

Cingular Site: Bankhead

**OPTION AND GROUND LEASE AGREEMENT**

THIS OPTION AND GROUND LEASE AGREEMENT ("Agreement"), is made this \_\_\_\_\_ day of \_\_\_\_\_, 2004 by and between Wendell Moody and Vickie Moody, (the "LANDLORD") and NEW CINGULAR WIRELESS PCS, LLC, a Delaware limited liability company, d/b/a Cingular Wireless, its affiliates, successors and assigns, (the "TENANT").

**PROPERTY**

LANDLORD is the owner of certain real property located at Parcel # 67-15-01-2-10 in Winston County, State of Alabama, as described on Exhibit "A" attached hereto (the "Property") and TENANT desires to obtain an option to lease a portion of such Property containing approximately 10,000 square feet, together with three (3) guy anchor easements and a right of way thereto as hereinafter described for the purpose of constructing, maintaining, and operating a wireless communications facility and uses incidental thereto (such portion of Property and such right of way being hereinafter collectively called the "Leased Premises"). The Leased Premises is more specifically described in, and substantially shown on, Exhibit "B" attached hereto.

**OPTION**

**NOW THEREFORE**, in consideration of the sum of Five Hundred and 00/100 Dollars (\$500.00) (the "Option Money"), to be paid by TENANT to LANDLORD within thirty (30) days of TENANT's execution of this Agreement, LANDLORD hereby grants to TENANT the exclusive right and option (the "Option") to lease the Leased Premises in accordance with the terms and conditions set forth herein.

A. **Option Period.** The Option may be exercised at any time within one year of execution of this Agreement by all parties (the "Option Period"). At TENANT's election and upon TENANT's written notice to LANDLORD prior to expiration of the Option Period, the Option Period may be further extended for one additional period of six (6) months with an additional payment of Five Hundred and 00/100 Dollars (\$500.00), by TENANT to LANDLORD for the extension of the Option Period. The Option Period may be further extended by mutual written agreement. If TENANT fails to exercise the Option within the Option Period as it may be extended as provided herein, the Option shall terminate, all rights and privileges granted hereunder shall be deemed completely surrendered, LANDLORD shall retain all money paid for the Option, and no additional money shall be payable by either party to the other.

B. **Transfer of Option.** The Option may be sold, assigned, or transferred at any time by TENANT to TENANT's parent company or any affiliate or subsidiary of, or partner in TENANT or its parent company or to any third party agreeing to be subject to the terms hereof. From and after the date the Option has been sold, assigned or transferred by TENANT to a third

party agreeing to be subject to the terms hereof, TENANT shall immediately be released from any and all liability under this Agreement, including the payment of any rental or other sums due, without any further action.

C. **Changes in Property During Option Period.** If during the Option Period or any extension thereof, or during the term of this Agreement if the Option is exercised, LANDLORD decides to subdivide, sell, or change the status of the zoning of the Leased Premises, the Property or the other real property of LANDLORD contiguous to, surrounding, or in the vicinity of the Property ("Surrounding Property"), LANDLORD shall immediately notify TENANT in writing. Any sale of the Property or Surrounding Property shall be subject to TENANT's rights under this Agreement. LANDLORD agrees that during the Option Period or any extension thereof, or during the term of this Agreement if the Option is exercised, LANDLORD shall not initiate or consent to any change in the zoning of the Property or LANDLORD's Surrounding Property or impose or consent to any other restriction that would prevent or limit TENANT from using the Leased Premises for the uses intended by TENANT as hereinafter set forth in this Agreement.

D. **Title.** LANDLORD warrants that LANDLORD holds good and marketable title to the Property and has the full power and authority to enter into and execute this Agreement. LANDLORD further warrants that there are no deeds to secure debt, mortgages, liens, unrecorded agreements or judgments encumbering the Property and no restrictive covenants, or other encumbrances on the title to the Property that would prevent TENANT from using the Leased Premises for the uses intended by TENANT as set forth in this Agreement.

E. **Inspections.** LANDLORD shall permit TENANT and TENANT's employees, agents, and contractors during the Option Period, and any extension thereof, free ingress and egress to the Leased Premises by TENANT or its employees, agents, and contractors to conduct structural strength analysis, subsurface boring tests, environmental inspections (including Phase I and Phase II audits), radio frequency tests, and such other tests, investigations, and similar activities as TENANT may deem necessary (collectively "the Inspections"), at the sole cost of TENANT. The scope, sequence, and timing of the Inspections shall be at the sole discretion of TENANT. The Inspections may be commenced at any time during the aforementioned Option Period and if the Option is exercised, at any time during the term of the Agreement. TENANT and its employees, agents and contractors shall have the right to bring the necessary vehicles and equipment onto the Leased Premises, the Property, and the LANDLORD's Surrounding Property to conduct such tests, investigations, and similar activities. TENANT shall indemnify and hold LANDLORD harmless against any loss or damage for personal injury or physical damage to the Leased Premises, the Property, LANDLORD's Surrounding Property, or the property of third parties resulting from any Inspections. In the event that LANDLORD is a lessee of the Property, LANDLORD shall use its best efforts to obtain a consent to this Agreement from the underlying Lessor and any necessary documentation to allow TENANT the ability to perform any of the above Inspections on the Property. Furthermore, LANDLORD shall provide, upon TENANT's request, any existing documentation in LANDLORD's possession related to the Property including, but not limited to, an existing survey and copies of any existing reports and applications that TENANT deems reasonably necessary. Upon written request, TENANT shall furnish to LANDLORD copies of the environmental findings. However, LANDLORD shall not rely on said environmental findings for

anything outside this Agreement and shall indemnify and hold TENANT harmless from such findings.

F. **Surveys.** LANDLORD also hereby grants to TENANT the right to survey the Leased Premises and the Property, and the legal description of the Leased Premises on the survey obtained by TENANT shall then become Exhibit "B", which shall be attached hereto and made a part hereof, and shall control in the event of discrepancies between it and the terms of this Agreement.

G. **Governmental Approvals.** TENANT's ability to use the Leased Premises is contingent upon its obtaining all certificates, permits, licenses, and other approvals that may be required by any governmental authorities. LANDLORD shall cooperate with TENANT in its effort to obtain such certificates, permits, licenses, and other approvals. During the Option Period, and during the term of this Agreement if the Option is exercised, LANDLORD agrees to sign such papers as are required to file applications with the appropriate zoning authority and other governmental authorities for the proper zoning of the Property and for other certificates, permits, licenses, and approvals as are required for the use of the Leased Premises intended by the TENANT. If requested by TENANT, any such applications may be filed with respect to not only the Leased Premises, but also LANDLORD's Property. TENANT will perform all other acts and bear all expenses associated with any zoning or other procedure necessary to obtain any certificate, permit, license, or approval for the Property deemed necessary by TENANT. LANDLORD agrees not to register any written or verbal opposition to any such procedures.

H. **Utility Services.** During the Option Period, and during the term of this Agreement if the Option is exercised, LANDLORD shall cooperate with TENANT in TENANT's effort to obtain utility services along the access right-of-way contained in the Property or other portions of LANDLORD's Surrounding Property, by signing such documents or easements as may be required by the utility companies. In the event any utility company is unable or does not desire to use the aforementioned right-of-way, LANDLORD hereby agrees to grant an additional right-of-way either to TENANT or to the utility company at no cost to TENANT. If LANDLORD fails to fulfill LANDLORD's obligations to cooperate with TENANT as required herein in obtaining the governmental approvals or utility services contemplated by this Agreement, then in addition to any rights or remedies that TENANT may have at law or in equity, TENANT shall also be entitled to reimbursement from LANDLORD, upon demand, of all costs and expenses incurred by TENANT in connection with its activities under this Agreement, including but not limited to costs of environmental assessments, title examinations, zoning application fees, and attorneys' fees and other legal expenses of TENANT. In the event LANDLORD desires to relocate the utilities and utility easement(s), LANDLORD will obtain all certificates, permits and other approvals required by the utility company at LANDLORD's sole cost. All activities related to the relocation of such utilities shall not interfere with the construction, maintenance, or operation of TENANT's Communications Facility ("as hereinafter defined").

I. **Exercise of Option.** TENANT shall exercise the Option by written notice to LANDLORD by certified mail, return receipt requested. The notice shall be deemed effective on

the date it is posted. On and after the date of such notice, this Agreement shall also constitute a Lease Agreement between LANDLORD and TENANT on the following terms and conditions:

### **LEASE AGREEMENT**

1. **Lease of Property.** LANDLORD hereby leases to TENANT the Leased Premises as described above, which includes the grant of a nonexclusive right and easement during the term of this Agreement for ingress and egress, seven (7) days a week, twenty-four (24) hours a day, on foot or motor vehicle, including trucks, and for the installation and maintenance of utility wires, cables, conduits, and pipes over, under, or along the twenty foot (20') wide right of way extending from the nearest public right-of-way, which is known as Hwy 278, to the Leased Premises, as such right-of-way is shown on Exhibit "B" hereto.

2. **Initial Term and Rental.** This Agreement shall be for an initial term of five (5) years ("Initial Term") beginning on the date the Option is exercised by TENANT ("Commencement Date") at an annual rental of Six Thousand Dollars (\$6,000.00) plus applicable sales tax thereon, if any, to be paid in equal monthly installments on the first day of each month during the term, in advance, to the LANDLORD or to such other person, firm or place as the LANDLORD may, from time to time, designate in writing at least thirty (30) days in advance of any rental payment date. If the Commencement Date is on a date other than the first day of a calendar month, TENANT shall make a prorated payment of the installment of the annual rental payable for the first and last month of the term of this Agreement.

TENANT will have the right, at its sole cost and expense, to use a direct deposit system with regard to rent payments. LANDLORD agrees to cooperate with TENANT in providing requisite information to TENANT for such direct deposit.

3. **Extension of Term.** TENANT shall have the option to extend the term of this Agreement for four (4) additional consecutive five (5) year periods. Each option for an extended term shall be deemed automatically exercised without notice by TENANT to LANDLORD unless TENANT gives LANDLORD written notice of its intention not to exercise any such extension option at least six (6) months prior to the end of the then current term. If TENANT gives LANDLORD written notice of its intention not to exercise any such option, the term of this Agreement shall expire at the end of the then current term. All references herein to the term of this Agreement shall include the term as it is extended as provided in this Agreement.

4. **Extended Term Rental.** The annual rental for the extended terms shall increase by Ten percent (10%) per term over the annual rental for the previous term. The annual rental for any extended term shall be payable in the same manner as the annual rental for the Initial Term.

5. **Continuance of Lease.** If, at least six (6) months prior to the end of the fourth (4th) extended term, neither LANDLORD nor TENANT has given the other written notice of its desire that the term of this Agreement end at expiration of the fourth (4th) extended term, then upon the expiration of the fourth (4th) extended term, this Agreement shall continue in force and effect upon the same covenants, terms, and conditions for a further term of one (1) year, and for annual terms



thereafter until terminated by either party by giving to the other written notice of its intention to terminate at least six (6) months prior to the end of any such annual term. Monthly rental during such annual terms shall be equal to the rent paid for the last month of the fourth (4th) extended term.

6. **Use.** TENANT shall use the Leased Premises for the purpose of constructing, maintaining and operating a communications facility and uses incidental thereto, which facility may consist of such buildings as are necessary to house telecommunications equipment, a free standing monopole, guyed or three sided antenna structure of sufficient height, as determined by TENANT, now or in the future to meet the telecommunication needs of TENANT, its subtenants, licensees and sublicensees and all necessary appurtenances, and a security fence of chain link or comparable construction that may, at the option of TENANT, be placed around the perimeter of the Leased Premises (collectively, the "Communications Facility"). TENANT shall be allowed to modify, supplement, replace, remove, or relocate any of the improvements at the Leased Premises, including the antennas, microwaves, or other appurtenances during the term of this Agreement and any extensions thereof. All improvements, modifications, supplements, replacements, ~~removals~~ or relocation which are necessary for use by TENANT, its subtenants, licensees and sublicensees shall be made at no expense to LANDLORD. The Communications Facility may be operated at frequencies licensed to Tenant and/or its affiliates. LANDLORD grants TENANT, its subtenants, licensees and sublicensees the right to use such portions of LANDLORD's Property and Surrounding Property as are reasonably required during construction, installation, maintenance, and operation of the Communications Facility. TENANT shall maintain the Leased Premises in a reasonable condition and shall be solely responsible for the repair and maintenance of all improvements on the Leased Premises, excluding repair and maintenance due to the willful misconduct or negligence of the LANDLORD, its employees, agents or contractors. LANDLORD shall not be allowed to use the Property or the Surrounding Property in any manner which would cause interference with the operation of the Communications Facility. In the event there is interference due to LANDLORD's actions or usage, LANDLORD shall immediately take all steps necessary to eliminate the interference including, if required, cutting off power to the objectionable equipment. Based on standard and accepted engineering practices, if LANDLORD cannot eliminate the interference within twenty-four (24) hours of its inception, LANDLORD shall immediately remove the objectionable equipment and/or cease operations.

7. **Governmental Approvals.** LANDLORD shall cooperate with TENANT in its effort to obtain and maintain in effect all certificates, permits, licenses, and other approvals required by governmental authorities for TENANT's use of the Leased Premises. The obligations of LANDLORD as set forth herein during the Option Period with respect to governmental approvals shall continue throughout the term of this Agreement. If at any time during the term of this Agreement, TENANT is unable to use the Leased Premises for a communications facility in the manner intended by TENANT due to imposed zoning conditions or requirements, or in the event that after the exercise of the Option, any necessary certificate, permit, license, or approval is finally rejected or any previously issued certificate, permit, license, or approval is canceled, expires, lapses, or is otherwise withdrawn or terminated by the applicable governmental authority, or radio frequency propagation tests are found to be unsatisfactory so that TENANT, in its sole discretion, will be unable to use the Leased Premises for a communications facility in the manner intended by

TENANT, TENANT shall have the right to terminate this Agreement by written notice to LANDLORD. In such case, LANDLORD shall retain all rentals paid to LANDLORD prior to the termination date. Upon such termination, LANDLORD and TENANT shall have no other further obligations to each other, other than TENANT's obligation to remove its property as hereinafter provided.

8. **Taxes.** TENANT shall be responsible for making any necessary returns for and paying any and all personal property taxes separately levied or assessed against TENANT's facilities or the improvements constructed by TENANT on the Leased Premises. Taxes are not to be considered as additional rent, but rather as reimbursement to LANDLORD and to be separately billed. TENANT shall pay for any documented increase in ad valorem real estate taxes levied against the Property which are directly attributable to the improvements constructed by TENANT on the Leased Premises and are not separately levied or assessed by the taxing authorities against TENANT or the improvements of TENANT. LANDLORD shall pay all other ad valorem real property taxes levied against the Property on or before the date such taxes become delinquent. LANDLORD hereby agrees that if the taxes which are levied against the LANDLORD and TENANT's improvements on LANDLORD's Property are incorrectly assessed, TENANT maintains the right to appeal the tax assessment to the appropriate governmental authority, said appeal shall be paid for by TENANT. Should the state in which the Property is located offer an early payment tax incentive, LANDLORD hereby agrees that TENANT shall be allowed to pay the taxes under the incentive plan which shall allow for TENANT to take advantage of any offered incentives. LANDLORD shall furnish documentation to TENANT within thirty (30) days of receipt by LANDLORD or LANDLORD's representative of the tax assessment for any assessed taxes which are levied against the Leased Premises. LANDLORD'S ability to bill TENANT for said taxes is limited to the current year tax billing in question. In no event will LANDLORD have the ability to bill for pro-rata share or estimates of taxes on future tax billings.

9. **Insurance.** TENANT shall, at its sole cost and expense, at all times during the term of this Agreement maintain in effect a policy or policies of insurance: a) covering its personal property located on the Leased Premises and TENANT's improvements to the Leased Premises paid for and installed by TENANT, providing protection against any peril included under insurance industry practices within the classification "fire and extended coverage," providing protection as deemed desirable by TENANT with respect to its personal property and to the full insurable value of its TENANT improvements paid for by TENANT; and b) Commercial General Liability insurance with minimum limits of \$1,000,000 for injury to or death of one or more persons in any one occurrence and \$1,000,000 for damage to or destruction of properties in any one occurrence. TENANT shall name the LANDLORD as an additional insured as its interest may appear in regards to the aforementioned policies and shall furnish LANDLORD with a certificate of insurance upon request by the LANDLORD.

10. **Self- Insurance.** TENANT shall have the right to self-insure with respect to any of the above insurance.

11. **Indemnification.**

(a) TENANT shall indemnify and hold LANDLORD harmless against any liability or loss from personal injury or property damage resulting from or arising out of the use and occupancy of the Leased Premises by TENANT or its employees or agents, excepting, however, such liabilities and losses as may be due to or caused by the acts or omissions of LANDLORD or its employees or agents.

(b) LANDLORD shall indemnify and hold TENANT harmless against any liability or loss from personal injury or property damage resulting from or arising out of the use and occupancy of the Property by LANDLORD or its employees or agents, excepting, however, such liabilities and losses as may be due to or caused by the acts or omissions of TENANT or its employees or agents.

12. **Sale of Property.**

If LANDLORD, at any time during the Initial Term or any extended term of this Agreement, decides to sell, subdivide, or rezone any of the Leased Premises, the Property, or all or any part of LANDLORD's Surrounding Property, to a purchaser other than TENANT, LANDLORD shall promptly notify TENANT in writing, and such sale shall be subject to this Agreement and TENANT's rights hereunder. LANDLORD agrees not to sell, lease, or use any areas of LANDLORD's Property or Surrounding Property for the installation, operation, or maintenance of other wireless communications facilities if, such installation, operation, or maintenance would interfere with TENANT's facilities as determined by radio propagation tests performed by TENANT at purchasing parties' expense. If the radio frequency propagation tests demonstrate levels of interference unacceptable to TENANT, LANDLORD shall be prohibited from selling, leasing, or using any areas of LANDLORD's Property or Surrounding Property. LANDLORD shall not be prohibited from the selling, leasing, or use of any of LANDLORD's Property or Surrounding Property for non-wireless communication use.

13. **Quiet Enjoyment.** LANDLORD covenants that TENANT, on paying the rental and performing the covenants, terms and conditions required of TENANT contained herein, shall peaceably and quietly have, hold and enjoy the Leased Premises and the leasehold estate granted to TENANT by virtue of this Agreement.

14. **Assignment.** This Agreement may be sold, assigned, licensed, or transferred at any time by TENANT to Crown Castle South Inc. ("CCSI") or to TENANT's or CCSI's parent company or to any affiliate or subsidiary of TENANT or its parent company, to any entity with or into which TENANT or CCSI is merged or consolidated, or to any entity resulting from a reorganization of TENANT or CCSI or its parent company or to any third party agreeing to be subject to the terms and conditions herein. Upon any such sale, assignment, license or transfer, TENANT shall be released from its obligations hereunder without further act, and LANDLORD shall execute any instrument reasonably requested by TENANT to effect such release. Notwithstanding the foregoing or anything to the contrary herein, TENANT may license, sublease or sublicense part or all of the Leased Premises at any time with notice to LANDLORD and CCSA may further license, sublease or sublicense the same at any time with notice to LANDLORD.

15. **Condemnation.** If notice is given to LANDLORD that the Property will be condemned by any legally constituted public authority, then LANDLORD shall promptly notify TENANT of such taking or condemnation. If the whole of the Property, or such portion thereof as will make the Leased Premises unusable by TENANT, in TENANT's discretion, for the purposes herein leased, is condemned by any legally constituted public authority, then this Agreement, and the term hereby granted, shall, at TENANT's option, cease from the time when possession thereof is taken by the public authority, and rental shall be accounted for as between LANDLORD and TENANT as of that date. However, nothing in this paragraph shall be construed to limit or adversely affect TENANT's right to seek an award of compensation from any public authority that is seeking condemnation proceeding for the taking of TENANT's leasehold interest hereunder or for the taking of TENANT's improvements, fixtures, equipment, and personal property.

16. **Casualty.** If TENANT's Leased Premises, Communications Facility, or improvements thereon are damaged or destroyed by fire or other casualty, TENANT shall not be required to repair or replace the Communications Facility or any of TENANT's improvements. Additionally, if completion of the repairs is not possible within ninety (90) days following the date of the damage or destruction or if the cost of repairs is reasonably estimated by TENANT to be more than twenty-five (25%) of the replacement value of the Communications Facility, TENANT may terminate this Agreement in its sole discretion by giving written notice to LANDLORD. Termination shall be effective immediately after such notice is given. Upon such termination, this Agreement shall become null and void. LANDLORD and TENANT shall have no other further obligations to each other, other than TENANT's obligation to remove its property as hereinafter provided.

17. **Subordination.** LANDLORD shall obtain for the benefit of TENANT a commercially reasonable Non-Disturbance Agreement from the present and any future mortgagee(s) or holder(s) of a deed of trust confirming that TENANT's right to quiet possession of the Leased Premises during the Initial Term and any extended term shall not be disturbed, as long as TENANT is not in default under this Agreement. No such subordination shall be effective unless the holder of every such deed to secure debt or mortgage shall, either in the deed to secure debt or mortgage or in a separate agreement with TENANT, agrees that in the event of a foreclosure, or conveyance in lieu of foreclosure, of LANDLORD's interest in the Property, such holder shall recognize and confirm the validity and existence of this Agreement and the rights of TENANT hereunder, and this Agreement shall continue in full force and effect and TENANT shall have the right to continue its use and occupancy of the Leased Premises in accordance with the provisions of this Agreement as long as TENANT is not in default of this Agreement beyond applicable notice and cure periods. TENANT shall execute in a timely manner whatever instruments may reasonably be required to evidence the provisions of this paragraph. In the event the Property is encumbered by a deed to secure debt or mortgage on the date of the exercise of the Option, LANDLORD, no later than thirty (30) days after the Option has been exercised, shall obtain and furnish to TENANT a non-disturbance agreement in recordable form from the holder of each deed to secure debt or mortgage.



18. **Title Insurance.** TENANT, at TENANT's option, may obtain title insurance on its leasehold interest in the Property. LANDLORD shall cooperate with TENANT's efforts to obtain title insurance by executing documents or obtaining requested documentation as required by the title insurance company. If LANDLORD fails to provide requested documentation within thirty (30) days of TENANT's request, or fails to provide any non-disturbance agreement required in the preceding paragraph of this Agreement, TENANT, at TENANT's option, may withhold and accrue the monthly rental until such time as all such documentation is received by TENANT.

19. **Hazardous Substances.** LANDLORD warrants, represents, and agrees that neither the LANDLORD nor, to the best of LANDLORD's knowledge, any third party has used, generated, stored, or disposed of any Hazardous Materials in, on, or under the Leased Premises, Property, or Surrounding Property. "Hazardous Materials" shall mean petroleum or any petroleum product, asbestos, and any other substance, chemical, or waste that is identified as hazardous, toxic, or dangerous in any applicable federal, state, or local law, rule, regulation, order or ordinance. TENANT shall indemnify, defend and hold LANDLORD harmless from any and all claims, damages, fines, judgements, penalties, costs, liabilities or losses (including, without limitation, any and all sums paid for settlement of claims, attorneys' fees and consultants' and experts' fees) from the presence or release of any Hazardous Materials on the Leased Premises if caused by TENANT or persons acting under TENANT. LANDLORD shall indemnify, and defend any breach of LANDLORD's representations and warranty set forth above and hold TENANT harmless from any and all claims, damages, fines, judgements, penalties, costs, liabilities or losses (including, without limitation, any and all sums paid for settlement of claims, attorneys' fees and consultants' and experts' fees) from the presence or release of any Hazardous Materials on LANDLORD's Property or Surrounding Property unless caused by TENANT or persons acting under TENANT.

20. **Opportunity to Cure.**

(a) If TENANT should fail to pay any rental or other amounts payable under this Agreement when due, or if TENANT should fail to perform any other of the covenants, terms, or conditions of this Agreement, prior to exercising any rights or remedies against TENANT on account thereof, LANDLORD shall first provide TENANT with written notice specifying the nature of the failure and provide TENANT with a thirty (30) day period to cure such failure (if the failure is a failure to pay rental or any other sum of money under this Agreement) or a sixty (60) day period to cure such failure (if the failure is a failure to perform any other covenant, term, or condition of this Agreement). If the failure is not a failure to pay rental or any other sum of money hereunder but is not capable of being cured within a sixty (60) day period, TENANT shall be afforded a reasonable period of time to cure the failure provided that TENANT promptly commences curing the failure after the notice and prosecutes the cure to completion with due diligence.

(b) In the event that LANDLORD is in default of its obligations under this Agreement and such default continues for thirty (30) days after written notice from TENANT, TENANT, may at its option and in any addition to any other right or remedy available hereunder, or at law or equity, incur reasonable expenses necessary to perform the obligation of LANDLORD specified in such notice, and any amount paid by TENANT in so

doing shall be deemed paid for the account of LANDLORD, and LANDLORD agrees to reimburse TENANT therefor and TENANT may set off from rent or other amounts due hereunder any reasonable amount expended by TENANT as a result of such default. This Paragraph 20(b) falls under the terms and obligation of Paragraph 22(b).

21. **Notices.** Except as otherwise provided herein, any notices or demands which are required by law or provided under the terms of this Agreement shall be given or made by LANDLORD or TENANT in writing and shall be given by hand delivery, telegram, or other similar communication or sent via facsimile confirmed by an original hard copy or by certified or registered mail, or by a national overnight receipted delivery services which provides signed acknowledgments of receipt (including Federal Express, UPS, Emery, Purolator, DHL, Airborne and other similar couriers delivery services) and addressed to the respective parties set forth below. Such notices shall be deemed to have been given in the case of telegrams or similar communications when sent; in the case of certified or registered mail when deposited in the United States mail with postage prepaid, and in the case of overnight receipted delivery service the day the notice is deposited with the overnight delivery service. Every notice, demand, or request hereunder shall be sent to the addresses listed below:

If to LANDLORD: Wendell Moody and Vickie Moody  
5875 Highway 278  
Haleyville, AL 35565

If to TENANT: Cingular Wireless  
Mail Code GAN02  
6100 Atlantic Boulevard  
Norcross, GA 30071  
Attn: Network Real Estate Administration

With a copy to: Cingular Wireless  
Site: 231/411  
100 Concourse Parkway  
Suite 290  
Birmingham, AL 35244  
Attn: Director, Real Estate & Construction - Network

And: Cingular Wireless LLC  
5565 Glenridge Connector  
Suite 1700  
Atlanta, GA 30342  
Attn: Legal Department

Rejection or refusal to accept delivery of any notice, or the inability to deliver any notice because of a changed address of which no notice was given, shall be deemed to be receipt of any such notice.

22. **Termination.**

(a) Notwithstanding any other termination rights available to TENANT under this Agreement, TENANT, at its sole and absolute discretion, shall have the right to terminate this Agreement with ninety (90) days prior written notice to LANDLORD and a lump sum payment to LANDLORD in an amount equal to six (6) months rent or the total of the remaining months of the then current term, whichever is less. The rental rate shall be computed at the rate that is in effect at the time of termination. At termination, TENANT shall execute upon the request of the LANDLORD a written cancellation of the Agreement vacating the Leased Premises in recordable form and TENANT shall have no other further obligations, other than TENANT's obligation to remove its property as hereinafter provided.

(b) In addition to and not in limitation of any other provisions of this Agreement, TENANT shall have the right, exercisable by at least ten (10) days prior written notice thereof to LANDLORD, to terminate this Agreement upon occurrence of one or more of the following events:

(i) if LANDLORD shall violate or breach, or shall fail fully and completely to observe, keep, satisfy, perform and comply with, any agreement, term, representation, warranty, covenant, and shall not cure such violation, breach or failure within thirty (30) days after TENANT gives LANDLORD written notice thereof, or, if such failure shall be incapable of cure within thirty (30) days, if LANDLORD shall not commence to cure such failure within such thirty (30) day period and continuously prosecute the performance of the same to completion with due diligence; or

(ii) the commencement by LANDLORD of a voluntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or the consent by LANDLORD to the appointment of a receiver, liquidator, assignee, trustee, custodian, (or other similar official) of any substantial part of the property of LANDLORD, or to the taking of possession of any such property by any such functionary or the making of an any assignment for the benefit of creditors by LANDLORD; or

(iii) pursuant to the terms of Paragraph 17, "Subordination."

23. **Removal of Improvements.** Title to all improvements constructed or installed by TENANT on the Leased Premises shall remain with TENANT, and all improvements constructed or installed by TENANT shall at all times be and remain the property of TENANT, regardless of whether such improvements are attached or affixed to the Property. Furthermore all improvements constructed or installed by TENANT shall be removable at the expiration or earlier termination of this Agreement or any renewal or extension thereof, provided TENANT shall not at such time be in

default under any covenant or agreement contained in this Agreement. TENANT, upon termination of this Agreement, shall, within ninety (90) days, remove all improvements, fixtures, and personal property constructed or installed on the Leased Premises by TENANT and restore the Leased Premises to substantially the same condition as received, reasonable wear and tear and damage by insured casualty excepted. TENANT shall not be required to remove any foundations, driveways, or underground cables or wires. If such removal causes TENANT to remain on the Leased Premises after termination of this Agreement, TENANT shall pay rent at the then existing monthly rate, or on the existing monthly pro rata basis if based upon a longer payment term, until such time as the removal is completed.

24. **Radon Gas.** In accordance with Florida Law, the following statement is hereby made:

"RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department."

25. **Miscellaneous.** This Agreement cannot be modified except by a written modification executed by LANDLORD and TENANT in the same manner as this Agreement is executed. The headings, captions and numbers in this Agreement are solely for convenience and shall not be considered in construing or interpreting any provision in this Agreement. Wherever appropriate in this Agreement, personal pronouns shall be deemed to include other genders and the singular to include the plural, if applicable. This Agreement contains all agreements, promises and understandings between the LANDLORD and TENANT, and no verbal or oral agreements, promises, statements, assertions or representations by LANDLORD or TENANT or any employees, agents, contractors or other representatives of either, shall be binding upon LANDLORD or TENANT.

26. **Contractual Limitations Period.** No action or proceeding may be maintained or brought against a party to this Agreement unless such action or proceeding is commenced within twenty-four (24) months after the cause of action accrued unless such cause of action could not have reasonably been discovered by such party.

27. **Security Interest.** It is the express intent of the parties to this Agreement that LANDLORD have no security interest whatsoever in any personal property of TENANT, and, to the extent that any applicable statute, code, or law grants LANDLORD such an interest, LANDLORD does hereby expressly waive any rights thereto.

28. **Representation.** LANDLORD and TENANT warrant to each other that they were represented in this transaction respectively by N/A ("Tenant's Broker") and N/A ("Landlord's Broker") (collectively, "Broker") and by no other real estate brokerage firms. Additionally, the parties warrant to each other that they will each hold the other harmless from and indemnify each other



against claims made by any broker (except Broker) claiming to have represented the indemnifying party in this transaction.

29. **Governing Law.** This Agreement shall be governed and interpreted by, and construed in accordance with, the laws of the state where the Leased Premises is located.

30. **Attorney's Fees.** In any proceeding which either party may prosecute to enforce its rights hereunder, the unsuccessful party shall pay all costs incurred by the prevailing party, including reasonable attorneys' fees.

31. **Certificates.** After the commencement of the term of this Agreement, from time to time, within fifteen (15) days after written request therefor, LANDLORD shall deliver to TENANT, or to any mortgagee of TENANT, a certificate stating that: (i) TENANT has entered into occupancy of the space in accordance with the provisions of this Agreement; (ii) that this Agreement is in full force and effect; (iii) that LANDLORD has performed the covenants, agreements or conditions required of LANDLORD, if such be the case (and if such not be the case, then TENANT shall list those covenants, agreements or conditions not so performed); and (iv) any other information reasonably requested by TENANT or TENANT's mortgagee.

32. **Memorandum of Agreement.** At the request of TENANT, LANDLORD agrees to execute a memorandum or short form of this Agreement, in recordable form, setting forth a description of the Leased Premises, the term of this Agreement and other information desired by TENANT for the purpose of giving public notice thereof to third parties, as set forth as Exhibit "C" attached hereto.

33. **Confidentiality.** LANDLORD agrees not to discuss publicly, advertise, nor publish in any newspaper, journal, periodical, magazine, or other form of mass media, the terms or conditions of this Agreement. Doing so shall constitute a default under this Agreement. It is agreed that the parties to this Agreement will not discuss the terms and conditions contained herein with any unrelated third parties.

34. **Binding Effect.** This Agreement shall extend to and bind the heirs, personal representatives, successors, and assigns of LANDLORD and TENANT and shall constitute covenants running with the land.


35. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which shall constitute the same Agreement.

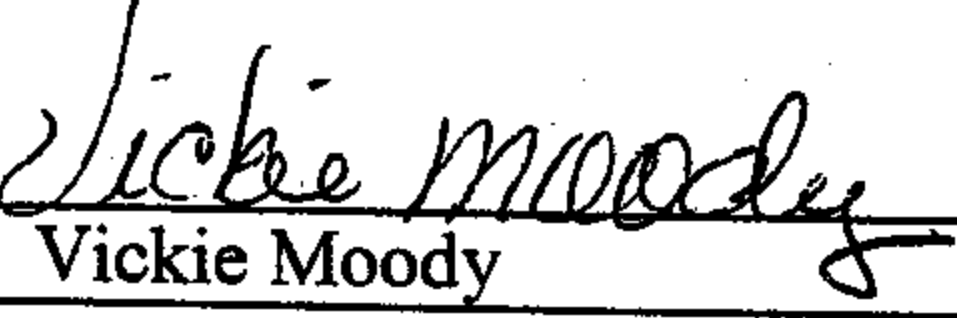
[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their respective seals.

**LANDLORD:**  
**Wendell Moody**

**LANDLORD:**  
**Vickie Moody**

By:   
Name: Wendell Moody  
Title: Landlord

By:   
Name: Vickie Moody  
Title: Landlord

STATE OF ALABAMA

:  
:SS

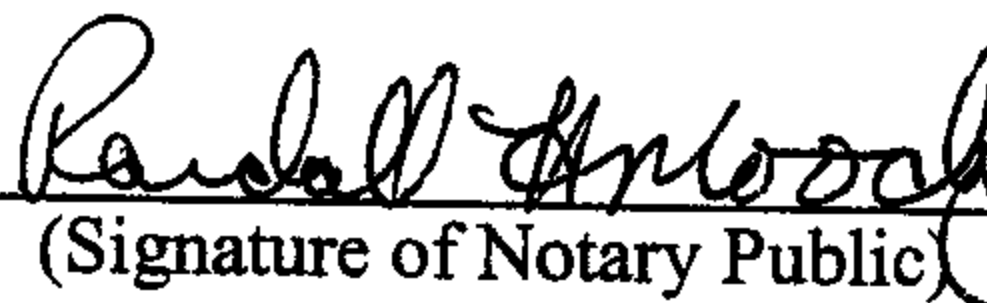
COUNTY OF WINSTON

:

PERSONALLY APPEARED BEFORE ME, the undersigned authority and for said County and State, the within named Wendell Moody and Vickie Moody, who acknowledged that they signed, executed and delivered the above and foregoing instrument on the day and year therein mentioned and for the purposes therein stated.

GIVEN UNDER MY HAND AND OFFICIAL SEAL, this, the 15 day of October, 2004.

(Seal)

  
(Signature of Notary Public)

RANDALL H. MOODY  
(Type Name of Notary Public)

State of Alabama

My Commission Expires 1-19-05

*[Handwritten initials]*

*[Handwritten signature]*

DANIEL THREATT

*[Handwritten signature]*

Lisa Henderson

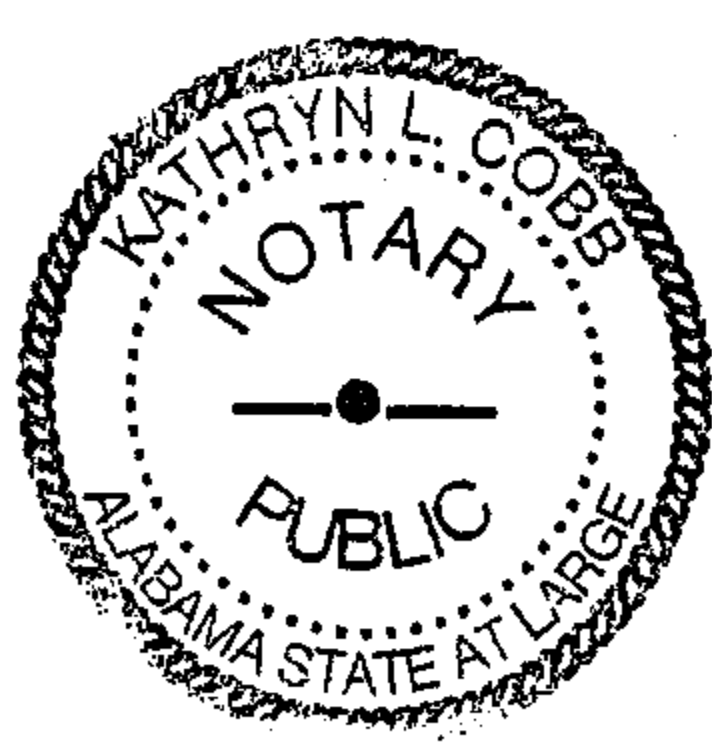
TENANT:  
NEW CINGULAR WIRELESS PCS, LLC  
a Delaware limited liability company, d/b/a  
Cingular Wireless

By: *[Handwritten signature]*  
Name: Robert J. Leger  
Title: Executive Director

STATE OF ALABAMA :  
COUNTY OF SHELBY :SS

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify this 10 day of February, 2008 that Robert J. Leger, as Executive Director, of NEW CINGULAR WIRELESS PCS, LLC a Delaware limited liability company, d/b/a Cingular Wireless, has signed the foregoing instrument and, acknowledged before me on this date that, being informed of the contents of the foregoing instrument, she, with full authority, executed the same voluntarily for and as the act of said entity. He/She is ☒ personally known to me OR ☐ has produced \_\_\_\_\_ as identification.

(Seal)

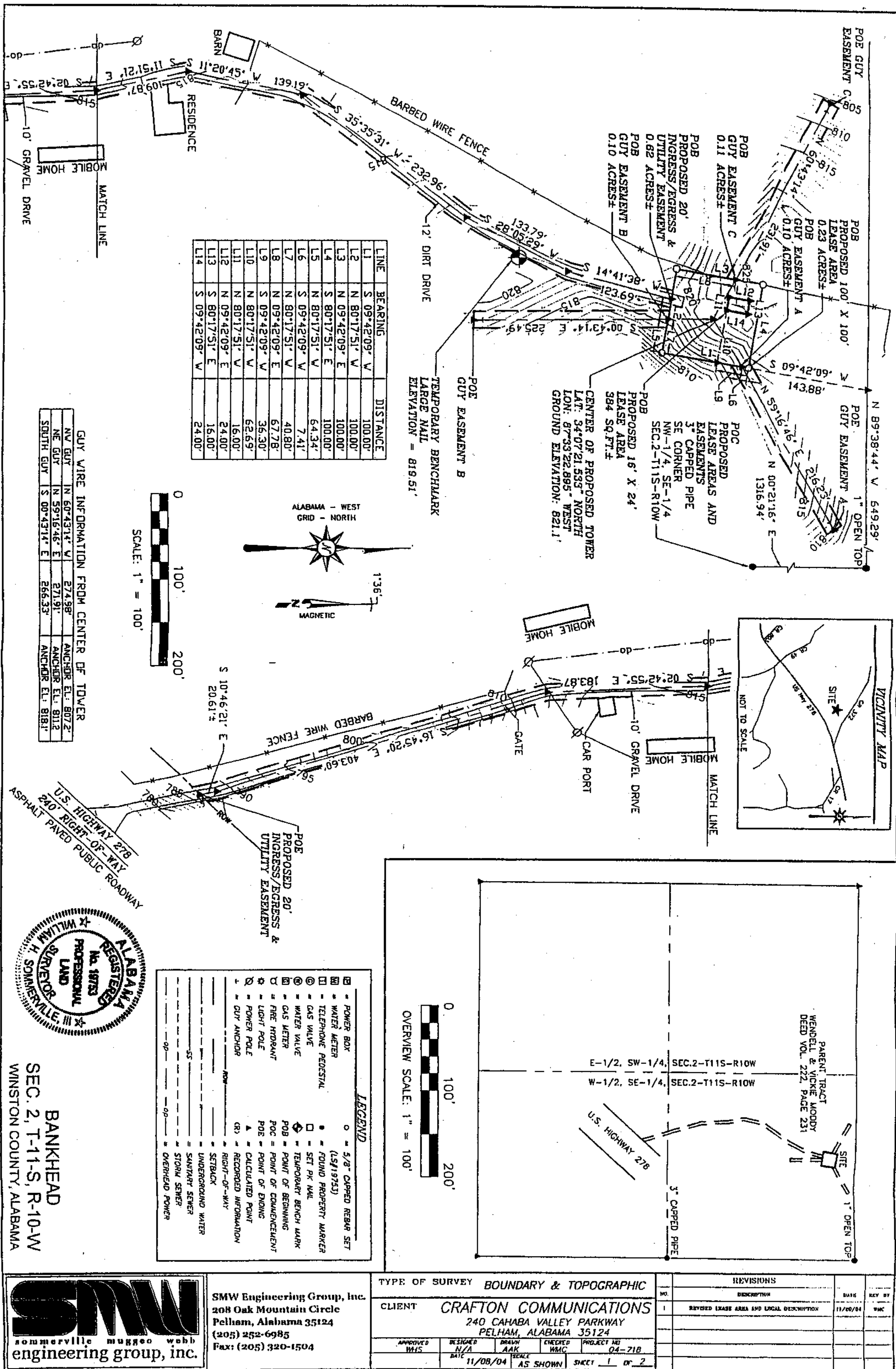


*[Handwritten signature]*  
(Signature of Notary Public)  
Kathryn L. Cobb  
(Type Name of Notary Public)  
State of Alabama  
My Commission Expires 4-8-08

**EXHIBIT "A"**

**All that part of the E1/2 of SW1/4 and the W1/2 of the SE1/4 of Section 2, Township 11 South,  
Range 10 West, Winston County, Alabama, lying and situated North and West of Highway  
278. Minerals Excepted.**

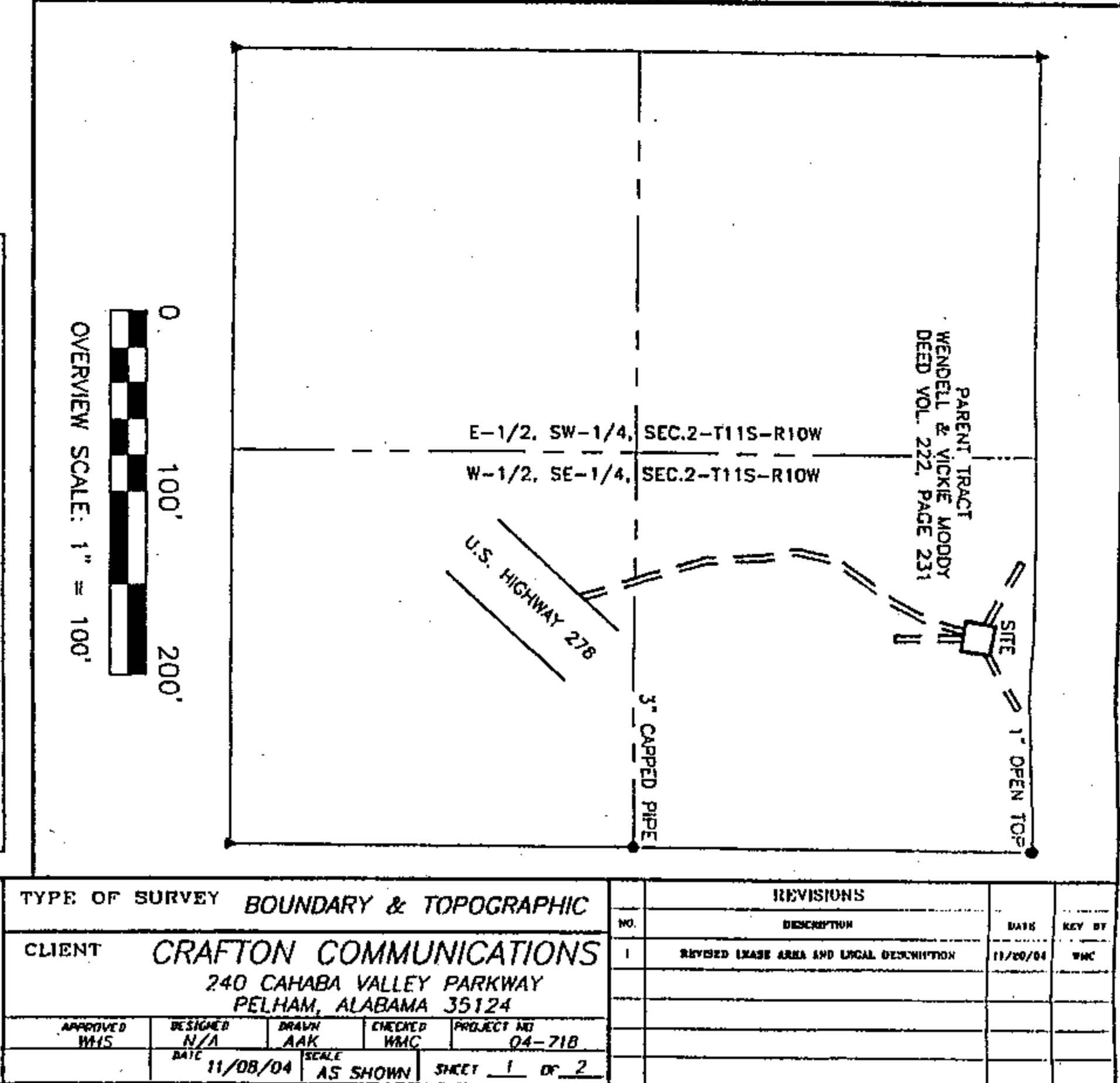




**BANKHEAD**  
 SEC. 2, T-11-S, R-10-W  
 WINSTON COUNTY, ALABAMA



SMW Engineering Group, Inc.  
 208 Oak Mountain Circle  
 Pelham, Alabama 35124  
 (205) 252-6985  
 Fax: (205) 320-1504



TYPE OF SURVEY **BOUNDARY & TOPOGRAPHIC**  
 CLIENT **CRAFTON COMMUNICATIONS**  
 240 CAHABA VALLEY PARKWAY  
 PELHAM, ALABAMA 35124  
 PROJECT NO. 04-718  
 DATE 11/08/04  
 AS SHOWN  
 SHEET 1 OF 2

NO.	REVISIONS	DATE	KEY BY
1	REVISED EXISTING AREA AND LOCAL DESCRIPTION	11/08/04	WMC

# FLOOD NOTE

The subject property appears to lie in Zone "X" of the Flood Insurance Rate Map Community Panel No. 010304-0004 B, which bears an effective date of September 01, 1991 and IS NOT in a special flood hazard area or areas of determined base flood elevation. No field measurements were used in this determination and an elevation certificate may be needed for verification.

## SURVEYOR'S NOTES

1. Boundary & Topographic Survey, made on the ground under the supervision of an Alabama Registered Land Surveyor. Date of field survey is October 26, 2004.
2. Bearings are based on Alabama West State Plane Coordinates NAD 83.
3. No underground utilities, underground encroachments or building foundations were measured or located as a part of this survey, unless otherwise shown. Trees and shrubs not located, unless otherwise shown.
4. Benchmark used is a concrete monument and brass disc. NAVD 88 Datum with an established elevation of 892 feet. (2720 meters), PID EF1705. Onsite benchmark is as shown hereon.
5. Elevations shown are in feet and refer to NAVD 88.
6. This survey was conducted for the purpose of a Boundary & Topographic Survey only, and is not intended to delineate the regulatory jurisdiction of any federal, state, regional or local agency, board, commission or other similar entity.
7. Attention is directed to the fact that this survey may have been reduced or enlarged in size due to reproduction. This should be taken into consideration when obtaining scaled data.
8. This Survey was conducted without the benefit of an Abstract Title search.
9. Surveyor hereby states the Geodetic Coordinates and the elevation shown for the proposed centerline of the tower are accurate to within +/- 15 feet horizontally and to within +/- 3 feet vertically (NOAA Accuracy Code 1A).
10. Survey shown hereon conforms to the Minimum Requirements as set forth by the State Board for a Class "A" Survey.
11. Field data upon which this map or plot is based has a closure precision of not less than one-foot in 15,000 feet (1:15,000) and an angular error that does not exceed 10 seconds times the square root of the number of angles turned. Field traverse was not adjusted.

## PROPOSED 16' X 24' LEASE AREA:

A parcel of land being a portion of that certain tract of land as recorded in the Deed Volume 222, Page 231 in the Office of the Judge of Probate for Winston County, Alabama and lying in the West Half of the Southeast Quarter of Section 2, Township 11 South, Range 10 West and being more particularly described as follows:

Commence at a 3" capped pipe found at the southeast corner of the Northwest Quarter of the Southeast Quarter of said Section 2, thence N 00°21'16" E along the east line of said Northwest Quarter a distance of 1316.94 feet to a 1" open top found at the northeast corner of said Northwest Quarter; thence N 89°38'44" W a distance of 649.29 feet to a point; thence S 09°42'09" W a distance of 143.88 feet to a 5/8" capped rebar set "19753"; thence S 09°42'09" W a distance of 36.30 feet to a point; thence N 80°17'51" W a distance of 62.69 feet to the Point of Beginning; thence continue N 80°17'51" W a distance of 16.00 feet to a point; thence S 09°42'09" E a distance of 24.00 feet to a point; thence S 80°17'51" E a distance of 16.00 feet to the Point of Beginning. Said described parcel contains 384 square feet, more or less.

## PROPOSED 100' X 100' LEASE AREA:

A parcel of land being a portion of that certain tract of land as recorded in the Deed Volume 222, Page 231 in the Office of the Judge of Probate for Winston County, Alabama and lying in the West Half of the Southeast Quarter of Section 2, Township 11 South, Range 10 West and being more particularly described as follows:

Commence at a 3" capped pipe found at the southeast corner of the Northwest Quarter of the Southeast Quarter of said Section 2, thence N 00°21'16" E along the east line of said Northwest Quarter a distance of 1316.94 feet to a 1" open top found at the northeast corner of said Northwest Quarter; thence N 89°38'44" W a distance of 649.29 feet to a point; thence S 09°42'09" W a distance of 143.88 feet to a 5/8" capped rebar set "19753" and the Point of Beginning; thence S 09°42'09" W a distance of 100.00 feet to a 5/8" capped rebar set "19753"; thence N 80°17'51" W a distance of 100.00 feet to a 5/8" capped rebar set "19753"; thence N 09°42'09" E a distance of 100.00 feet to a 5/8" capped rebar set "19753"; thence S 80°17'51" E a distance of 100.00 feet to the Point of Beginning. Said described parcel contains 0.23 acres, more or less.

## PROPOSED 20' INGRESS/EGRESS & UTILITY EASEMENT:

An easement being a portion of that certain tract of land as recorded in the Deed Volume 222, Page 231 in the Office of the Judge of Probate for Winston County, Alabama and lying in the West Half of the Southeast Quarter of Section 2, Township 11 South, Range 10 West and being more particularly described as follows:

Commence at a 3" capped pipe found at the southeast corner of the Northwest Quarter of the Southeast Quarter of said Section 2, thence N 00°21'16" E along the east line of said Northwest Quarter a distance of 1316.94 feet to a 1" open top found at the northeast corner of said Northwest Quarter; thence N 89°38'44" W a distance of 649.29 feet to a point; thence S 09°42'09" W a distance of 143.88 feet to a 5/8" capped rebar set "19753"; thence S 09°42'09" W a distance of 100.00 feet to a 5/8" capped rebar set "19753"; thence N 80°17'51" W a distance of 64.34 feet to the Point of Beginning of an Ingress/Egress & Utility Easement being 20 feet in width and lying 10 feet each side of the following described centerline, said centerline to follow the meanderings of and existing dirt and gravel drive; thence S 14°41'38" W a distance of 123.69 feet to a point; thence S 28°05'29" W a distance of 133.79 feet to a point; thence S 35°35'31" W a distance of 232.96 feet to a point; thence S 11°20'45" W a distance of 139.19 feet to a point; thence S 11°51'21" E a distance of 109.87 feet to a point; thence S 02°42'55" E a distance of 183.87 feet to a point; thence S 16°45'20" E a distance of 403.60 feet to a point; thence S 10°46'21" E a distance of 20.61 feet, more or less to the Point of Ending on the northerly right-of-way of U.S. Highway 278. Said described easement contains 0.62 acres, more or less.

## PROPOSED GUY EASEMENT A:

An easement being a portion of that certain tract of land as recorded in the Deed Volume 222, Page 231 in the Office of the Judge of Probate for Winston County, Alabama and lying in the West Half of the Southeast Quarter of Section 2, Township 11 South, Range 10 West and being more particularly described as follows:

Commence at a 3" capped pipe found at the southeast corner of the Northwest Quarter of the Southeast Quarter of said Section 2, thence N 00°21'16" E along the east line of said Northwest Quarter a distance of 1316.94 feet to a 1" open top found at the northeast corner of said Northwest Quarter; thence N 89°38'44" W a distance of 649.29 feet to a point; thence S 09°42'09" W a distance of 143.88 feet to a 5/8" capped rebar set "19753"; thence S 09°42'09" W a distance of 7.41 feet to the Point of Beginning of a Guy Easement being 20 feet in width and lying 10 feet each side of the following described centerline; thence N 59°16'46" E a distance of 216.23 feet to the Point of Ending. Said described easement contains 0.10 acres, more or less.

## PROPOSED GUY EASEMENT B:

An easement being a portion of that certain tract of land as recorded in the Deed Volume 222, Page 231 in the Office of the Judge of Probate for Winston County, Alabama and lying in the West Half of the Southeast Quarter of Section 2, Township 11 South, Range 10 West and being more particularly described as follows:

Commence at a 3" capped pipe found at the southeast corner of the Northwest Quarter of the Southeast Quarter of said Section 2, thence N 00°21'16" E along the east line of said Northwest Quarter a distance of 1316.94 feet to a 1" open top found at the northeast corner of said Northwest Quarter; thence N 89°38'44" W a distance of 649.29 feet to a point; thence S 09°42'09" W a distance of 143.88 feet to a 5/8" capped rebar set "19753"; thence S 09°42'09" W a distance of 100.00 feet to a 5/8" capped rebar set "19753"; thence N 80°17'51" W a distance of 40.80 feet to the Point of Beginning of a Guy Easement being 20 feet in width and lying 10 feet each side of the following described centerline; thence S 00°43'14" E a distance of 225.49 feet to the Point of Ending. Said described easement contains 0.10 acres, more or less.

## PROPOSED GUY EASEMENT C:

An easement being a portion of that certain tract of land as recorded in the Deed Volume 222, Page 231 in the Office of the Judge of Probate for Winston County, Alabama and lying in the West Half of the Southeast Quarter of Section 2, Township 11 South, Range 10 West and being more particularly described as follows:

Commence at a 3" capped pipe found at the southeast corner of the Northwest Quarter of the Southeast Quarter of said Section 2, thence N 00°21'16" E along the east line of said Northwest Quarter a distance of 1316.94 feet to a 1" open top found at the northeast corner of said Northwest Quarter; thence N 89°38'44" W a distance of 649.29 feet to a point; thence S 09°42'09" W a distance of 143.88 feet to a 5/8" capped rebar set "19753"; thence S 09°42'09" W a distance of 100.00 feet to a 5/8" capped rebar set "19753"; thence N 80°17'51" W a distance of 100.00 feet to a 5/8" capped rebar set "19753"; thence N 09°42'09" E a distance of 67.78 feet to the Point of Beginning of a Guy Easement being 20 feet in width and lying 10 feet each side of the following described centerline; thence N 60°43'14" W a distance of 231.91 feet to the Point of Ending. Said described easement contains 0.11 acres, more or less.

## PARENT TRACT (DEED VOL. 222, PAGE 231):

All that part of the E1/2 of SW1/4 and the W1/2 of the SE1/4 of Section 2, Township 11 South, Range 10 West, Winston County, Alabama, lying and situated North and West of Highway 278. Minerals excepted.

## SURVEYOR'S CERTIFICATION

To Gintular Wireless:

This is to certify that this map or plot and the survey on which it is based were made in accordance with "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys," jointly established and adopted by ALTA, ACSM and NSPS in 1999, and includes Items 1-6, 10-12 of Table A thereof. Pursuant to the Accuracy Standards as adopted by ALTA, NSPS, and ACSM and in effect on the date of this certification, undersigned further certifies that:

- \* the survey measurements were made in accordance with the "Minimum Angle, Distance, and Closure Requirements for Survey Measurements Which Control Land Boundaries for ALTA/ACSM Land Title Surveys."

*William H. Sommerville, III*  
William H. Sommerville, III  
Alabama Registered No. 19753

**BANKHEAD**  
SEC. 2, T-11-S, R-10-W  
WINSTON COUNTY, ALABAMA



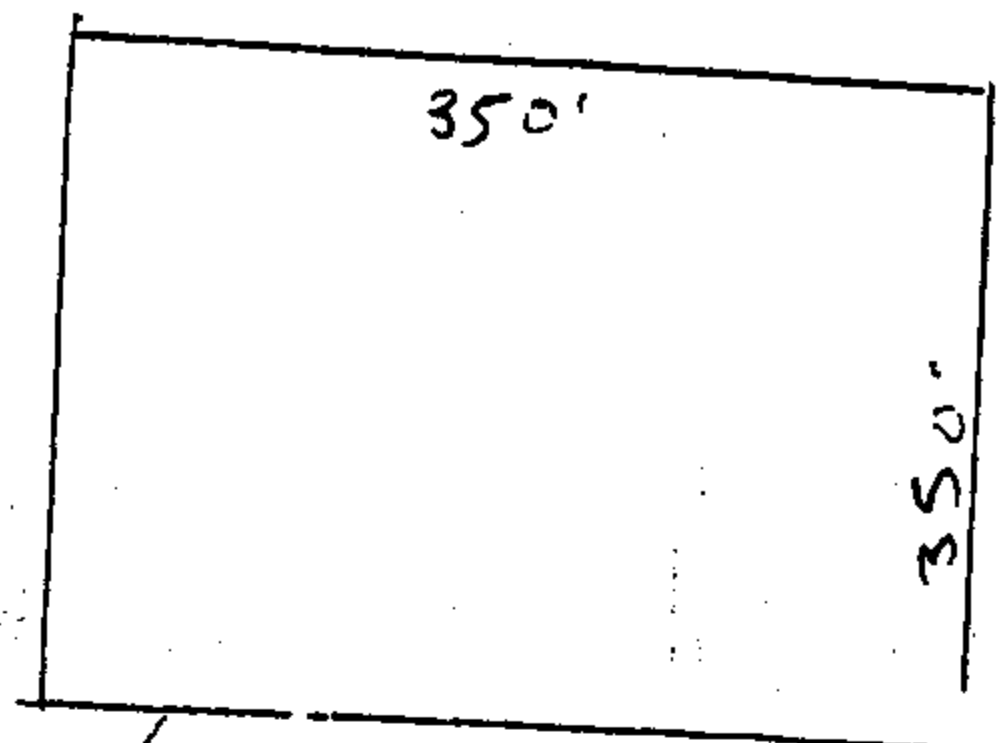
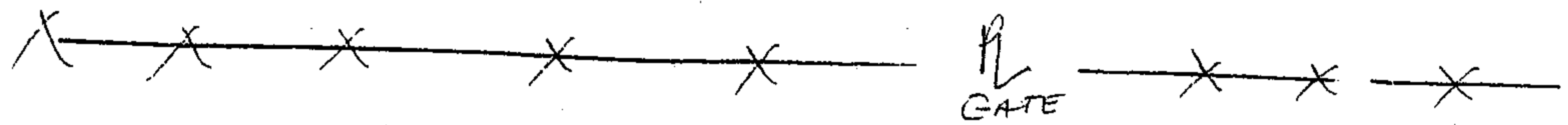
SMW Engineering Group, Inc.  
208 Oak Mountain Circle  
Pelham, Alabama 35124  
(205) 252-6085  
Fax: (205) 320-1504

TYPE OF SURVEY		BOUNDARY & TOPOGRAPHIC	
CLIENT		CRAFTON COMMUNICATIONS	
		240 CAHABA VALLEY PARKWAY PELHAM, ALABAMA 35124	
APPROVED	DESIGNED	DRAWN	CHECKED
WHS	N/A	AAK	WMC
DATE	11/08/04	SCALE	N/A
		PROJECT NO.	04-718
		SHEET	2 OF 2

REV. BY	DATE	REVISIONS
WMC	11/08/04	REVISED LEASE AREA AND LOCAL DESCRIPTION

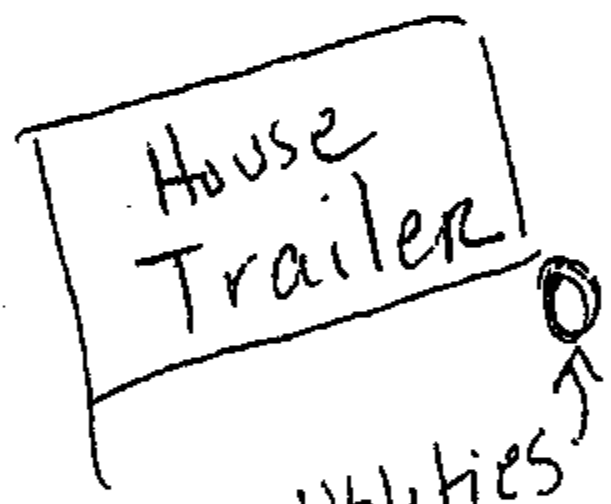
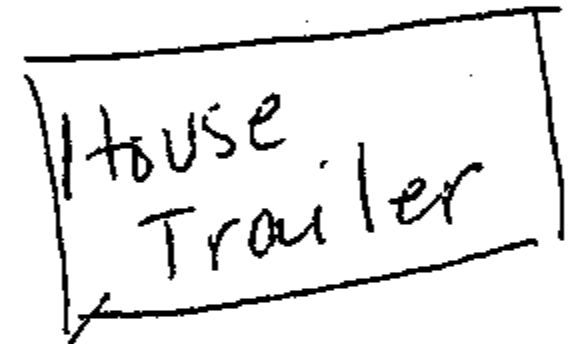
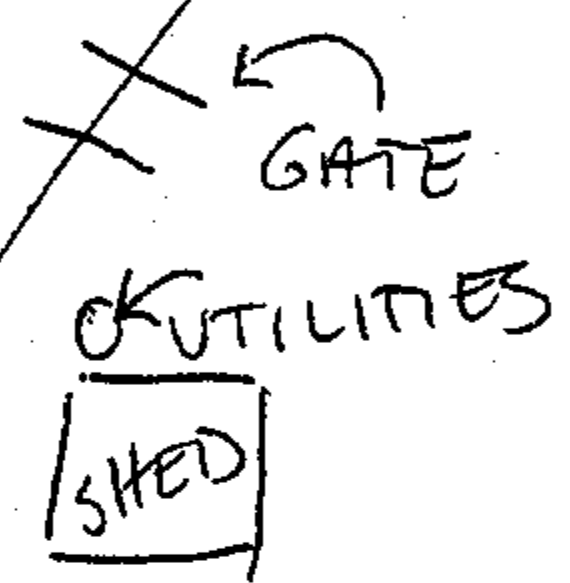
**EXHIBIT "B"**

**See attached site sketch – to be replaced by survey upon completion**



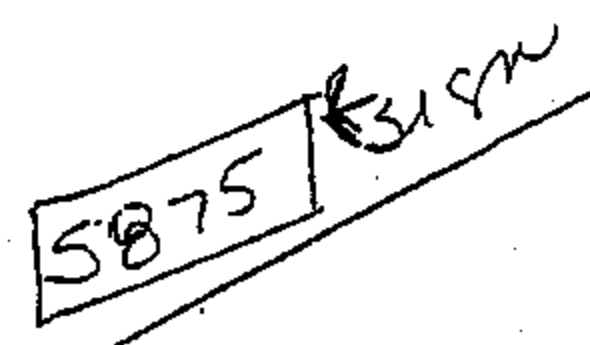
TIMBER

TIMBER



Utilities

EXISTING  
← DRIVE



Hwy 278

BANKHEAD  
MOODY SITE



**EXHIBIT "C"**

**Prepared by:**

Kevin Harris  
Crafton Communications, Inc.  
240 Cahaba Valley Parkway  
Birmingham, AL 35124

**After Recording Return to:**

Edwards, Cohen, Sanders & Dawson, P.A.  
200 N. Laura Street  
Jacksonville, FL 32202  
Attn: David Edwards

**Cingular Site: Bankhead**

**MEMORANDUM OF OPTION  
AND LEASE AGREEMENT**

This Memorandum of Option and Lease Agreement (the "Memorandum") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2004, between Wendell Moody and Vickie Moody, whose address is 5875 Hwy 278, Haleyville, AL 35565, (the "Landlord") and **NEW CINGULAR WIRELESS PCS, LLC**, a Delaware limited liability company, d/b/a Cingular Wireless, with an office at: Cingular Wireless, 6100 Atlantic Boulevard, Norcross, Georgia 30071 (the "Tenant").

**WITNESSETH:**

Landlord and Tenant entered into an Option and Lease Agreement on \_\_\_\_\_, 2004, (the "Agreement") regarding that certain portion of Landlord's property (the "Property") as set forth on Exhibit "A" attached hereto (the "Leased Premises") for the purpose of installing, operating and maintaining a wireless communications facility, which shall include other improvements including but not limited to, antennas, microwaves, coaxial cables and other equipment related thereto. All of the foregoing is set forth in the Agreement. In consideration of the rent and covenants therein provided in the Agreement, Landlord does hereby grant to Tenant an option (the "Option") to lease the Leased Premises and Tenant hereby accepts the Option.

1. The Option may be exercised by Tenant at any time on or prior to \_\_\_\_\_, 2005. All of the foregoing is set forth in the Agreement. In the event of such conflict between the terms and conditions set forth in this Memorandum and the terms and conditions set forth in the Agreement, the Agreement shall control.

2. In the event Tenant fails to exercise the Option prior to the expiration thereof under the time period set forth above, then the Agreement shall be null and void and neither party shall have any further rights hereunder or under the Agreement.

3. In the event that Tenant exercises the Option, Landlord hereby leases to Tenant, and Tenant hereby accepts the Leased Premises for an Initial Term of Five (5) years commencing on the date of the exercise of the Option, upon the terms and conditions set forth in the Agreement.

4. Tenant further has the option to extend the Initial Term for Four (4) consecutive Five (5) year periods upon the terms and conditions set forth in the Agreement (the "Extension Options"). For purposes of providing notice to third parties hereunder, it shall be presumed that the Extension Options have been exercised in the future unless Tenant executes and records in the public records an instrument which indicates that an Extension Option has not been exercised or this Memorandum has been terminated.

5. Landlord covenants that upon exercise of the Option, Tenant, on paying the rent and performing the covenants set forth in the Agreement, shall peaceably and quietly have, hold and enjoy the Leased Premises.

**[SIGNATURES APPEAR ON FOLLOWING PAGES]**

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

LANDLORD:  
Wendell Moody

Not  
For  
Execution

By:

Name: Wendell Moody

Title: Landlord

LANDLORD:  
Vickie Moody

Not  
For  
Execution

By:

Name: Vickie Moody

Title: Landlord

STATE OF ALABAMA

:  
:SS  
:

COUNTY OF WINSTON

PERSONALLY APPEARED BEFORE ME, the undersigned authority and for said County and State, the within named Wendell Moody and Vickie Moody, who acknowledged that they signed, executed and delivered the above and foregoing instrument on the day and year therein mentioned and for the purposes therein stated.

GIVEN UNDER MY HAND AND OFFICIAL SEAL, this, the \_\_\_\_\_ day of \_\_\_\_\_, 2004.

Not  
For  
Execution

\_\_\_\_\_  
(Signature of Notary Public)

\_\_\_\_\_  
(Type Name of Notary Public)

State of Alabama

My Commission Expires \_\_\_\_\_

(Seal)

*[Handwritten signature]*  
*ZM*

TENANT:  
NEW CINGULAR WIRELESS PCS, LLC  
a Delaware limited liability company, d/b/a  
Cingular Wireless

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**NOT FOR EXECUTION**

STATE OF ALABAMA  
COUNTY OF SHELBY

:  
:SS  
:

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify  
this \_\_\_\_\_ day of \_\_\_\_\_, 2004 that \_\_\_\_\_, as  
) \_\_\_\_\_, of NEW CINGULAR WIRELESS PCS, LLC a Delaware  
limited liability company, d/b/a Cingular Wireless, has signed the foregoing instrument and,  
acknowledged before me on this date that, being informed of the contents of the foregoing instrument,  
she, with full authority, executed the same voluntarily for and as the act of said entity. He/She is ( )  
personally known to me OR ( ) has produced \_\_\_\_\_ as  
identification.

(Seal)

\_\_\_\_\_  
(Signature of Notary Public)  
\_\_\_\_\_  
(Type Name of Notary Public)  
State of Alabama  
My Commission Expires \_\_\_\_\_

**NOT FOR EXECUTION**



**EXHIBIT "A"**

**LEASED PREMISES – to be replaced by survey upon completion**