

## SITE ACCESS AGREEMENT

This Site Access Agreement (this “**Agreement**”) is executed by Cellco Partnership d/b/a **Verizon Wireless** (the “**Licensee**”), with a business address of 180 Washington Valley Road, Bedminster, NJ 07921, and **Lexington-Fayette Urban County Government**, (the “**Licensor**”) whose mailing address is **200 East Main St., Lexington, KY 40507**.

### BACKGROUND

As part of Licensee’s consideration of real property (the “**Property**”) located at **Deer Haven Park, 1937 Deer Haven Lane, Lexington, KY 40509**, as more fully described in Exhibit “A”, attached, for the placement, maintenance and use of a communications facility and appurtenant uses, the Licensor has agreed to grant to Licensee and other persons described herein, a license, to enter upon the Property to conduct activities to help Licensee assess the suitability of the Property for its intended use. These activities may include, among other things, environmental inspection, testing and sampling activities (“**Site Investigations**”) at the Property.

The purpose of this Agreement is to enter into a site access license governing the Site Investigations that may be conducted by Licensee’s authorized agents, contractors, consultants and employees.

Licensee and Licensor agree as follows:

1. **Authority to Grant a License.** Licensor represents that it has the authority to grant the access allowed by this Agreement and that there is no need to obtain the approval or consent of any other party. The Licensor hereby grants a license to Licensee to conduct the Site Investigation.
2. **Access to Property and Licensor’s Consent.** Licensor grants to Licensee and its agents, advisors, employees, consultants, representatives, and independent contractors, including environmental contractors and consultants hired directly or indirectly by Licensee (collectively, the “**Licensee Representatives**”), the right, but not the obligation, of ingress to, egress from, and access under, above, and through, the Property for the purpose of performing the Site Investigation. The Site Investigation may include, but is not necessarily limited to, activities intended to (1) review environmental, safety and health conditions;(2) conduct radio tests, including the placing of radio broadcast/receive equipment on the Property for necessary periods; (3) conduct physical, structural and geotechnical testing; and (4) perform boundary and other surveys. These activities may, among other things, include the collection and testing of samples of soil, water, building materials and other substances. Without limiting the generality of the foregoing, the Licensee Representatives may drill into the soil, remove reasonable amounts of soil, install and sample monitoring wells, and perform other tests, actions, evaluations, procedures, and treatments to complete its investigations. The Licensee Representatives shall undertake all activities on the Property in compliance with all applicable laws and shall use commercially reasonable efforts to minimize the extent and duration of any interference with Licensor’s business operations on the Property. The cost of all such activities shall be the responsibility of Licensee (or the Licensee

Representatives as arranged between the Licensee Representative and the Licensee) and not Licensor.

3. **Advance Notice.** Licensee or Licensee Representatives shall give Licensor at least twenty four (24) hours advance notice, either orally (by telephone or in person) or by electronic message of a planned activity that can reasonably be expected to require invasive activities into the Property's subsurface, including notice of the areas of the Property that are expected to be materially affected by any sampling, monitoring, installation, or similar action. Licensee Representatives shall cooperate with Licensor to schedule the activities so as to minimize the extent and duration of any interference with Licensor's operations. Licensor shall provide at least one business day notice by electronic message.

4. **Installation, Sampling, and Removal.** Licensor shall cooperate with the Licensee Representatives regarding all this installation, monitoring, sampling, removal and related activities that Licensee Representatives desire to conduct on the Property. Licensor shall cooperate in locating buried utilities and improvements on the Property at the request of Licensee Representative and shall assist the Licensee Representatives in avoiding impacts to such buried or concealed features. At the Licensor's specific request, Licensee Representatives shall use commercially reasonable efforts to schedule its activities to avoid times of peak business activity on the Property. Licensor authorizes Licensee Representatives to only obstruct a maximum of one-half of the trail at any time. Caution and/or work ahead signage must be placed during obstruction, access to, or use of, limited areas of the Property to conduct Site Investigations. Licensee Representatives may use any electrical or other utility outlets or connections on the Property to conduct its activities. Licensee Representatives shall split all samples with Licensor upon Licensor's request, so long as Licensor pays for any and all additional costs incurred by the Licensee Representatives in this regard. After completing the activities contemplated by this Agreement, Licensee or Licensee Representatives shall remove their equipment and restore any part of the Property that was affected by its activities to a condition that is acceptable to LFUCG Division of Parks & Recreation to the condition of the Property at the time immediately preceding the commencement of said activities.

5. **Indemnification.** (a) Licensee shall indemnify and hold harmless Licensor for any penalties, damages or costs that result from the negligence or willful misconduct, misrepresentation or breach of warranty in this agreement by Licensee or Licensee representatives.

(b) The indemnification in this agreement shall only apply if prompt notice is provided to the indemnifying party. The indemnity is conditioned on the following: (i) the indemnifying party has the opportunity to fully manage any indemnified matter as it deems appropriate (including any required remediation or defense of claims) with employees, agents, contractors, consultants and attorneys of the indemnifying party's choosing and (ii) the reasonable cooperation of any indemnified party (including the signing of any properly completed forms that will allow for the continued current use of the property).

(c) The site access granted to the Licensee and/or Licensee Representatives pursuant to this Agreement extends to any repair or restoration work required to remediate any damage to the Property that is indemnified pursuant to this Section.

6. **Test Results.**

(a) Licensor understands and acknowledges that the environmental testing to be undertaken may create legal duties applicable to Licensor if conditions of pollution are discovered and that except to the extent required by law, neither Licensee nor Licensee Representatives have an obligation to report any test results or conditions to any party as a result of this Agreement. Licensee and Licensee Representatives will provide copies of test results to Licensor unless Licensor specifically requests, in writing, prior to the start of testing, not to receive the test results from Licensee's review. Licensor acknowledges that these tests are performed for Licensee's specific purposes and cannot be relied on by Licensor in any way as being accurate or sufficient for any purposes. Licensor agrees and acknowledges that it is not authorized to share, provide, disseminate, present, and/or make available the test results to any third party unless required by law.

(b) In certain cases test results regarding the environmental conditions of the property may result in a reporting obligation specific to Licensee or Licensee Representatives. In any of those cases, Licensee or Licensee Representative shall, if reasonably possible, notify Licensor at least twenty four (24) hours prior to making the notification but in any case within seventy two (72) hours after making the notification to the appropriate agency. Licensor agrees that Licensee and Licensee Representatives bear no responsibility for the costs resulting from that reporting and that Licensee shall not become responsible for any conditions that it discovers during the Site Investigation.

(c) Licensor acknowledges and agrees that any samples that are taken during the activities undertaken pursuant to this Agreement and any investigation-derived media (i.e., drill cuttings, well purge water) generated by the investigation may require off-site disposal based upon test results. Licensor agrees to execute all properly completed waste manifests or other documents required for proper disposal of test results. Licensor's obligation to sign any properly completed waste manifests or other documents required for proper disposal survives this Agreement so long as those items that require disposal were generated pursuant to this Agreement. The cost of off-site disposal of media will be paid for by Licensee or the appropriate Licensee Representative, not Licensor.

(d) Licensee may use the results of the Site Investigation as it deems appropriate and may share the results with third parties, including, but not necessarily limited to attorneys, consultants, contractors, employees and regulators.

7. **Termination.** This Agreement shall terminate automatically on the earlier of: (1) execution of a lease agreement for any part of the Property between Licensee and Licensor, or (2) a decision by Licensee that the site is unsuitable.

8. **Waiver; Modification; Severability.** An extension, amendment, modification, cancellation, or termination of this Agreement will be valid and effective only if it is in writing and signed by each party to this Agreement, except as provided otherwise in this Agreement. In addition, a waiver of any duty, obligation, or responsibility of a party under this Agreement will be valid and effective only if it is evidenced by a writing signed by, or on behalf of, the party against whom the waiver or discharge is sought to be enforced. Whenever possible, each provision of this Agreement should be construed and interpreted so that it is valid and enforceable under applicable law. However, if a provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, that provision will be deemed severable from the remaining provisions of this Agreement and will not affect the validity, interpretation, or effect of the other provisions of this Agreement or the application of that provision to other circumstances in which it is valid and enforceable.
9. **Assignment; Third Party Beneficiaries.** Neither the entry of this Agreement or any action taken by Licensee hereunder shall create any third party beneficiary or third party beneficiary rights.
10. **Legal Matters.** The validity, construction, enforcement, and interpretation of this Agreement are governed by the laws of the State where the Property is located and the federal laws of the United States of America.
11. **Notices.** Except for oral notices specifically authorized in this agreement, notices permitted by this Agreement will be valid only if such notice is in writing, delivered personally or by e-mail, telecopy, commercial courier, or first class, postage prepaid, United States mail (whether or not certified or registered and regardless of whether a return receipt is requested or received by the sender), and addressed by the sender to the intended recipient at its address set forth in the first paragraph of this Agreement, or to such other address as the intended recipient may designate by notice given to the sender in accordance with this section. A validly given notice, consent, demand, request, or approval will be effective on the earlier of its receipt, if delivered personally or by e-mail, telecopy, or commercial courier, or the third day after it is postmarked by the United States Postal Service, if delivered by first class, postage prepaid, United States mail. Each party promptly shall notify the other of any change in its mailing address or telephone contact number stated in this Agreement.
12. **Complete Agreement; Survival.** This Agreement records the entire understanding between the parties regarding the subjects addressed in it and supersedes any previous or contemporaneous agreement, understanding, or representation, oral or written, by either of them.
13. **Execution and Effectiveness.** The parties may execute this Agreement in counterparts. Each executed counterpart will constitute an original document, and all executed counterparts, together, will constitute the same agreement. This Agreement will become effective upon the last signatory's delivery of the fully executed document to the other party, and the last signatory shall fill in the EXECUTED date below prior to such delivery.

EXECUTED: \_\_\_\_\_, 20\_\_.

**LICENSOR:**

By: \_\_\_\_\_  
Print Name: Linda Gorton  
Title: Mayor  
Date: \_\_\_\_\_

**LICENSEE:**

**Cellco Partnership d/b/a Verizon Wireless**

By: Breanna M. Givens  
Print Name: Breanna M. Givens  
Title: Network PE/PEL  
Date: 5/5/08

**[SIGNATURE(S) OF LICENSEE REPRESENTATIVE(S) THAT WILL CONDUCT SITE INVESTIGATION ON FOLLOWING PAGE]**

The undersigned "Licensee Representative" has reviewed this Agreement and hereby agrees to comply with all obligations pertaining to, and imposed on, Licensee Representatives contained herein.

Agreed to and accepted by:

ERI Consulting

By: 

Name: Nick W. Ritz

Title: Nat. Tech. Dir

Date: 4/29/22

## EXHIBIT A LEGAL DESCRIPTION

THE FOLLOWING IS A DESCRIPTION OF THE PROPOSED LEASE AREA TO BE LEASED FROM THE PROPERTY CONVEYED TO LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, PUBLIC FACILITIES CORPORATION AS RECORDED IN DEED BOOK 2040, PAGE 478 OF RECORD IN THE OFFICE OF THE CLERK OF FAYETTE COUNTY, KENTUCKY, PARCEL ID: 25768900, WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEARING DATUM USED HEREIN IS BASED UPON KENTUCKY STATE PLANE COORDINATE SYSTEM, SINGLE ZONE, NAD 83, FROM A REAL TIME KINEMATIC GLOBAL POSITIONING SYSTEM OBSERVATION USING THE KENTUCKY TRANSPORTATION CABINET REAL TIME GPS NETWORK COMPLETED ON JULY 2, 2020.

COMMENCING AT A FOUND 5/8" REBAR WITH ORANGE CAP, STAMPED PLS 2020 AT THE COMMON CORNER OF THE PROPERTY CONVEYED TO LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, PUBLIC FACILITIES CORPORATION AS RECORDED IN DEED BOOK 2040, PAGE 478, PARCEL ID: 25768900, ALSO CORNER TO THE PROPERTY CONVEYED TO LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT AS RECORDED IN DEED BOOK 2902, PAGE 21 (PARCEL 1-B OF PLAT CABINET "N", SLIDE 538), PARCEL ID: 38233640 AND CORNER TO THE PROPERTY CONVEYED TO MARION C. KING, TRUSTEE AS RECORDED IN DEED BOOK 1691, PAGE 599, PARCEL ID: 21127900, FOR REFERENCE SAID REBAR IS S83°08'54"E 338.44', S83°10'58"E 285.48' AND S83°09'36"E 482.25' FROM A FOUND 5/8" REBAR (NO CAP) IN THE EAST LINE OF THE RIGHT OF WAY OF POLO CLUB BOULEVARD, ALSO CORNER TO SAID PARCEL ID: 38233640 AND CORNER TO THE PROPERTY CONVEYED TO BLAKE & MARY K. DEBACHER AS RECORDED IN DEED BOOK 3624, PAGE 451 (LOT 169 OF PLAT CABINET "R", SLIDE 570); THENCE LEAVING SAID COMMON CORNER AND TRAVERSING THE LAND OF LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, PARCEL ID: 25768900, N24°16'34"E 89.28' TO A SET 1/2" REBAR, 18" LONG, CAPPED "PATTERSON PLS 3136", HEREAFTER REFERRED TO AS A "SET IPC", AT THE SOUTHWEST CORNER OF THE PROPOSED LEASE AREA AND BEING **THE TRUE POINT OF BEGINNING**; THENCE N09°34'47"E 80.00' TO A SET IPC; THENCE S71°53'23"E 101.12' TO A SET IPC; THENCE S09°34'47"W 65.00' TO A SET IPC; THENCE N80°25'13"W 100.00' TO THE POINT OF BEGINNING CONTAINING 7,250.000 SQUARE FEET AS PER SURVEY BY MARK E. PATTERSON, PLS #3136 DATED JULY 2, 2020.

THE FOLLOWING IS A DESCRIPTION OF THE PROPOSED 30' / VARIABLE WIDTH ACCESS AND UTILITY EASEMENT TO BE GRANTED FROM THE PROPERTY CONVEYED TO LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, PUBLIC FACILITIES CORPORATION AS RECORDED IN DEED BOOK 2040, PAGE 478 OF RECORD IN THE OFFICE OF THE CLERK OF FAYETTE COUNTY, KENTUCKY, PARCEL ID: 25768900, ALSO ON THE PROPERTY CONVEYED TO LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT AS RECORDED IN DEED BOOK 2902, PAGE 21 (PARCEL 1-B OF PLAT CABINET "N", SLIDE 538) OF RECORD IN THE OFFICE OF THE CLERK OF FAYETTE COUNTY, KENTUCKY, PARCEL ID: 38233640, WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEARING DATUM USED HEREIN IS BASED UPON KENTUCKY STATE PLANE COORDINATE SYSTEM, SINGLE ZONE, NAD 83, FROM A REAL TIME KINEMATIC GLOBAL POSITIONING SYSTEM OBSERVATION USING THE KENTUCKY TRANSPORTATION CABINET REAL TIME GPS NETWORK COMPLETED ON JULY 2, 2020.

COMMENCING AT A FOUND 5/8" REBAR WITH ORANGE CAP, STAMPED PLS 2020 AT THE COMMON CORNER OF THE PROPERTY CONVEYED TO LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, PUBLIC FACILITIES CORPORATION AS RECORDED IN DEED BOOK 2040, PAGE 478, PARCEL ID: 25768900, ALSO CORNER TO THE PROPERTY CONVEYED TO LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT AS RECORDED IN DEED BOOK 2902, PAGE 21 (PARCEL 1-B OF PLAT CABINET "N", SLIDE 538), PARCEL ID: 38233640 AND CORNER TO THE PROPERTY CONVEYED TO MARION C. KING, TRUSTEE AS RECORDED IN DEED BOOK 1691, PAGE 599, PARCEL ID: 21127900, FOR REFERENCE SAID REBAR IS S83°08'54"E 338.44', S83°10'58"E 285.48' AND S83°09'36"E 482.25' FROM A FOUND 5/8" REBAR (NO CAP) IN THE EAST LINE OF THE RIGHT OF WAY OF POLO CLUB BOULEVARD, ALSO CORNER TO SAID PARCEL ID: 38233640 AND CORNER TO THE PROPERTY CONVEYED TO BLAKE & MARY K. DEBACHER AS RECORDED IN DEED BOOK 3624, PAGE 451 (LOT 169 OF PLAT CABINET "R", SLIDE 570); THENCE LEAVING SAID COMMON CORNER AND TRAVERSING THE LAND OF LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, PARCEL ID: 25768900, N24°16'34"E 89.28' TO A SET 1/2" REBAR, 18" LONG, CAPPED "PATTERSON PLS 3136", HEREAFTER REFERRED TO AS A "SET IPC", AT THE SOUTHWEST CORNER OF THE PROPOSED LEASE AREA; THENCE WITH SAID LEASE AREA, N09°34'47"E 80.00' TO A SET IPC; THENCE S71°53'23"E 101.12' TO A SET IPC AND BEING **THE TRUE POINT OF BEGINNING**; THENCE LEAVING SAID LEASE AREA, S71°53'23"E 30.34'; THENCE S09°34'47"W 13.00'; THENCE S80°25'13"E 15.00'; THENCE S09°34'47"W 30.00'; THENCE N80°25'13"W 15.00'; THENCE S09°34'47"W 23.89'; THENCE S33°37'48"W 24.49'; THENCE S07°09'32"W 3.91'; THENCE S82°50'28"E 1232.60'; THENCE ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 215.00', ARC LENGTH OF 25.34', THE CHORD OF WHICH BEARS S79°27'54"E 25.32'; THENCE S76°05'19"E 96.88'; THENCE S83°00'28"E 210.35' TO THE WEST LINE OF THE RIGHT OF WAY OF WALNUT GROVE LANE AND BEING THE EAST LINE OF SAID PROPERTY IN DEED BOOK 2040, PAGE 478 ; THENCE WITH SAID LINE, S09°42'28"W 30.03'; THENCE LEAVING SAID LINE AND TRAVERSING THE LAND OF SAID DEED BOOK 2040, PAGE 478, N83°00'28"W 210.74'; THENCE N76°05'19"W 98.70'; THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 185.00', ARC LENGTH OF 21.80', THE CHORD OF WHICH BEARS N79°27'54"W 21.79'; THENCE N82°50'28"W 1262.60'; THENCE N07°09'32"E 40.97'; THENCE N33°37'48"E 25.15' TO A SET IPC IN THE SOUTHEAST CORNER OF SAID LEASE AREA; THENCE WITH SAID LEASE AREA, N09°34'47"E 65.00' TO THE POINT OF BEGINNING CONTAINING 7,250.000 SQUARE FEET AS PER SURVEY BY MARK E. PATTERSON, PLS #3136 DATED JULY 2, 2020.