R-08-110

RESOLUTION

AUTHORIZING THE CITY OF NASHUA TO ENTER INTO A TOWER COMMUNICATIONS SITE LEASE AGREEMENT WITH METROPCS MASSACHUSETTS AT MINE FALLS PARK (10 WHIPPLE STREET)

CITY OF NASHUA

In the Year Two Thousand and Eight

RESOLVED *by the Board of Alderman of the City of Nashua that* the City is authorized to enter into the attached Tower Communications Site Lease Agreement with MetroPCS Massachusetts for space at Mine Falls Park (10 Whipple Street). The rental amount is $1,700.00 per month, and shall be increased annually by three percent. The term is for five years, with the lessee having the right to extend the term for four additional terms of five years each.

LEGISLATIVE YEAR 2008

RESOLUTION: R-08-110

PURPOSE: **Authorizing the City of Nashua to enter into a tower communications site lease agreement with MetroPCS Massachusetts at Mine Falls Park (10 Whipple Street)**

SPONSOR(S): **Alderman-at-Large David W. Deane**

COMMITTEE ASSIGNMENT:

FISCAL NOTE: $1,700 per month revenue to the City.

ANALYSIS

This resolution authorizes the City of Nashua to enter into a long-term lease with MetroPCS Massachusetts for a tower communications site at Mine Falls Park (10 Whipple Street).

Approved as to form: **Office of Corporation Counsel**

By: Dorothy Clarke

Date: August 6, 2008

TOWER COMMUNICATIONS SITE LEASE AGREEMENT

THIS TOWER COMMUNICATIONS SITE LEASE AGREEMENT ("Lease Agreement") dated as of _____, is made by and between MetroPCS Massachusetts, LLC, a Delaware limited liability company ("Lessee") and the City of Nashua, New Hampshire, a municipal corporation in the State of New Hampshire ("Lessor").

RECITALS

This Lease Agreement is entered into based upon the following facts, circumstances and understandings:

A. Lessor owns certain real property located at Sheet E, Lot 1487, commonly known as Mine Falls Park, located in the City of Nashua, County of Hillsborough, State of New Hampshire and having an address of 10 Whipple Street ("Lessor's Real Property"). Lessee desires to lease a portion of space located within Lessor's Real Property for the placement of a wireless communications site, together with any necessary easements over portions of Lessor's Real Property and/or shared use of Lessor's easements over other real property necessary for Lessee's access and utilities to the leased area (altogether the "Premises"), as described and/or depicted on Exhibit "A" attached hereto. Lessor represents and warrants that it has the right to grant the rights set forth herein and that it has full rights of ingress to and egress from the Premises from a public roadway.

B. Lessee desires to construct and operate a wireless communications site at the Premises as part of its communications network.

C. Based on the Premises set forth herein and on the terms and conditions set forth below, Lessor is willing to lease the Premises to Lessee for Lessee's proposed use subject to the terms and conditions of this Lease Agreement.

WHEREFORE, in consideration of the Premises set forth above and the terms and conditions set forth herein, the parties, intending to be legally bound, hereto agree as follows:

1. **Grant of Lease.** Lessor hereby leases to Lessee the Premises for Lessee's proposed use, subject to the following terms and conditions for the Term.

2. **Permitted Uses.** The Premises may be used by Lessee for the operation of a wireless communications site. Under this Lease Agreement, Lessee may install, place, alter, upgrade, repair, replace and maintain on the Premises such antennas, radio transmitting and receiving equipment, conduits, wires, batteries, back-up generators, utility lines and facilities, supporting structures, storage facilities, telephone facilities, microwave equipment, and related equipment (collectively "Lessee's Facilities") as Lessee deems necessary for the operation of its wireless communications site at the Premises or as required by any county, state or federal agency or department. Further, Lessee may perform construction, alterations, upgrades, maintenance, repairs, additions to, and replacement of Lessee's Facilities as necessary and appropriate for its ongoing business and has the right to do all work

necessary to prepare, modify and maintain the Premises to accommodate Lessee's Facilities and as required for Lessee's communications operations at the Premises.

3. **Conditions Precedent: Prior Approvals.** This Lease Agreement is conditioned upon Lessee obtaining all governmental licenses, permits and approvals enabling Lessee to construct and operate wireless communications facilities on the Premises without conditions which are not standard or typical for premises where wireless communications facilities are located. Lessor agrees to cooperate with Lessee's requests for Lessor's signatures as real property owner on permit applications, for allowing site inspections by governmental agencies required in connection with reviewing permit applications, and for assistance in obtaining such necessary approvals, provided that such cooperation and assistance shall be at no expense to Lessor.

4. **Term.** The term of this Lease Agreement ("Term") shall be five (5) years commencing on the date Lessee begins construction of Lessee's Facilities on the Premises ("Commencement Date"). Lessee shall promptly deliver written notice to Lessor of the Commencement Date. Lessee shall have the right to extend the Term of this Lease Agreement for four (4) additional terms (each a "Renewal Term") of five (5) years each. The terms and conditions for each Renewal Term shall be the same terms and conditions as in this Lease Agreement, except that the Rent shall be increased as set forth hereinbelow. This Lease Agreement shall automatically be extended for each successive five (5) year Renewal Term unless Lessee notifies Lessor in writing of Lessee's intention not to extend this Lease Agreement at least thirty (30) days prior to the expiration of the first Term or any Renewal Term.

5. **Rent.** Within forty-five (45) days of the Commencement Date, Lessee shall pay Lessor, as rent, the sum of One Thousand Seven Hundred Dollars ($1,700.00) ("Rent") per month. Rent shall be payable on the first day of each month, in advance, to Lessor or Lessor's alternate payee specified in Section 23, Notices and Deliveries. If the Commencement Date of this Lease Agreement is other than the first day of a calendar month, Lessee shall prorate Rent for the remainder of the calendar month in which the Term commences and include such partial Rent payment with the Rent due for the succeeding month's Rent, thereafter Lessee shall pay a full month's Rent on the first day of each calendar month, except that payment shall be prorated for the final fractional month of this Lease Agreement, or if this Lease Agreement is terminated before the expiration of any month for which Rent should have been paid. On every first anniversary of the Commencement Date, and throughout the duration hereof as renewed and extended, Rent shall be increased annually by three percent (3%).

6. **Due Diligence Contingency and Pre-Commencement Date Access to Premises.** Conditioned upon reasonable coordination with the Lessor and no interference with activities at Mine Falls Park, Lessee shall have the right following the full execution of this Lease Agreement and prior to the Commencement Date, to enter the Premises for the purpose of making necessary inspections, taking measurements and conducting engineering surveys (and soil tests where applicable) and other reasonably necessary tests to determine the suitability of the Premises for Lessee's Facilities ("Due Diligence"), and for the purpose of preparing the Premises for the installation or construction of Lessee's Facilities. During any Due Diligence activities or pre-construction work, Lessee shall have insurance which covers such activities as set forth in Section16, Insurance. Lessee will notify Lessor of any proposed tests, measurements or pre-construction work and will coordinate the scheduling of such activities with Lessor. If in the course of its Due Diligence Lessee determines that the Premises are unsuitable for Lessee's contemplated use, then Lessee shall have the right to terminate this Lease Agreement prior to the

Commencement Date by delivery of written notice thereof to Lessor as set forth in Section 13, Termination.

7. **Ongoing Access to Premises.** Throughout the Term and any Renewal Term of this Lease Agreement, Lessee shall have the right of access to the Premises for its employees and agents twenty-four (24) hours a day, seven (7) days per week, conditioned upon reasonable coordination with the Lessor and no interference with activities at Mine Falls Park, at no additional charge to Lessee. In exercising its right of access to the Premises herein, Lessee agrees to cooperate with any reasonable security procedures utilized by Lessor at Lessor's Real Property and further agrees not to disturb or interfere with the business or other activities of Lessor or of other tenants or occupants of Lessor's Real Property. Lessor shall maintain all existing access roadways or driveways extending from the nearest public roadway to the Premises in a manner sufficient to allow for Lessee's access to the Premises. Lessor shall be responsible for maintaining and repairing such roadways and driveways at Lessor's sole expense, except for any damage caused by Lessee's use of such roadways or driveways. If Lessee causes any such damage, Lessee shall promptly repair the same at its sole expense.

8. **Lessee's Work, Maintenance and Repairs.** All of Lessee's construction and installation work at the Premises shall be performed at Lessee's sole cost and expense and in a good and workmanlike manner. Lessee shall submit copies of the site plan and specifications to the Lessor for prior approval, which approval will not be unreasonably withheld, conditioned or delayed. Lessor shall give such approval or provide Lessee with its requests for changes within five (5) business days of Lessor's receipt of Lessee's plans. If Lessor does not provide such approval or request for changes within such five (5) business day period, Lessor shall be deemed to have approved the plans. Lessor shall not be entitled to receive any additional consideration in exchange for giving its approval of Lessee's plans. Lessee shall maintain Lessee's Facilities and the Premises in neat and safe condition in compliance with all applicable codes and governmental regulations. Lessee shall not be required to make any repairs to the Premises except for damages to the Premises caused by Lessee, its employees, agents, contractors or subcontractors.

9. **Title to Lessee's Facilities.** Title to Lessee's Facilities and any equipment placed on the Premises by Lessee shall be held by Lessee. All of Lessee's Facilities shall remain the property of Lessee and are not fixtures. Lessor waives any and all lien rights it may have, statutory or otherwise concerning the Lessee Facilities or any portion thereof and Lessee has the right to remove all or any portion of Lessee's Facilities at its sole expense on or before the expiration or termination of this Lease Agreement, provided that Lessee repairs any damage caused to the Premises or Lessor's Real Property by Lessee's removal. Lessor acknowledges that Lessee may enter into financing arrangements including promissory notes and financial and security agreements for the financing of Lessee's Facilities (the "Collateral") with a third party financing entity and may in the future enter into additional financing arrangements with other financing entities. In connection therewith, Lessor (i) consents to the installation of the Collateral to the extent that the Collateral is part of the approved Lessee's Facilities; (ii) disclaims any interest in the Collateral, as fixtures or otherwise, whether arising at law or otherwise, including, but not limited to any statutory landlord's lien ; and (iii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any Rent due or to become due and that such Collateral may be removed at any time without recourse to legal proceedings.

10. **Utilities.** Lessee shall have the right to install utilities, including, the installation of necessary conduit and sleeving at Lessee's expense, and to improve the present utilities on or near the

Premises (including, but not limited to the installation of emergency back-up power). Subject to Lessor's approval of the location, which approval shall not be unreasonably withheld, conditioned, or delayed, Lessee shall have the right to place utilities on (or to bring utilities across) Lessor's Real Property in order to service the Premises and Lessee's Facilities. Upon Lessee's request, Lessor shall execute recordable easement(s) evidencing this right. Lessee shall fully and promptly pay for all utilities furnished to the Premises for the use, operation and maintenance of Lessee's Facilities.

11. **Interference with Communications.** Lessee's Facilities and operations shall not interfere with the communications configurations, frequencies or operating equipment which exist on Lessor's Real Property on the effective date of this Lease Agreement ("Pre-existing Communications"), and Lessee's Facilities and operations shall comply with all non-interference rules of the Federal Communications Commission ("FCC"). In the event that the Lessee's Facilities are shown to cause interference with Pre-existing Communications, Lessor shall provide written notice to Lessee of such interference and Lessee shall be responsible for correcting such interference. Lessor shall not, nor shall Lessor permit any other tenant or occupant of any portion of Lessor's Real Property to, engage in any activities or operations within Lessor's Real Property which interfere with the communications operations of Lessee described in Section 2, above. Such interference with Lessee's communications operations shall be deemed a material breach by Lessor, and Lessor shall have the responsibility to promptly terminate said interference. In the event any such interference does not cease promptly, the parties acknowledge that continuing interference will cause irreparable injury to Lessee, and therefore Lessee shall have the right to bring a court action to enjoin such interference or to terminate this Lease Agreement immediately upon notice to Lessor. Lessor agrees to incorporate equivalent provisions regarding non-interference with Pre-existing Communications into any subsequent leases, licenses or rental agreements with other persons or entities for any portions of Lessor's Real Property.

12. **Taxes.** Lessee shall pay all personal and real property taxes that may be assessed upon the Premises as a direct cause of Lessee's use of the Premises. .

13. **Termination.** This Lease Agreement may be terminated by Lessee effective immediately without further liability by delivery of written notice thereof to Lessor prior to the Commencement Date for any reason resulting from Lessee's Due Diligence, or if a title report obtained by Lessee for Lessor's Real Property shows any defects of title or any liens or encumbrances which may materially affect Lessee's use of the Premises for Lessee's intended use, or for any other or no reason. This Lease may also be terminated without further liability on thirty (30) days prior written notice as follows: (i) by either party upon a default of any covenant, condition, or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default; (ii) by Lessee if it does not obtain licenses, permits or other approvals necessary to the construction or operation of Lessee's Facilities ("Permits"), is unable to obtain such Permits without conditions which are not standard or typical for premises where wireless communications facilities are located or is unable to maintain such licenses, permits or approvals despite reasonable efforts to do so; (iii) by Lessee if Lessee is unable to occupy or utilize the Premises due to ruling or directive of the FCC or other governmental or regulatory agency, including, but not limited to, a take back of frequencies; (iv) by Lessee if Lessee determines, in its sole discretion, that the Premises are not appropriate for its operations for, environmental or, technological reason, including, without limitation, signal strength or interference; or (v) any other reason upon three (3) months prior written notice. Other than as stated herein, Lessor shall not have the right to terminate, revoke or cancel this Lease Agreement. Upon the expiration, cancellation or termination of this Lease Agreement, Lessee shall remove its equipment from the Premises and surrender the Premises

in good condition, ordinary wear and tear and damage from casualty excepted; however, Lessee shall not be required to remove any frames or supports for Lessee's Facilities or conduits which have been installed by Lessee. In the event the equipment is not removed within three (3) months of expiration, cancellation or termination of this Lease Agreement, the equipment may be removed by the Lessor and the cost of removal assessed against the Lessee. To secure Lessee's obligation for the removal of Lessee's facilities, Lessee shall deliver to Lessor a surety bond in the amount Ten Thousand Dollars ($10,000.00), naming Lessor as obligee. Should Lessee fail to abide by the terms and conditions for removal of the Installation at the expiration or earlier termination of this Agreement, or at such time as the parties may mutually agree in writing, Lessor shall notify the surety of such termination or recovery of possession and require such surety to pay to Landlord pursuant to such bond an amount equal to Ten Thousand Dollars ($10,000.00). The bond certificate shall be submitted to the Lessor at least ten (10) days prior to the Commencement Date.

14. Destruction of Premises. If the Premises or Lessor's Real Property is destroyed or damaged so as in Lessee's judgment to hinder its effective use of Lessor's Property for the ongoing operation of a wireless communications site, Lessee may elect to terminate this Lease Agreement without further liability of Lessee as of the date of the damage or destruction by so notifying Lessor no more than thirty (30) days following the date of such damage or destruction. In the event that Lessee elects to terminate this Lease Agreement, all rights and obligations of the parties which do not survive the termination of this Lease Agreement shall cease as of the date of the damage or destruction.

15. Condemnation. If a condemning authority takes all of Lessor's Real Property, or a portion which in Lessee's reasonable opinion is sufficient to render the Premises unsuitable for Lessee's ongoing operation of a wireless communications site, then this Lease Agreement shall terminate without further liability of Lessee as of the date when possession is delivered to the condemning authority. In any condemnation proceeding each party shall be entitled to make a claim against the condemning authority for just compensation recoverable under applicable condemnation law. Sale of all or part of the Premises to a purchaser with the power of eminent domain in the face of the exercise of its power of eminent domain shall be treated as a taking by a condemning authority.

16. Insurance. Lessee shall maintain the following insurance: (1) Commercial General Liability with limits of One Million Dollars ($1,000,000.00) per occurrence, (2) Automobile Liability with a combined single limit of One Million Dollars ($1,000,000.00) per accident, (3) Workers' Compensation as required by law, and (4) Employer's Liability with limits of One Million Dollars ($1,000,000.00) per occurrence. Lessor, at Lessor's sole cost and expense, shall procure and maintain on the Property, bodily injury and property damage insurance with a combined single limit of at least One Million Dollars ($1,000,000.00) per occurrence. Such insurance shall insure, on an occurrence basis, against liability of Lessor, its employees and agents arising out of or in connection with Lessor's use, occupancy and maintenance of the Property. Each party shall be named as an additional insured on the other's policy. Each party shall provide to the other a certificate of insurance evidencing the coverage required by this paragraph within thirty (30) days of the Commencement Date. Each party waives any rights of recovery against the other for injury or loss due to hazards covered by their property insurance, and each party shall require such insurance policies to contain a waiver of recovery against the other.

17. Assignments or Transfers. Lessor may assign or transfer this Lease Agreement to any person or entity, provided that such assignee or transferee agrees in writing to fulfill the duties and obligations of the Lessor in said Lease Agreement, including the obligation to respect Lessee's rights to

nondisturbance and quiet enjoyment of the Premises during the remainder of the Term and any Renewal Term hereof. Lessee may assign or transfer this Lease Agreement without prior approval by Lessor to any of Lessee's partners, shareholders, members, subsidiaries, or affiliates, to any entity in which Lessee or any of its affiliates holds an ownership interest, to a person or entity acquiring by purchase, merger or operation of law a majority of the value of the assets of Lessee or to any entity whose business is the ownership of wireless communications facilities. Upon such assignment, Lessee shall be relieved of all liabilities and obligations hereunder and Lessor shall look solely to the assignee for performance under this Lease Agreement and all obligations hereunder. Except as otherwise provided for herein, Lessee shall not assign or transfer this Lease Agreement to any other person or entity without the prior written approval of Lessor, which approval shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding anything to the contrary contained in this Agreement, Lessee may assign, mortgage, pledge, hypothecate or otherwise transfer without consent its interest in this Agreement to any financing entity, or agent on behalf of any financing entity to whom Lessee (i) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by loans, bonds, debentures, notes or similar instruments, or (iii) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof.

18. **Subleases.** Lessee at its sole discretion shall have the right, without any need to obtain the consent of Lessor, to license or sublease all or a portion of the Premises and the Lessee's Facilities to others whose business includes the provision of wireless communication services. Lessee's licensee(s) and sublessee(s) shall be entitled to all rights of ingress and egress to the Premises and the right to install utilities on the Premises as if said licensee or sublessee were the Lessee under this Lease Agreement.

19. **Nondisturbance and Quiet Enjoyment; Subordination; Estoppel Certificates.**

(a) Lessor covenants and warrants to Lessee that (i) it has good and unencumbered title to the Lessor's Real Property free and clear of any liens or mortgages which will materially interfere with Lessee's rights to or use the Premises; (ii) that the execution and performance of this Lease Agreement by Lessor will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreement binding on Lessor; and (iii) That so long as Lessee is not in default under this Lease Agreement, Lessee shall be entitled to quiet enjoyment of the Premises during the term of this Lease Agreement or any Renewal Term, and Lessee shall not be disturbed in its occupancy and use of the Premises.

(b) This Lease Agreement shall be subordinate to each and every deed of trust, mortgage or other security instrument which may now or hereafter affect Lessor's Real Property and to any renewals, extensions, supplements, amendments, modifications or replacements thereof. In confirmation of such subordination, Lessor and Lessee shall execute and deliver promptly a commercially reasonable certificate of subordination that the other may reasonably request, provided that such certificate acknowledges that this Lease Agreement remains in full force and effect, recognizes Lessee's right to nondisturbance and quiet enjoyment of the Premises so long as Lessee is not in default under this Lease Agreement, and only contains true and accurate statements. If any mortgagee or lender succeeds to Lessor's interest in Lessor's Real Property through a foreclosure proceeding or by a deed in lieu of foreclosure, Lessee shall attorn to and recognize such successor as Lessor under this Lease Agreement.

(c) At any time upon not less than ten (10) days' prior written notice from the other, Lessor or Lessee shall execute, acknowledge and deliver to the other or any other party specified by the requesting party a statement in writing certifying that this Lease Agreement is in full force and effect, if true, and the status of any continuing defaults under this Lease Agreement.

20. Indemnifications.

(a) Lessee's Indemnity. Lessee hereby agrees to indemnify and hold Lessor and Lessor's officers, directors, partners, shareholders, employees, agents, contractors or subcontractors harmless from and against any and all losses, claims, liabilities, damages, costs and expenses (including reasonable attorney's fees and costs) and injuries (including personal injuries or death) arising from or in connection with (i) Lessee's negligent acts or willful misconduct in the use, operation, maintenance or repair of Lessee's Facilities at the Premises or access over Lessor's Real Property or Lessee's shared use of Lessor's easements for access to the Premises; or (ii) a breach by Lessee of any obligation under this Lease Agreement, except those resulting from the negligence or willful misconduct of Lessor or Lessor's officers, directors, partners, shareholders, employees, agents, contractors or subcontractors.

(b) Lessor's Indemnity. Lessor hereby agrees to indemnify and hold Lessee and Lessee's officers, directors, partners, shareholders, employees, agents, contractors or subcontractors harmless from and against any and all losses, claims, liabilities, damages, costs and expenses (including reasonable attorney's fees and costs) and injuries (including personal injuries or death) arising from or in connection with (i) Lessor's negligent acts or willful misconduct in the improvements on Lessor's Real Property, Lessor's shared use of easements for access to Lessor's Real Property; (ii) a breach by Lessor of any obligation under this Lease Agreement; (iii) any violation of governmental regulations relating to Lessor's Real Property, except those resulting from the negligence or willful misconduct of Lessee or Lessee's officers, directors, partners, shareholders, employees, agents, contractors or subcontractors.

(c) Survival of Indemnity Provisions. The indemnity provisions of this section shall survive the expiration, cancellation or expiration of this Lease Agreement and shall not extend to indirect, special, incidental or consequential damages, including, without limitation, loss of profits, income or business opportunities to the indemnified party or anyone claiming through the indemnified party.

21. Hazardous Materials. Lessee agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within the Lessor's Real Property in violation of any law or regulation. Lessor represents, warrants and agrees (1) that neither Lessor nor, to Lessor's knowledge, any third party has used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any Hazardous Material (defined below) on, under, about or within Lessor's Real Property in violation of any law or regulation, and (2) that Lessor will not, and will not permit any third party to use, generate, store or dispose of any Hazardous Material on, under, about or within Lessor's Real Property in violation of any law or regulation. Lessee shall not be responsible for handling, removal, or treatment of any Hazardous Materials, hazardous substance or hazardous wastes which is present prior to the delivery of the Premises to Lessee, or which is brought onto the Lessor's Real Property by some party outside the control of Lessee, and no costs incurred in connection with the clean-up, removal, or treatment of hazardous materials, hazardous substances or hazardous wastes shall be allocated to Lessee. Lessor and Lessee each agree to defend, indemnify and hold harmless the other and the other's partners, affiliates, agents and employees against any and all losses, liabilities, claims and/or costs (including reasonable

attorneys' fees and costs) arising from any breach of any representation, warranty or agreement contained in this paragraph. As used in this paragraph, "Hazardous Material" shall mean petroleum or any petroleum product, asbestos, any substance known by the state in which Lessor's Real Property is located to cause cancer and/or reproductive toxicity, and/or any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. This paragraph shall survive the termination of this Agreement.

23. Notices and Deliveries. Any notice or demand required to be given herein shall be made by certified or registered mail, return receipt requested, or nationally recognized overnight delivery service to the address of the respective parties set forth below:

Lessor: City of Nashua, New Hampshire
229 Main Street
P.O. Box 2019
Nashua, NH 03061-2019
Attn: Park and Recreation Superintendent
Telephone: 603-589-3362
Facsimile: 603-594-3465
Federal Taxpayer ID Number: 02-6000581

With a copy to: City of Nashua, New Hampshire
229 Main Street
P.O. Box 2019
Nashua, NH 03061-2019
Attn: City Clerk

Lessee: MetroPCS Massachussetts, LLC
c/o MetroPCS, Inc.
2250 Lakeside Blvd.
Richardson, TX 75082-4303
Attn: Property Manager
Telephone: 214-265-2550
Facsimile: 214-265-2570

With a copy to: MetroPCS Massachusetts, LLC
285 Billerica Road
Chelmsford, MA 01824
Attention: Property Manager

Lessor or Lessee may from time to time designate any other address for notices or deliveries by written notice to the other party.

24. Miscellaneous.

(a) **Severability.** If any provision of the Lease Agreement is held to be invalid or unenforceable by a court of competent jurisdiction with respect to any party, the remainder of this Lease Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable shall not be affected, each provision of this Lease Agreement shall be valid and enforceable to the fullest extent permitted by law, and the parties shall negotiate in good faith to amend this Lease Agreement to retain the economic effect of the invalid or unenforceable provisions.

(b) **Binding Effect.** Each party represents and warrants that said party has full power and authority, and the person(s) executing this Lease Agreement have full power and authority, to execute and deliver this Lease Agreement, and that this Lease Agreement constitutes a valid and binding obligation of each party, enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditor's rights generally and by general equitable principles (whether enforcement is sought in proceedings in equity or at law). This Lease Agreement shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

(c) **Waivers.** No provision of this Lease Agreement shall be deemed to have been waived by a party unless the waiver is in writing and signed by the party against whom enforcement of the waiver is attempted. No custom or practice which may develop between the parties in the implementation or administration of the terms of this Lease Agreement shall be construed to waive or lessen any right to insist upon strict performance of the terms of this Lease Agreement.

(d) **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State in which the Premises are located.

(e) **Survival.** Terms and conditions of this Lease Agreement which by their sense and context survive the termination, cancellation or expiration of this Lease Agreement will so survive.

(f) **Memorandum of Lease.** Lessor acknowledges that a Memorandum of Agreement substantially in the form annexed hereto as Exhibit B will be recorded by Lessee in the Official Records of the County where the Property is located.

(g) **Entire Agreement; Amendments.** This Lease Agreement constitutes the entire agreement and understanding between the parties regarding Lessee's lease of the Premises and supersedes all prior and contemporaneous offers, negotiations and other agreements concerning the subject matter contained herein. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease Agreement must be in writing and executed by duly authorized representatives of both parties.

(h) **No Presumptions Regarding Preparation of Lease Agreement.** The parties acknowledge and agree that each of the parties has been represented by counsel or has had full opportunity to consult with counsel and that each of the parties has participated in the negotiation and drafting of this Lease Agreement. Accordingly it is the intention and agreement of the parties that the language, terms and conditions of this Lease Agreement are not to be construed in any way against or in

favor of any party hereto by reason of the roles and responsibilities of the parties or their counsel in connection with the preparation of this Lease Agreement.

(i) Exhibits. All Exhibits referred to herein and any Addenda are incorporated herein. The parties understand and acknowledge that the legal description of the Lessor's Real Property and the description/depiction of the Premises and the Memorandum of Lease, are in preliminary form. Accordingly, the parties agree that upon the preparation of final, more complete exhibits, of the Lessor's Real Property and the description/depiction of the Premises, may be replaced by Lessee with such final, more complete exhibit(s).

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Lease Agreement to be executed by their duly authorized representatives on the dates set forth below and acknowledge that this Lease Agreement is effective as of the date first above written.

LESSOR:

City of Nashua, NH,

a municipal corporation in the State of New Hampshire

By: _____
(Signature)

Print Name: Donnalee Lozeau

Title: Mayor

Date: _____

LESSEE:

MetroPCS Massachusetts, LLC,
a Delaware limited liability company

By: _____
(Signature)

Print Name: Bruce Martin

Title: Vice-President & General Manager

Date: _____

EXHIBIT A

DESCRIPTION OF PREMISES

to the Lease Agreement dated _____, 200__, by and between City of Nashua, New Hampshire, as Lessor, and MetroPCS Massachusetts, LLC, a Delaware limited liability company, as Lessee.

The Premises consist of those specific areas described/shown below or attached where Lessee's communications antennae, equipment and cables occupy Lessor's Real Property. The Premises and the associated utility connections and access, including easements, ingress, egress, dimensions, and locations as described/shown, are approximate only and may be adjusted or changed by Lessee at the time of construction to reasonably accommodate sound engineering criteria and the physical features of Lessor's Real Property.

(A final drawing or copy of a property survey or site plan depicting the above shall replace this Exhibit A when initialed by Lessor or Lessor's designated agent and may be modified from time to time when initialed by both Lessor and Lessee.)

EXHIBIT B

NOTICE OF LEASE AGREEMENT

Prepared by: recording requested by and return to:

MetroPCS Massachusetts, LLC
285 Billerica Road
Chelmsford, MA 01824
Attn.: Property Manager

This Notice of Lease Agreement is entered into on this ____ day of _____, 200_, by and between the City of Nashua, New Hampshire, with an office at 229 Main Street, Nashua, NH 03061(hereinafter referred to as "Lessor"), and MetroPCS Massachusetts LLC, a Delaware limited liability company, with an office at 2250 Lakeside Blvd., Richardson, TX 75082-4303 (hereinafter referred to as "Lessee").

1. Lessor and Lessee entered into a Communications Site Lease Agreement ["Agreement"] on the ____ day of _____, _____, for the purpose of installing, operating and maintaining a communications facility and other improvements within certain real property located at Sheet E, Lot 1487, commonly known as Mine Falls Park, located in the City of Nashua, New Hampshire, County of Hillsborough, State of New Hampshire, and having an address of 10 Whipple Street which was acquired by the Lessor pursuant to the deed recorded with the Hillsborough County Registry of Deeds at Book 2067, Page 225 ("Lessor's Real Property"). All of the foregoing is set forth in the Agreement.

2. The term of the Agreement is for five (5) years commencing on _____, or _____, whichever first occurs ("Commencement Date") and terminating on the _____ anniversary of the Commencement Date, with _____ (_____) successive five (5) year options to renew.

3. The Premises which is located within the Lessor's Real Property and which is the subject of the Agreement is described/depicted in Exhibit A annexed hereto.

Exhibit Only
Not for Signature

IN WITNESS WHEREOF, the parties have executed this Notice of Lease as of the day and year first above written.

LESSOR:

City of Nashua, New Hampshire, a municipal corporation in the State of New Hampshire

By: _____

Name: Donnalee Lozeau

Title: Mayor

Date: _____

LESSEE:

MetroPCS Massachusetts LLC, a Delaware limited liability company

By: _____

Name: Bruce Martin

Title: V-P & General Manager

Date: _____

LESSOR NOTARY

STATE OF _____

COUNTY OF _____

On _____, before me, _____, Notary Public, personally appeared _____, proved to me through satisfactory evidence of identification, which were _____, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

_____ (SEAL)

Notary Public

LESSEE NOTARY

STATE OF _____

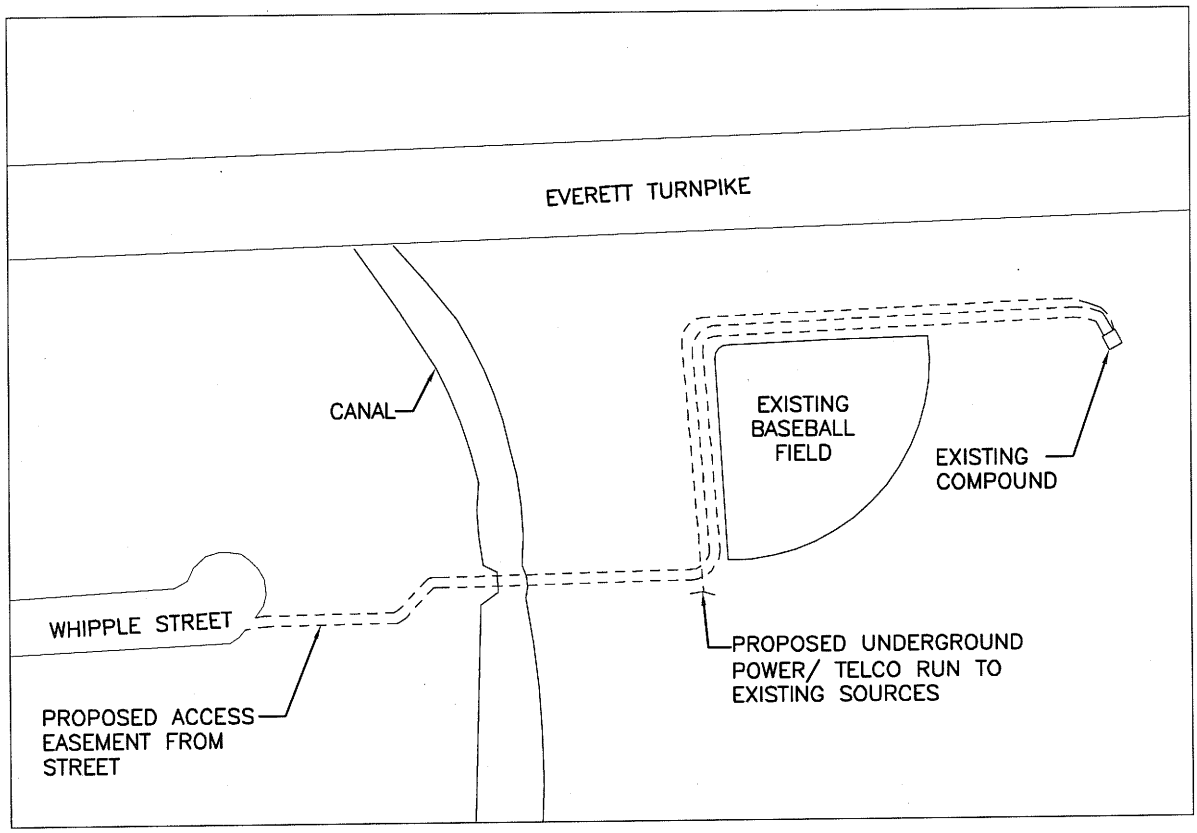
COUNTY OF _____

On _____, before me, _____, Notary Public, personally appeared Bruce Martin, proved to me on the basis of satisfactory evidence of identification, which were _____, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacit(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

_____ (SEAL)

Notary Public



APPROX. TRUE NORTH

SITE PLAN

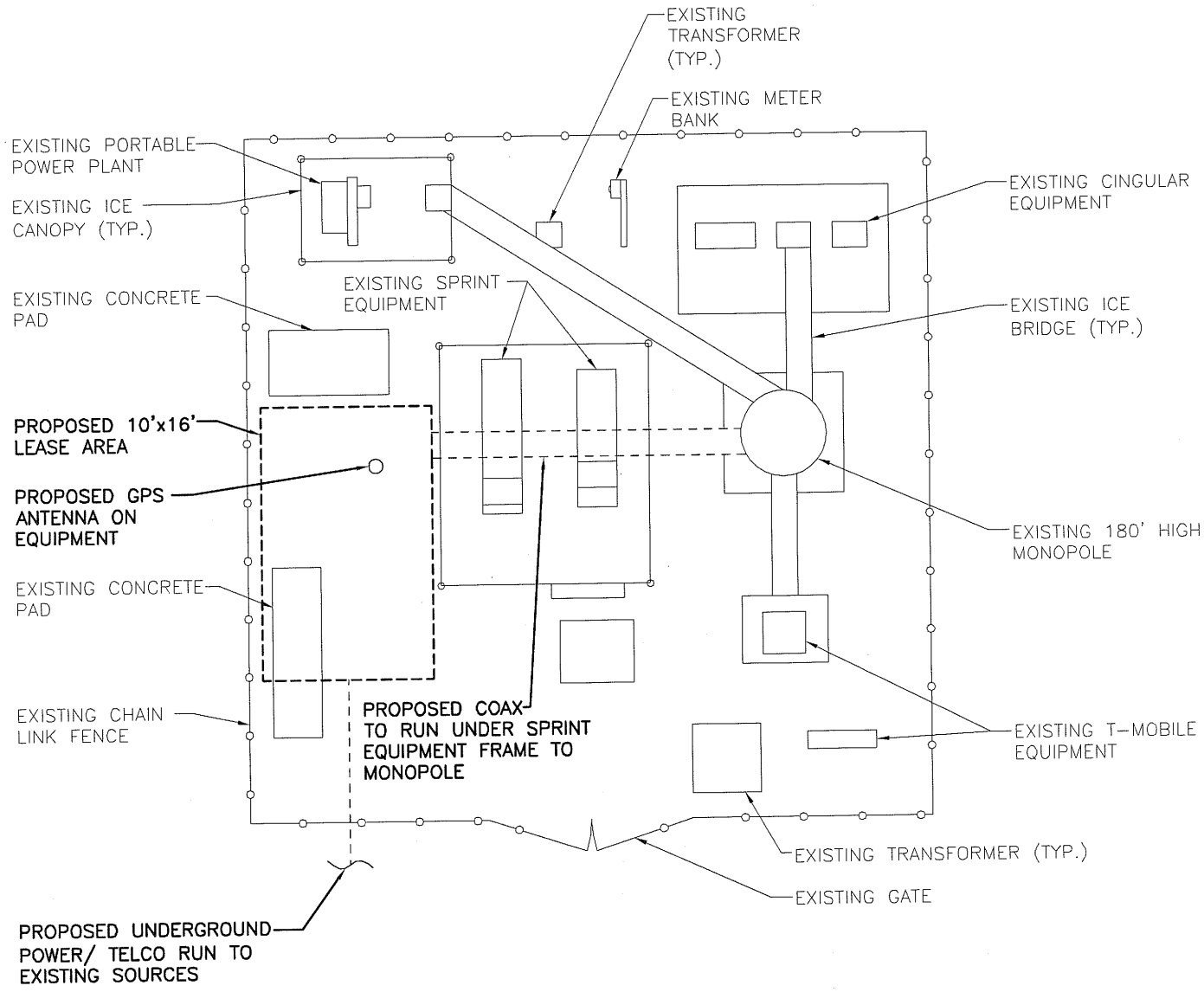
NTS

APPROVALS

SITE OWNER	DATE
CONSTRUCTION MANAGER	DATE
RF ENGINEER	DATE
SITE ACQUISITION	DATE

THE ABOVE PARTIES HEREBY APPROVE AND ACCEPT THESE DOCUMENTS AND AUTHORIZE THE CONTRACTOR TO PROCEED WITH THE CONSTRUCTION DESCRIBED HEREIN, ALL CONSTRUCTION DOCUMENTS ARE SUBJECT TO REVIEW BY THE LOCAL BUILDING DEPARTMENT AND ANY CHANGES OR MODIFICATIONS THEY MAY IMPOSE.

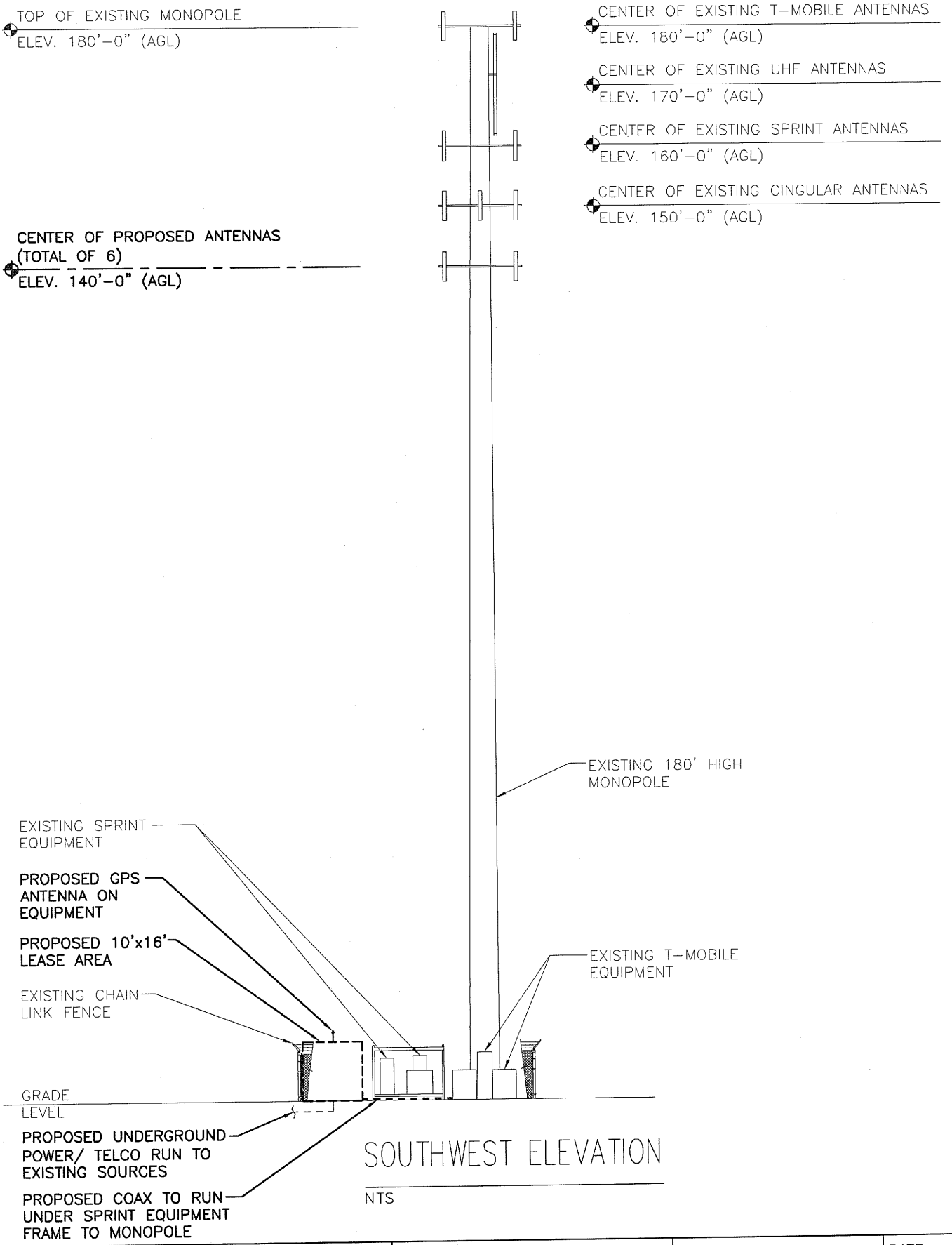
SITE NO: MAN0017A SITE NAME: T-M MINE FALLS ADDRESS: MINE FALLS PARK NASHUA, NH 01880	metroPCS. Unlimit Yourself. 285 BILLERICA ROAD-THIRD FLOOR CHELMSFORD, MA 01824	SITE TYPE: MONOPOLE	DATE: 10/22/07
		DRAWN BY: DB	SCALE: NTS



PLAN
NTS

APPROX. TRUE NORTH

SITE NO: MAN0017A SITE NAME: T-M MINE FALLS ADDRESS: MINE FALLS PARK NASHUA, NH 01880	metroPCS. Unlimit Yourself. 285 BILLERICA ROAD-THIRD FLOOR CHELMSFORD, MA 01824	SITE TYPE: MONOPOLE	DATE: 10/22/07
		DRAWN BY: DB	SCALE: NTS



SOUTHWEST ELEVATION

NTS

SITE NO: MAN0017A SITE NAME: T-M MINE FALLS ADDRESS: MINE FALLS PARK NASHUA, NH 01880	metroPCS. Unlimit Yourself. 285 BILLERICA ROAD-THIRD FLOOR CHELMSFORD, MA 01824	SITE TYPE: MONOPOLE	DATE: 10/22/07
		DRAWN BY: DB	SCALE: NTS

AMENDED
R-08-110

RESOLUTION

AUTHORIZING THE CITY OF NASHUA TO ENTER INTO A TOWER COMMUNICATIONS SITE LEASE AGREEMENT WITH METROPCS MASSACHUSETTS AT MINE FALLS PARK (10 WHIPPLE STREET)

CITY OF NASHUA

In the Year Two Thousand and Eight

RESOLVED *by the Board of Alderman of the City of Nashua that* the City is authorized to enter into the attached Tower Communications Site Lease Agreement with MetroPCS Massachusetts for space at Mine Falls Park (10 Whipple Street). The rental amount is $2,200.00 per month, and shall be increased annually by three percent. The term is for five years, with the lessee having the right to extend the term for four additional terms of five years each.

RESOLUTION R-08-110

Authorizing the City of Nashua to enter into a tower communications site lease agreement with MetroPCS Massachusetts at Mine Falls Park (10 Whipple Street)

Endorsed by

IN THE BOARD OF ALDERMEN

1ST READING AUGUST 12, 2008

Referred to: FINANCE COMMITTEE and BOARD OF PUBLIC WORKS

2nd Reading SEPTEMBER 9, 2008

3rd Reading SEPTEMBER 23, 2008

4th Reading

Other Action REFERRED BACK TO FINANCE COMMITTEE

Passed SEPTEMBER 23, 2008

Indefinitely Postponed

Defeated

Attest: _____ City Clerk

_____ President

Approved Sept. 29 08 (Date)

_____ Mayor's Signature

Vetoed:

Veto Sustained:

Veto Overridden:

Attest: _____ City Clerk

_____ President