

(Referred to in the Current Agreements, as defined herein, as Tax No. 14-4-1-19-1-000-001.001)



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Exhibit "B"
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The Premises

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 SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 19, TOWNSHIP 20 SOUTH, RANGE 2 WEST, SHELBY COUNTY, ALABAMA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 19, TOWNSHIP 20 SOUTH, RANGE 2 WEST, THENCE RUN N89-32-48E ALONG SOUTH LINE OF SAID QUARTER-QUARTER SECTION FOR A DISTANCE OF 176.00 FEET TO A POINT, THENCE RUN N00-00-00W FOR A DISTANCE OF 118.10 FEET TO A POINT, SAID POINT BEING THE POINT OF BEGINNING; THENCE RUN N00-00-00W FOR A DISTANCE OF 100 FEET TO A POINT; THENCE RUN N90-00-00E FOR A DISTANCE OF 100 FEET TO A POINT; THENCE RUN S00-00-00E FOR A DISTANCE OF 100 FEET TO A POINT; THENCE RUN S90-00-00W FOR A DISTANCE OF 100 FEET TO A POINT, SAID POINT BEING THE POINT OF BEGINNING.

Access and Utility Easements:

AN EASEMENT SITUATED IN THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 19, TOWNSHIP 20 SOUTH, RANGE 2 WEST, SHELBY COUNTY, ALABAMA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 19, TOWNSHIP 20 SOUTH, RANGE 2 WEST, THENCE RUN N89-32-48E ALONG SOUTH LINE OF SAID QUARTER-QUARTER SECTION FOR A DISTANCE OF 176.00 FEET TO A POINT, THENCE RUN N00-00-00W FOR A DISTANCE OF 118.10 FEET TO A POINT, THENCE RUN S90-00-00W FOR A DISTANCE OF 35 FEET TO A POINT, SAID POINT BEING THE POINT OF BEGINNING OF AN INGRESS/EGRESS & UTILITY EASEMENT THAT LIES 10 FEET EITHER SIDE OF SAID CENTERLINE AS DESCRIBED HEREIN; THENCE RUN S00-00-00E FOR A DISTANCE OF 27.36 FEET TO A POINT; THENCE RUN N78-12-56W FOR A DISTANCE OF 21.28 FEET TO A POINT; THENCE RUN N80-19-05W FOR A DISTANCE OF 43.45 FEET TO A POINT; THENCE RUN N84-49-41 W FOR A DISTANCE OF 47.78 FEET TO A POINT; THENCE RUN N88-46-07W FOR A DISTANCE OF 38.41 FEET TO A POINT; THENCE RUN SOUTH 89-50-16W FOR A DISTANCE OF 35.26 FEET TO A POINT; THENCE RUN S73-33-47W FOR A DISTANCE OF 22.44 FEET TO A POINT; THENCE RUN S47-12-35W FOR A DISTANCE OF 18.88 FEET TO A POINT; THENCE RUN S17-50-52W FOR A DISTANCE OF 21.11 FEET TO A POINT; THENCE RUN S01-01-53W FOR A DISTANCE OF 40.81 FEET TO A POINT; THENCE RUN S00-05-40W FOR A DISTANCE OF 58.67 FEET TO A POINT;

Exhibit "B"
(Page 2 of 2)

THENCE RUN S03-36-16W FOR A DISTANCE OF 59.78 FEET TO A POINT; THENCE RUN S06-15-07W FOR A DISTANCE OF 58.37 FEET TO A POINT; THENCE RUN S04-32-16W FOR A DISTANCE OF 58.18 FEET TO A POINT; THENCE RUN S01-45-06W FOR A DISTANCE OF 51.34 FEET TO A POINT; THENCE RUN S00-30-18E FOR A DISTANCE OF 52.7 FEET TO A POINT; THENCE RUN S05-27-11E FOR A DISTANCE OF 46.8 FEET TO A POINT; THENCE RUN S09-56-00E FOR A DISTANCE OF 106.91 FEET TO A POINT; THENCE RUN S02-31-00E FOR A DISTANCE OF 57.78 FEET TO A POINT; THENCE RUN S00-20-04E FOR A DISTANCE OF 152.75 FEET TO A POINT; THENCE RUN S01-24-25W FOR A DISTANCE OF 174.62 FEET TO A POINT; THENCE RUN S01-21-25W FOR A DISTANCE OF 127.06 FEET TO A POINT; THENCE RUN S00-11-28E FOR A DISTANCE OF 72.25 FEET TO A POINT; THENCE RUN S01-28-42E FOR A DISTANCE OF 95.36 FEET TO A POINT; THENCE RUN S02-11-39E FOR A DISTANCE OF 68.08 FEET TO A POINT; THENCE RUN S05-20-42E FOR A DISTANCE OF 14.53 FEET TO A POINT ON THE WESTERN RIGHT-OF-WAY LINE OF COUNTY ROAD 52, HAVING A PRESCRIPTIVE RIGHT-OF-WAY OF 80 FEET, AND ALSO BEING THE TERMINUS OF SAID DESCRIBED EASEMENT.

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

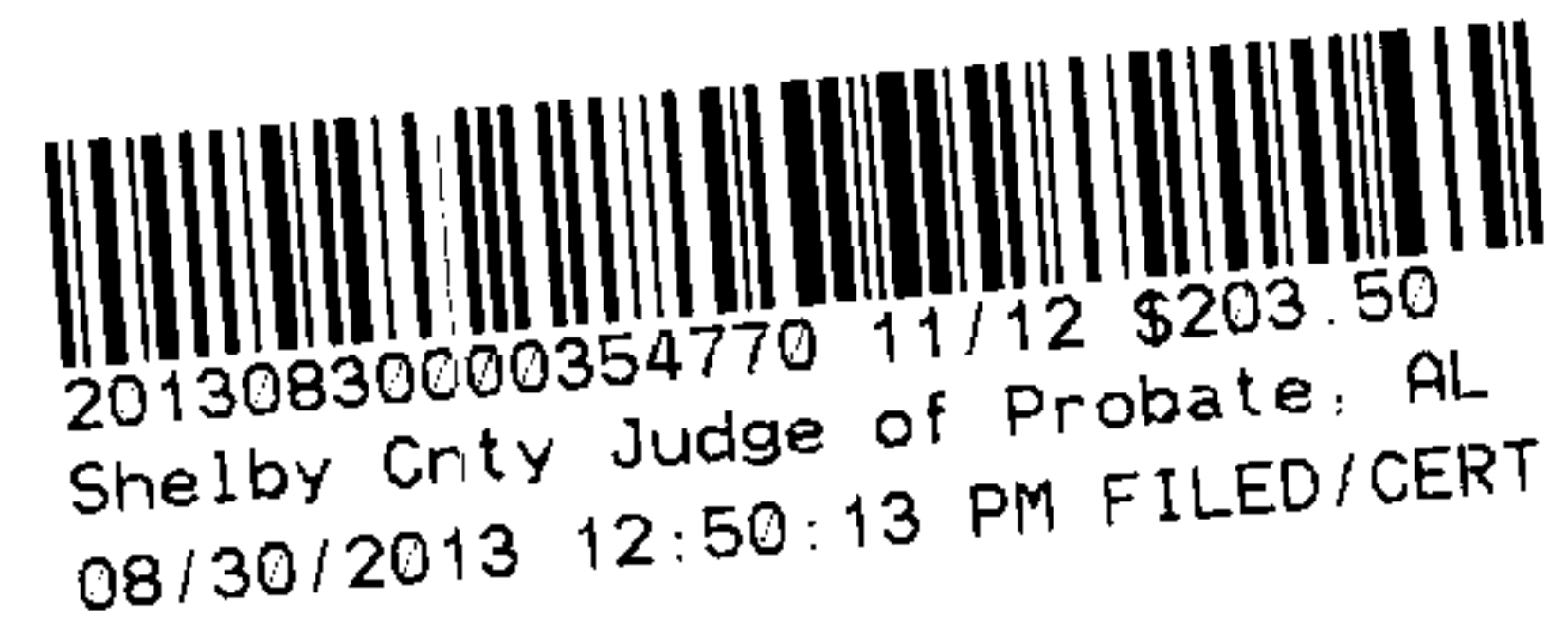


Exhibit "C"

Current Agreements

1. That certain Communications Site Lease Agreement (Ground) entered into by and between Wayne M. Ellison and Edna L. Ellison as lessor and Dial Call, Inc., a Georgia corporation, d/b/a Nextel Communications as lessee, dated February 25, 1997, as evidenced by that certain Confirmatory Memorandum of Lease dated December 8, 2006 and recorded on January 19, 2010 as Instrument No. 20100119000016830 in the Official Records of Shelby County, Alabama, including any amendments thereto.
2. Any other leases, licenses or agreements respecting the Premises to which Lessor is a party.


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