

STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL

IN RE:

APPLICATION OF NEW CINGULAR  
WIRELESS PCS, LLC (AT&T) FOR  
CERTIFICATES OF ENVIRONMENTAL  
COMPATIBILITY AND PUBLIC NEED FOR  
THE CONSTRUCTION, MAINTENANCE  
AND OPERATION OF TWO  
TELECOMMUNICATIONS TOWER  
FACILITIES LOCATED OFF OF  
HAYWARDVILLE ROAD AND  
ED WILLIAMS ROAD  
BOTH IN THE TOWN OF  
EAST HADDAM, CONNECTICUT

DOCKET NO. 395

DECEMBER 3, 2009

MOTION FOR A PROTECTIVE ORDER RELATED TO DISCLOSURE  
OF THE EXACT MONTHLY RENT AND FINANCIAL TERMS INCLUDED IN THE  
LEASE AGREEMENT BETWEEN AT&T AND EAST HADDAM FISH & GAME CLUB

In furtherance of the Council's ruling in Docket 366, the Applicant respectfully moves for a protective order related to the disclosure of the exact monthly rent in its lease agreement with East Haddam Fish & Game Club ("Landlord"). The Siting Council's evaluation of AT&T's proposed facility should not be based on the financial terms of AT&T's agreement with the Landlord as it does not relate to the criteria set forth in Section 16-50p of the Connecticut General Statutes. Additionally, AT&T considers the specific amount of rent and other financial terms that these parties agreed upon as proprietary corporate information. It is respectfully submitted that the specific monthly rent of the lease agreement between AT&T and the Landlord as well as other financial terms is not relevant to this proceeding and should be excluded from any public disclosure. In furtherance of this motion, an unredacted copy of the lease pages specifying the monthly rent and other financial terms has been provided in the attached sealed envelope and marked "Proprietary-Confidential" with a redacted copy of the lease attached to this motion and provided in furtherance of Section 16-50o(c) of the Connecticut General Statutes.



Daniel M. Laub, Esq.

Market: Connecticut  
Cell Site Number: SR2292  
Cell Site Name: East Haddam – Route 434/Old Salem Road  
Fixed Asset Number: 10128075

## LEASE AGREEMENT

THIS LEASE AGREEMENT ("**Agreement**"), dated as of the latter of the signature dates below ("**Effective Date**"), is entered into by East Haddam Fishing and Game Club, Inc., a Connecticut corporation, having a mailing address of P.O. Box 59, New London, CT 06320 (hereinafter referred to as "**Landlord**") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 12555 Cingular Way, Suite 1300, Alpharetta, GA 30004 (hereinafter referred to as "**Tenant**").

### BACKGROUND

Landlord owns or controls that certain plot, parcel or tract of land, together with all rights and privileges arising in connection therewith, located at Haywardville Road, in the County of Middlesex, State of Connecticut (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 leases to Tenant a certain portion of the Property containing approximately 10,000 square feet including the air space above such room/cabinet/ground space as described and shown as "Proposed 100' x 100' Lease Area" on attached **Exhibit 1** (the "**Leased Parcel**") and, together with an the right of unrestricted access for ingress, egress and the installation, use and maintenance of utilities along that portion of the Property shown and identified as "Proposed 20 Foot Wide Access and Utility Easement" and for the installation and maintenance of utilities over that portion of the Property shown as proposed 20 foot wide "Utility Easement" on **Exhibit 1** (the "**Easement Parcel**"), and, together with the Leased Parcel, collectively, the "**Premises**").
- 2. PERMITTED USE.** Tenant may use the Leased Parcel for the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair and replacement and upgrade of a not greater than 180 foot monopole design telecommunications tower and related communication fixtures and related equipment cables, accessories and improvements, which may include suitable support structure, associated antennas, equipment shelters or cabinets and fencing and any other items necessary to the successful and secure use of the Leased Parcel (collectively, the "**Communication Facility**") and may use the Easement Parcel for the the installation, construction, maintenance, operation, repair, replacement and upgrade of such utility service necessary for the transmission and reception of communications signals and the operation of the Communication Facility. , Tenant shall have the right to conduct tests to the Premises and to survey and review title to 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, except to the extent that Tenant receives any payment for such mandated application the same shall be subject to the provisions of Paragraph 4(c) herein (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**. For a period of ninety (90) days following the start of construction, Landlord grants Tenant, its subtenants, licensees and sublicensees, the right to use such portions of Landlord's contiguous, adjoining or surrounding property as described on **Exhibit 1** hereto (the "**Surrounding Property**"), as may reasonably be required during construction and installation of the Communications Facility provided, other than necessary for clearing and grading for use of the Surrounding

Property for construction related equipment, there shall be no alteration or construction within the Surrounding Property. 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 main entry point to the equipment shelter or cabinet, and to make improvements, alterations, upgrades or additions appropriate for Tenant's use to the Premises ("**Tenant Changes**"), provided the Easement Parcel shall only be improved by a 12 foot gravel roadway for ingress and egress and electric utility improvements as shown on **Exhibit 1**. Tenant Changes include the right to construct a fence around the Leased Parcel and undertake any other appropriate means to secure the Leased Parcel, at Tenant's expense. Tenant agrees to comply with all applicable governmental laws, rules, statutes and regulations, relating to its use of the Communication Facility on the Property. Tenant has the right to modify, supplement, replace, upgrade, expand the equipment, increase the number of antennas or relocate the Communication Facility within the Leased Parcel at any time during the term of this Agreement. Tenant will be allowed to make such alterations to the Leased Parcel in order to accomplish Tenant's Changes or to insure 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 the Effective Date. The Initial Term will terminate on the fifth (5<sup>th</sup>) annual anniversary of the Effective Date.

(b) This Agreement will automatically renew for four (4) additional five (5) year term(s) (each five (5) year term shall be defined as 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, at least ninety (90) days prior to the end of the fourth (4<sup>th</sup>) extended term, either Landlord or Tenant has not given the other written notice of its desire that the term of this Agreement end at the expiration of the fourth (4<sup>th</sup>) extended term, then upon the expiration of the fourth (4<sup>th</sup>) extended 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 until terminated by either party by giving to the other written notice of its intention to so terminate at least six (6) months prior to the end of any such annual 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. Rent due during any Holdover Term shall be payable as provided for in Paragraph 4 and shall be subject to the three (3%) percent per annum increases as provided in Paragraph 4(b).

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

4. **RENT.**

(a) Commencing on the first day of the month following the date that Tenant commences construction (the "**Rent Commencement Date**"), Tenant will pay the Landlord a monthly rental payment of [REDACTED], at the address set forth above, on or before the fifth (5<sup>th</sup>) day of each calendar month in advance. For any partial months occurring after the Rent Commencement Date, Rent will be prorated. The initial Rent payment will be forwarded by Tenant to Landlord within thirty (30) days after the Rent Commencement Date. In consideration of the entering of this Agreement, and within thirty (30) days of the Effective Date, Tenant shall [REDACTED]

(b) In year two (2) of the Initial Term, and each year thereafter, including throughout any Extension Terms exercised, the monthly rent will [REDACTED] paid during the previous year.

(c) Tenant shall pay [REDACTED]

[REDACTED]

(d) All charges payable under this Agreement such as utilities and taxes shall be billed by Landlord within one (1) year 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 and additional rent which is due and payable without a requirement that it be billed by Landlord. The provisions of the foregoing sentence 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 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, at Tenant's expense, and agrees to reasonably assist Tenant, at no cost to Landlord, all required applications to obtain Governmental 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. Tenant shall endeavor to diligently pursue all Government Approvals and the commencement of construction of the Communication Facility. Tenant shall promptly notify Landlord of the granting or denying of any Government Approval. If the Tenant has failed to obtain all Government Approvals and commence construction of the Communication Facility within twenty-four (24) months of the Effective Date then, at the option of Landlord, this Agreement shall terminate and there shall be no further obligations of the parties hereunder, provided, however, that if the Tenant has been diligently pursuing such Government Approvals, has not been denied any such Government Approval, and has not received a final determination from the Connecticut Siting Council or other agency having jurisdiction, then such twenty-four (24) month period shall be extended for an additional period of six (6) months .

(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 Tenant's choice. In the event Tenant determines, in its sole discretion, due to the title report results or survey results, that the condition of the Premises is unsatisfactory, Tenant will have the right to terminate this Agreement upon notice to Landlord within sixty (60) days of the Effective Date. If Tenant has failed to give such notice to Landlord within such sixty (60) day period this contingency shall be deemed satisfied.

(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 the Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system, design, operations or Governmental Approvals. Tenant shall indemnify and hold Landlord harmless against any loss or damages for personal injury or physical damage to the Premises, the Surrounding Property or the property of third parties resulting from any such test, investigations, or similar activities, and shall be responsible for compliance with all environmental laws, regulations and ordinances during the construction of the Communication Facility. Tenant covenants and agrees to restore the Property to the original condition following any testing hereunder and shall at Landlord's request deliver copies of all reports, tests, studies or information involving the Premises or property of the Landlord. In the event Tenant determines, in its sole discretion, that as a result of any such tests that the condition of the Premises is unsatisfactory, Tenant will have the right to terminate this Agreement upon notice to Landlord within one hundred twenty (120) days of the Effective Date. If Tenant has failed to give such notice to Landlord within the applicable period herein this contingency shall be deemed satisfied.

(d) In the event that as a result of (i) the requirements of any Governmental Approval; (ii) the requirements of a utility provider to the Communication Facility; or (iii) the results of any tests performed on the

Property, the Leased Parcel or Easement Parcel needs to be relocated on the Property, Tenant shall request Landlord's approval of a modification to the location of the Leased Parcel and/or Easement Parcel by written notice to Landlord accompanied by a survey showing such revisions. Such approval shall not be unreasonably withheld or delayed provided there is no material change in the size or burden to the Property or a material increase in the impact to Landlord's use and enjoyment of the Property. Such modification shall be evidenced by an amendment to this Agreement and to the Memorandum of Lease recorded with the East Haddam Land Records.

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 Paragraph 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, other than as a result of Tenant's failure to renew, 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;

(c) by Tenant upon sixty (60) days prior written notice to Landlord if Tenant determines, in its commercially reasonable discretion, that based upon technical considerations, Tenant will be unable to use the Property for its intended purposes under this Agreement, , so long as Tenant pays Landlord a termination fee equal to six (6) months Rent, at the then current rate.

7. **INSURANCE.**

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 minimum limit of liability [REDACTED] 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. The coverage afforded by Tenant's commercial general liability insurance shall apply to Landlord as an additional insured, but only with respect to Landlord's liability arising out of its interest in the Property.

8. **INTERFERENCE.**

(a) Where there are existing radio frequency user(s) on the Property, the Landlord will provide Tenant with a list of all existing radio frequency user(s) 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 radio frequency user(s) on the Property so disclosed by Landlord, 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 for the use of the Property, if such use 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 use, nor will Landlord permit its employees, tenants, licensees, invitees or agents to use, any portion of the Property in any way which interferes 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 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 this Agreement upon notice to Landlord..

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 or 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.

(c) 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.

#### 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 and warrants 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 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; (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 the Landlord; and (v) if the Property is or becomes encumbered by a deed to secure a debt, mortgage or other security interest, Landlord will use best efforts to provide promptly to Tenant a mutually agreeable Subordination, Non-Disturbance and Attornment Agreement.

#### 11. ENVIRONMENTAL.

(a) Landlord represents and warrants that it is unaware of any hazardous substances at the Property as of the date of this Agreement, and, to the best of Landlord's knowledge, 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 environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene condition or other matters as may now or at any time hereafter be in effect, that are now or were related 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 which is related to (i) the indemnifying party's failure to comply with any environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or matters as may now or hereafter be in effect, or (ii) any environmental or industrial hygiene conditions that arise out of or are in any way related to the condition of the Property and activities conducted by the party thereon, unless the environmental conditions are caused by the other party.

(c) The indemnifications of this Paragraph 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 Paragraph 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 or industrial hygiene condition or matter relating to the Property that, in Tenant's reasonable

determination, renders the condition of the Premises or Property unsuitable for Tenant's use, or if Tenant reasonably believes that the leasing or continued leasing of the Premises would expose Tenant to undue risks of government action, intervention or third-party liability, Tenant will have the right, in addition to any other rights it may have at law or in equity, to terminate the Agreement upon notice to Landlord whereupon there shall be no further obligations of the parties under this Agreement.

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 to and over the Easement Parcel, to the Premises, for the installation, maintenance and operation of the Communication Facility and any utilities serving the Premises. 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. Landlord acknowledges that in the event Tenant cannot access the Premises, Tenant shall incur significant damage. If Landlord fails to provide the access granted by this Paragraph 12, such failure shall be a default under this Lease. In connection with such default, in addition to any other rights or remedies available to Tenant under this Lease 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, including, but not limited to, its lost profits, 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 herein are a reasonable approximation of such damages. In the event any public utility is unable to use the access or easement provided to Tenant then the Landlord agrees to grant additional access or an easement either to Tenant or to the public utility, for the benefit of Tenant, at no cost to Tenant. Tenant shall be solely responsible for the removal of snow or ice, or for any improvements necessary to utilize such access.

13. **REMOVAL/RESTORATION.** All portions of the Communication Facility brought onto the Property by Tenant will be and remains Tenant's personal property and, at Tenant's option, may be removed by Tenant at any time during 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 the 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 the Tenant and may be removed by Tenant, subject to the terms hereof, at any time during the Term. Within one hundred twenty (120) days of the termination of this Agreement, Tenant will remove all of Tenant's above-ground improvements, and Tenant will, to the extent reasonable, restore the Premises to its condition at the commencement of the Agreement, reasonable wear and tear and loss by casualty or other causes beyond Tenant's control excepted. Notwithstanding the foregoing, Tenant will not be responsible for the replacement of any trees, shrubs or other vegetation, nor will Tenant be required to remove from the Premises or the Property any foundations or underground utilities.

14. **MAINTENANCE/UTILITIES.**

(a) Tenant will keep and maintain the Premises in good condition, reasonable wear and tear and damage from the elements excepted.

(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 the 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 thirty days of receipt of the usage data and required forms. Failure by Landlord to perform this function will limit utility fee recovery by Landlord to a 12-month period. If Tenant submeters electricity from Landlord, Landlord agrees to give Tenant at least 24 hours advanced 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) hour per day, seven (7) day per week. If the interruption is for an extended period of time, in Tenant's

reasonable determination, the Landlord agrees to allow Tenant the right to bring in a temporary source of power for the duration of the interruption. Landlord will fully cooperate with any utility company requesting an easement over, under and across the Premises in order for the utility company to provide service to the 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.

**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 receipt of 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 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. If Tenant remains in default beyond any applicable cure period, Landlord will have the right to exercise any and all rights and remedies available to it under law and equity.

(b) The following will be deemed a default by Landlord and a breach of this Agreement: (i) failure to provide access to the Premises or to cure an interference problem under Paragraph 8(a) within twenty-four (24) hours after receipt of written notice of such default; or (ii) Landlord's failure to perform any term, condition or breach of any warranty or covenant 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. If Landlord remains in default beyond any applicable cure period, Tenant will have the right to exercise any and all rights available to it under law and equity, including the right to cure Landlord's default and to deduct the costs of such cure from any monies due to Landlord from Tenant.

**16. ASSIGNMENT/SUBLEASE.** This Agreement may be assigned or transferred by the Tenant without any approval or consent of the Landlord to any "Tenant-Related Party," defined as the Tenant's principal, subsidiaries, affiliates, or to any party controlling, controlled by, or under common control with Tenant, or to any entity which acquires all or substantially all of Tenant's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of merger, acquisition or other business organization. Provided that the Tenant-Related Party assumes, recognizes and also agrees to become responsible to the Landlord for the performance of all terms and conditions of this Agreement, upon notification to Landlord by Tenant of any such assignment, Tenant will be relieved of all future performance, liabilities and obligations under this Agreement to the extent of such assignment. Tenant shall have the right to assign this Agreement to any party that is not a Tenant-Related Party upon the written consent of Landlord, which consent shall not be unreasonably withheld or delayed, provided, however, that no such assignment to a party that is not a Tenant-Related Party shall relieve Tenant of its obligations and liabilities under this Agreement unless such assignee party demonstrates that it has either, (i) continuously operated in the business of development and/or ownership of telecommunication towers and facilities for not less than ten (10) years, or (ii) a tangible net worth, as determined in accordance with generally accepted accounting principles, of not less than \$10,000,000.00.

**17. 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:



If to Tenant: New Cingular Wireless PCS, LLC  
Attn: Network Real Estate Administration  
Re: Cell Site #: SR2292; Cell Site Name: East Haddam-Rte 434/Old Salem Road Rd (CT)  
Fixed Asset No: 10128075  
12555 Cingular Way, Suite 1300  
Alpharetta, GA 30004

With a copy to: New Cingular Wireless PCS, LLC  
Attn.: Legal Department  
Re: Cell Site #: SR2292; Cell Site Name: East Haddam-Rte 434/Old Salem Rd (CT)  
Fixed Asset No: 10128075  
340 Mt. Kemble Ave.  
Morristown, NJ 07960-6656

If to Landlord: East Haddam Fishing and Game Club, Inc.  
P. O. Box 59  
New London, CT 06320

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.

In the event of a change in ownership, transfer or sale of the Property, within ten (10) days of such transfer, Landlord will send the below documents to Tenant. In the event Tenant does not receive such appropriate documents, Tenant shall not be responsible for any failure to pay the current landlord

- a. Old deed to Property
- b. New deed to Property
- c. Bill of Sale or Transfer
- d. Copy of current Tax Bill
- e. New W-9
- f. New Payment Direction Form
- g. Full contact information for new Landlord including all phone numbers

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, provided that any award to Tenant will not diminish Landlord's recovery. Tenant will be entitled to reimbursement for any prepaid Rent on a prorata basis.

19. **CASUALTY.** Landlord will provide notice to Tenant of any casualty affecting the Property within forty-eight (48) hours of the casualty. If any part of the Communication 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 to

Tenant on account thereof and to be reimbursed for any prepaid Rent on a prorata basis. If notice of termination is given, or if Landlord or Tenant undertake to rebuild the Communications Facility, Landlord agrees to use its reasonable efforts to permit Tenant to place temporary transmission and reception facilities on the Property at no additional Rent until such time as Tenant is able to activate a replacement transmission facility at another location or the reconstruction of the Communication Facility is completed.

**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 and 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.** Landlord shall be responsible for payment of all ad valorem taxes levied upon the lands, improvements and other property of Landlord. Tenant shall be responsible for all taxes levied upon Tenant's leasehold improvements (including Tenant's equipment building and tower) on the Premises. Tenant shall reimburse Landlord, as additional rent for any increase in ad valorem real estate taxes levied against the Property which are directly attributable to the improvements constructed by Tenant on the Property, including without limitation, any increase in real property taxes of the Property resulting from a loss of classification of such Property as farmland, open-space land and/or forest land resulting from Tenant's use of the Premises and which such taxes are not separately levied or assessed by the taxing authorities against Tenants or the improvements of Tenant. Landlord shall provide Tenant with copies of all assessment notices on or including the Premises immediately upon receipt, but in no event later than thirty (30) days after receipt by Landlord. If Landlord fails to provide such notice within such time frame, Landlord shall be responsible for all increases in taxes for the year covered by the assessment. Tenant shall have the right to contest, in good faith, the validity or the amount of any tax or assessment levied against the Premises by such appellate or other proceedings as may be appropriate in the jurisdiction, provided Tenant shall pay the minimum amount of any such tax required by law to avoid the accrual of interest during such appeal and shall pay any unpaid tax and accrued interest owing at the conclusion of such appeal. This right shall include the ability to institute any legal, regulatory or informal action in the name of Landlord, Tenant, or both, with respect to the valuation of the Premises. Landlord shall cooperate at no expense to the Landlord in the institution and prosecution of any such proceedings and will execute any documents required therefore. The expense of any such proceedings shall be borne by Tenant and any refunds or rebates secured as a result of Tenant's action shall belong to Tenant.

**22. SALE OF PROPERTY/**

(a) If Landlord, at any time during the Term of this Agreement, decides to sell, subdivide or rezone any of the Premises, 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 sale, subdivision or rezoning shall be subject to this Agreement and Tenant's rights hereunder. 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, any such testing to be at the expense of Landlord or Landlord's prospective purchaser, and not Tenant. 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. Landlord shall not be prohibited from the selling, leasing or use of any of the Property or the Surrounding Property for non-wireless communication use. In the event the Property is transferred, the new landlord shall have a duty at the time of such transfer to provide Tenant with a completed IRS Form W-9, or its equivalent, and other related paper work to effect a transfer in Rent to the new landlord. The provisions of this Paragraph 22 shall in no way limit or impair the obligations of Landlord under Paragraph 8 above.

23. **MISCELLANEOUS.**

(a) **Amendment/Waiver.** This Agreement cannot be amended, modified or revised unless done in writing and signed by an authorized agent of the Landlord and an authorized agent of the Tenant. No provision may be waived except in a writing signed by both parties.

(b) **Memorandum/Short Form Lease.** 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. Either party may record this Memorandum or Short Form of Lease 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 bind 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 with respect to the subject matter of this Agreement.

(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: (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 the Agreement and are incorporated by reference into this Agreement; (v) use of the terms "termination" or "expiration" are interchangeable; and (vi) reference to a default will take into consideration any applicable notice, grace and cure periods; and (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.

(g) **Estoppel.** Either party will, at any time upon twenty (20) business 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 encumbrance of the Premises. The requested party's failure to deliver such a statement within such time will be conclusively relied upon by 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) **W-9.** 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.

(i) **No Electronic Signature/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.

(j) **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) business days prior written notice to the other party hereto.

(k) **Counterparts.** This Agreement may be executed in two (2) or more counterparts, all of which shall be considered on and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties. It being understood that all parties need not sign the same counterpart.

**[SIGNATURES APPEAR ON THE NEXT PAGE]**

IN WITNESS WHEREOF, the parties have caused this Agreement to be effective as of the last date written below.

WITNESSES:

"LANDLORD"

Gregory A. Bykos  
Print Name: GREGORY A. BYKOS

A. Wright Palmer  
Print Name: A. WRIGHT PALMER

East Haddam Fishing and Game Club, Inc.

By: [Signature]  
Print Name: Peter C. [Signature]  
Its: President  
Date: 7 March 2009

"TENANT"

M. Elisabeth Burke  
Print Name: M. ELISABETH BURKE

[Signature]  
Print Name: Connie Wappel

New Cingular Wireless PCS, LLC,  
By: AT&T Mobility Corporation  
Its: Manager

By: [Signature]  
Print Name: James R. Hoffmann  
Its: Executive Director  
Network Operations - New England

Date: 3/13/09

[ACKNOWLEDGMENTS APPEAR ON THE NEXT PAGE]

TENANT ACKNOWLEDGMENT

STATE OF Massachusetts  
COUNTY OF Middlesex ss:

On the 13 day of March 2009 before me personally appeared James R. Hoffman, and acknowledged under oath that he is the Exec Dir Network of NavCrystals Wireless LLC, the Tenant named in the attached instrument, and as such was authorized to execute this instrument on behalf of the LLC.

Consuelo M Wappel  
Notary Public: CONSUELO M. WAPPEL  
My Commission Expires: Notary Public  
Commonwealth of Massachusetts  
My Commission Expires August 24 2012

LANDLORD ACKNOWLEDGMENT

FOR CORPORATION:

East Haddam Fishing & Game Club, Inc.,  
a Connecticut corporation

Witnessed by:  
Rory C. Baker  
Name: Harriet A. Boyko  
Annaling Palmer  
Name: ANNALING PALMER

By: Harriet A. Boyko  
Name: Harriet A. Boyko  
Title: President

STATE OF Connecticut  
COUNTY OF Hartford

The foregoing instrument was acknowledged before me this 9th day of March, 2009, by Peter C. Johnson, President of East Haddam Fishing & Game Club, Inc., a Connecticut corporation, on behalf of the corporation.

Harriet Boyko  
Name: HARRIET BOYKO  
Notary Public  
Serial No.: 64913  
My Commission Expires: 10/31/2012

[NOTARIAL SEAL]

**EXHIBIT 1**

**DESCRIPTION OF PREMISES**

Page 1 of 4

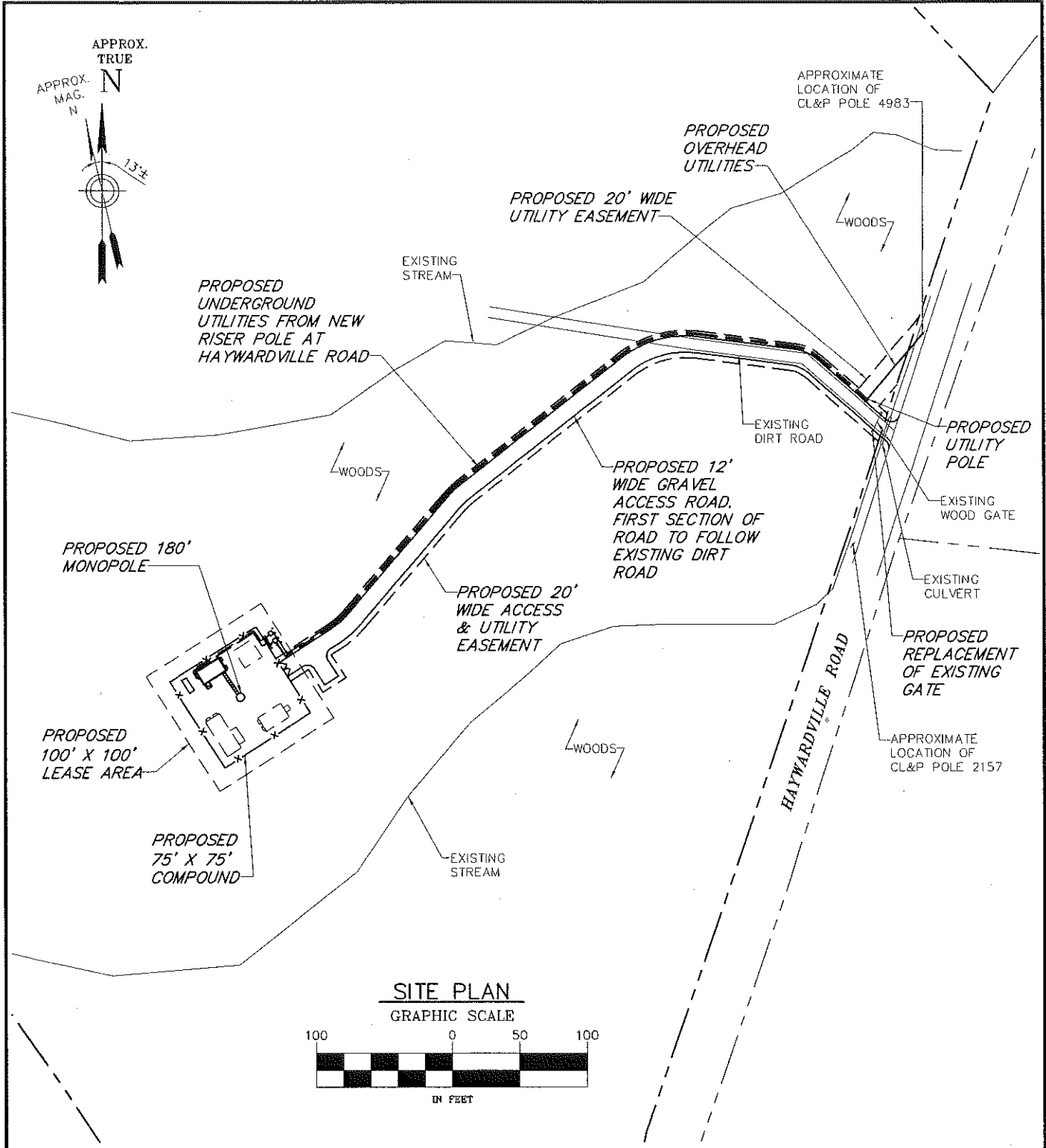
to the Agreement dated \_\_\_\_\_, 2009, by and between East Haddam Fishing and Game Club, Inc., a Connecticut corporation, as Landlord, and New Cingular Wireless PCS, LLC, a Delaware liability company, as Tenant.

The Premises are described and/or depicted as follows:

See Attached

**Notes:**

1. 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.



NOTE:  
 PROPOSED CINGULAR WIRELESS INSTALLATION SHOWN IS ONLY APPROXIMATE. EXACT LOCATIONS AND DETAILS WILL BE DETERMINED BY FINAL ENGINEERING DESIGN.

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 2139 Silas Deane Highway, Suite 212 - Rocky Hill, CT 06067-2336  
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NEW CINGULAR WIRELESS PCS, LLC  
 500 ENTERPRISE DRIVE, ROCKY HILL, CT 06067

SR2292  
 EAST HADDAM FISHING & GAME CLUB  
 HAYWARDVILLE ROAD  
 EAST HADDAM, CT 06423  
 MIDDLESEX COUNTY

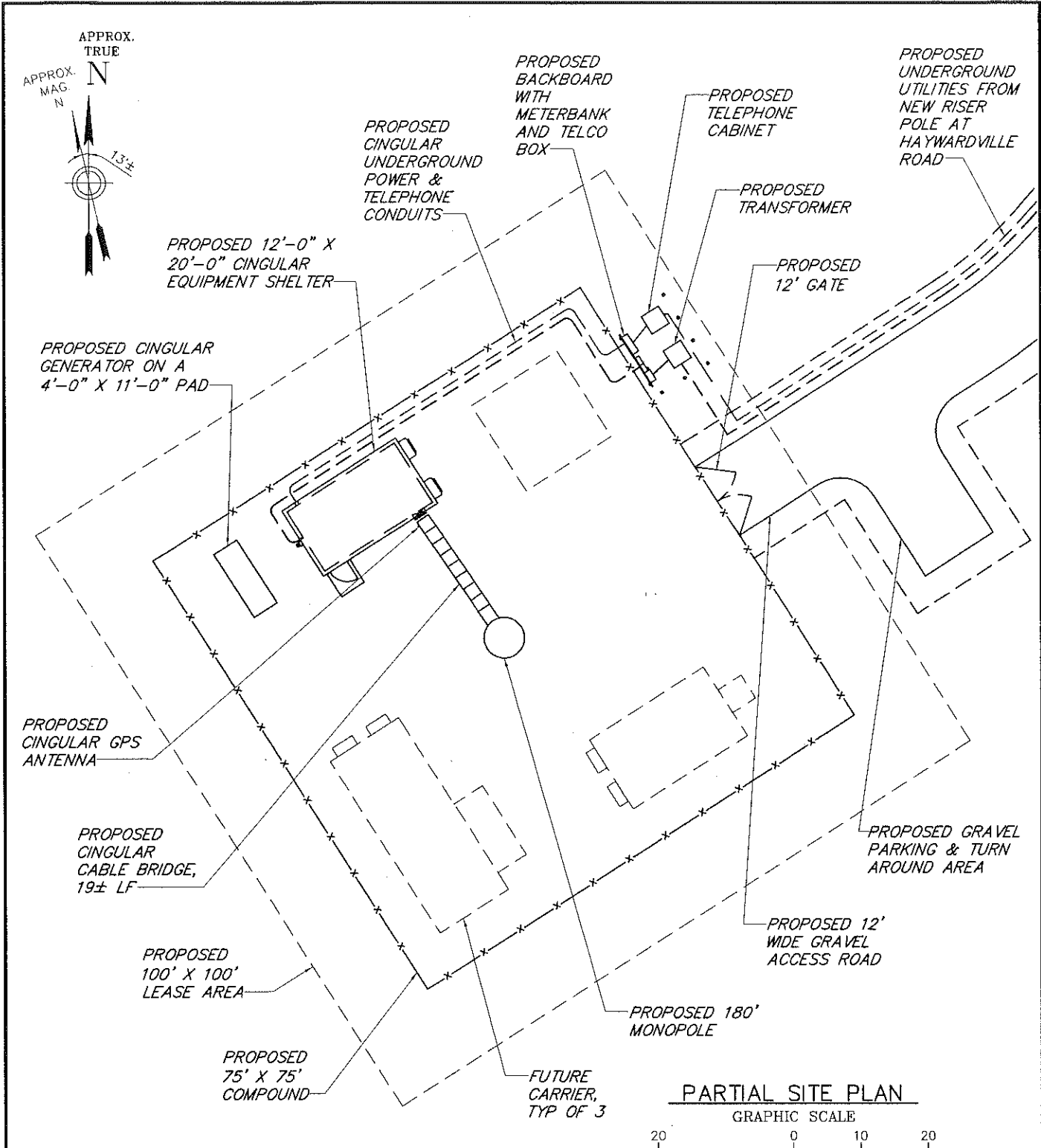
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1 OF 3

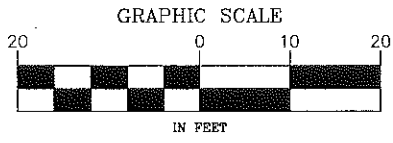
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**PARTIAL SITE PLAN**



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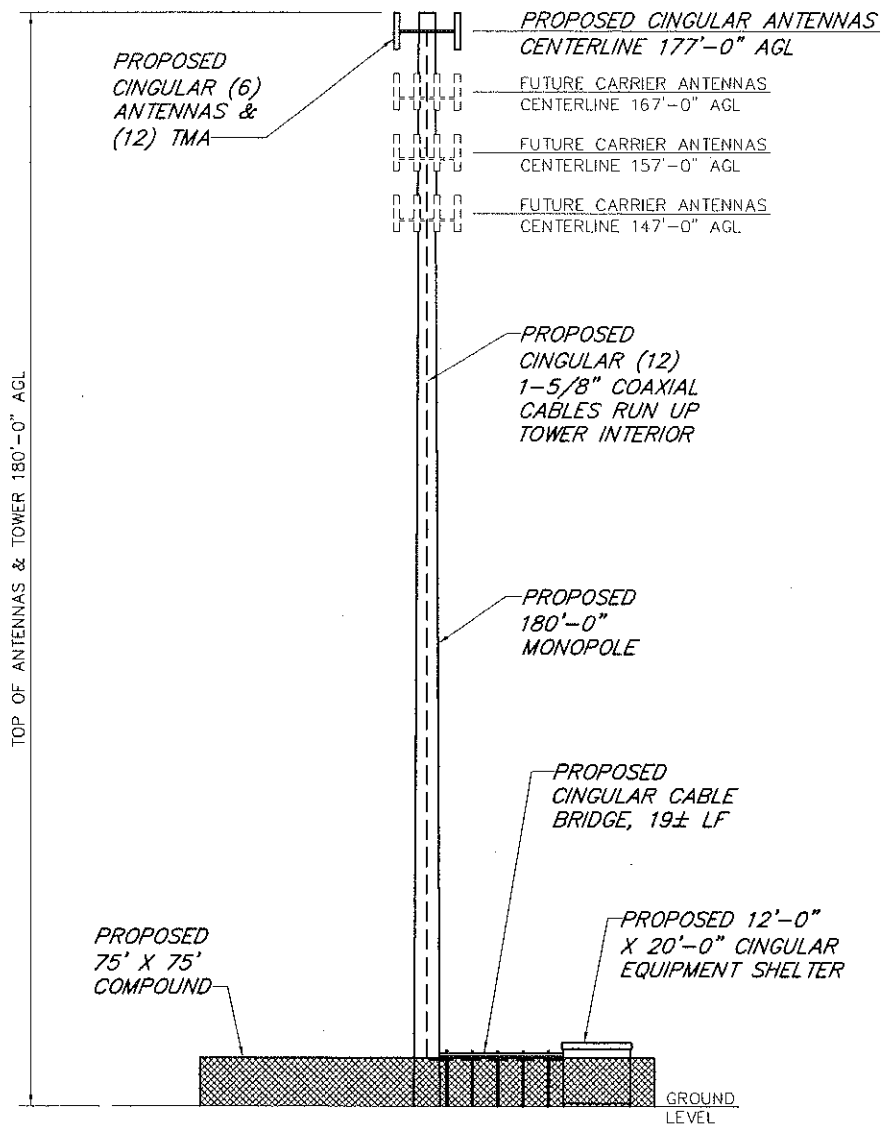
**CHA**  
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 HAYWARDVILLE ROAD  
 EAST HADDAM, CT 06423  
 MIDDLESEX COUNTY  
 CHA PROJ. NO. - 18301-1021

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**TOWER ELEVATION**  
NO SCALE

NOTE:  
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