



## **RESOLUTION**

**APPROVING A SITE LEASE AGREEMENT WITH T-MOBILE NORTHEAST, LLC TO RELOCATE THE LESSEE'S COMMUNICATION EQUIPMENT LOCATED AT WHIPPLE STREET, MINE FALLS PARK TO THE NEW REPLACEMENT TOWER**

### ***CITY OF NASHUA***

*In the Year Two Thousand and Fifteen*

**RESOLVED** by the Board of Aldermen of the City of Nashua that the attached Site Lease Agreement between T-Mobile Northeast, LLC and the City of Nashua for the leased premises (cell tower and ground space) located at Whipple Street, Mine Falls Park, Nashua, New Hampshire is approved.

**LEGISLATIVE YEAR 2015**

**RESOLUTION:** R-15-185

**PURPOSE:** Approving a site lease agreement with T-Mobile Northeast, LLC to relocate the Lessee's communication equipment located at Whipple Street, Mine Falls Park to the new replacement tower

**ENDORSERS:** Donnalee Lozeau

**COMMITTEE  
ASSIGNMENT:**

**FISCAL NOTE:** Annual lease fee of \$2,700 per month (\$32,400 per year) through April 30, 2016 with 3% increases each year thereafter for the duration of the agreement.

---

**ANALYSIS**

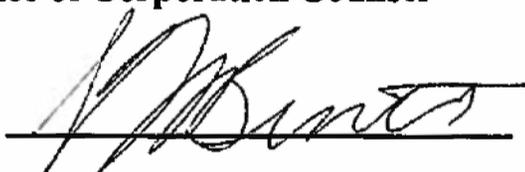
This resolution approves a site lease agreement with T-Mobile Northeast, LLC for the leased premises (cell tower and ground space) located at Whipple Street, Mine Falls Park, Nashua, New Hampshire. This is a successor agreement to the easement in gross currently in effect with T-Mobile. Due to the construction of the replacement tower by Verizon, it is necessary to negotiate a new site lease with T-Mobile, Omnipoint's successor. This site lease agreement permits the relocation of T-Mobile's communication equipment from the existing tower to the newly constructed replacement tower at the same location. The agreement has an initial term of five (5) years and four (4) renewal terms of five (5) years each.

This resolution should be referred to the Board of Public Works.

---

**Approved as to form:**

**Office of Corporation Counsel**

**By:** 

**Date:** October 21, 2015

## SITE LEASE AGREEMENT

This SITE LEASE AGREEMENT (this "Agreement") is effective the date of the last signature on this Agreement (the "Effective Date") by and between City of Nashua, a New Hampshire Municipal Corporation ("Landlord") and T-Mobile Northeast LLC, a Delaware Limited Liability Company ("Tenant").

Landlord and Tenant agree to the following:

- 1. Property Description.** Landlord is the owner of the real property located at Mines Falls Park, 10 Whipple Street, Nashua, New Hampshire as further described on Exhibit A (the "Property"). The Property includes the premises which is comprised of approximately 250 square feet plus any additional portions of the Property which Tenant may require for the use and operation of its facilities as generally described on Exhibit B (the "Premises"). Tenant reserves the right to update the description of the Premises on Exhibit B to reflect any modifications or changes.
- 2. Relocation.** Tenant currently has wireless communications equipment installed on a tower ("Existing Tower") located at the Property pursuant to an Easement in Gross entered into by the parties on August 28, 1998. The Existing Tower will be decommissioned and removed from Landlord's property. A new tower ("Replacement Tower") will be constructed by others and the Tenant's wireless communications equipment now installed on the Existing Tower together with any related ground equipment will be relocated to the Replacement Tower. The Replacement Tower will benefit current and future tower tenants by permitting expansion of tenants' facilities. The cost of migrating Tenant's existing equipment from the Existing Tower to the Replacement Tower shall be borne by Cellco Partnership d/b/a Verizon Wireless (see Tower Replacement Agreement between the City of Nashua and Cellco Partnership dated February 24, 2015). Upon the Commencement Date, the parties agree that the Easement in Gross will terminate and the terms and conditions thereof shall no longer be in full force and effect.
- 3. Landlord Cooperation.** During the Term (as defined below), Landlord shall cooperate with Tenant's due diligence activities, which shall include, but not be limited to, access to the Property for inspections, testing, permitting related to the Permitted Uses (as defined below). Landlord authorizes Tenant to file, submit and obtain all zoning, land use and other applications for permits, licenses and approvals required for the Permitted Uses from all applicable governmental and quasi-governmental entities (collectively, the "Governmental Approvals"). Landlord's cooperation shall include the prompt execution and delivery of any documents necessary to obtain and maintain Government Approvals or utility services. Additionally, Landlord shall not take any actions which are in conflict with or interfere with Tenant's Governmental Approvals.
- 4. Antenna Facilities and Permitted Uses.** Tenant leases the Premises for its equipment, personal property and improvements associated with Tenant's wireless communications business (the "Antenna Facilities"). The Premises may be used for the construction, installation, operation, maintenance, repair, addition, upgrading, removal or replacement of any and all Antenna Facilities (the "Permitted Uses") for no fee or additional consideration. The Antenna Facilities shall remain the exclusive property of Tenant and shall not be considered fixtures. Tenant, at its expense, may use any and all reasonable means as Tenant deems necessary to control, secure or restrict access to the Antenna Facilities. Landlord hereby waives any and all lien rights it may have concerning the Antenna Facilities. If necessary to maintain service, Tenant shall have the right to locate a cell-on-wheels, or other temporary antenna facility on the Property. Landlord shall cooperate with the placement of the temporary facility at a mutually acceptable location.

**5. Lease Term.**

a) The Initial Term of the Lease shall be Error! Reference source not found. (Error! Reference source not found.) years commencing upon the relocation of Tenant's equipment to Replacement Tower (the "Commencement Date"), and ending at 11:59 p.m. on the day immediately preceding the fifth (5<sup>th</sup>) anniversary of the Commencement Date (the "Initial Term"). The Initial Term, together with any Renewal Terms and Extended Periods are referred to collectively as the "Term."

b) The Initial Term shall automatically renew for four(4) successive renewal terms of Error! Reference source not found. (5) years each (each a "Renewal Term"), provided, however, that Tenant may elect not to renew by providing notice prior to the expiration of the then current Term.

**6. Rent/Other Charges.**

a) Upon the Commencement Date, Tenant shall pay Landlord rent in the amount of Two Thousand Seven Hundred (\$2,700.00 ) per month (the "Rent"). Tenant shall deliver Rent to Landlord at the address specified in Section 15, or by electronic payment. The first Rent payment shall be due within twenty business (20) days after the Commencement Date. Subsequent Rent shall be payable by the fifth day of each month.

b) During the Term, the annual Rent shall be adjusted on each anniversary of the Commencement Date to an amount equal to three (3%) percent of the Rent in effect immediately prior to the adjustment date.

c) Rent for any partial month shall be prorated on a per day basis, based on the number of days in the month in question. Landlord shall cooperate with Tenant regarding the use of any electronic rent payment systems or the provision of any associated documentation. Tenant may condition payment of Rent and any other sums payable under this Agreement upon Tenant's receipt of a duly completed IRS form W-9, or similar governmental form.

d) Any charges payable under this Agreement other than Rent shall be billed by Landlord to Tenant within twelve (12) months from the date the charges were incurred or due.

e) Expansion of Tenant's Facilities. Should Tenant elect to increase its tower load on the Replacement Tower (an increase will be defined as any additional loading beyond what Tenant has on the Existing Tower as further described in Exhibit B-1) it shall make a one-time payment of \$27,000.00 to Cellco Partnership d/b/a Verizon Wireless upon receiving all necessary approvals for such increased tower load. Tenant shall be defined as being in the "Opt-In Group."

**7. Interference.** Tenant shall not interfere with the radio frequency communications of Landlord or any of Landlord's existing tenants as of the Effective Date. After the Effective Date, Landlord shall not install, or permit any third party to install, any equipment or structures that interfere with or restrict the operations of Tenant. Any such interference shall be deemed a material breach of this Agreement by Landlord and Landlord shall remove the cause of the interference within forty-eight (48) hours of notice. Tenant shall have the right to exercise all legal and equitable rights and remedies to end the interference.

**8. Utility Services.**

a) Tenant shall have the right to connect to, maintain, repair, upgrade, remove or replace existing utility related equipment and shall have the right to install new utility related equipment to service its Antenna Facilities, or cell-on-wheels on, or serving the Property (collectively, the "Utility Facilities").

b) Tenant shall be responsible for all utilities charges for electricity, or any other utility service used by Tenant on the Premises. Tenant shall install separate meters for Tenant's utility usage.

**9. Access and Easements.**

a) Throughout the Term and any Renewal Term of this Lease Agreement, Tenant 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 Landlord and no interference with activities at Mine Falls Park, at no additional charge to Tenant. In exercising its right of access to the Premises herein, Tenant agrees to cooperate with any reasonable security procedures utilized by Landlord at the Property and further agrees not to disturb or interfere with the business or other activities of Landlord or of other tenants or occupants of the Property. Tenant acknowledges that Landlord performs limited maintenance on the access road to the Premises and does not maintain the road in the winter. Subject to the limitations in the previous sentence, Landlord shall be responsible for maintaining and repairing such roadways and driveways at Landlord's sole expense, except for any damage caused by Tenant's use of such roadways or driveways, reasonable wear and tear expected. If Tenant causes any such damage, Tenant shall promptly repair the same at its sole expense.

b) Subject to Landlord's approval of the location, which approval shall not be unreasonably withheld, conditioned, or delayed, Tenant shall have the right to place utilities on (or to bring utilities across) Landlord's Property in order to service the Premises and Tenant's Facilities. Upon Tenant's request, Landlord shall execute recordable easement(s) evidencing this right.

**10. Termination.** Tenant may terminate this Agreement without further liability, upon thirty (30) days prior written notice to Landlord, for any of the following reasons: (i) changes in local or state laws or regulations which adversely affect Tenant's ability to operate; (ii) a Federal Communications Commission ("FCC") ruling or regulation that is beyond the control of Tenant; (iii) technical or economic reasons; or (iv) if Tenant is unable to obtain any Governmental Approval required for the construction or operation of Tenant's Antenna Facilities. Upon ninety (90) days prior written notice to Landlord, Tenant may terminate this Agreement for any or no reason.

**11. Casualty and Condemnation.** If the Premises or Antenna Facilities are damaged or destroyed by wind, fire or other casualty, Tenant shall be entitled to negotiate, compromise, receive and retain all proceeds of Tenant's insurance and other claims and Tenant may terminate the Lease by written notice to Landlord. If the Premises, any Easements or Antenna Facilities are taken or condemned by power of eminent domain or other governmental taking, then: (a) Tenant shall be entitled to negotiate, compromise, receive and retain all awards attributable to (i) the Antenna Facilities, (ii) Tenant's leasehold interest in the Property, (iii) any moving or relocation benefit available to Tenant and (iv) any other award available to Tenant that is not attributable to Landlord's title to or interest in the Property. If the Antenna Facilities are not operational due to casualty or condemnation, Tenant shall have the right to abate the Rent for that period time. In addition, Tenant may terminate the Lease by written notice to Landlord.

**12. Default and Right to Cure.** A party shall be deemed in default under this Agreement if it fails to make any payment, or to perform any obligation required of it within any applicable time period specified and does not commence curing such breach within thirty (30) days after receipt of written notice of such breach from the non-defaulting party ("Default"). This Agreement, or Tenant's rights of possession shall not be terminated due to any Tenant Default unless: (a) the Default is material; (b) Landlord shall have given Tenant not less than thirty (30) days prior written notice, after the expiration of the cure period described above, and Tenant fails to cure such Default within the second thirty (30) day notice period; and (c) Landlord lacks any other adequate legal or equitable right or remedy.

**13. Taxes.** Tenant shall pay all personal and real property taxes that may be assessed upon the Premises as a direct cause of Tenant's use of the Premises. Landlord shall pay when due all real estate taxes and assessments for the Property, including the Premises. Tenant shall have the right to challenge any tax or assessment.

**14. Insurance and Subrogation and Indemnification.**

a.) Tenant shall maintain the following insurance:

- General Liability insurance in the amount of \$1,000,000 per occurrence; \$3,000,000 aggregate;
- \$1,000,000 Combined Single Limit Automobile Liability;
- and Workers' Compensation Coverage in compliance with the State of New Hampshire statutes, \$100,000/\$500,000/\$100,000.

Tenant shall maintain in effect at all times during the performance under this contract all specified insurance coverage with insurers. None of the requirements as to types and limits to be maintained by Tenant are intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Tenant under this agreement. The City of Nashua shall not maintain any insurance on behalf of Tenant. All subcontractors shall provide a Certificate of Insurance prior to the commencement of any work. Tenant will provide the City of Nashua with certificates of insurance for coverage as listed below and endorsements affecting coverage required by the contract within ten calendar days after the City approves this agreement. The City of Nashua requires thirty days written notice of cancellation in coverage. The certificates and endorsements for each insurance policy must be signed by a person authorized by the insurer and who is licensed by the State of New Hampshire. General Liability, Employers' Liability and Auto Liability policies must name the City of Nashua as an additional insured and reflect on the certificate of insurance. Tenant is responsible for filing updated certificates of insurance with the City of Nashua's Risk Management Department during the life of the contract.

- The specified insurance requirements do not relieve Tenant of its responsibilities or limit the amount of its liability to the City or other persons, and Tenant is encouraged to purchase such additional insurance, as it deems necessary.
- The insurance provided herein is primary, and no insurance held or owned by the City of Nashua shall be called upon to contribute to a loss.
- Tenant is responsible for and required to remedy all damage or loss to any property, including property of the City, caused in whole or part by Tenant or anyone employed, directed, or supervised by Tenant.

b.) Upon the expiration, cancellation, or termination of this Lease Agreement, Tenant shall remove its equipment from the Property and surrender the Property in good condition, ordinary wear and tear and damage from casualty excepted; however, Tenant shall not be required to remove any frames or supports for Tenant's Facilities or conduits which have been installed by Tenant. 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 Landlord and the cost of removal and all associated costs assessed against the Tenant. To secure Tenant's obligation for the removal of Tenant's facilities, Tenant shall deliver to Landlord a surety bond in the amount Ten Thousand Dollars (\$10,000.00), naming Landlord as obligee. Should Tenant fail to abide by the terms and conditions for removal of its Facilities at the expiration or earlier termination of this Agreement, or at such time as the Parties may mutually agree in writing, Landlord 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 shall be submitted to the Landlord by the Commencement Date.

c.) Subject to the property insurance waivers set forth in the preceding subsection (a), Landlord and Tenant each agree to indemnify and hold harmless the other party from and against any and all administrative and judicial actions and rulings, claims, causes of action, demands and liabilities, including reasonable attorneys' fees, to the extent caused by or arising out of: (i) any negligent acts or omissions or willful misconduct in the operations or activities on the Property by the indemnifying party or the employees, agents, contractors, licensees, tenants or subtenants of the indemnifying party, (ii) any spill or other release of any Hazardous Substances (as defined below) on the Property by the indemnifying party or the employees, agents, contractors, licensees, tenants or subtenants of the indemnifying party, or (iii) any breach of any obligation of the indemnifying party under this Agreement. The indemnifying party's obligations under this subsection are contingent upon its receiving prompt written notice of any event giving rise to an obligation to indemnify the other party and the indemnified party's granting it the right to control the defense and settlement of the same.

d.) The provisions of subsections (b) and (c) above shall survive the expiration or termination of this Agreement.

15. **Notices.** All notices, requests, demands and other communications shall be in writing and shall be effective three (3) business days after deposit in the U.S. mail, certified, return receipt requested or upon receipt if personally delivered or sent via a nationally recognized courier to the addresses set forth below. Landlord or Tenant may from time to time designate any other address for this purpose by providing written notice to the other party.

**If to Tenant, to:**  
T-Mobile USA, Inc.  
12920 SE 38th Street  
Bellevue, WA 98006  
Attn:Property Management/  
4DN4407C

**If to Landlord, to:**  
Office of the Mayor City of Nashua  
229 Main Street  
Nashua, NH 03060

**Per the W-9 Form Rent is to be paid to:**  
City of Nashua  
229 Main Street  
Nashua, NH 03060

16. **Quiet Enjoyment, Title and Authority.** Landlord covenants and warrants that: (a) Landlord has full right, power and authority to execute and perform this Agreement and to grant Tenant the leasehold interest

and Easements contemplated under this Agreement; (b) Landlord has good and unencumbered title to the Property, free and clear of any liens or Mortgages (defined below) which shall interfere with Tenant's Lease or any rights to or use of the Premises; (c) the execution and performance of this Agreement shall not violate any laws, ordinances, covenants, or the provisions of any Mortgage, lease, or other agreement binding on Landlord; (d) Tenant's use and quiet enjoyment of the Premises shall not be disturbed; and (e) Landlord shall be responsible, at its sole cost and expense, for maintaining all portions of the Property in good order and condition and in compliance with all applicable laws.

**17. Environmental Laws.** Landlord and Tenant shall comply with all federal, state and local laws in connection with any substances brought onto the Property that are identified by any law, ordinance or regulation as hazardous, toxic or dangerous (collectively, the "Hazardous Substances"). Tenant agrees to be responsible for all losses or damage caused by any Hazardous Substances that it may bring onto the Property and will indemnify Landlord for all such losses or damages. Landlord agrees to be responsible for all losses or damage caused by any Hazardous Substances on or entering the Property, except those brought onto the Property by Tenant, and will indemnify Tenant for all such losses or damages including the cost of any investigation or remediation, or other actions required to comply with applicable law. Landlord represents that it has no knowledge of any Hazardous Substances on the Property.

**18. Assignment.**

- a) Tenant shall have the right to assign or transfer this Lease and the Easements to any person or business entity which: (i) is FCC licensed to operate a wireless communications business; (ii) is a parent, subsidiary or affiliate of Tenant or Tenant's parent; (iii) is merged or consolidated with Tenant; (iv) acquires more than fifty percent (50%) of either an ownership interest in Tenant or the assets of Tenant; or (v) any entity or company whose primary business function is the management or operation of wireless communications real estate or leases. Upon such assignment, Tenant shall be relieved of all liabilities and obligations hereunder, except as provided for in this Agreement, and Landlord shall look solely to the assignee for performance under this Lease. Tenant may sublease the Premises, upon written notice to Landlord. Tenant may otherwise assign this Lease upon written approval of Landlord, which approval shall not be unreasonably delayed, withheld, conditioned or denied.
- b) Landlord shall not sell or convey the Property or assign or otherwise transfer this Agreement without providing Tenant with ninety (90) days prior written notice. Landlord must provide Tenant at least six (6) months written notice of any repairs, maintenance or other work (the "Work") during the Term of the Lease which would require the relocation of the Antenna Facilities.

**19. Marking and Lighting Requirements.** If any tower or other support structure for Tenant's Antenna Facilities is owned by Landlord, Landlord acknowledges that Landlord shall be responsible for compliance with all marking and lighting requirements of the Federal Aviation Administration and the FCC. Landlord shall indemnify and hold Tenant harmless from any fines or other liabilities caused by Landlord's failure to comply with these requirements.

**20. Miscellaneous.**

- a. This Agreement constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations and other agreements with respect to the subject matter and Property. Any amendments to this Agreement must be in writing and executed by both parties.

- b. Landlord agrees to cooperate with Tenant in executing any documents which Tenant deems necessary to insure, protect Tenant's rights in, or use of, the Premises. Landlord shall execute and deliver: (i) a Memorandum of Lease in substantially the form attached as Exhibit C; and (ii) if the Property is encumbered by a deed, mortgage or other security interest (each, a "Mortgage"), a subordination, non-disturbance and attornment agreement using Tenant's form.
- c. This Agreement shall be construed in accordance with the laws of the state or territory in which the Property is located, without regard to the principles of conflicts of law.
- d. If any term of this Agreement is found to be void or invalid, the remaining terms of this Agreement shall continue in full force and effect. Any questions of particular interpretation shall be interpreted as to their fair meaning.
- e. Each party hereby represents and warrants to the other that this Agreement has been duly authorized, executed and delivered by it, and that no consent or approval is required by any lender or other person or entity in connection with the execution or performance of this Agreement.
- f. If either party is represented by any broker or any other leasing agent, such party is responsible for all commission fee or other payment to such agent.
- g. This Agreement and the interests granted herein shall run with the land, and shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.
- h. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument. Signed facsimile and electronic copies of this Agreement shall legally bind the Parties to the same extent as original documents.

**LANDLORD:** City of Nashua

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**TENANT:** T-Mobile Northeast LLC

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
T-Mobile Legal Approval

**EXHIBIT A**  
**Legal Description**

The Property is legally described as follows:

Two certain tracts or parcels of land situated on the west and east sides of the F. E. Everett Highway and the south side of the Nashua River in the City of Nashua, County of Hillsborough and State of New Hampshire bounded and described as follows:

**PARCEL I.** A certain tract or parcel of land situated on the west side of the F. E. Everett Highway and the south side of the Nashua River in the City of Nashua, County of Hillsborough and State of New Hampshire being the same as shown on plan of land entitled "Boundary Plan of Land of the Mine Falls Park System Nashua, N.H. for City of Nashua, N.H. Nashua Planning Board. Scale 1" = 200' December 12, 1969, Park System, Sheet 1 of 2" and further bounded and described as follows:

Beginning at the southeast corner of the hereindescribed premises at a stone bound set in the west line of the F. E. Everett Highway: thence running

- (1) S 42° 6' 00" W, three hundred fifty-eight and 76/100 (358.76) feet to a stone bound; thence turning and running
- (2) S 58° 55' 30" W, two hundred one and 81/100 (201.81) feet to a stone bound; thence turning and running
- (3) S 31° 21' 30" W, two hundred twenty-nine and 24/100 (229.24) feet to a stone bound; thence turning and running
- (4) S 3° 39' 50" W, three hundred thirty-eight and 44/100 (338.44) feet to a stone bound; thence turning and running
- (5) S 28° 27' 50" W, six hundred forty-one and 26/100 (641.26) feet to a stone bound; thence turning and running
- (6) S 68° 59' 50" W, four hundred thirty-five and 94/100 (435.94) feet to a stone bound; thence turning and running
- (7) S 8° 54' 50" W, five hundred thirteen and 80/100 (513.80) feet to a stone bound; (all of the seven immediately previous courses being by land of Nashua-New Hampshire Foundation); thence turning and running
- (8) S 26° 30' 30" E, three hundred seventy (370) feet to a concrete bound at land of Ferd Corp.; thence turning and running
- (9) S 43° 09' 20" E, four hundred two and 31/100 (402.31) feet to a concrete bound; thence turning and running
- (10) S 52° 03' 00" E, by land of Ferd Corp., five hundred ninety-eight and 22/100 (598.22) feet to a concrete bound; thence turning and running
- (11) S 38° 32' 40" W, by land of Ferd Corp., five hundred fifty-four and 93/100 (554.93) feet to a concrete bound; thence continuing
- (12) S 38° 32' 40" W, three hundred twelve and 16/100 (312.16) feet to a stone bound set in the North line of Riverside Street as shown on said plan; thence turning and running
- (13) S 65° 31' 10" W, by the north line of said Riverside Street, six hundred sixteen and 61/100 (616.61) feet to a stone bound; thence turning and running
- (14) N 58° 22' 00" W, seventy-four and 42/100 (74.42) feet to a concrete bound; thence turning and running
- (15) S 52° 38' 00" W, one hundred seventy-seven and 71/100 (177.71) feet to a stone bound; thence turning and running

- (16) S 38° 37' 30" W, one hundred thirty-five and No/100 (135.00) feet to a stone bound; thence turning and running
- (17) N 51° 22' 30" W, two hundred forty-five and No/100 (245.00) feet to a stone bound; thence turning and running
- (18) N 11° 20' 10" W, two hundred forty-two and 44/100 (242.44) feet to a stone bound; thence turning and running
- (19) S 85° 45' 00" W, five hundred eighty-five and 85/100 (585.85) feet to a concrete bound; thence turning and running
- (20) N 62° 39' 40" W, four hundred six and 43/100 (406.43) feet to a drill hole in the retaining wall at the south bank of the Nashua River; thence turning and running
- (21) N 25° 16' 00" W crossing said River, two hundred forty-five and 92/100 (245.92) feet to a drill hole in the retaining wall at the north bank of the Nashua River; thence

- (22) Westerly by the north bank of the Nashua River, eleven hundred (1100) feet, more or less, to a concrete bound of land of Nashua Sand and Gravel Corp. or William Badders; thence turning and running
- (23) N 20° 21' 40" W by land of Nashua Sand and Gravel Corp. one hundred sixty-two and 26/100 (162.26) feet to a concrete bound at land of Lincoln Park; thence turning and running
- (24) N 65° 38' 50" E through a concrete bound, five hundred eighty-five and 55/100 (585.55) feet to a stone bound; thence turning and running
- (25) N 21° 10' 30" E by land of Rota, Inc. and others, eight hundred thirty-one and 09/100 (831.09) feet to a concrete bound; thence turning and running
- (26) N 16° 43' 30" E, sixty-eight and 66/100 (68.66) feet to a stone bound; thence turning and running
- (27) N 15° 48' 40" E, one hundred seventy-one and 92/100 (171.92) feet to a stone bound; thence turning and running
- (28) N 13° 18' 40" E, two hundred ninety-nine and 86/100 (299.86) feet to a concrete bound; thence turning and running
- (29) N 28° 02' 10" E, two hundred thirty-one and 73/100 (231.73) feet to a concrete bound; thence turning and running
- (30) N 55° 20' 20" E, one hundred seventy-two and 33/100 (172.33) feet to a concrete bound; thence turning and running
- (31) N 36° 33' 10" E, eighty and 71/100 (80.71) feet to a concrete bound; thence turning and running
- (32) N 25° 55' 50" E, one hundred three and 53/100 (103.53) feet to a bound; thence turning and running
- (33) N 45° 58' 20" E, one hundred sixteen and 37/100 (116.37) feet to a stone bound; thence turning and running
- (34) N 40° 51' 30" E, one hundred thirteen and 37/100 (113.37) feet to a stone bound; thence turning and running
- (35) N 36° 22' 30" E, one hundred thirty (130.00) feet to a stone bound; thence turning and running
- (36) N 46° 29' 30" E, ninety-nine and 14/100 (99.14) feet to a stone bound; thence turning and running
- (37) N 60° 04' 50" E, one hundred thirty and 44/100 (130.44) feet to a stone bound; thence turning and running
- (38) N 30° 42' 10" E, one hundred thirty-five and 04/100 (135.04) feet to a stone bound at land of City of Nashua; thence turning and running
- (39) S 75° 45' 00" E, two hundred (200) feet, more or less, across the Nashua River to the south bank of said river; thence turning and running
- (40) Northeasterly by the south bank of the Nashua River, thirty-four hundred (3400) feet, more or less, to the west line of the F. E. Everett Highway; thence turning and running
- (41) S 1° 56' 53" E by the west line of the F. E. Everett Highway, twelve hundred forty (1240) feet, more or less, to the place of beginning.

**PARCEL II.** A certain tract or parcel of land situated on the east side of the F. E. Everett Highway and the south side of the Nashua River in the City of Nashua, County of Hillsborough and State of New Hampshire being the same as shown on plan of land entitled "Boundary Plan of Land of the Mine Falls Park System Nashua, N.H. for City of Nashua, N.H. Nashua Planning Board, Scale 1" = 200' December 12, 1969, Park System, Sheet 2 of 2" and further bounded and described as follows:

**BEGINNING** at a stone bound at the northeast corner of the hereindescribed premises at land of Nashua-New Hampshire Foundation and land of Paulson Realty, Inc.; thence running

- (1) S 18° 06' 00" E by said Paulson Realty, Inc. land, one hundred forty-eight and 83/100 (148.83) feet to a stone bound; thence turning and running
- (2) S 39° 36' 00" E by land of B & G Realty Corp., one hundred ninety-nine and 56/100 (199.56) feet to a stone bound; thence turning and running
- (3) S 32° 39' 00" E by land of B & G Realty Corp. and land of Fran Corp. four hundred twenty and 07/100 (420.07) feet to a stone bound; thence turning and running
- (4) N 88° 01' 00" E by land of Fran Corp. one hundred seven and 17/100 (107.17) feet to a concrete bound; thence turning and running
- (5) S 48° 24' 20" E, one hundred and 77/100 (100.77) feet to a drill hole in a retaining wall; thence turning and running
- (6) N 76° 15' 40" E to a fence post; thence turning and running
- (7) Southeasterly by a curve having a radius of 377.50', ninety-four and 03/100 (94.03) feet to a railroad spike set in the north line of Ledge Street; thence turning and running
- (8) S 27° 20' 20" W, one hundred thirty-six and 74/100 (136.74) feet to a concrete bound; thence turning and running
- (9) S 47° 44' 50" W, two hundred thirty-three and 73/100 (233.73) feet to a concrete bound; thence turning and running
- (10) S 64° 02' 20" W, one hundred twenty-eight and 20/100 (128.20) feet to a concrete bound; thence turning and running
- (11) S 77° 11' 20" W, two hundred forty-seven and 58/100 (247.58) feet to a point; all of the four immediately preceding courses are by the North line of Ledge Street; thence turning and running
- (12) N 66° 40' 50" W, two hundred and 73/100 (200.73) feet to a concrete bound; thence turning and running
- (13) N 66° 42' 50" W, eighty and 86/100 (80.86) feet to a concrete bound; thence turning and running
- (14) S 17° 12' 40" W, forty-three and 13/100 (43.13) feet to a drill hole in the concrete walk; thence turning and running
- (15) N 72° 45' 10" W by land of various owners, four hundred eighty-nine and 30/100 (489.30) feet to a steel pin; thence turning and running
- (16) N 60° 50' 30" W, two hundred eighty and 42/100 (280.42) feet by land of various owners to a drill hole in the concrete base of the fence post; thence turning and running
- (17) N 60° 32' 30" W, seventy-nine and 73/100 (79.73) feet to a fence post; thence turning and running
- (18) N 75° 57' 00" W, thirty-four and 21/100 (34.21) feet to a concrete bound; thence turning and running
- (19) S 65° 42' 40" W, thirty-six and 93/100 (36.93) feet to a concrete bound; thence turning and running
- (20) N 24° 16' 00" W, sixty-four and 15/100 (64.15) feet to a stone bound; thence turning and running
- (21) S 65° 40' 50" W, forty (40) feet to a concrete bound; thence turning and running
- (22) N 72° 44' 10" W by land of various owners, two hundred ten and 24/100 (210.24) feet to a concrete bound at land of City of Nashua; thence turning and running

- (23) N 17° 15' 50" E, by land of City of Nashua, two hundred fifty-four and 20/100 (254.20) feet to a stone bound; thence turning and running
- (24) N 72° 44' 10" W, by land of City of Nashua, one hundred seventy-five and 35/100 (175.35) feet to a stone bound; thence turning and running
- (25) S 64° 19' 50" W, four hundred fifty-three and 51/100 (453.51) feet to a stone bound at the northerly end of a forty (40) foot right of way; thence turning and running
- (26) Northerly and westerly by a curve having a radius of 230 feet, three hundred sixty-one and 28/100 (361.28) feet to a stone bound; thence turning and running
- (27) S 87° 01' 30" W, five hundred seventy-four and 20/100 (574.20) feet to a stone bound; thence turning and running
- (28) N 83° 41' 00" W, three hundred seven and 67/100 (307.87) feet to a stone bound; thence turning and running
- (29) N 70° 12' 00" W, two hundred (200) feet to a stone bound; thence turning and running
- (30) N 37° 51' 20" W, nine hundred (900) feet to a stone bound; thence turning and running
- (31) N 55° 08' 30" W, three hundred (300) feet to a stone bound; thence turning and running
- (32) N 67° 11' 40" W, two hundred (200) feet to a stone bound; thence turning and running
- (33) S 88° 35' 00" W, two hundred (200) feet to a stone bound; thence turning and running
- (34) S 62° 47' 30" W, two hundred (200) feet to a stone bound; thence turning and running
- (35) S 56° 56' 10" W, two hundred (200) feet to a stone bound at the east side of the F. E. Everett Highway; thence turning and running
- (36) N 1° 56' 53" W, by the east line of the F. E. Everett Highway, thirteen hundred forty (1340) feet, more or less to a point in the south bank of the Nashua River; thence turning and running
- (37) Northerly, easterly, southerly, southeasterly and easterly by the Nashua River eighty-two hundred (8200) feet, more or less, to a stone bound in the South Bank of the Nashua River; thence turning and running
- (38) S 10° 14' 00" E, one hundred eighty-nine and 35/100 (189.35) feet to a stone bound; thence turning and running
- (39) N 79° 46' 00" E, seven hundred thirty-four and 74/100 (734.74) feet to a stone bound at the place of beginning.

leaning and intending to convey and hereby conveying a portion of the premises conveyed to Nashua-New Hampshire Foundation by Textron, Inc. by deed dated December 31, 1948, recorded in Hillsborough County Registry of Deeds, Volume 1210, Page 329.

I. There are also conveyed all rights, titles and interests of the grantor in any of the following situate or located in Nashua and encompassed by the boundaries of the plan hereinabove referred to (the recital of any item shall not imply a limitation of any other items recited): (a) land, waters,

the beds of rivers, streams and canals, easements of way, transportation, transmission and every other sort of easement in land, appurtenant or in gross; incorporeal hereditaments; revisionary interests; and every other sort of interest in real property; (b) subject to exceptions and reservations hereinafter set forth, to use, take, control, withhold and release the flow of waters in the rivers, streams and canals; (c) subject to exceptions and reservations hereinafter set forth buildings, structures, canals, dams, gates, flumes, racks, penstocks, tailraces, reservoirs, equipment and devices and means for the use, taking, control and withholding of waters, rivers, streams and canals. Also there are conveyed all flowage rights of grantor over lands in Nashua and Hollis up river from the Mine Falls Dam.

(a) Also is hereby granted the right on the part of the grantee by its authorized employees and agents on official duties to enter the conveyed

premises from the east through grantor's premises known as the Mill Yard off Pine Street by way of common roads and bridges including Foundation's lower service road. There is excluded from this right the use of Foundation's higher service road.

(b) Also there is granted the right to drain the Canal for inspection, repairs or improvements upon appropriate notice to the grantor of intent to do so.

II. There is expressly excepted and excluded from this deed and this conveyance is made subject to:

(a) The easements held by and any electrical equipment, structures or devices owned by the Connecticut River Power Company or Public Service Company of New Hampshire and any rights of either Company to maintenance and use thereof; said easements are as shown on the above referred plans.

(b) As to Parcel No. 2, the premises along the course described as follows are conveyed subject to prescriptive rights, if any, of others: "thence running southerly and by land of Marquis and others in a line parallel with the easterly line of the railroad tracks on the land of the grantor and five feet easterly therefrom two hundred thirty-seven and thirty-three hundredths (237.33) feet to a stone bound at the northwesterly line of Ledge Street".

(c) Two metal garages on Parcel No. 1, now or formerly owned by Joseph W. Brown and his or the present owners' rights relating to the use thereof.

(d) The area occupied by the P. E. Everett Turnpike right of way as shown on said plans.

III. There is expressly excepted from this conveyance and reserved to the grantor, its successors and assigns:

(a) The right and easement to enter into and pass through the herein conveyed premises for the purpose and with the right of inspection of the area, the structures therein including, but not limited to, the Canal and Mine Falls dam and for the purpose and right of maintaining, operating, improving, repairing and drawing water from the walls in the well fields in the cove area, (part of Parcel 2) as indicated on the above referred to plan, also for the purpose and with the right to drill new wells in said area and operating and maintaining pumps and pump houses and water pipes and mains and other equipment necessary in connection with use and operation of said walls and the carrying of water therefrom.

(b) The right on the part of the grantor, its successors and assigns to drain the Canal for inspection, repair and improvement upon appropriate notice to the grantee of its intent to do so.

(c) The right to have maintained the flow of water in the Canal at a rate sufficient to provide a water level as now provided for fire protection purposes in the Mill Yard area, so-called.

(d) The right and easement to install, construct, maintain, repair and replace drains adequate and sufficient to drain water and sewage from grantor's premises lying south of Parcel 1 and Parcel 2 of the granted premises in, over and across the granted premises lying north of grantor's premises for the purpose of draining water and sewage from grantor's said premises lying south of Parcel 1 and Parcel 2 of the herein granted premises; the location and number of said drains to be determined by mutual agreement of the grantor and the grantee.

IV. The grantee, for itself, its successors and assigns, covenants with grantor, its successors and assigns, that the grantee will and its successors and assigns shall perform all the obligations of the grantor in agreement with said Connecticut River Power Company and the said Public Service Company of New Hampshire relating to electric transmission lines which be within the boundaries of the hereinconveyed premises.

The grantee for itself, its successors and assigns further covenants with the grantor, its successors and assigns as follows:

(a) The conveyed premises will be held in perpetuity by the City of Nashua or its successors and maintained and used solely as a public park, however, the lagoon area so-called, may be used as it is now used until such use is abandoned at which time it will become subject to the covenant set forth in the first clause of this sub-paragraph.

(b) It will maintain the Mine Falls dam at its present height and retain forever the right to increase its elevation by fifteen feet; it will maintain the ~~gate house~~ <sup>gate</sup> and maintain the water level in the canal satisfactory to the grantor, its successors and assigns.

(c) Any building constructed upon the premises will be the property of the City of Nashua and be of durable construction and conform aesthetically to its surroundings.

(d) No business offices or shop facilities shall be permitted upon the premises except those necessary for park administration and maintenance.

(e) Use of motor vehicles and power boats excepting such use in the Nashua River as may be legally beyond the control of the grantee, its successors and assigns, shall be restricted to use by police, fire, maintenance, emergency and safety personnel (both City and Foundation), except however, that parking of motor vehicles may be allowed in appropriate designated parking areas on the perimeter of the premises as determined by appropriate City authorities.

(f) No hunting shall be allowed and firearms shall be prohibited from the premises except those employed by law enforcement agents on their official duties or City or Foundation employees or agents in the course of their official duties.

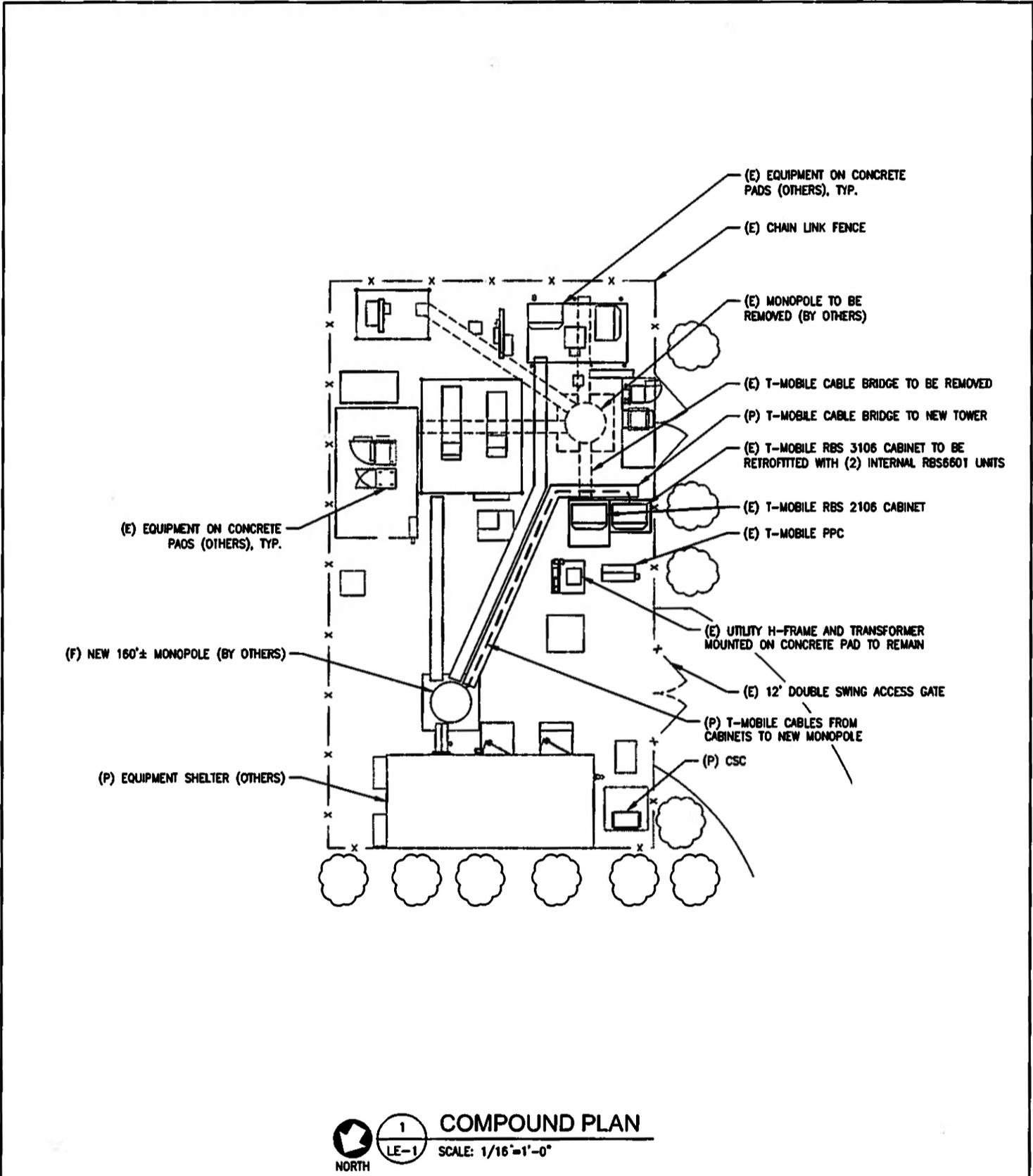
(g) A chain link fence will be erected in the cove area to prevent unauthorized access from the park to Foundation's Mill Yard.

(h) The present chain link fence in the lagoon area will be retained as long as the lagoons are maintained and operated .

**EXHIBIT B**

Subject to the terms and conditions of this Agreement, the location of the Premises is generally described and depicted as shown below or in the immediately following attachment(s).

Site Number: Error! Reference source not found.  
Site Name: Error! Reference source not found.  
Market: Error! Reference source not found.

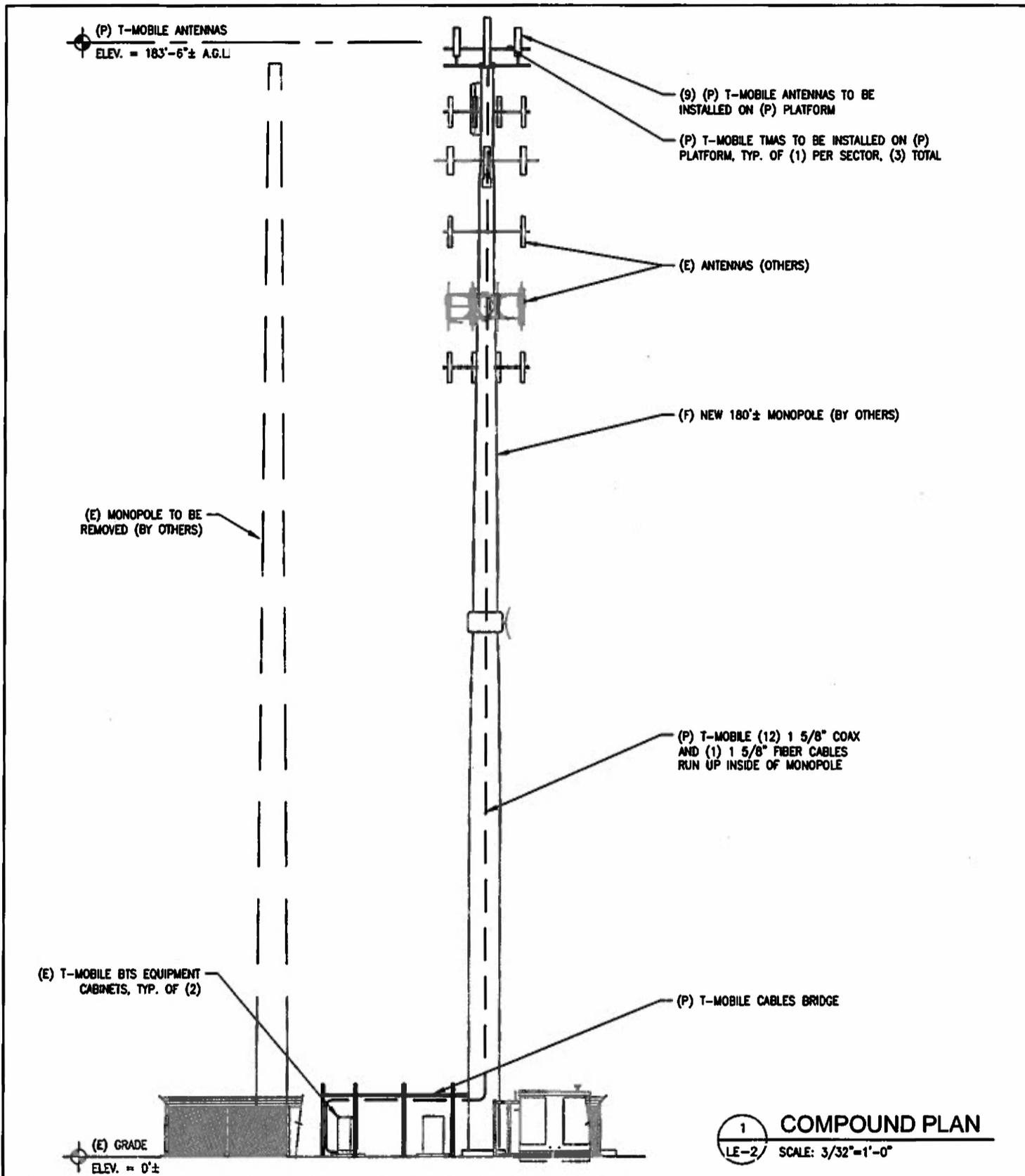


**E GADVANCED**  
ENGINEERING GROUP, P.C.  
Civil Engineering • Site Development • Surveying • Telecommunications  
500 NORTH BROADWAY  
EAST PROVIDENCE, RI 02914  
TEL: (401) 354-2403  
FAX: (401) 633-6354

T-MOBILE NORTHEAST LLC  
15 COMMERCE WAY, SUITE B  
NORTON, MA 02766  
OFFICE: (508) 286-2700  
FAX: (508) 286-2893

TITLE: LEASE EXHIBIT  
SITE NO: 4DN4407C  
SITE NAME: MINE FALLS PARK  
ADDRESS: WHIPPLE STREET  
NASHUA, NH 03063

DATE: 9/1/2015  
DRAWN BY: AAB  
REVISION: 1  
SCALE: NOTED  
SHEET: 1 OF 2



**EGADVANCED**  
 ENGINEERING GROUP, P.C.  
Civil Engineering - Site Development - Surveying - Telecommunications  
 500 NORTH BROADWAY  
 EAST PROVIDENCE, RI 02914  
 TEL: (401) 354-2403  
 FAX: (401) 633-6354

T-MOBILE NORTHEAST LLC  
 15 COMMERCE WAY, SUITE B  
 NORTON, MA 02766  
 OFFICE: (508) 286-2700  
 FAX: (508) 286-2893

TITLE: LEASE EXHIBIT  
 SITE NO: 4DN4407C  
 SITE NAME: MINE FALLS PARK  
 ADDRESS: WHIPPLE STREET  
 NASHUA, NH 03063

DATE:	9/1/2015
DRAWN BY:	AAB
REVISION:	1
SCALE:	NOTED
SHEET:	2 OF 2

**EXHIBIT B-1**

**Tenant's Equipment Loading Schedule**

- (3) Ericsson Air B2A/B4P antennas**
- (3) Ericsson Air B4A/B2P antennas**
- (3) RFS APX16DWV-16DWVS antennas**
- (3) RFS ATMAA1412D-1A20 TMAs**
- (12) lines 1 5/8" coaxial cabling**
- (1) lines 1 5/8" fiber**

**EXHIBIT C**

**Memorandum  
of  
Lease**

After Recording, Mail To:

APN:  
Loan No.

---

**MEMORANDUM OF LEASE**

A Site Lease Agreement (the "Agreement") by and between City of Nashua , a New Hampshire Municipal Corporation ("Landlord") and T-Mobile Northeast LLC, a Delaware Limited Liability Company ("Tenant") was made regarding a portion of the following property (as more particularly described in the Agreement, the "Premises"):

See Attached Exhibit A incorporated herein for all purposes.

Without limiting the terms and conditions of the Agreement, Landlord and Tenant hereby acknowledge the following:

1. Capitalized terms used, but not otherwise defined herein, shall have the meanings ascribed to such terms in the Agreement.
2. The Agreement shall constitute a lease (the "Lease"), the term of which shall initially be for **Error! Reference source not found.** (Error! Reference source not found.) years and will commence upon the relocation of Tenant's equipment to Replacement Tower (the "Commencement Date").
3. Tenant shall have the right to extend the Lease for four (4) additional and successive **Error! Reference source not found.**-year terms.
4. This memorandum is not a complete summary of the Lease. It is being executed and recorded solely to give public record notice of the existence of the Option and the Lease with respect to the Premises. Provisions in this memorandum shall not be used in interpreting the Lease provisions and in the event of conflict between this memorandum and the said unrecorded Lease, the unrecorded Lease shall control.
5. This memorandum may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto were upon the same instrument.

**IN WITNESS WHEREOF**, the parties hereto have respectively executed this memorandum effective as of the date of the last party to sign.

**LANDLORD:** City of Nashua

**By:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**TENANT:** T-Mobile Northeast LLC

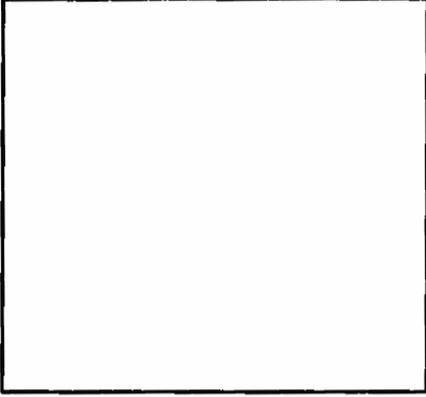
**By:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_





Notary Public \_\_\_\_\_  
Print Name \_\_\_\_\_  
My commission expires \_\_\_\_\_

(Use this space for notary stamp/seal)