



CITY OF POQUOSON

OFFICE OF THE CITY MANAGER

500 CITY HALL AVENUE
POQUOSON, VA 23662
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June 13, 2022

To: City Council

From: Tonya O'Connell, Assistant City Manager

Through: City Manager

Subject: **Resolution Authorizing the City Manager to Enter Into a Land Lease Agreement for a Cell Tower Facility Adjacent to South Lawson Park with New Cingular Wireless (t/a AT&T Wireless)**

Presented for a public hearing and consideration is the request of New Cingular Wireless (t/a AT&T Wireless) for a land lease agreement on City property adjacent to South Lawson Park. The term of agreement is for five (5) year for lease to commence on January 27, 2020 with automatic renews of five (5) additional five (5) year terms.

A land lease was initially entered into with New Cingular Wireless and the City of Poquoson when a Conditional Use Permit was approved in 2008 to allow for a cell tower and associated equipment to be located on City property adjacent to South Lawson Park. The address of the land and cell tower is 1240 Poquoson Avenue.

The request to the extension has been delayed due to the pandemic and change in staff. New Cingular Wireless has continued to provide lease payments to the City while awaiting the approval of the land lease extension. The Staff and the City Attorney has reviewed the Land Lease Agreement that has been proposed by New Cingular Wireless.

A resolution is presented to you tonight requesting authorizing for the City Manager to enter into The Land Lease Agreement for the City property located at 1240 Poquoson Avenue adjacent to South Lawson Park.

A RESOLUTION AUTHORIZING THE EXECUTION OF A FIVE YEAR LEASE OF PUBLICLY OWNED PROPERTY LOCATED WEST OF SOUTH LAWSON PARK, 1240 POQUOSON AVENUE

WHEREAS, a Conditional Use Permit was approved for New Cingular Wireless, PCS, LLC (t/a AT&T) to erect a 199-foot tall monopole telecommunications tower on publicly owned property west of South Lawson Park address 1240 Poquoson Avenue in 2008; and

WHEREAS, a public hearing was held at the June 13, 2022 City Council meeting due to the period of time that is requested by New Cingular Wireless, and

WHEREAS, New Cingular Wireless has agreed that all cost associated with advertising the public hearing will be reimbursed to the City, and

WHEREAS, New Cingular Wireless has proposed a five year lease with five additional five year terms renewing automatically of the subject property which lease agreement has been carefully reviewed and considered by City Council.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Poquoson, Virginia:

Section 1: That the City Manager is hereby authorized to negotiate and enter into a five year lease with five additional five years terms renewing automatically of publicly owned property located west of South Lawson Park (1240 Poquoson Avenue) with New Cingular Wireless, PCS, LLC to contain the services that has been maintained at the telecommunications tower.

Section 2: That this resolution shall be in effect on and after its adoption.

ADOPTED: _____

TESTE: _____

City Clerk

Market: VA / WV
Cell Site Number: NF470
Cell Site Name: Poquoson
Fixed Asset Number: 10103194

LAND LEASE AGREEMENT

THIS LAND LEASE AGREEMENT ("**Agreement**"), dated as of the latter of the signature dates below (the "**Effective Date**"), is entered into by the City of Poquoson, a Virginia municipal corporation, having a mailing address of 500 City Hall Avenue, Poquoson, Virginia 23662 ("**Landlord**") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd. NE 3rd Floor, Atlanta, GA 30319 ("**Tenant**").

BACKGROUND

Landlord owns or controls that certain plot, parcel or tract of land, as described on **Exhibit 1**, improved with a structure (the "**Structure**"), together with all rights and privileges arising in connection therewith, located at 1240 Poquoson Avenue, in the City of Poquoson, State of Virginia (collectively, the "**Property**"). Tenant desires to use a portion of the Property in connection with its federally licensed communications business. Landlord desires to grant to Tenant the right to use a portion of the Property in accordance with this Agreement.

The parties agree as follows:

- 1. LEASE OF PREMISES.** Landlord hereby leases to Tenant a certain portion of the Property containing approximately 1,500 square feet including the air space above such ground space, as described on attached **Exhibit 1** (the "**Premises**") for the placement of Tenant's Communication Facility.
- 2. PERMITTED USE.** Tenant may use the Premises for the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair, replacement and upgrade of its communications fixtures and related equipment, cables, accessories and improvements, which may include a suitable support structure, associated antennas, equipment shelters or cabinets and fencing and any other items necessary to the successful and secure use of the Premises (collectively, the "**Communication Facility**"), as well as the right to test, survey and review title on the Property; Tenant further has the right but not the obligation to add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including, but not limited to, emergency 911 communication services, at no additional cost to Tenant or Landlord (collectively, the "**Permitted Use**"). Landlord and Tenant agree that any portion of the Communication Facility that may be conceptually described on **Exhibit 1** will not be deemed to limit Tenant's Permitted Use. If **Exhibit 1** includes drawings of the initial installation of the Communication Facility, Landlord's execution of this Agreement will signify Landlord's approval of **Exhibit 1**. Tenant has the right to install and operate transmission cables from the equipment shelter or cabinet to the antennas, electric lines from the main feed to the equipment shelter or cabinet and communication lines from the Property's main entry point to the equipment shelter or cabinet, and to make other improvements, alterations, upgrades or additions appropriate for Tenant's Permitted Use including the right to construct a fence around the Premises and undertake any other appropriate means to secure the Premises at Tenant's expense. Tenant has the right to modify, supplement, replace, upgrade, expand the equipment, increase the number of antennas or relocate the Communication Facility within the Premises at any time during the term of this Agreement. Tenant will be allowed to make such alterations to the Property in order to ensure that Tenant's Communication Facility complies with all applicable federal, state or local laws, rules or regulations.

3. **TERM.**

(a) The initial lease term will be five (5) years ("**Initial Term**"), commencing on January 27, 2020 (the "**Effective Date**"). The Initial Term will terminate on the fifth (5th) anniversary of the Effective Date.

(b) This Agreement will automatically renew for five (5) additional five (5) year term(s) (each five (5) year term shall be defined as an "**Extension Term**"), upon the same terms and conditions unless Tenant notifies Landlord in writing of Tenant's intention not to renew this Agreement at least sixty (60) days prior to the expiration of the existing Initial Term or then-existing Extension Term.

(c) Unless (i) Landlord or Tenant notifies the other in writing of its intention to terminate this Agreement at least twelve (12) months prior to the expiration of the final Extension Term, or (ii) the Agreement is terminated as otherwise permitted by this Agreement prior to the end of the final Extension Term, then upon the final Extension Term this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of one (1) year, and for annual terms thereafter ("**Annual Term**") until terminated by either party by giving to the other written notice of its intention to so terminate at least twelve (12) months prior to the end of any such Annual Term. Monthly rental during such Annual Terms shall be equal to the Rent paid for the last month of the final Extension Term. If Tenant remains in possession of the Premises after the termination of this Agreement, then Tenant will be deemed to be occupying the Premises on a month-to-month basis (the "**Holdover Term**"), subject to the terms and conditions of this Agreement.

(d) The Initial Term, any Extension Terms, any Annual Terms and any Holdover Term are collectively referred to as the Term ("**Term**").

4. **RENT.**

(a) Commencing on January 27, 2020, the rent (the "**Rent**") shall be Two Thousand Four Hundred Eighteen and 24/100 Dollars (\$2,418.24) per month, and shall continue during the Term, subject to adjustment as provided herein: on January 27, 2021 and each year thereafter, including throughout any Additional Term exercised, the Rent will increase by three percent (3%) over the rent paid during the previous year. In any partial month occurring after the Rent Commencement Date, Rent will be prorated. The initial Rent payment will be forwarded by Tenant to Landlord within forty-five (45) days after the Rent Commencement Date.

(b) All charges payable under this Agreement such as utilities and taxes shall be billed by Landlord within three (3) years from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by Landlord, and shall not be payable by Tenant. The foregoing shall not apply to monthly Rent which is due and payable without a requirement that it be billed by Landlord. The provisions of this subsection shall survive the termination or expiration of this Agreement.

5. **APPROVALS.**

(a) Landlord agrees that Tenant's ability to use the Premises is contingent upon the suitability of the Premises and Property for Tenant's Permitted Use and Tenant's ability to obtain and maintain all governmental licenses, permits, approvals or other relief required of or deemed necessary or appropriate by Tenant for its use of the Premises, including without limitation applications for zoning variances, zoning ordinances, amendments, special use permits, and construction permits (collectively, the "**Government Approvals**"). Landlord authorizes Tenant to prepare, execute and file all required applications to obtain Government Approvals for Tenant's Permitted Use under this Agreement and agrees to reasonably assist Tenant with such applications and with obtaining and maintaining the Government Approvals. In addition, Tenant shall have the right to initiate the ordering and/or scheduling of necessary utilities.

(b) Tenant has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of its choice.

(c) Tenant may also perform and obtain, at Tenant's sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports on, over, and under the Property, necessary to determine if Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system, design, operations or Government Approvals.

6. **TERMINATION.** This Agreement may be terminated, without penalty or further liability, as follows:

(a) by either party on thirty (30) days prior written notice, if the other party remains in default under Section 15 of this Agreement after the applicable cure periods;

(b) by Tenant upon written notice to Landlord, if Tenant is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now or hereafter intended by Tenant; or if Tenant determines, in its sole discretion that the cost of obtaining or retaining the same is commercially unreasonable;

(c) by Tenant, upon written notice to Landlord, if Tenant determines, in its sole discretion, due to the title report results or survey results, that the condition of the Premises is unsatisfactory for its intended uses;

(d) by Tenant, after the Rent Commencement Date, upon prior written notice to Landlord for any reason or no reason.

7. **INSURANCE.**

(a) During the Term, Tenant will carry, at its own cost and expense, the following insurance: (i) workers' compensation insurance as required by law; and (ii) commercial general liability (CGL) insurance with respect to its activities on the Property, such insurance to afford protection of up to Three Million Dollars (\$3,000,000) per occurrence and Six Million Dollars (\$6,000,000) general aggregate, based on Insurance Services Office (ISO) Form CG 00 01 or a substitute form providing substantially equivalent coverage. Tenant's CGL insurance shall contain a provision including Landlord as an additional insured. Such additional insured coverage:

(i) shall be limited to bodily injury, property damage or personal and advertising injury caused, in whole or in part, by Tenant, its employees, agents or independent contractors;

(ii) shall not extend to claims for punitive or exemplary damages arising out of the acts or omissions of Landlord, its employees, agents or independent contractors or where such coverage is prohibited by law or to claims arising out of the gross negligence of Landlord, its employees, agents or independent contractors; and

(iii) shall not exceed Tenant's indemnification obligation under this Agreement, if any.

8. **INTERFERENCE.**

(a) Prior to or concurrent with the execution of this Agreement, Landlord has provided or will provide Tenant with a list of radio frequency user(s) and frequencies use on the Property as of the Effective Date. Tenant warrants that its use of the Premises will not interfere with those existing radio frequency uses on the Property, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations.

(b) Landlord will not grant, after the date of this Agreement, a lease, license or any other right to any third party, if exercise of such grant may in any way adversely affect or interfere with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will notify Tenant in writing prior to granting any third party the right to install and operate communications equipment on the Property.

(c) Landlord will not, nor will Landlord permit its employees, tenants, licensees, invitees, agents or independent contractors to, in interfere in any way with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will cause such interference to cease within twenty-four (24) hours after receipt of notice of interference from Tenant. In the event any such interference does not cease within the aforementioned cure period, Landlord shall cease all operations which are suspected of causing interference (except for intermittent testing to determine the cause of such interference) until the interference has been corrected.

(d) For the purposes of this Agreement, "interference" may include, but is not limited to, any use on the Property or Surrounding Property by Landlord, that causes electronic or physical obstruction with, or degradation of, the communications signals from the Communication Facility.

9. INDEMNIFICATION.

(a) Tenant agrees to indemnify, defend and hold Landlord harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly from the installation, use, maintenance, repair or removal of the Communication Facility or Tenant's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Landlord, its employees, agents or independent contractors.

(b) Landlord agrees to indemnify, defend and hold Tenant harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly from the actions or failure to act of Landlord, its employees or agents, or Landlord's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Tenant, its employees, agents or independent contractors. All to the extent of Virginia law.

I The indemnified party: (i) shall promptly provide the indemnifying party with written notice of any claim, demand, lawsuit, or the like for which it seeks indemnification pursuant to this Section and provide the indemnifying party with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of the indemnifying party; and (iii) shall fully cooperate with the indemnifying party in the defense of the claim, demand, lawsuit, or the like. A delay in notice shall not relieve the indemnifying party of its indemnity obligation, except (1) to the extent the indemnifying party can show it was prejudiced by the delay; and (2) the indemnifying party shall not be liable for any settlement or litigation expenses incurred before the time when notice is given.

10. WARRANTIES.

(a) Tenant and Landlord each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power and authority to enter into this Agreement and bind itself hereto through the party set forth as signatory for the party below.

(b) Landlord represents, warrants and agrees that: (i) Landlord solely owns the Property as a legal lot in fee simple, or controls the Property by lease or license; (ii) the Property is not and will not be encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect Tenant's Permitted Use and enjoyment of the Premises under this Agreement; (iii) as long as Tenant is not in default then Landlord grants to Tenant sole, actual, quiet and peaceful use, enjoyment and possession of the Premises without hindrance or ejection by any persons lawfully claiming under Landlord; (iv) Landlord's execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on Landlord; and (v) if the Property is or becomes encumbered by a deed to secure a debt, mortgage or other security interest, Landlord will provide promptly to Tenant a mutually agreeable subordination, non-disturbance and attornment agreement executed by Landlord and the holder of such security interest.

11. ENVIRONMENTAL.

(a) Landlord represents and warrants to the best of its actual knowledge, except as may be identified in **Exhibit 11** attached to this Agreement, (i) the Property, as of the date of this Agreement, is free of hazardous substances, including asbestos-containing materials and lead paint, and (ii) the Property has never been subject to any contamination or hazardous conditions resulting in any environmental investigation, inquiry or remediation. Landlord and Tenant agree that each will be responsible for compliance with any and all applicable governmental laws, rules, statutes, regulations, codes, ordinances, or principles of common law regulating or imposing standards of liability or standards of conduct with regard to protection of the environment or worker health and safety, as may now or at any time hereafter be in effect, to the extent such apply to that party's activity conducted in or on the Property

(b) Landlord and Tenant agree to hold harmless and indemnify the other from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of the indemnifying party for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding ("**Claims**"), to the extent arising from that party's breach of its obligations or representations under Section 11(a). Landlord agrees to hold harmless and indemnify Tenant from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of Landlord for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from subsurface or other contamination of the Property with hazardous substances prior to the effective date of this Agreement or from such contamination caused by the acts or omissions of Landlord during the Term. Tenant agrees to hold harmless and indemnify Landlord from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of Tenant for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from hazardous substances brought onto the Property by Tenant. Landlord is held harmless to the extent of Virginia law.

(c) The indemnifications of this Section 11 specifically include reasonable costs, expenses and fees incurred in connection with any investigation of Property conditions or any clean-up, remediation, removal or restoration work required by any governmental authority. The provisions of this Section 11 will survive the expiration or termination of this Agreement.

(d) In the event Tenant becomes aware of any hazardous materials on the Property, or any environmental, health or safety condition or matter relating to the Property, that, in Tenant's sole determination, renders the condition of the Premises or Property unsuitable for Tenant's use, or if Tenant believes that the leasing or continued leasing of the Premises would expose Tenant to undue risks of liability to a government agency or third party, Tenant will have the right, in addition to any other rights it may have at law or in equity, to terminate this Agreement upon written notice to Landlord.

12. ACCESS. At all times throughout the Term of this Agreement, and at no additional charge to Tenant, Tenant and its employees, agents, and subcontractors, will have twenty-four (24) hour per day, seven (7) day per week pedestrian and vehicular access ("**Access**") to and over the Property, from an open and improved public road to the Premises, for the installation, maintenance and operation of the Communication Facility and any utilities serving the Premises. As may be described more fully in **Exhibit 1**, Landlord grants to Tenant an easement for such Access and Landlord agrees to provide to Tenant such codes, keys and other instruments necessary for such Access at no additional cost to Tenant. Upon Tenant's request, Landlord will execute a separate recordable easement evidencing this right. Landlord shall execute a letter granting Tenant Access to the Property substantially in the form attached as **Exhibit 12**; upon Tenant's request, Landlord shall execute additional letters during the Term. Landlord acknowledges that in the event Tenant cannot obtain Access to the Premises due to the action of Landlord, Tenant shall incur significant damage. If Landlord fails to provide the Access granted by this Section 12, such failure shall be a default under this Agreement due to the action of Landlord. In connection with such default, in addition to any other rights or remedies available to Tenant under this Agreement or at law or equity, Landlord shall pay Tenant, as liquidated damages and not as a penalty, \$500.00 per day in consideration of Tenant's damages until Landlord cures such default. Landlord and

Tenant agree that Tenant's damages in the event of a denial of access are difficult, if not impossible, to ascertain, and the liquidated damages set forth above are a reasonable approximation of such damages.

13. REMOVAL/RESTORATION. All portions of the Communication Facility brought onto the Property by Tenant will be and remain Tenant's personal property and, at Tenant's option, may be removed by Tenant at any time during or after the Term. Landlord covenants and agrees that no part of the Communication Facility constructed, erected or placed on the Premises by Tenant will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of Landlord that all improvements of every kind and nature constructed, erected or placed by Tenant on the Premises will be and remain the property of Tenant and may be removed by Tenant at any time during or after the Term. Tenant will repair any damage to the Property resulting from Tenant's removal activities. At the Landlord's request, and if Landlord does not elect to retain ownership of the monopole, the footings, foundations and concrete will be removed to a depth of one foot below grade. Notwithstanding the foregoing, Tenant will not be responsible for the replacement of any trees, shrubs or other vegetation.

14. MAINTENANCE/UTILITIES.

(a) Tenant will keep and maintain the Premises in good condition, reasonable wear and tear and damage from the elements excepted. Landlord will maintain and repair the Property and access thereto and all areas of the Premises where Tenant does not have exclusive control, in good and tenable condition, subject to reasonable wear and tear and damage from the elements. Landlord will be responsible for maintenance of landscaping on the Property.

(b) Tenant will be responsible for paying on a monthly or quarterly basis all utilities charges for electricity, telephone service or any other utility used or consumed by Tenant on the Premises. In the event Tenant cannot secure its own metered electrical supply, Tenant will have the right, at its own cost and expense, to submeter from Landlord. When submetering is required under this Agreement, Landlord will read the meter and provide Tenant with an invoice and usage data on a monthly basis. Landlord agrees that it will not include a markup on the utility charges. Landlord further agrees to provide the usage data and invoice on forms provided by Tenant and to send such forms to such address and/or agent designated by Tenant. Tenant will remit payment within forty-five (45) days of receipt of the usage data and required forms. As noted in Section 4(c) above, any utility fee recovery by Landlord is limited to a twelve (12) month period. If Tenant submeters electricity from Landlord, Landlord agrees to give Tenant at least twenty-four (24) hours advance notice of any planned interruptions of said electricity. Landlord acknowledges that Tenant provides a communication service which requires electrical power to operate and must operate twenty-four (24) hours per day, seven (7) days per week. If the interruption is for an extended period of time, in Tenant's reasonable determination, Landlord agrees to allow Tenant the right to bring in a temporary source of power for the duration of the interruption. Landlord will not be responsible for interference with, interruption of or failure, beyond the reasonable control of Landlord, of such services to be furnished or supplied by Landlord.

(c) Landlord hereby grants to any company providing utility or similar services, including electric power and telecommunications, to Tenant an easement over the Property, from an open and improved public road to the Premises, and upon the Premises, for the purpose of constructing, operating and maintaining such lines, wires, circuits, and conduits, associated equipment cabinets and such appurtenances thereto, as such utility companies may from time to time require in order to provide such services to the Premises. Upon Tenant's or service company's request, Landlord will execute a separate recordable easement evidencing this grant, at no cost to Tenant or the service company.

15. DEFAULT AND RIGHT TO CURE.

(a) The following will be deemed a default by Tenant and a breach of this Agreement: (i) non-payment of Rent if such Rent remains unpaid for more than thirty (30) days after written notice from Landlord of such failure to pay; or (ii) Tenant's failure to perform any other term or condition under this Agreement within forty-five (45) days after written notice from Landlord specifying the failure. No such

Poquoson, VA 23662

Either party hereto may change the place for the giving of notice to it by thirty (30) days' prior written notice to the other as provided herein.

18. CONDEMNATION. In the event Landlord receives notification of any condemnation proceedings affecting the Property, Landlord will provide notice of the proceeding to Tenant within forty-eight (48) hours. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's sole determination, to render the Premises unsuitable for Tenant, this Agreement will terminate as of the date the title vests in the condemning authority. The parties will each be entitled to pursue their own separate awards in the condemnation proceeds, which for Tenant will include, where applicable, the value of its Communication Facility, moving expenses, prepaid Rent, and business dislocation expenses. Tenant will be entitled to reimbursement for any prepaid Rent on a prorata basis.

19. CASUALTY. If any part of the Communication Facility or Property is damaged by casualty or other harm as to render the Premises unsuitable, in Tenant's sole determination, then Tenant may terminate this Agreement by providing written notice to Landlord, which termination will be effective as of the date of such casualty or other harm. Upon such termination, Tenant will be entitled to collect all insurance proceeds payable to Tenant on account thereof and to be reimbursed for any prepaid Rent on a prorata basis. Landlord agrees to permit Tenant to place temporary transmission and reception facilities on the Property, but only until such time as Tenant is able to activate a replacement transmission facility at another location; notwithstanding the termination of this Agreement, such temporary facilities will be governed by all of the terms and conditions of this Agreement, including Rent. If Landlord or Tenant undertakes to rebuild or restore the Premises and/or the Communication Facility, as applicable, Landlord agrees to permit Tenant to place temporary transmission and reception facilities on the Property at no additional Rent until the reconstruction of the Premises and/or the Communication Facility is completed. If Landlord determines not to rebuild or restore the Property, Landlord will notify Tenant of such determination within thirty (30) days after the casualty or other harm. If Landlord does not so notify Tenant and Tenant decides not to terminate under this Section, then Landlord will promptly rebuild or restore any portion of the Property interfering with or required for Tenant's Permitted Use of the Premises to substantially the same condition as existed before the casualty or other harm. Landlord agrees that the Rent shall be abated until the Property and/or the Premises are rebuilt or restored, unless Tenant places temporary transmission and reception facilities on the Property.

20. WAIVER OF LANDLORD'S LIENS. Landlord waives any and all lien rights it may have, statutory or otherwise, concerning the Communication Facility or any portion thereof. The Communication Facility shall be deemed personal property for purposes of this Agreement, regardless of whether any portion is deemed real or personal property under applicable law; Landlord consents to Tenant's right to remove all or any portion of the Communication Facility from time to time in Tenant's sole discretion and without Landlord's consent.

21. TAXES.

(a) Landlord shall be responsible for timely payment of all taxes and assessments levied upon the lands, improvements and other property of Landlord including any such taxes that may be calculated by the taxing authority using any method, including the income method. Tenant shall be responsible for any taxes and assessments attributable to and levied upon Tenant's leasehold improvements on the Premises if and as set forth in this Section 21. Nothing herein shall require Tenant to pay any inheritance, franchise, income, payroll, excise, privilege, rent, capital stock, stamp, documentary, estate or profit tax, or any tax of similar nature, that is or may be imposed upon Landlord.

New Cingular Wireless PCS, LLC

Attn.: Network Real Estate Administration -- Taxes
Re: Cell Site #: NF470; Cell Site Name: Poquoson (VA)
Fixed Asset No.: 10103194
1025 Lenox Park Blvd. NE
3rd Floor
Atlanta, GA 30319

22. SALE OF PROPERTY.

(a) Landlord shall not be prohibited from the selling, leasing or use of any of the Property or the Surrounding Property except as provided below.

(b) If Landlord, at any time during the Term of this Agreement, decides to rezone or sell, subdivide or otherwise transfer all or any part of the Premises, or all or any part of the Property or Surrounding Property, to a purchaser other than Tenant, Landlord shall promptly notify Tenant in writing, and such rezoning, sale, subdivision or transfer shall be subject to this Agreement and Tenant's rights hereunder. In the event of a change in ownership, transfer or sale of the Property, within ten (10) days of such transfer, Landlord or its successor shall send the documents listed below in this subsection (b) to Tenant. Until Tenant receives all such documents, Tenant shall not be responsible for any failure to make payments under this Agreement and reserves the right to hold payments due under this Agreement.

- i. Old deed to Property
- ii. New deed to Property
- iii. Bill of Sale or Transfer
- iv. Copy of current Tax Bill
- v. New IRS Form W-9
- vi. Completed and Signed AT&T Payment Direction Form
- vii. Full contact information for new Landlord including phone number(s)

(c) Landlord agrees not to sell, lease or use any areas of the Property or Surrounding Property for the installation, operation or maintenance of other wireless communications facilities if such installation, operation or maintenance would interfere with Tenant's Permitted Use or communications equipment as determined by radio propagation tests performed by Tenant in its sole discretion. Landlord or Landlord's prospective purchaser shall reimburse Tenant for any costs and expenses of such testing. If the radio frequency propagation tests demonstrate levels of interference unacceptable to Tenant, Landlord shall be prohibited from selling, leasing or using any areas of the Property or the Surrounding Property for purposes of any installation, operation or maintenance of any other wireless communications facility or equipment.

(d) The provisions of this Section shall in no way limit or impair the obligations of Landlord under this Agreement, including interference and access obligations.

23. RENTAL STREAM OFFER. If at any time after the date of this Agreement, Landlord receives a bona fide written offer from a third party seeking an assignment or transfer of the Rent payments

associated with this Agreement (“**Rental Stream Offer**”), Landlord shall immediately furnish Tenant with a copy of the Rental Stream Offer. Tenant shall have the right within ninety (90) days after it receives such copy to match the Rental Stream Offer and agree in writing to match the terms of the Rental Stream Offer. Such writing shall be in the form of a contract substantially similar to the Rental Stream Offer. If Tenant chooses not to exercise this right or fails to provide written notice to Landlord within the ninety (90) day period, Landlord may assign the right to receive Rent payments pursuant to the Rental Stream Offer, subject to the terms of this Agreement. If Landlord attempts to assign or transfer Rent payments without complying with this Section, the assignment or transfer shall be void. Tenant shall not be responsible for any failure to make payments under this Agreement and reserves the right to hold payments due under this Agreement until Landlord complies with this Section.

24. MISCELLANEOUS.

(a) **Amendment/Waiver.** This Agreement cannot be amended, modified or revised unless done in writing and signed by Landlord and Tenant. No provision may be waived except in a writing signed by both parties. The failure by a party to enforce any provision of this Agreement or to require performance by the other party will not be construed to be a waiver, or in any way affect the right of either party to enforce such provision thereafter.

(b) **Memorandum/Short Form Lease.** Contemporaneously with the execution of this Agreement, the parties will execute a recordable Memorandum or Short Form of Lease substantially in the form attached as **Exhibit 24b**. Either party may record this Memorandum or Short Form of Lease at any time during the Term, in its absolute discretion. Thereafter during the Term of this Agreement, either party will, at any time upon fifteen (15) business days’ prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum or Short Form of Lease.

(c) **Limitation of Liability.** Except for the indemnity obligations set forth in this Agreement, and otherwise notwithstanding anything to the contrary in this Agreement, Tenant and Landlord each waives any claims that each may have against the other with respect to consequential, incidental or special damages, however caused, based on any theory of liability.

(d) **Compliance with Law.** Tenant agrees to comply with all federal, state and local laws, orders, rules and regulations (“**Laws**”) applicable to Tenant’s use of the Communication Facility on the Property. Landlord agrees to comply with all Laws relating to Landlord’s ownership and use of the Property and any improvements on the Property.

(e) **Bind and Benefit.** The terms and conditions contained in this Agreement will run with the Property and bind and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns.

(f) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement. Exhibits are numbered to correspond to the Section wherein they are first referenced. Except as otherwise stated in this Agreement, each party shall bear its own fees and expenses (including the fees and expenses of its agents, brokers, representatives, attorneys, and accountants) incurred in connection with the negotiation, drafting, execution and performance of this Agreement and the transactions it contemplates.

(g) **Governing Law.** This Agreement will be governed by the laws of the state in which the Premises are located, without regard to conflicts of law.

(h) **Interpretation.** Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term “including” will be interpreted to mean “including but not limited to”; (iii) whenever a party’s consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of this Agreement and are incorporated by reference into this Agreement; (v) use of the terms “termination” or “expiration” are interchangeable; (vi) reference to a default will take into consideration any applicable notice, grace and

cure periods; (vii) to the extent there is any issue with respect to any alleged, perceived or actual ambiguity in this Agreement, the ambiguity shall not be resolved on the basis of who drafted the Agreement; (viii) the singular use of words includes the plural where appropriate and (ix) if any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force if the overall purpose of the Agreement is not rendered impossible and the original purpose, intent or consideration is not materially impaired.

(i) **Affiliates.** All references to "Tenant" shall be deemed to include any Affiliate of New Cingular Wireless PCS, LLC using the Premises for any Permitted Use or otherwise exercising the rights of Tenant pursuant to this Agreement. "Affiliate" means with respect to a party to this Agreement, any person or entity that (directly or indirectly) controls, is controlled by, or under common control with, that party. "Control" of a person or entity means the power (directly or indirectly) to direct the management or policies of that person or entity, whether through the ownership of voting securities, by contract, by agency or otherwise.

(j) **Survival.** Any provisions of this Agreement relating to indemnification shall survive the termination or expiration hereof. In addition, any terms and conditions contained in this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall so survive.

(k) **W-9.** As a condition precedent to payment Landlord agrees to provide Tenant with a completed IRS Form W-9, or its equivalent, upon execution of this Agreement and at such other times as may be reasonably requested by Tenant, including any change in Landlord's name or address.

(l) **Execution/No Option.** The submission of this Agreement to any party for examination or consideration does not constitute an offer, reservation of or option for the Premises based on the terms set forth herein. This Agreement will become effective as a binding Agreement only upon the handwritten legal execution, acknowledgment and delivery hereof by Landlord and Tenant. This Agreement may be executed in two (2) or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties. All parties need not sign the same counterpart.

(m) **Attorneys' Fees.** In the event that any dispute between the parties related to this Agreement should result in litigation, the prevailing party in such litigation shall be entitled to recover from the other party all reasonable fees and expenses of enforcing any right of the prevailing party, including without limitation, reasonable attorneys' fees and expenses. Prevailing party means the party determined by the court to have most nearly prevailed even if such party did not prevail in all matters. This provision will not be construed to entitle any party other than Landlord, Tenant and their respective Affiliates to recover their fees and expenses.

(n) **WAIVER OF JURY TRIAL.** EACH PARTY, TO THE EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING UNDER ANY THEORY OF LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE TRANSACTIONS IT CONTEMPLATES.

[SIGNATURES AND ACKNOWLEDGEMENTS APPEAR ON NEXT PAGE]

EXHIBIT 1

DESCRIPTION OF PREMISES

Page ___ of ___

to the Land Lease Agreement dated _____, 202__, by and between the City of Poquoson, a Virginia municipal corporation, as Landlord, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Tenant.

The Property is legally described as follows:

20' Access and Utility Easement

Commencing at a point situated at the southern end of South Lawson Road, said point also being the northeastern most corner of property owned by the City of Poquoson, being Tax Map 21-1-1A; thence along the southern end of South Lawson Street also being the dividing line of Tax Map 21-1-1A South 59 degrees 05 minutes 32 seconds West a distance of 10.59 feet to a point, said point being the beginning and centerline of a proposed 20' access and utility easement; thence along the centerline of said 20' access and utility easement along a curve to the right having a radius of 33.00 feet, an arc length of 48.49 feet, a chord bearing of South 14 degrees 54 minutes 44 seconds West and a chord distance of 44.24 feet to a point; thence South 57 degrees 00 minutes 26 seconds West a distance of 392.75 feet to a point; thence South 46 degrees 52 minutes 47 seconds West a distance of 199.52 feet to a point; thence South 84 degrees 36 minutes 10 seconds West a distance of 98.65 feet to a point; thence South 16 degrees 05 minutes 53 seconds West a distance of 128.14 feet to a point; thence South 52 degrees 38 minutes 19 seconds West a distance of 81.69 feet to a point; thence South 46 degrees 26 minutes 17 seconds West a distance of 125.76 feet to a point; thence South 58 degrees 42 minutes 38 seconds West a distance of 61.45 feet to a point; thence along a curve to the right having a radius of 50.00 feet an arc length of 49.58 feet, a chord bearing of South 87 degrees 07 minutes 05 seconds West a distance of 47.57 feet to a point; thence North 64 degrees 28 minutes 37 seconds 227.09 feet to a point; thence along a curve the left having a radius of 50.00 feet an arc length or 37.71 feet a chord bearing of North 86 degrees 05 minutes 00 seconds East a distance of 199.58 feet to a point, said point being situated on the eastern line of a proposed 80'x100' lease area and being the end of said 20' access and utility easement.

80' x 100' Lease Area

Commencing at a point situated at the southern end of South Lawson Road, said point also being the northeastern most corner of property owned by the City of Poquoson, being Tax Map 21-1-1A; thence along the southern end of South Lawson Street also being the dividing line of Tax Map 21-1-1A South 59 degrees 05 minutes 32 seconds West a distance of 10.59 feet to a point, said point being the beginning and centerline of a proposed 20' access and utility easement; thence along the centerline of said 20' access and utility easement along a curve to the right having a radius of 33.00 feet, an arc length of 48.49 feet, a chord bearing of South 14 degrees 54 minutes 44 seconds West and a chord distance of 44.24 feet to a point; thence South 57 degrees 00 minutes 26 seconds West a distance of 392.75 feet to a point; thence South 46 degrees 52 minutes 47 seconds West a distance of 199.52 feet to a point; thence South 84 degrees 36 minutes 10 seconds West a distance of 98.65 feet to a point; thence South 16 degrees 05 minutes 53 seconds West a distance of 128.14 feet to a point; thence South 52 degrees 38 minutes 19 seconds West a distance of 81.69 feet to a point; thence South 46 degrees 26 minutes 17 seconds West a distance of 125.76 feet to a point; thence South 58 degrees 42 minutes 38 seconds West a distance of 61.45 feet in a point; thence along a curve to the right having a radius of 50.00 feet an arc length of 49.58 feet, a chord bearing of South 87 degrees 07 minutes 05 seconds West a distance of 47.57 feet to a point; thence North 64 degrees 28 minutes 37 seconds 227.42 feet to a point; thence along a curve the left having a radius of 50.00 feet an arc length or 37.71 feet a chord bearing of North 86 degrees 05 minutes 00 seconds East a distance of 199.58 feet to a point, said point being situated on the eastern line of a proposed 80'x100' lease area and being the end of said 20' access and utility easement; thence along the eastern line of said 80'x100' lease area South 17 degrees 41 minutes 33 seconds East a distance of 25.50 feet to a point; said point being the place of beginning; thence South 72 degrees 18 minutes 27 seconds West a distance of 100.00 feet to a point; thence North 17 degrees 41 minutes 33 seconds West a distance of 80.00 feet to a point; thence North 72 degrees 18 minutes 27 seconds East a distance of 100.00 feet to a point; thence South 17 degrees 41 minutes 33 seconds East a distance of 80.00 feet to a point, said point being the place of beginning and containing 8,000 s.f. of land.

The Premises are described and/or depicted as follows:

20' Access and Utility Easement

Commencing at a point situated at the southern end of South Lawson Road, said point also being the northeastern most corner of property owned by the City of Poquoson, being Tax Map 21-1-1A; thence along the southern end of South Lawson Street also being the dividing line of Tax Map 21-1-1A South 59 degrees 05 minutes 32 seconds West a distance of 10.59 feet to a point, said point being the beginning and centerline of a proposed 20' access and utility easement; thence along the centerline of said 20' access and utility easement along a curve to the right having a radius of 33.00 feet, an arc length of 48.49 feet, a chord bearing of South 14 degrees 54 minutes 44 seconds West and a chord distance of 44.24 feet to a point; thence South 57 degrees 00 minutes 26 seconds West a distance of 392.75 feet to a point; thence South 46 degrees 52 minutes 47 seconds West a distance of 199.52 feet to a point; thence South 84 degrees 36 minutes 10 seconds West a distance of 98.65 feet to a point; thence South 16 degrees 05 minutes 53 seconds West a distance of 128.14 feet to a point; thence South 52 degrees 38 minutes 19 seconds West a distance of 61.89 feet to a point; thence South 46 degrees 26 minutes 17 seconds West a distance of 125.76 feet to a point; thence South 58 degrees 42 minutes 38 seconds West a distance of 61.45 feet to a point; thence along a curve to the right having a radius of 50.00 feet an arc length of 49.58 feet, a chord bearing of South 87 degrees 07 minutes 05 seconds West a distance of 47.57 feet to a point; thence North 64 degrees 28 minutes 37 seconds 227.09 feet to a point; thence along a curve the left having a radius of 50.00 feet an arc length of 37.71 feet a chord bearing of North 86 degrees 05 minutes 00 seconds East a distance of 199.58 feet to a point, said point being situated on the eastern line of a proposed 80'x100' lease area and being the end of said 20' access and utility easement.

80' x 100' Lease Area

Commencing at a point situated at the southern end of South Lawson Road, said point also being the northeastern most corner of property owned by the City of Poquoson, being Tax Map 21-1-1A; thence along the southern end of South Lawson Street also being the dividing line of Tax Map 21-1-1A South 59 degrees 05 minutes 32 seconds West a distance of 10.59 feet to a point, said point being the beginning and centerline of a proposed 20' access and utility easement; thence along the centerline of said 20' access and utility easement along a curve to the right having a radius of 33.00 feet, an arc length of 48.49 feet, a chord bearing of South 14 degrees 54 minutes 44 seconds West and a chord distance of 44.24 feet to a point; thence South 57 degrees 00 minutes 26 seconds West a distance of 392.75 feet to a point; thence South 46 degrees 52 minutes 47 seconds West a distance of 199.52 feet to a point; thence South 84 degrees 36 minutes 10 seconds West a distance of 98.65 feet to a point; thence South 16 degrees 05 minutes 53 seconds West a distance of 128.14 feet to a point; thence South 52 degrees 38 minutes 19 seconds West a distance of 61.89 feet to a point; thence South 46 degrees 26 minutes 17 seconds West a distance of 125.76 feet to a point; thence South 58 degrees 42 minutes 38 seconds West a distance of 61.45 feet to a point; thence along a curve to the right having a radius of 50.00 feet an arc length of 49.58 feet, a chord bearing of South 87 degrees 07 minutes 05 seconds West a distance of 47.57 feet to a point; thence North 64 degrees 28 minutes 37 seconds 227.42 feet to a point; thence along a curve the left having a radius of 50.00 feet an arc length of 37.71 feet a chord bearing of North 86 degrees 05 minutes 00 seconds East a distance of 199.58 feet to a point, said point being situated on the eastern line of a proposed 80'x100' lease area and being the end of said 20' access and utility easement; thence along the eastern line of said 80'x100' lease area South 17 degrees 41 minutes 33 seconds East a distance of 25.50 feet to a point; said point being the place of beginning; thence South 72 degrees 18 minutes 27 seconds West a distance of 100.00 feet to a point; thence North 17 degrees 41 minutes 33 seconds West a distance of 80.00 feet to a point; thence North 72 degrees 18 minutes 27 seconds East a distance of 100.00 feet to a point; thence South 17 degrees 41 minutes 33 seconds East a distance of 80.00 feet to a point, said point being the place of beginning and containing 8,000 s.f. of land.

Notes:

- I. THIS EXHIBIT MAY BE REPLACED BY A LAND SURVEY AND/OR CONSTRUCTION DRAWINGS OF THE PREMISES ONCE RECEIVED BY TENANT.

2. ANY SETBACK OF THE PREMISES FROM THE PROPERTY'S BOUNDARIES SHALL BE THE DISTANCE REQUIRED BY THE APPLICABLE GOVERNMENTAL AUTHORITIES.
3. WIDTH OF ACCESS ROAD SHALL BE THE WIDTH REQUIRED BY THE APPLICABLE GOVERNMENTAL AUTHORITIES, INCLUDING POLICE AND FIRE DEPARTMENTS.
4. THE TYPE, NUMBER AND MOUNTING POSITIONS AND LOCATIONS OF ANTENNAS AND TRANSMISSION LINES ARE ILLUSTRATIVE ONLY. ACTUAL TYPES, NUMBERS AND MOUNTING POSITIONS MAY VARY FROM WHAT IS SHOWN ABOVE.

EXHIBIT 11

ENVIRONMENTAL DISCLOSURE

Landlord represents and warrants that the Property, as of the date of this Agreement, is free of hazardous substances except as follows:

1. NONE.

EXHIBIT 12

STANDARD ACCESS LETTER

[FOLLOWS ON NEXT PAGE]

[Landlord Letterhead]

DATE

Building Staff / Security Staff
Landlord, Lessee, Licensee
Street Address
City, State, Zip

Re: Authorized Access granted to AT&T

Dear Building and Security Staff,

Please be advised that we have signed a lease with AT&T permitting AT&T to install, operate and maintain telecommunications equipment at the property. The terms of the lease grant AT&T and its representatives, employees, agents and subcontractors ("representatives") 24 hour per day, 7 day per week access to the leased area.

To avoid impact on telephone service during the day, AT&T representatives may be seeking access to the property outside of normal business hours. AT&T representatives have been instructed to keep noise levels at a minimum during their visit.

Please grant the bearer of a copy of this letter access to the property and to leased area. Thank you for your assistance.

Landlord Signature

EXHIBIT 24b

MEMORANDUM OF LEASE

[FOLLOWS ON NEXT PAGE]

TAX MAP: [insert]

Consideration: N/A

PREPARED BY:

New Cingular Wireless PCS, LLC

WHEN RECORDED RETURN TO:

Catherine Abejar, Lease Processing

(858) 799-7850

Md7, LLC

10590 West Ocean Air Drive, Suite 300

San Diego, CA 92130

Phone Number: (858) 799-7850

SPACE ABOVE FOR RECORDER'S USE

Re: Cell Site #: NF470
Cell Site Name: Poquoson (VA)
Fixed Asset Number: 10103194
State: VA
County: Poquoson City

**MEMORANDUM
OF
AGREEMENT**

This Memorandum of Agreement is entered into on this ____ day of _____, 202__, by and between the City of Poquoson, a Virginia municipal corporation, having a mailing address at 500 City Hall Avenue, Poquoson, VA 23662 (hereinafter referred to as "**Landlord**") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd. NE, 3rd Floor, Atlanta, GA 30319 (hereinafter referred to as "**Tenant**").

1. Landlord and Tenant entered into a certain Land Lease Agreement dated _____, 202__ (hereinafter, collectively, the "**Agreement**") for the purpose of installing, operating and maintaining a communications facility and other improvements at Landlord's real property located in the City of Poquoson, State of Virginia, commonly known as 1240 Poquoson Avenue. All of the foregoing are set forth in the Agreement.
2. The New Initial Term will be five (5) years ("**New Initial Term**") commencing on January 27, 2020, with five (5) successive five (5) year options to renew.
3. The portion of the land being leased to Tenant (the "**Premises**") is described in **Exhibit 1** annexed hereto.

4. This Memorandum of Agreement is not intended to amend or modify and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Agreement, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum of Agreement and the provisions of the Agreement, the provisions of the Agreement shall control. The Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Agreement.

[NO MORE TEXT ON THIS PAGE - SIGNATURES TO FOLLOW ON NEXT PAGE]

Exhibit 1 to Memorandum of Agreement

Legal Description

Street Address: 1240 Poquoson Avenue, Poquoson, VA 23662

TAX MAP: _____

That certain Premises (and access and utility easements) on a portion of the real property described as follows:

20' Access and Utility Easement

Commencing at a point situated at the southern end of South Lawson Road, said point also being the northeastern most corner of property owned by the City of Poquoson, being Tax Map 21-1-1A; thence along the southern end of South Lawson Street also being the dividing line of Tax Map 21-1-1A South 59 degrees 05 minutes 32 seconds West a distance of 10.59 feet to a point, said point being the beginning and centerline of a proposed 20' access and utility easement; thence along the centerline of said 20' access and utility easement along a curve to the right having a radius of 33.00 feet, an arc length of 48.49 feet, a chord bearing of South 14 degrees 54 minutes 44 seconds West and a chord distance of 44.24 feet to a point; thence South 57 degrees 00 minutes 28 seconds West a distance of 392.75 feet to a point; thence South 48 degrees 52 minutes 47 seconds West a distance of 199.52 feet to a point; thence South 84 degrees 36 minutes 10 seconds West a distance of 98.85 feet to a point; thence South 16 degrees 05 minutes 53 seconds West a distance of 128.14 feet to a point; thence South 52 degrees 38 minutes 19 seconds West a distance of 61.69 feet to a point; thence South 46 degrees 26 minutes 17 seconds West a distance of 125.76 feet to a point; thence South 58 degrees 42 minutes 38 seconds West a distance of 61.45 feet to a point; thence along a curve to the right having a radius of 50.00 feet an arc length of 49.58 feet, a chord bearing of South 87 degrees 07 minutes 05 seconds West a distance of 47.57 feet to a point; thence North 64 degrees 28 minutes 37 seconds 227.09 feet to a point; thence along a curve the left having a radius of 50.00 feet an arc length of 37.71 feet a chord bearing of North 86 degrees 05 minutes 00 seconds East a distance of 199.58 feet to a point, said point being situated on the eastern line of a proposed 80'x100' lease area and being the end of said 20' access and utility easement.

80' x 100' Lease Area

Commencing at a point situated at the southern end of South Lawson Road, said point also being the northeastern most corner of property owned by the City of Poquoson, being Tax Map 21-1-1A; thence along the southern end of South Lawson Street also being the dividing line of Tax Map 21-1-1A South 59 degrees 05 minutes 32 seconds West a distance of 10.59 feet to a point, said point being the beginning and centerline of a proposed 20' access and utility easement; thence along the centerline of said 20' access and utility easement along a curve to the right having a radius of 33.00 feet, an arc length of 48.49 feet, a chord bearing of South 14 degrees 54 minutes 44 seconds West and a chord distance of 44.24 feet to a point; thence South 57 degrees 00 minutes 28 seconds West a distance of 392.75 feet to a point; thence South 46 degrees 52 minutes 47 seconds West a distance of 199.52 feet to a point; thence South 84 degrees 36 minutes 10 seconds West a distance of 98.85 feet to a point; thence South 16 degrees 05 minutes 53 seconds West a distance of 128.14 feet to a point; thence South 52 degrees 38 minutes 19 seconds West a distance of 61.69 feet to a point; thence South 46 degrees 26 minutes 17 seconds West a distance of 125.76 feet to a point; thence South 58 degrees 42 minutes 38 seconds West a distance of 61.45 feet to a point; thence along a curve to the right having a radius of 50.00 feet an arc length of 49.58 feet, a chord bearing of South 87 degrees 07 minutes 05 seconds West a distance of 47.57 feet to a point; thence North 64 degrees 28 minutes 37 seconds 227.42 feet to a point; thence along a curve the left having a radius of 50.00 feet an arc length of 37.71 feet a chord bearing of North 86 degrees 05 minutes 00 seconds East a distance of 199.58 feet to a point, said point being situated on the eastern line of a proposed 60'x100' lease area and being the end of said 20' access and utility easement; thence along the eastern line of said 80'x100' lease area South 17 degrees 41 minutes 33 seconds East a distance of 25.50 feet to a point; said point being the place of beginning; thence South 72 degrees 18 minutes 27 seconds West a distance of 100.00 feet to a point; thence North 17 degrees 41 minutes 33 seconds West a distance of 80.00 feet to a point; thence North 72 degrees 18 minutes 27 seconds East a distance of 100.00 feet to a point; thence South 17 degrees 41 minutes 33 seconds East a distance of 80.00 feet to a point, said point being the place of beginning and containing 8,000 s.f. of land.

W-9 FORM

[FOLLOWS ON NEXT PAGE]

**Request for Taxpayer
Identification Number and Certification**

Give Form to the requester. Do not send to the IRS.

Print or type
See Specific Instructions on page 2.

Name (as shown on your income tax return)	
Business name/disregarded entity name, if different from above	
Check appropriate box for federal tax classification: <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ <input type="checkbox"/> Exempt payee <input type="checkbox"/> Other (see instructions) ▶ _____	
Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
City, state, and ZIP code	
List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number	
<input style="width: 100%;" type="text"/> - <input style="width: 100%;" type="text"/> - <input style="width: 100%;" type="text"/>	

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Employer identification number	
<input style="width: 100%;" type="text"/> - <input style="width: 100%;" type="text"/>	

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here

Signature of U.S. person ▶

Date ▶

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.