

-----Original Message-----

From: cmsmailer@civicplus.com <cmsmailer@civicplus.com>

Sent: Monday, June 29, 2020 3:15 PM

To: Mark Purple <mpurple@southboroughma.com>

Subject: [Town of Southborough MA] 17 Common Street (Sent by Jeffrey Barbadora, Jeff.Barbadora@crowncastle.com)

[EXTERNAL]

Message:

Good Afternoon Mark,

It was great to speak with you last week in regard to the ATT modification to the flagpole issue at 17 Common Street.

We discussed a couple of options for ATT so that they can upgrade their antenna system. Again, ATT has been functioning on this pole for 21 years with limited antenna equipment. ATT like other wireless providers are essential to all types of wireless services including but not limited to 911.

Over 80% of emergency calls are now made from cell phones. I was informed when the site was shut down to change the ATT antennas from the old system to the new system, this was coordinate in some capacity with the Southborough Fire Department.

The couple of options we did discuss of for ATT, if modifying this pole cannot be done was first, construct a new larger diameter flagpole in the rear of the property. Second, increasing the canister size for the entire pole. I wanted to suggest a third option and that is to add a taper to the top of the tower.

Attached is a photosim drawing showing the flagpole as before then with modification taper and then showing the flag. Please review the four captions as this is the best alternative for ATT to use this flag pole. We would be open to beautifying the land surrounding the pole if that is an option to help mitigate an concerns.

Thanks,

Jeffrey Barbadora

781-970-0053

12 Gill Street, Suite 5800, Woburn, MA 01801 CrownCastle.com



1 EXISTING

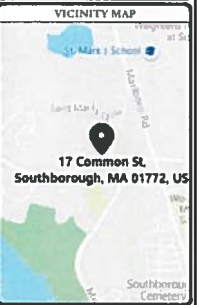


2 PROPOSED



AT&T MOBILITY SITE
NUMBER: MAL03309
ORDER # : 459082
BU # 842944
SOUTHBOROUGH COMMON
ST (MA0348)
17 COMMON STREET
SOUTHBOROUGH, MA 01772
WORCESTER
LAT: 42° 18' 21.24"
LONG: -71° 31' 54.84"

REVISIONS	
DATE	BY



SHEET NUMBER	REVISION
P-1	0



1 EXISTING



2 PROPOSED



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REVISIONS	
NUMBER	DATE



SHEET NUMBER: P-2
REVISION: 0



1 EXISTING



2 PROPOSED

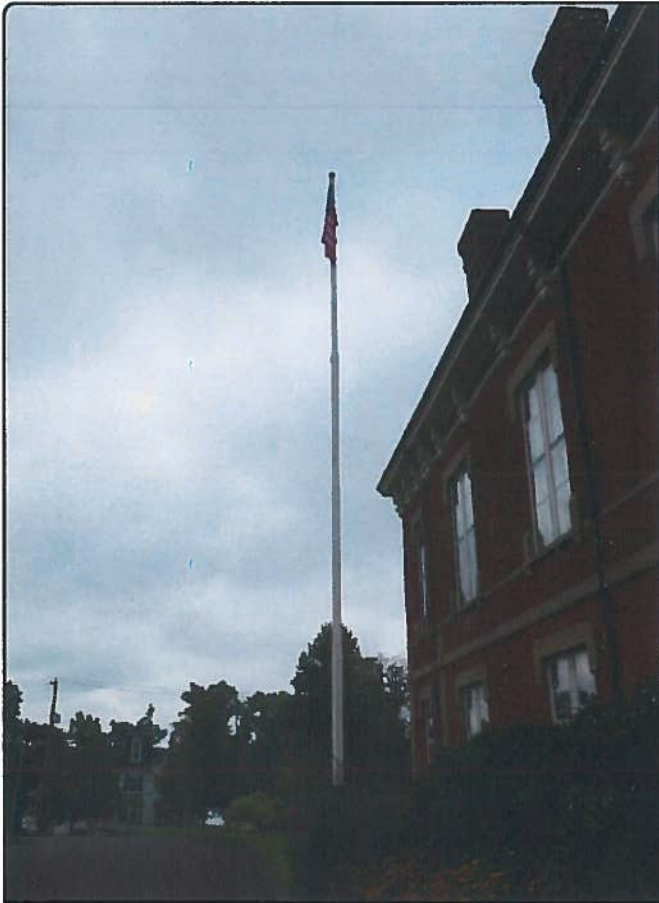


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REVISIONS	
DATE	BY



SHEET NUMBER	REVISION
P-3	0



1 EXISTING



2 PROPOSED



AT&T MOBILITY SITE
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REVISIONS	
NO.	DATE



SHEET NUMBER	REVISION
P-4	0



Crown Castle
301 North Cattleman Road, Suite 200
Sarasota, FL 34232

_____, 2019

Town of Southborough
17 Common Street
Southborough, MA 01772

RE: Lease Agreement for property located at 17 Common Street, Southborough,
Massachusetts 01772; Crown Castle Business Unit:842944

Dear _____:

This letter agreement ("Letter Agreement") sets forth the terms of the agreement between CCATT LLC, a Delaware limited liability company ("Company"), as ultimate successor in interest to AT&T Wireless PCS, Inc., by and through its agent AT&T Wireless Services, Inc., d/b/a AT&T Wireless Services, a Delaware corporation, and the Town of Southborough ("Town"), to extend the length of the term of that certain Lease Agreement between the Town and Company dated August 4, 1999 (as amended and assigned, the "Lease"), for property located at the address above (the "Site"). A copy of that lease with an exhibit is attached hereto and incorporated herein by reference.

The Lease expires on September 30, 2019. The Town requires additional time to complete the Request for Proposal ("RFP") process. For that reason, the parties agree that the Company may remain on the Site and continue to operate under the same terms and conditions of the Lease after the expiration date until the earlier of (i) the parties execute an additional amendment further extending the term of the Lease or (ii) September 30, 2020. Company may terminate the Lease prior to the expiration of this Letter Agreement by providing the Town thirty (30) days' notice of termination and the Lease shall terminate at the end of the thirty (30) day notice period. The Lease may be further extended only upon the written agreement of the parties.

The parties agree that the annual rent shall continue to escalate at three percent (3%) annually pursuant to the terms of the Lease. Accordingly, the next three percent (3%) rent escalation shall occur on October 1, 2019, pursuant to Section 5 of the Lease.

If this Letter Agreement accurately sets forth our understanding regarding the foregoing, please so indicate by signing and returning to the undersigned the enclosed copy of this letter.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Town:
Town of Southborough

Company:
CCATT LLC,
a Delaware limited liability company,

By: 

By: _____

Name: BRIAN E. SHEA

Name: _____

Title: CHAIRMAN - BOARD OF SELECTMEN

Title: _____

Date: 9/17/19

Date: _____

Attest:

By: 

Name: MARK. J. PURPLE

Title: TOWN ADMINISTRATOR

Date: 9/17/19



PAUL J. BERRY, TOWN CLERK

BOARD OF SELECTMEN

Town House, 17 Common Street, Southborough, MA 01772-1662
Tel: 508-485-0710 Fax: 508-480-0161 Email: selectmen@southboroughma.com

CONTRACT SUBMISSION DOCUMENT

Date: November 21, 2006

To: ☐ Town Accountant Dorothy Phaneuf
☒ Town Clerk Paul J. Berry

From: Jean E. Kitchen, Town Administrator

Re: Contract of: Town of Southborough and New Cingular Wireless PCS, LLC

For: First Amendment to Lease Agreement

Amount: (see agreement)

Enclosed are the following papers:

- ☒ Bid/Proposal/Agreement from the above company
- ☐ Letter of award to the above company
- ☒ Copy of bidding summary
- ☒ Copy of legal ad as it appeared in the newspaper
- ☒ Copy of bid specifications
- ☒ If no bid summary is available, copy of bid proposals is attached from companies not receiving award
- ☐ Letter of recommendation

[contract submission letter]

Cell Site No MA0348
Market: New England
Address: 17 Common Street, Southborough MA 01772

FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT TO LEASE AGREEMENT ("Amendment"), dated as of the latter of the signature dates below, is by and between The Town of Southborough, having a mailing address 17 Common Street, Southborough MA 01772 (hereinafter referred to as "LANDLORD") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 6100 Atlantic Boulevard, Norcross, Georgia 30071 as successor in interest to AT&T Wireless PCS, Inc (hereinafter collectively referred to as "TENANT").

WHEREAS, LANDLORD and TENANT entered into a Lease Agreement dated August 1999, whereby LANDLORD leased to TENANT certain Premises, therein described, that are a portion of the Property located at 17 Common Street, Southborough MA ("Agreement"); and

WHEREAS, LANDLORD and TENANT desire to amend the Agreement to expand the Premises approximately 23 square feet (5' x 4'6") on the outside of the building as shown in **Exhibit 1**; and

WHEREAS, LANDLORD and TENANT desire to amend the Agreement to modify the notice section thereof; and

WHEREAS, LANDLORD and TENANT desire to amend the Agreement to permit TENANT 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; and

WHEREAS, LANDLORD and TENANT, in their mutual interest, wish to amend the Agreement as set forth below accordingly.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, LANDLORD and TENANT agree as follows:

1. **Rent.** Commencing on the first day of the month following the date that Tenant commences construction (the "Rent Commencement Date"), Rent shall be increased by two hundred dollars (\$200.00) per month, subject to adjustments as provided in the Agreement.
2. **Notices.** Section 18 of the Agreement is hereby deleted in its entirety and replaced with the following: **NOTICES.** All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows. As to TENANT, c/o Cingular Wireless LLC, Attn: Network Real

Estate Administration Re: Cell Site # MA0348, Cell Site Name Town of Southborough, 6100 Atlantic Boulevard, Norcross, GA 30071, with a copy to Cingular Wireless LLC, Attn: Legal Department 5 Wood Hollow Road, Parsippany, NJ 07054 Re: Cell Site # MA0348, Cell Site Name Town of Southborough, with a copy to Cingular Wireless LLC, Attn: Network Real Estate, 580 Main Street, Bolton, MA. 01740 Re: Cell Site #MA0348, Cell Site Name Town of Southborough; and as to LANDLORD, The Town of Southborough, 17 Common Street, Southborough MA 01772. 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.

3. **Emergency 911 Service.** LANDLORD agrees that TENANT may 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 provided that such equipment is located within TENANT'S leased Premises. Any expansion of TENANT'S leased Premises must be agreed to in writing by LANDLORD and TENANT.
4. **Other Terms and Conditions Remain.** In the event of any inconsistencies between the Agreement and this Amendment, the terms of this Amendment shall control. Except as expressly set forth in this Amendment, the Agreement otherwise is unmodified and remains in full force and effect. Each reference in the Agreement to itself shall be deemed also to refer to this Amendment.
5. **Capitalized Terms.** All capitalized terms used but not defined herein shall have the same meanings as defined in the Agreement.

IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute and seal this Amendment on the dates set forth below.

LANDLORD: Town of Southborough

By: Roger W Challen
Name: ROGER W CHALLEN
Title: CHAIRMAN, BOS
Date: NOV 6, 2006

TENANT:
NEW CINGULAR WIRELESS PCS, LLC

By: [Signature]
Name: R. Michael Maus
Title: Executive Director
Date: New England Market
11-16-06

TENANT ACKNOWLEDGEMENT

COMMONWEALTH OF MASSACHUSETTS

)ss:

COUNTY OF WORCESTER

On the 16 day of November 2006 before me personally appeared R. Michael Yous, and acknowledged under oath that he is the Exec. Dir. Network of New Cingular Wireless PCS, LLC, the limited liability company named in the attached instrument, and as such was authorized to execute this instrument on behalf of the limited liability company.

Notary Public:

Consuelo M. Wappel
CONSUELO M. WAPPEL

My Commission Expires:

Notary Public

Commonwealth of Massachusetts

My Commission Expires

August 24, 2012

LANDLORD ACKNOWLEDGEMENT

INDIVIDUAL ACKNOWLEDGEMENT

STATE OF Massachusetts)

)ss:

COUNTY OF Worcester)

BE IT REMEMBERED, that on this 6 day of November 2006 before me, the subscriber, a person authorized to take oaths in the State of Massachusetts, personally appeared Roger W. Challen who, being duly sworn on his/her/their oath, deposed and made proof to my satisfaction that he/she/they is/are the person(s) named in the within instrument; and I, having first made known to him/her/them the contents thereof, he/she/they did acknowledge that he/she/they signed, sealed and delivered the same as his/her/their voluntary act and deed for the purposes therein contained.

Notary Public:

Jean E. Kitchen
My Commission Expires:

JEAN E. KITCHEN

Notary Public

My Commission Expires

April 9, 2010

PARTNERSHIP (consisting of corporate partners) ACKNOWLEDGEMENT

STATE OF _____)
) ss:
COUNTY OF _____)

I CERTIFY that on _____, 200____, _____ personally came before me and this/these person(s) acknowledged under oath to my satisfaction, that:

(a) this/these person(s) signed, sealed and delivered the attached document as _____ [title] of _____ [name of corporation] a corporation of the State of _____, which is a general partner of the partnership named in this document;

(b) the proper corporate seal of said corporate general partner was affixed; and

(c) this document was signed and delivered by the corporation as its voluntary act and deed as [a] general partner(s) on behalf of said partnership [by virtue of authority from its Board of Directors].

Notary Public: _____
My Commission Expires _____

CORPORATE ACKNOWLEDGEMENT

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF WORCESTER)

I CERTIFY that on _____, 2006, _____ [name of representative] personally came before me and acknowledged under oath that he or she:

(a) is the _____ [title] of Circle Company, Inc., the corporation named in the attached instrument,

(b) was authorized to execute this instrument on behalf of the corporation and

(c) executed the instrument as the act of the corporation.

Notary Public
My Commission Expires: _____

EXHIBIT 1

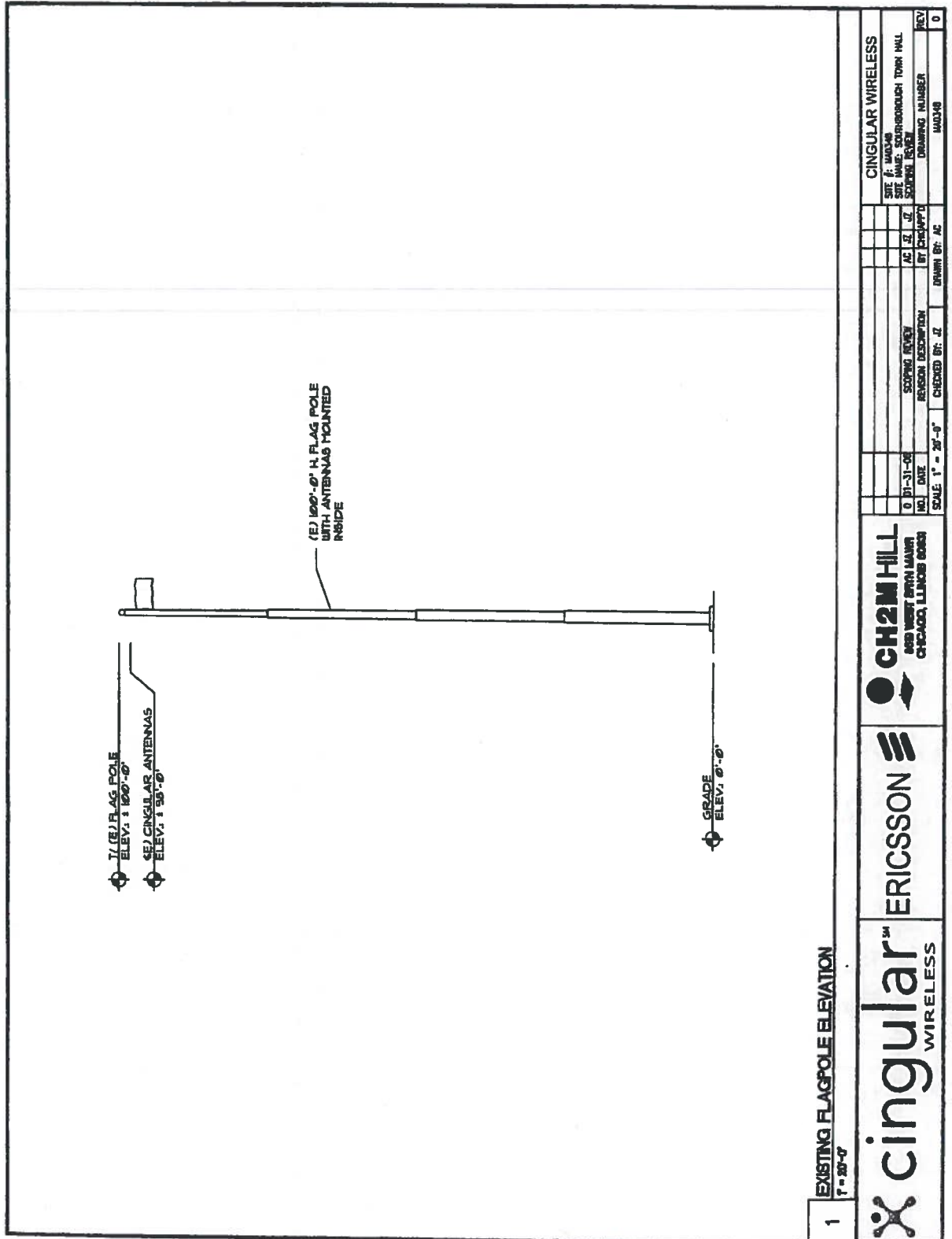
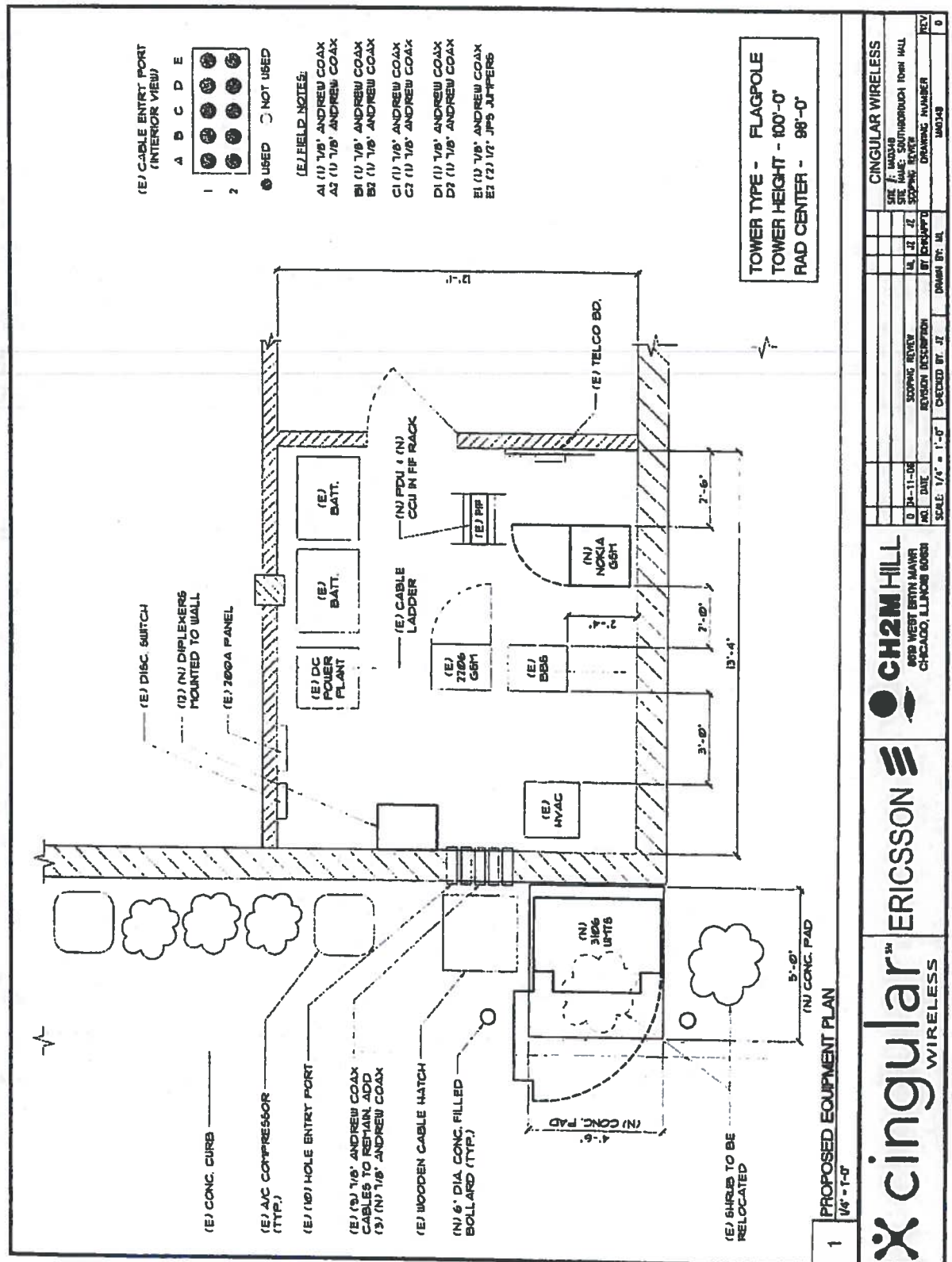


EXHIBIT 1

E-348

Cell Site Number: E-348.1
Address: 17 Common Street, Southborough, MA

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement"), dated as of the date below, is entered into by Town of Southborough, a Municipal Corporation, with a Tax ID# of 04-6001305, having its principal office/residing at 17 Common Street, Southborough, Massachusetts 01772-9109 (hereinafter referred to as "Landlord") and AT&T WIRELESS PCS, INC., by and through its agent AT&T Wireless Services, Inc. d/b/a AT&T WIRELESS SERVICES, a Delaware corporation, having an office at 400 Blue Hill Drive, Suite 100, Westwood, Massachusetts 02090 (hereinafter referred to as "Tenant").

BACKGROUND

Landlord owns that certain plot, parcel or tract of land, together with all rights and privileges arising in connection therewith, located at 17 Common Street, identified as Lot 4 in Map 54 in the Town of Southborough, Worcester County, State of Massachusetts 01772-9109 (collectively "Property"). Tenant desires to use a portion of the Property in connection with its federally licensed wireless communications business.

The parties agree as follows:

1. **LEASE OF PREMISES.** Landlord leases to Tenant a certain portion of the Property containing approximately 200 square feet as described on attached Exhibit 1 (collectively, "Premises").
2. **PERMITTED USE.** Tenant may use the Premises for the following: (i) transmission and reception of communications signals; (ii) to construct, install, operate, maintain, repair, replace, protect and secure, its radio fixtures and related equipment, cables, accessories and improvements (collectively, the "Antenna Facility"); including the right to construct an operational flagpole with three internally mounted antennas, an equipment room, ; and (iii) any activities related to the foregoing. Landlord and Tenant agree that Exhibit 1 shows the initial installation of Tenant and that it does not limit Tenant's rights under this paragraph. Tenant has the right (i) to install and operate transmission cables from the equipment room to the antennas, electric lines from the main feed to the equipment room, and telephone lines from the main telephone entry point to the equipment room and (ii) to erect, construct or make Property improvements, alterations, or additions appropriate for Tenant's use ("Tenant Changes").
3. **INSTALLATIONS.** Tenant agrees to comply with all applicable governmental laws, rules, statutes and regulations, relating to its use of the Antenna Facility on the Property. Tenant has the right to modify, supplement, replace, and upgrade the Antenna 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 accomplish Tenant's Changes or to insure that Tenant's Antenna Facility complies with all applicable federal, state or local laws, rules or regulations. Prior to the initial installation of Tenant's Changes, Tenant will supply the Landlord with plans and specifications ("Plans") to be reviewed and approved by the Landlord prior to commencement of Tenant's Changes. Landlord's approval will not be unreasonably withheld, conditioned or delayed. In no event will Tenant begin construction of the Antenna Facility until Landlord has approved the Plans. After approval, the Plans will be considered incorporated in this Agreement as Exhibit 2. Any subsequent changes to the Premises or the Property, except for Tenant's changes regarding routine maintenance, will require the same approval process. Landlord will not knowingly permit or suffer any person to copy or utilize the Plans for any purpose other than as provided in this Agreement and will return the Plans to Tenant promptly upon request.

4. TERM.

(a) The initial lease term will be five (5) years ("Initial Term"), commencing upon the Commencement Date, as defined below. The Initial Term will terminate on the last day of the month in which the fifth annual anniversary of the Commencement Date occurred.

(b) This Agreement will automatically renew for three (3) additional five (5) year Term(s) (the "Extension Term"), upon the same terms and conditions unless the Tenant notifies the Landlord in writing of Tenant's intention not to renew this Agreement at least ninety (90) days prior to the expiration of the existing Term.

(c) If Tenant remains in possession of the Premises after the termination or expiration 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, and the Extension Term and the Holdover Term are collectively referred to as the Term. ("Term").

5. RENT. Commencing on the date that Tenant commences construction (the "Commencement Date"), Tenant will pay the Landlord a monthly rental payment based upon the attached Exhibit 3 at the address set forth above, on or before the 5th day of each calendar month in advance or to such other person, firm, or place as Landlord may, from time to time, designate in writing at least thirty (30) days in advance of any due date. Rent will be prorated for any partial month.

6. APPROVALS.

(a) Landlord agrees that Tenant's ability to use the Premises is contingent upon its suitability for Tenant's intended use from both an economic and technical engineering basis and Tenant's ability to obtain 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 referred to as "Governmental Approvals"). Landlord specifically authorizes Tenant to prepare, execute and file all necessary or appropriate applications to obtain Governmental Approvals for its use under this Agreement and to reasonably cooperate with the same.

(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 choice.

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

7. **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 Paragraph 16 of this Agreement after the applicable cure periods;

(b) by Tenant on sixty (60) days prior written notice, if Tenant is unable to obtain, maintain, or otherwise forfeits or cancels 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 Antenna Facility as now and hereafter intended by Tenant; or if the Premises become unsuitable for Tenant's operation due to governmental regulations or if Tenant determines in its sole discretion that the cost of obtaining or retaining the same is commercially unreasonable;

(c) by Tenant on sixty (60) days prior written notice, if Tenant determines, in its sole discretion that Tenant's use of the Premises (as the same may have been modified from time to time) is no longer consistent with the optimal operation of Tenant's communications network based upon either technical or economic considerations in Tenant's sole discretion;

(d) by Tenant on sixty (60) days prior written notice, if Tenant determines that interference by or to Tenant's use of the Premises cannot be resolved to Tenant's satisfaction;

(e) by Tenant immediately upon notice, if destruction or damage to the Premises or the taking thereof (by partial condemnation or otherwise) is sufficient, in Tenant's reasonable judgment, to adversely affect Tenant's use of the Premises; or

(f) by Tenant immediately upon notice, if Tenant determines, in its sole discretion, due to the title results, survey results or Tests, that the condition of the Premises is unsatisfactory or Tenant

believes that the leasing or continued leasing of the Premises would expose Tenant to undue risks of government action or intervention or third-party.

If this Agreement is terminated for any reason outlined in this paragraph, any prepaid rent will be refunded on a prorata basis.

8. INSURANCE.

(a) Tenant will carry during the Term, at its own cost and expense, the following insurance: (i) "All Risk" property insurance for its property's replacement cost; (ii) commercial general liability insurance with a commercial general liability endorsement having a minimum limit of liability of \$1,000,000 combined single limit for bodily injury or death/property damage arising out of any one occurrence; and (iii) Workers' Compensation Insurance as required by law.

(b) Tenant will name the Landlord as an additional insured under its general liability policy. Tenant will require its insurance company to give at least thirty (30) days prior written notice of termination or cancellation of the policy to the additional insured, except for termination or cancellation for non-payment of premium, which notice will be ten (10) days. Such endorsement will be delivered to the additional insured within thirty (30) days from the Commencement Date.

(c) Notwithstanding anything in this Agreement, with respect to all loss, damage, or destruction to the insured party's property (including rental value and business interruption) occurring during the term of this Agreement, each of Landlord and Tenant hereby releases and waives all claims (except for willful misconduct and negligence) against the other party, and each of the other party's, employees, agents, officers, and directors. Landlord and Tenant will make a reasonable effort to include in their property insurance policy or policies a waiver of subrogation provision whereby any such release does not adversely affect such policies or prejudice any right of the insured party to recover thereunder.

9. INTERFERENCE.

(a) Where there are prior existing radio frequency users on the Landlord's property, the Landlord will provide Tenant with a list of all current radio frequency user(s) (and their frequencies) on the Property to allow Tenant to evaluate the potential for interference. Tenant warrants that its use of the Premises will not interfere with existing third parties on the Premises as long as the current user(s) operate and continue to operate within their 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 for use of Landlord's Property, if such use may in any way adversely affect or interfere with Tenant's Antenna Facility. Landlord will notify Tenant and receive Tenant's written approval prior to granting any third party the right to install and operate communications equipment on Landlord's Property. Nothing contained herein will restrict Tenant nor its successors and assigns from installing and modifying its/their communication equipment.

- (c) Landlord will not use, nor will Landlord permit its employees, tenants, licensees, invitees or agents to use, any portion of the Property or any of Landlord's other properties in any way which interferes with the operations of Tenant or the rights of Tenant under this Agreement. Landlord will cause such interference to cease upon not more than twenty-four (24) hours' notice from Tenant. In the event any such interference does not cease within the aforementioned cure period then the parties acknowledge that Tenant will suffer irreparable injury, and therefore, Tenant will have the right, in addition to any other rights that it may have at law or in equity, for Landlord's breach of this Agreement, to elect to enjoin such interference or to terminate the Agreement upon notice to Landlord.

10. INDEMNIFICATION.

(a) Tenant agrees to indemnify, defend and hold Landlord harmless from and against any direct injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) resulting from the installation, use, maintenance, repair or removal of the Antenna Facilities or the 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 direct injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising from the actions or failure to act of Landlord or its employees or agents, or the 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.

11. WARRANTIES.

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

(b) Landlord represents and warrants that: Landlord (i) solely owns the Property as a legal lot in fee simple, or controls the Property by lease or license, unencumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, agreements of record or not of record, which would adversely affect Tenant's use and enjoyment of the Premises under this Agreement; (ii) 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; (iii) its 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 the Landlord.

12. **ENVIRONMENTAL.** Landlord represents, warrants and agrees that: (i) the Property and its uses and operations complies, and will comply, with all local, state or federal statutes or regulations, or ordinances pertaining to the environment or natural resources ("Environmental Laws"); (ii) the Property has not been used or allowed to be used by Landlord or, to the best of Landlord's knowledge, any previous owner, to emit through ground, water or air, refine, manufacture, generate, produce, store, contain, handle, transfer, process, treat or transport hazardous substances or hazardous wastes, products or pollutants, including without limitation asbestos, oil, petroleum products and their by-products, (collectively called "Hazardous Substance") as defined and regulated under any Environmental Laws; (iii) the Property has never been the subject of any federal or state Hazardous Substance related list; (iv) the Property has never required closure or clean-up of Hazardous Substance; and (v) no asbestos, Polychlorinated Biphenyls or other Hazardous Materials or underground storage tanks exist or have existed or will exist on the Property. Landlord warrants and represents that it will be solely liable for the clean-up and removal of Hazardous Substance and the restoration of the Property related to Hazardous Substances now and in the future existing on the Property except to the extent generated by Tenant. Landlord will defend, indemnify and hold Tenant harmless from and against any and all direct liabilities, damages, losses, costs, assessments, penalties, fines, expenses and fees, including reasonable legal fees, related to Landlord's breach of any of the above representations and warranties.

Tenant represents, warrants and agrees to conduct its activities on the Premises in compliance with all applicable Environmental Laws. Tenant agrees to defend, indemnify and hold harmless Landlord from and against any and all direct liabilities, damages, losses, costs, assessments, penalties, fines, expenses and fees, including reasonable legal fees, that Landlord may suffer due to the existence or discovery of Hazardous Substance on the Property, or released into the environment that are directly caused by Tenant's use of the Premises.

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

13. **ACCESS.** Landlord will be permitted access to the Premises: (i) for emergencies with notification to the Police Department during non-business hours, so long as Tenant is notified as soon thereafter as reasonably practicable; and (ii) with reasonable prior notice to Tenant to make necessary repairs; in all cases provided that Tenant's equipment, technology and proprietary interests remain secure and the Antenna Facility's operation is not adversely affected.

At all times throughout the term of this Agreement, and at no additional charge to Tenant, Landlord will provide, as further set forth in Exhibit 1, Tenant and its employees, agents, and

subcontractors, with twenty-four hour, seven day access to and over the Property, from an open and improved public road to the Premises, for the installation, maintenance and operation of the Antenna Facilities and any utilities serving the Premises. Upon Tenant's request, Landlord will execute an easement evidencing this right. In the event any public utility is unable to use the access or easement provided to Tenant then the Landlord hereby agrees to grant an additional access or easement either to Tenant or to the public utility, for the benefit of Tenant, at no cost to Tenant.

14. REMOVAL/RESTORATION.

(a) All portions of the Antenna Facility brought onto the Property by Tenant will be and remain Tenant's personal property until such time as this lease is terminated or expires. Within one hundred twenty (120) days of the termination of this Agreement, Tenant will remove any equipment located within the town building.

(b) Upon termination or expiration of the Lease, the flagpole will become the property of the town, not including Tenant's antennae, radio equipment, and proprietary technology.

15. MAINTENANCE ; UTILITIES.

(a) Tenant will keep and maintain, at Tenant's expense, its Premises in good condition, reasonable wear and tear and damage from the elements excepted. Landlord will maintain and repair the Property and access thereto, in good and tenable condition, subject to reasonable wear and tear and damage from the elements.

(b) Tenant will be solely responsible for and promptly pay all utilities charges for electricity, telephone service or any other utility used or consumed by Tenant on the Premises. Landlord will fully cooperate with any utility company requesting an easement over, under and across the Property in order for the utility company to provide service to the Tenant. During any application period the Tenant will have the right to temporarily use Landlord's electricity and will pay the Landlord the current local utility rate for electric consumed by Tenant. 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 the Landlord. Tenant will pay on a monthly basis the current local utility company rate for submetered electric, after the meter is read by the Landlord and billed to Tenant. 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.

16. 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 receipt of written notice of such failure to pay from Landlord; or (ii) Tenant's failure to perform any other term or condition under this Agreement within forty-five (45) days after receipt of written notice from Landlord specifying the failure. No such failure, however, will be deemed to exist if Tenant has commenced to

cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Tenant.

(b) The following will be deemed a default by Landlord and a breach of this Agreement. Landlord's failure to perform any term or condition under this Agreement within forty-five (45) days after receipt of written notice from Tenant specifying the failure. No such failure, however, will be deemed to exist if Landlord has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord.

17. **ASSIGNMENT/SUBLEASE.** Landlord may assign this Agreement provided said assignee will assume, recognize and also become responsible to Tenant for, the performance of all of the terms and conditions to be performed by Landlord under this Agreement.

Tenant may assign or sublet all or any part of this Agreement, and all or any rights, benefits, liabilities and obligations hereunder, to (i) any person or business entity which is a parent, subsidiary or affiliate of Tenant; (ii) any person or business entity that controls or is controlled by or under common control with Tenant; (iii) any person or business entity that is merged or consolidated with Tenant or purchases a majority or controlling interest in the ownership or assets of Tenant; or (iv) any person or business entity which is licensed by the FCC to operate a wireless communications business. Upon notification to Landlord by Tenant of any such action, Tenant will be relieved of all future performance, liabilities and obligations under this Agreement to the extent of such assignment or sublease. Tenant may not otherwise assign or sublet this Agreement without Landlord's consent.

18. **NOTICES.** All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notice will be addressed to the parties at the addresses set forth above (as to Tenant, Attn.: Director of System Development; with a copy to AT&T Wireless Services, 15 East Midland Avenue, Paramus, New Jersey 07652, Attn.: Legal Department). Either party hereto may change the place for the giving of notice to it by written notice to the other as provided herein.

19. **SEVERABILITY.** If any term or condition of this Agreement is found unenforceable, the remaining terms and conditions will remain binding upon the parties as though said unenforceable provision were not contained herein. However, if the invalid, illegal or unenforceable provision materially affects this Agreement then the Agreement may be terminated by either party on ten (10) days prior written notice to the other party hereto.

20. **TAXES.** Tenant will pay all personal property taxes assessed on, or any portion of such taxes attributable to, the Antenna Facility. Tenant, upon presentation of sufficient and proper

documentation, will pay, within thirty (30) days, any increase in real property taxes levied against the Property (excluding any additional taxes that relate to the period prior to the Commencement Date, i.e., rollback taxes) which is directly attributable to Tenant's use of the Property, provided Tenant will be entitled to appeal any such increase payable by it. Landlord agrees that it will cooperate with an appeal of such taxes and will promptly pay when due all real estate taxes levied against the Property.

21. CONDEMNATION. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's 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 be entitled to share in the condemnation proceeds in proportion to the values of their respective interests in the Property, which for Tenant will include, where applicable, the value of its Antenna Facility, moving expenses, prepaid rent, and business dislocation expenses. Tenant will be entitled to reimbursement for any prepaid Rent.

22. CASUALTY. If any part of the Antenna Facility or Property is damaged by fire or other casualty so as to render the Premises unsuitable, in Tenant's sole determination, then Tenant may terminate this Agreement by providing written notice to the Landlord, which termination will be effective as of the date of such damage or destruction. Upon such termination, Tenant will be entitled to collect all insurance proceeds payable on account thereof and to be reimbursed for any prepaid Rent.

23. BROKER FEES. Tenant and Landlord each acknowledges and represents to the other that no broker or other person was used by it in connection with this transaction. If any claims, actions or proceedings are brought against either party ("Indemnitee") by reason of any broker, finder or other person claiming to have dealt with the other party ("Indemmitor") in connection with this transaction and/or the Premises, then the Indemmitor hereby agrees to indemnify, hold harmless and defend the Indemnitee from and against all liabilities arising from such claims, and all reasonable costs and expenses incurred in connection therewith (including, without limitation, reasonable legal fees and disbursements). The provisions of this Article will survive the termination of this Agreement.

24. MISCELLANEOUS.

A) AMENDMENT; WAIVER. This Agreement cannot be amended, modified or revised unless done in writing and signed by an authorized agent of Landlord and Tenant. No provision may be waived except in writing signed by the party waiving said right.

B) SHORT FORM LEASE. Either party will, at any time upon fifteen (15) days prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum of Lease. Either party may record this memorandum at any time, in its absolute discretion.

C) BIND AND BENEFIT. The terms and conditions contained in this Agreement will run with the Property and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns.

D) 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.

E) 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.

F) INTERPRETATION. Unless otherwise specified, the following rules of construction and interpretation apply: (a) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (b) use of the term "including" will be interpreted to mean "including but not limited to"; (c) 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; (d) exhibits are an integral part of the Agreement and are incorporated by reference into this Agreement; (e) use of the terms "termination" or "expiration" are interchangeable, and (f) reference to a default will take into consideration any applicable notice, grace and cure periods.

G) ESTOPPEL. Either party will, at any time upon fifteen (15) days prior written notice from the other, execute, acknowledge and deliver to the other a statement in writing (i) certifying that this Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying this Agreement, as so modified, is in full force and effect) and the date to which the rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to such party's knowledge, any uncured defaults on the part of the other party hereunder, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises. Failure to deliver such a statement within such time will be conclusive upon the requesting party that (i) this Agreement is in full force and effect, without modification except as may be properly represented by the requesting party, (ii) there are no uncured defaults in either party's performance, and (iii) no more than one month's rent has been paid in advance.

H) NO OPTION. The submission of this Agreement for examination or consideration does not constitute a reservation of or option for the Premises. This Agreement will become effective as an Agreement only upon the legal execution, acknowledgment and delivery hereof by Landlord and Tenant.

I) EXECUTION DATE. The execution Date shall be the date this Agreement is last signed by all parties.

J) Prior to the start of construction of the flag pole at 17 Common Street, the Lessee will post a construction performance bond in the amount of Fifty thousand dollars (\$50,000) with the Town to be used by the Town to complete any work associated with the installation of the flag pole, as described in

Exhibit 4, not completed within three months of the start of construction. This construction work would not include the installation of wireless telephone communication equipment designed to be installed in the flag pole. The bond will be returned, in full, on satisfactory completion of construction. If the Applicant fails to construct or install wireless communication facility within six months after the Commencement Date, after exhausting opportunities to cure, the Lease shall terminate and the Town shall be free to keep all deposit funds, if any, and to lease or otherwise dispose of the site as it may determine.

- K) The terms and condition of the Request for Proposal dated February 17, 1999, are part and parcel of this Lease with the modifications outlined in the award letter to Attorney Anderson date June 28, 1999.

Wherefore, the parties hereby enter this Agreement as of the date set forth below:

WITNESSES:

Nikol K. Tran
Print Name: Nikol K. Tran

Print Name: _____

"LANDLORD"

Town of Southborough

By: *Janice C. Conlin*
Print Name: Janice C. Conlin
Its: _____
Date: 7/29/99

"TENANT"

AT&T Wireless PCS, Inc., by and
Through its agent, AT&T Wireless Services, Inc.,
D/b/a AT&T Wireless Services

Deborah Morissette
Print Name: Deborah Morissette

Jean Welland
Print Name: Jean Welland

By: *Sam J. Simons*
Print Name: Sam J. Simons
Its: System Development Manager
Date: 8-4-99

STATE OF MASSACHUSETTS)
COUNTY OF Norfolk) ss:

On the 4th day of Aug, 1999, before me personally appeared Samuelson, and acknowledged under oath that he is the Dir, Network Reclamation of AT+T Wireless of _____, the _____ named in the attached instrument, and as such was authorized to execute this instrument on behalf of the Tenant.

Linda J. Grossman
Notary Public
My Commission Expires: 2/19/2004

INDIVIDUAL ACKNOWLEDGMENT

STATE OF MASSACHUSETTS)
COUNTY OF _____) ss:

BE IT REMEMBERED, that on this _____ day of _____, 199__, before me, the subscriber, a person authorized to take oaths in the State of _____, personally appeared _____ who, being duly sworn on his/her/their oath, deposed and made proof to my satisfaction that he/she/they is/are the person(s) named in the within instrument; and I, having first made known to him/her/them the contents thereof, he/she/they did acknowledge that he/she/they signed, sealed and delivered the same as his/her/their voluntary act and deed for the purposes therein contained.

Notary Public
My Commission Expires: _____

PARTNERSHIP ACKNOWLEDGMENT

STATE OF MASSACHUSETTS)
COUNTY OF _____) ss:

I CERTIFY that on _____, 199__, _____ personally came before me and this/these person(s) acknowledged under oath to my satisfaction, that:

(a) this/these person(s) signed, sealed and delivered the attached document as _____ (title) of _____ (name of corporation) a corporation of the State of _____, which is a general partner of the partnership named in this document;

(b) the proper corporate seal of said corporate general partner was affixed; and

(c) this document was signed and delivered by the corporation as its voluntary act and deed as (a) general partner(s) on behalf of said partnership [by virtue of authority from its Board of Directors].

Notary Public
My Commission Expires _____

CORPORATE ACKNOWLEDGMENT

STATE OF MASSACHUSETTS,
COUNTY OF Norfolk, ss:

I CERTIFY that on Aug 4, 1999, Sam Simon
[name of representative] personally came before me and acknowledged under oath that he or she:

(a) is the Dir. Network Realization (title) of ATT Wireless (name
of corporation), the corporation named in the attached instrument.

(b) was authorized to execute this instrument on behalf of the corporation and

(c) executed the instrument as the act of the corporation.

Linda J. Grossman
Notary Public
My Commission Expires: 2/19/2004

STATE OF Massachusetts

) ss:

COUNTY OF Norfolk)

On the 4th day of Aug, 1999, before me personally appeared Sam J. Simons, to me known to be the individual who executed the foregoing instrument and who, being duly sworn, did depose and say that he is the System Development Manager, authorized to act as agent for AT&T Wireless Services, the corporation described in the foregoing instrument; and that he has signed and sealed the instrument with the full authority of the partnership and by order of the board of directors/trustees of the partners of the company.



Notary Public

My Commission Expires:

2/19/2004

INDIVIDUAL ACKNOWLEDGMENT

STATE OF _____)

) ss:

COUNTY OF _____)

BE IT REMEMBERED, that on this ____ day of _____, 199__ before me, the subscriber, a person authorized to take oaths in the State of _____, personally appeared _____ who, being duly sworn on his/her/their oath, deposed and made proof to my satisfaction that he/she/they is/are the person(s) named in the within instrument; and I, having first made known to him/her/them the contents thereof, he/she/they did acknowledge that he/she/they signed, sealed and delivered the same as his/her/their voluntary act and deed for the purposes therein contained.

Notary PublicMy Commission Expires:
_____PARTNERSHIP ACKNOWLEDGMENT

STATE OF Massachusetts

) ss:

COUNTY OF Norfolk

I CERTIFY that on Aug 4, 1999, Sanderson personally came before me and this/these person(s) acknowledged under oath to my satisfaction, that:

(a) this/these person(s) signed, sealed and delivered the attached document as Dir, Network Realization (title) of AT+T Wireless (name of corporation) a corporation of the State of Massachusetts, which is a general partner of the partnership named in this document;

(b) the proper corporate seal of said corporate general partner was affixed; and

(c) this document was signed and delivered by the corporation as its voluntary act and deed as (a) general partner(s) on behalf of said partnership [by virtue of authority from its Board of Directors].

Linda J. Grossman
Notary Public

My Commission Expires

2/19/2004

CORPORATE ACKNOWLEDGMENT

STATE OF _____

COUNTY OF _____, ss:

I CERTIFY that on _____, 199____, _____
[name of representative] personally came before me and acknowledged under oath that he or she:

(a) is the _____ [title] of _____ [name of corporation], the corporation named in the attached instrument,

(b) was authorized to execute this instrument on behalf of the corporation and

(c) executed the instrument as the act of the corporation.

Notary Public

My Commission Expires: _____

JAN-26-2001 10:04

TOWER RESOURCE

781 890 7034 P.18/25

Exhibit 1

PREMISES

Please See Attached.

JAN 26 '01 10:56

781 890 7034

PAGE.18

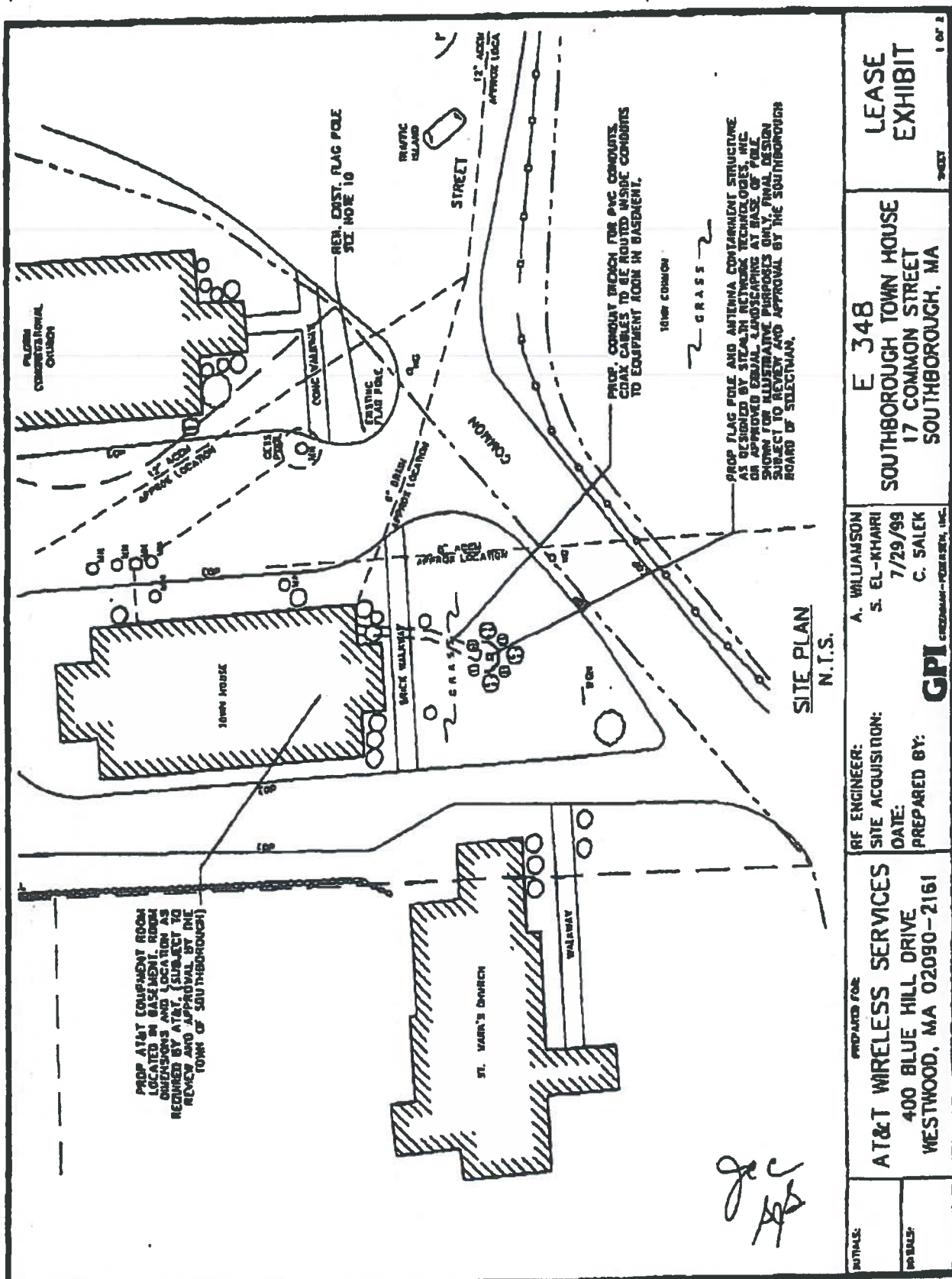


Exhibit 2

PLANS

Shall be Provided at a Later Date by AT&T Wireless Services.

Exhibit 3

RENT PAYMENT SCHEDULE

Annual Lease Payment for One Year of Contract is Eighteen thousand one Dollars (\$18,001.00).
Rental payments during the term of the Lease shall increase by 3% and in no event shall the increase be less than the Consumer Price Index increase for the preceding 12-month period.

A handwritten signature in black ink, appearing to be 'Jaw' or 'Jaw' followed by a stylized flourish.

Exhibit 4

FLAGPOLE CONSTRUCTION DESCRIPTION, AS REQUIRED BY THE LANDLORD.

Please See Attached.

**NON-PRICE REQUIREMENTS AS THEY RELATE TO CONSTRUCTION OF
FLAG POLE.**

(Where applicable, include responses to these items in the draft lease)

1. The height of the flag pole will be a minimum of 110 feet.
2. The pole will be constructed of metal or other materials with a serviceable life of at least 30 years. The installation and design of the pole shall be by a Registered Professional Engineer registered in the Commonwealth of Massachusetts. Describe specifications and materials to be used and include detailed foundation specifications. Include manufacture's design specifications. Plans and design calculations shall be submitted to the Town for its review and approval. Plans and calculations shall be stamped and signed by the designer. The installation shall be monitored by and certified by the design engineer upon completion.
3. The pole will be constructed to withstand all weather conditions conducive to this region. Provide all weather related specifications including ice loading, and wind speed tolerance specifications with and without a flag flying.
4. The pole will be coated with, or constructed with, a smooth, white, gloss or semi-gloss finish that will not require refinishing for the life of the pole. Describe specifications and materials to be used.
5. The design of the pole will provide for an external, or internal if possible, pulley and rope system for the purpose of raising and lowering a flag. This system will be constructed of materials requiring minimum maintenance for the life of the pole. Describe specifications and materials to be used.
6. The design of the flag pole will be of traditional New England design. There will be no external climbing rungs or any attachments to the exterior of the pole other than those needed for the flag flying system. The flag pole will have a base diameter the same or as similar to that of the existing pole as possible with a maximum base diameter of 16 inches. The pole will be terminated at the top with a gold plated copper ball of a proportion appropriate with the pole design. Lightning protection, if applicable, will be internal to the pole.
7. The Lessee will landscape the area at the base of the pole as determined by the Selectmen prior to signing of lease agreement.
8. The flag pole will be manufactured by the Stealth Company or equal.

Joe
Agg

(Flag pole cont.)

9. It will be the responsibility of the Lessee /owner of the flag pole to maintain the pole and its equipment (including the American flag) during the period of the lease. This will include the repair and replacement of the flag, and flying equipment as necessary.
10. ~~There will be no equipment associated with the wireless tower constructed external~~ of the Town House with the exception of the flag pole and lighting necessary to illuminate the flag if flown at night. All cables will be housed inside the pole and will be installed underground into the basement of the Town House. Describe the type and location of lighting to be installed.
11. Proposals will be evaluated with the design of the pole and the materials used being given the highest priority. The existing Town flag pole design will be the basis for this aesthetic evaluation.
12. The cost of electricity needed to illuminate the flag and the maintenance of the lighting equipment will be assumed by the Lessee.
13. The Town will maintain the right to review the performance history of the contractor(s) hired by the Lessee to install the above-described wireless equipment prior to the start of construction. The Town maintains the right to reject contractor(s) not meeting with its standards.
14. The Town will provide an area in the southerly basement area of the Town House for the purpose of housing necessary wireless communication equipment. Exact square footage requirements will be spelled out in the lease. Modifications to the Town House for purposes of the installation of equipment will be approved by the Board of Selectmen prior to any construction.
15. The existing flag pole located on the Town's property, just east of the Town House, will be cut off at ground level and lowered to the ground by crane at the time of the installation of the new pole. It will be placed at a location on site[to be determined by the Selectmen].
16. The Lessee will maintain ownership of the flag pole during the period of the lease.
17. All grounds, sidewalks, steps, etc. moved or disrupted will be restored to its condition prior to construction. The bond provided for the construction of the pole will cover restoration of the site if needed.

End.