**SUMMARY OF PROPOSED COMMITTEE DRAFT:**

**RESOLUTION 23-104**
**APPROVING A COMMUNICATION SITE LICENSE AGREEMENT TO NEW CINGULAR WIRELESS PCS, LLC FOR ITS EXISTING TELECOMMUNICATION FACILITY WITHIN THE MILILANI MAUKA DISTRICT PARK, MILILANI, OAHU, HAWAII, TMK: 9-5-049:020.**

**The PROPOSED CD1** makes the following amendments:

A. Amends the title of the resolution to "APPROVING A COMMUNICATION SITE LICENSE AGREEMENT TO NEW CINGULAR WIRELESS PCS, LLC FOR ITS EXISTING TELECOMMUNICATIONS FACILITY WITHIN THE MILILANI MAUKA DISTRICT PARK, MILILANI, OAHU, HAWAII, TAX MAP KEY 9-5-049:020."

B. Amends the sixth WHEREAS clause to clarify that the Department of Information Technology, rather than the Department of Budget and Fiscal Services, has determined the feasibility of the license rental fee and references Departmental Communication 407 (2023) dated June 15, 2023.

C. Makes miscellaneous technical and nonsubstantive amendments.

# CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAIʻI

No. **23-104, CD1**

# RESOLUTION

PROPOSED

APPROVING A COMMUNICATION SITE LICENSE AGREEMENT TO NEW CINGULAR WIRELESS PCS, LLC FOR ITS EXISTING TELECOMMUNICATIONS FACILITY WITHIN THE MILILANI MAUKA DISTRICT PARK, MILILANI, OAHU, HAWAII, TAX MAP KEY 9-5-049:020.

WHEREAS, the licensing of City and County of Honolulu ("City") property for telecommunications facilities is governed by Chapter 38, Article 12, Revised Ordinances of Honolulu 2021 ("ROH"); and

WHEREAS, New Cingular Wireless PCS, LLC ("New Cingular"), a Delaware limited liability company, was certified by the State of Hawaiʻi ("State") Department of Commerce and Consumer Affairs to transact business in the State as a limited liability company in 1999; and

WHEREAS, New Cingular desires to continue the operation of its telecommunications facilities within a portion of the City-owned Mililani Mauka District Park, located at 95-1069 Ukuwai Street, Mililani, Hawaiʻi, 96789, identified as Tax Map Key 9-5-049:020 ("Property"); and

WHEREAS, the Director of Budget and Fiscal Services recommends that the City enter into a license agreement with New Cingular to allow continued operation of its Type II telecommunications facilities within the Property; and

WHEREAS, unless otherwise authorized by the City Council, monthly telecommunications license fees to be charged by the City are as set forth in ROH § 38-12.3; and

WHEREAS, as set forth in Departmental Communication 407 (2023), dated June 15, 2023, the Department of Information Technology has determined that the monthly telecommunications rental fee table, as outlined in ROH § 38-12.3, is not feasible or equitable; and

WHEREAS, the recommended use fee for New Cingular is One Thousand Dollars ($1,000.00) per month, or Twelve Thousand Dollars ($12,000.00) per year, to be increased by four percent each year, compounded annually, for the duration of the agreement; and

WHEREAS, the agreement with New Cingular shall be for a term of five years, with the option to extend for four additional five-year periods, not exceeding a total of 25 years and shall be subject to the additional terms and conditions set forth in the

proposed agreement, which is attached hereto as Exhibit A and by reference is incorporated herein; and

WHEREAS, in order to permit New Cingular to enter into an agreement for more than five years, New Cingular is required to expend more than $25,000 for capital assets or for the renovation or maintenance of any capital asset for the term of the agreement, as outlined in ROH § 38-4.1(1); and

WHEREAS, the Department of Parks and Recreation, which has jurisdictional control of the Property, has no objection to the license agreement; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that the Council consents to and approves the proposed license agreement attached hereto as Exhibit A and by reference made a part of this resolution; and

BE IT FURTHER RESOLVED that the Director of Budget and Fiscal Services and/or official designee is hereby authorized to:

1. Execute a license agreement with New Cingular Wireless PCS, LLC in substantially the same form as the proposed agreement attached hereto as Exhibit A; and

2. Execute any incidental or related agreements and documents in furtherance of the above agreement, so long as such agreements and documents do not incur additional obligations on the part of the City; and

BE IT FURTHER RESOLVED that the Council approves of the deposit of all fees received under the license agreement into the City's general fund; and

**CITY COUNCIL**
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAIʻI

No. **23-104, CD1**

# RESOLUTION

BE IT FINALLY RESOLVED that copies of this resolution be transmitted to the Director of Budget and Fiscal Services, the Director of Parks and Recreation, and the Director of Information Technology.

INTRODUCED BY:

Tommy Waters (br)

DATE OF INTRODUCTION:

May 19, 2023
Honolulu, Hawaiʻi

Councilmembers

Exhibit A

NON-EXCLUSIVE LICENSE AGREEMENT

THIS NON-EXCLUSIVE LICENSE AGREEMENT (hereinafter "Agreement" or "License"), made this _____ day of _____, 2023, by and between the **CITY AND COUNTY OF HONOLULU**, a municipal corporation of the State of Hawaii, by its Director of the Department of Budget and Fiscal Services, hereinafter referred to as the "LICENSOR," and **NEW CINGULAR WIRELESS PCS, LLC**, a Delaware limited liability company, by and through **CCATT LLC**, a Delaware limited liability company, its attorney in fact, whose principal place of business address is 2000 Corporate Drive, Canonsburg, Pennsylvania 15317, hereinafter referred to as the "LICENSEE."

**W I T N E S S E T H:**

WHEREAS, LICENSOR is the owner of that certain parcel of land containing approximately 16.075 acres, identified as Mililani Mauka District Park and designated as Tax Map Key (1) 9-5-049: 020, and more particularly described in Exhibit A attached hereto and made a part hereof, hereinafter referred to as the "Property";

WHEREAS, the LICENSEE desires to license and use that certain portion of the Property described and shown in Exhibit B attached hereto and made a part hereof, with an area of approximately four hundred (400) square feet, and referred to hereinafter as the "Licensed Area," to operate, maintain, repair, remove, and/or replace a wireless telecommunications facility

consisting of: equipment shelters, communications tower, antennas, emergency generators, all necessary appurtenances to support such equipment and utility wires, poles, conduits, pipes and cable line over, under and across said licensed area (collectively referred to as the "Antenna Facility") together with access and utility easements;

WHEREAS, the LICENSOR agrees to grant to LICENSEE, a non-exclusive revocable license to construct, install, operate, maintain, repair, remove, and/or replace the Antenna Facility, under and across the Licensed Area described in Exhibit B, subject to the terms and conditions hereinafter set forth;

WHEREAS, LICENSEE acknowledges that the issuance of this License is subject to the approval of the Honolulu City Council;

WHEREAS, LICENSEE understands that this License is revocable at the will of the LICENSOR, as provided below, and that the construction of improvements on the Licensed Area, the placement of equipment on the Licensed Area, and/or other expenditure of funds in reliance of LICENSOR's approval of this License is at LICENSEE's own risk;

WHEREAS, LICENSEE agrees that no additional equipment, towers, sheds, cables or other improvements or equipment (including replacement equipment, towers, sheds, cables or other improvements or equipment) shall be constructed, installed or placed onto the Licensed Area, without the express written consent of the LICENSOR, such consent not to be unreasonably

withheld, conditioned or delayed, except in the event of an emergency. In the event LICENSOR fails to execute and return such consent or approval to LICENSEE within forty-five (45) days from the date of the written request, then LICENSOR's consent or approval shall be deemed approved; and

WHEREAS, the LICENSEE acknowledges that this License shall not in any way be construed to include the granting of any ownership rights or interest in the Licensed Area and/or the Property;

NOW, THEREFORE, in consideration of the covenants of the LICENSEE, as hereinafter contained, the LICENSOR does hereby permit the LICENSEE to use the Licensed Area, and the LICENSEE does hereby covenant with the LICENSOR as follows:

1. License Fee.

(a) The LICENSEE shall, for so long as this Agreement remains in effect, pay to the LICENSOR the license fee ("License Fee")

(b) stated herein for the use of the Licensed Area. The license fee for this license will be payable by the LICENSEE to the LICENSOR, without notice or demand, monthly, payable in advance, by or before the first day of each month.

(b) The Initial License Fee payment shall be an annual fee of $12,000.00, which may be paid in monthly installments. The first installment shall be due within thirty (30) days of the Commencement Date as identified below.

(c) The license fee for each subsequent year ("New Annual License Fee") shall be calculated annually, to the beginning of the next annual period, by applying 4% to the fee for the current year ("Current License Fee"), as follows:

| Year | Current License Fee | % Increase | Annual Increase | New Annual License Fee |
|---|---|---|---|---|
| 1 | $ 12,000.00 | 0.04 | $ 480.00 | $ 12,480.00 |
| 2 | $ 12,480.00 | 0.04 | $ 499.20 | $ 12,979.20 |
| 3 | $ 12,979.20 | 0.04 | $ 519.17 | $ 13,498.37 |
| 4 | $ 13,498.37 | 0.04 | $ 539.93 | $ 14,038.30 |
| 5 | $ 14,038.30 | 0.04 | $ 561.53 | $ 14,599.83 |

(d) The acceptance of the license fee by the LICENSOR shall not be deemed to be a waiver by the LICENSOR of any breach by the LICENSEE of any covenant or condition contained in this Agreement.

2. Late Payment Charges. Every installment of the license fee and every other payment due hereunder from LICENSEE to LICENSOR which shall not be paid within thirty (30) days after the same shall have become due shall bear interest from the date that the same became due and payable until paid, whether or not demand be made therefore, at the rate of 10 percent (10.0%) per year.

3. License Fee Payment Remit to Address.

City and County of Honolulu
Department of Budget and Fiscal Services
Division of Purchasing
530 S. King Street, Rm 115
Honolulu, Hawaii 96813
Reference: Mililani Mauka District Park

4. Non-waiver of rights. Acceptance of any late payment or charge by LICENSOR shall in no event constitute a waiver of LICENSEE's default with respect to such overdue amount, nor prevent LICENSOR from exercising any of the other rights and remedies granted hereunder.

5. License Period and Renewal Terms.

(a) This License has an initial term of five (5) years beginning the first day of the first full month following full execution of this Agreement (the "Commencement Date").

(b) Renewal Terms. Licensee is hereby granted options for four additional five (5) year terms, not to exceed a total license period of twenty-five (25) years.

(i) LICENSEE may exercise its option to extend by providing a notice to LICENSOR no less than twelve (12) months before the end of the expiring five year term. Notice shall be sent to the address listed in Paragraph 3.

(ii) LICENSOR retains its right to terminate or revoke this License as provided herein, notwithstanding Licensee's exercise of any option.

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Such notice shall only be effective if delivered at a time when the LICENSEE is not in Default hereunder. Within thirty (30) days following its receipt of LICENSEE'S notice of its desire to exercise the Renewal Option, given at the time and in the manner provided above, LICENSOR shall prepare and transmit to Tenant an appropriate amendment to this Agreement extending the Term for each Renewal Term, and specifying the proposed Annual Fee for such extension.

6. Termination At-Will. This Agreement may be terminated at any time by the mutual written agreement of the parties hereto, or by the LICENSOR at its sole and absolute discretion and without cause, upon giving twenty-four (24) months written notice of termination to the LICENSEE by hand-delivery or certified or registered first-class mail, postage prepaid, return receipt requested. Any termination shall not relieve the LICENSEE of its obligations to indemnify, defend and/or hold harmless the LICENSOR, pursuant to Paragraphs 24: Indemnity and 26: Hazardous Materials, herein with respect to any such claims, demands, liabilities, suits, actions, judgments, costs and expenses for loss, injury, death or damage arising prior to such termination or cancellation of all or any portion(s) of this Agreement.

7. Assumption of Risk Regarding Construction of Improvements. LICENSEE understands and agrees that because this Agreement may be terminated, and the rights granted herein may be terminated at any time by LICENSOR pursuant to Paragraph 6, any construction of improvements on the

Licensed Area, any placement of equipment on the Licensed Area, and/or any expenditures of funds by the LICENSEE in reliance upon this Agreement are done at LICENSEE's own risk. The construction of improvements, placement of equipment on the Licensed Area, or expenditure of funds by LICENSEE shall not be construed or interpreted to provide or confer LICENSEE with any greater rights than a license to use the Licensed Area as provided in this Agreement.

8. Cooperation in Execution of Documents. Each party agrees to cooperate with the other in executing any documents necessary to protect its rights of use of the Licensed Area.

9. Easement and Setbacks.

(a) This License is subject to all prior easements, setbacks and rights-of-way granted to construct, install, operate, maintain, repair and/or replace lines and other transmission facilities and appurtenances for electricity, telephone, water, sewers, drainage and any other services and utilities over, across and/or under the Licensed Area. LICENSOR further accepts and reserves the right to grant such additional easements and rights-of-way outside of the Licensed Area as from time to time appear to LICENSOR to be necessary or expedient for the economic development of the Property and/or other property owned or controlled by LICENSOR.

(b) LICENSOR grants and conveys to LICENSEE and its licensees and invitees the nonexclusive right of ingress, egress and regress for pedestrian

traffic over and across the Property, from the nearest public right-of-way to the Licensed Area, together with the right to install, replace and maintain utility wires, poles, cables, conduits and pipes as more fully shown on Exhibit B. Vehicular traffic will only be allowed within designated parking areas. LICENSOR may require LICENSEE to enter into a separate utility easement agreement related to the utility rights granted herein as may be reasonably requested by LICENSOR.

10. Legal Compliance. LICENSEE will comply, at its own expense, with all laws and ordinances and governmental rules and regulations applicable to the Licensed Area, including without limitation, all laws related to the handling, disposal, and storage of hazardous materials. If a law, ordinance, or governmental rule or regulation shall require LICENSOR to incur an expense as a result of LICENSEE's use of the Licensed Area and/or Antenna Facility, LICENSEE shall reimburse LICENSOR for such expense upon written demand by LICENSOR accompanied by supporting documentation evidencing the expense.

11. Limitation of Rights Conferred by This Agreement. Any rights granted by this Agreement shall not be intended or used to assert any ownership rights. Further, this Agreement shall not transfer or be construed to transfer or confer any permanent or temporary ownership interest in land, and shall not convey ownership of land rights. LICENSEE affirmatively waives

its right to assert claim(s) to ownership rights in the Licensed Area or the Property.

12. Use, Care, and Safety of the Subject Property. The LICENSEE shall use the Licensed Area to construct, install, operate, maintain, repair, remove, and/or replace the Antenna Facility in the area shown on Exhibit B. LICENSEE shall lay and maintain its cable line(s), if any, in a manner as will not materially interfere at any time, except during the period of construction, repair, or removal of the same, with the free use of the surface of the Property by the LICENSOR; provided, however, that after the original construction, any subsequent repair work, or any removal of the Antenna Facility or portions thereof, has been completed, the surface of the ground disturbed by the LICENSEE in the exercise of the rights granted hereby shall be restored to the condition that existed immediately prior to commencement of construction, less ordinary wear and tear and casualty loss, and in a manner reasonably satisfactory to the Director of the Department of Parks & Recreation of the City and County of Honolulu, or said Director's duly authorized representative. LICENSEE agrees that all structures, improvements, facilities, and equipment placed on the Licensed Area shall be constructed in accordance with applicable zoning approvals and permits. LICENSEE's use shall not otherwise materially interfere with use of the Property by the LICENSOR or the public.

13. Security/Loss. LICENSEE shall maintain the Licensed Area and Antenna Facility in as secure a manner as possible. LICENSOR shall not be

responsible for any and all loss or damage of the LICENSEE's Telecommunications Facilities, including LICENSEE's equipment or antennas due to, among other things, fire, flood, acts of God, theft, or vandalism, except to the extent caused by the willful misconduct or negligence of LICENSOR.

14. Operating Frequencies. The LICENSEE shall operate the Antenna Facility in accordance with Federal Communications Commission regulations.

15. Permits, Licenses, etc.

(a) Prior to the commencement of any construction and installation work, LICENSEE must obtain a Right-of-Entry permit from the Department of Parks and Recreation;

(b) Prior to the commencement of any construction and installation work, LICENSEE shall be responsible to obtain any and all necessary approvals, permits, easements, licenses, or rights of way that may be required by any agency governing the LICENSEE's construction, maintenance, and operation of the Antenna Facility on the Licensed Area, including but not limited to applicable approvals from the Department of Information Technology, the Department of Parks and Recreation, the Department of Planning and Permitting, the Department of Land and Natural Resources of the State of Hawaii, and the Federal Aviation Administration.

(c) The LICENSEE shall provide to the LICENSOR a copy of all permits, easements, licenses, or rights of way required of the LICENSEE for its operation, if requested by LICENSOR. Additionally, the LICENSEE shall

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maintain a copy of its Federal Communications Commission License, or other Government authorization, if required, authorizing the LICENSEE's operation at the Licensed Area or Antenna Facility. The LICENSEE shall post any signs on or near the LICENSEE's Antenna Facility as required by law.

16. Capital Asset Conditions. Licensee is required to expend the sum of $25,000 or more for capital assets, or for the renovation, maintenance or repairs of any capital asset for the term of this agreement. This includes money spent on the installation of furniture or fixtures, as well as money spent on the construction of improvements.

17. Cost. LICENSEE shall be solely responsible for all costs and expenses incurred in connection with the Licensed Area, improvements on the Licensed Area, and the Antenna Facility, including, but not limited to, the design, engineering, construction, planting, installation, maintenance, use, repair, removal, replacement, reconstruction and upkeep of said improvements and Antenna Facility, on, within or under the Licensed Area.

18. Maintenance. The LICENSEE shall, at its sole cost and expense, keep the Licensed Area and the Antenna Facility in a safe, clean, and orderly condition, including, but not limited to, making all necessary repairs to the Antenna Facilities, and shall not make, permit, or suffer, any waste, nuisance, or unlawful use of the Licensed Area. LICENSEE expressly covenants to maintain proper safeguards upon said Licensed Area for the protection and welfare of the public and pedestrians.

19. Improvements. The improvements constructed by LICENSEE on the Licensed Area, including all walls, fences, tower, equipment shed, and other structures, if any, shall remain the property of the LICENSEE; and the LICENSEE shall, upon termination of this Agreement, remove such improvements from the Licensed Area; provided, however, that in the event the LICENSEE shall fail to remove such improvements within thirty (30) days after written notice to remove, the LICENSOR may elect to remove the same and charge the cost of removal to the LICENSEE.

20. Repair. LICENSEE shall not damage, undermine or otherwise destroy any portion of the LICENSOR's property, including, without limitation, any facilities or improvements situated adjacent to or near the Licensed Area and/or the Property, or any equipment or appurtenances relating thereto, including, but not limited to, sidewalks, storm drains, drainage systems, and underground utility systems. LICENSEE shall, at its sole cost and expense, repair, restore and reconstruct that portion of the LICENSOR's property so damaged, undermined or destroyed, including any and all affected facilities, improvements, equipment and appurtenances.

21. No Obstruction. The LICENSOR shall not at any time during the term of this Agreement construct or place any building or other improvement of any kind within the Licensed Area unless LICENSEE provides written consent; provided, however, that this provision shall not prohibit the LICENSOR from making such uses of the Property outside of the Licensed Area

as do not unreasonably interfere with the exercise by the LICENSEE of the rights herein granted, or accepting on the LICENSEE's Antenna Facility, antennas of any other applicant for other uses. The LICENSEE shall determine the reasonableness of any interference, if any, as set forth in this provision. LICENSOR may from time-to-time grant similar licenses to other applicants whose use will not violate the foregoing. Only upon seventy-two (72) hours prior notice to LICENSEE and accompanied by LICENSEE's representative shall LICENSOR and LICENSOR's agents enter the Licensed Area unless in the event of an emergency where LICENSOR cannot reasonably comply with the foregoing notice requirement. In the event of such emergency access, LICENSOR shall, within forty-eight (48) hours of such access, inform LICENSEE of (i) the date and time of emergency access and (ii) the nature of the event requiring emergency access.

22. Co-locations.

(a) LICENSEE may sublicense use of the Licensed Area upon LICENSOR's approval, such approval not to be unreasonably withheld, conditioned or delayed;

(b) LICENSEE must submit an application to the LICENSOR for approval;

(c) In addition to the License Fee set forth in provision 1(b), LICENSEE shall pay to the LICENSOR a minimum of $900 per month for each approved co-locator, if no additional ground space is required;

(d) Should co-locators require additional ground space, LICENSEE shall pay to the LICENSOR the amount per month specified in Revised Ordinances of Honolulu §38-12.3 attributable to the additional aggregate footprint used or required to support the co-locator.

(e) LICENSEE may charge the co-locators reasonable charges for use of the LICENSEE's Antenna Facility and other improvements on the Licensed Area which are used by the co-locators.

23. Reservation of Rights. Except as otherwise stated herein, LICENSOR reserves unto itself the full use and enjoyment of the Property and to grant to others rights and privileges for any and all purposes affecting the Property, all without charge by and without the consent of the LICENSEE, provided that such use by the LICENSOR and/or third parties does not materially interfere with the LICENSEE's rights to use the Licensed Area under this Agreement. LICENSEE shall take such steps necessary to ensure that its exercise of the rights and privileges granted hereunder does not cause any material interference with the LICENSOR's operations in or near the Property.

24. Indemnity. The LICENSEE agrees to indemnify, defend and hold harmless the LICENSOR, its elected & appointed officials, directors, employees, volunteers, agents, or any person(s) acting for and on its behalf, from and against any and all claims, demands, liabilities, suits, actions, judgments, costs and expenses for loss, injury, death or damage, including without limitation, any or all loss or damage to the Licensed Area, Antenna

Facility and property of the LICENSOR or others, and injury or death to employees of LICENSEE or its contractors, when such loss, damage, injury or death arises as a result of the construction, maintenance, operation or removal of said Antenna Facility, or when such loss, damage, injury or death directly or indirectly arises or results from the exercise or enjoyment of the rights and privileges granted hereunder by the LICENSOR, including but not limited to loss, damage, injury or death sustained as a result of RF Exposure; provided, however, that such indemnification shall not apply to loss, damage, injury or death resulting from the negligence or intentional acts or omissions of the LICENSOR, its elected and appointed officials, agents or employees.

25. Insurance. Licensee shall obtain and maintain in full force and effect for the duration of this Agreement, the following types of insurance or applicable umbrella insurance with minimum limits as outlined below:

- Commercial General Liability insurance written on an "occurrence" form covering claims arising out of Lessee's premises, operations or independent contractors resulting from bodily injury & property damage, products & completed operations, and personal & advertising injury liability with minimum limits of:

| | |
|---|---|
| General Aggregate | $2,000,000 |
| Products/Completed Operations Aggregate | $2,000,000 |
| Personal/Advertising Injury | $1,000,000 |
| Each Occurrence | $1,000,000 |

- Automobile Liability insurance, including coverage for all owned, hired and non-owned autos with minimum limits of $1,000,000 combined single limit bodily injury and property damage.
- Workers Compensation insurance as required by statute, and

| Employer's Liability coverage with minimum limits of: | |
|---|---|
| Bodily Injury – Each Accident | $1,000,000 |
| Disease – Policy Limit | $1,000,000 |
| Disease – Each Employee | $1,000,000 |

The insurance policies shall name the City and County of Honolulu as an additional insured, with the exception of the workers' compensation policy. Lessee shall furnish copies of the required certificate of insurance to the Lessor. Lessee will provide the Lessor with thirty (30) days prior written notice of cancellation.

The Licensee hereby waives, on behalf of Licensor and on behalf of any insurance carrier of Lessee, any claim or other right which the Licensee might otherwise have against the Licensor arising out of loss or damage, including consequential loss or damage, to any property of Licensee. Because Licensee's employees work in and around Licensor's premises and Licensee accepts the condition of these premises as is, Licensee further agrees to require its workers compensation carrier to waive its right of subrogation against the Licensor.

Licensor does not in any way represent that the insurance coverage or the limits of insurance hereinafter specified are sufficient or adequate to protect Licensee's or Licensor's interests or liabilities and Licensee's liability under the terms of this Agreement shall not be limited to the minimum limits as required to be carried by the Licensee herein.

26. Hazardous Materials.

(a) Pre-Approval. The LICENSEE shall not cause or permit the escape, disposal, discharge or release of any hazardous materials except as permitted by law. The LICENSEE shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto and/or into the Property and/or Licensed Area any such materials except to use in the ordinary course of the LICENSEE's business. As used in this paragraph, the "presence, escape, disposal, discharge or release of hazardous materials" includes, but is not limited to oil, fuel and PCB spillage or leakage, improper waste oil disposal and pollution of any water attributable to the LICENSEE's (1) operations and activities on or connected with the Property and/or Licensed Area or (2) use and occupancy of the Licensed Area.

(b) LICENSEE's Best Knowledge and Belief. If any lender of LICENSEE or governmental agency shall ever require testing to ascertain whether or not the LICENSEE has caused or permitted the escape, disposal, discharge or release of hazardous materials, then the LICENSEE shall be responsible for the reasonable costs thereof. In addition, the LICENSEE shall execute affidavits, representations and the like at the LICENSOR's written request concerning the LICENSEE's best knowledge and belief regarding the presence of hazardous materials on, within or under the Property and/or the escape, disposal, discharge or release of hazardous materials therefrom.

(c) LICENSEE's Indemnification. The LICENSEE agrees to indemnify, defend, and hold harmless the LICENSOR from any claims, demands, suits, actions, judgments, liabilities, losses, damages, costs and expenses arising out of, connected with or related to (1) the presence, escape, disposal, discharge or release of hazardous materials, on, within, under or from the Licensed Area occurring while the LICENSEE is in possession of the Licensed Area if caused by the LICENSEE or persons acting under the LICENSEE or (2) the LICENSEE's performance of its obligations under subparagraph 25.e. below. These covenants shall survive the expiration or earlier termination of this Agreement.

(d) Hazardous Materials. For the purpose of this Agreement, "hazardous materials" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, and the Federal Clean Water Act, all as amended, or any other federal, state, or local environmental laws, regulations, or ordinances, whether existing as of the date hereof, previously enforced or subsequently enacted.

(e) LICENSEE's Clean-Up Obligation. After receiving written demand from the LICENSOR, the LICENSEE shall, at the LICENSEE's sole cost and expense, clean-up and decontaminate the Property and remove all hazardous materials therefrom caused by LICENSEE or persons acting under LICENSEE,

including, without limitation, clean-up of surface and ground waters and making the soil free and clear of all such contaminants and hazardous material. The provisions of this paragraph shall remain in full force and effect notwithstanding the termination of this Agreement.

(f) Protection of Waters. The LICENSEE shall maintain and employ debris, pollution and contamination control measures, safeguards and techniques to prevent debris, pollution or contamination to ocean waters, streams or waterways resulting from the activities or operations of the LICENSEE and the LICENSEE's invitees and agents, on, within, over, through, across, under or connected with the Property and shall take immediate corrective action in the event of such pollution or contamination to immediately remove the cause of such pollution or contamination and shall immediately clean the Property and affected areas and surrounding waters of such pollutant or contaminant and restore the areas affected by such pollution or contamination, all at the LICENSEE's own cost and expense.

27. Failure to Take Corrective Measures. Should the LICENSEE fail to commence such corrective measures within thirty (30) days from the date LICENSOR provides written notice to LICENSEE, the LICENSOR may then take such reasonable corrective measures as the LICENSOR deems necessary by using LICENSOR labor, materials and equipment or by hiring an independent contractor to perform such labor and obtain or supply the necessary materials and equipment. The LICENSEE shall reimburse the LICENSOR for the

reasonable costs of said corrective work upon demand therefor by the LICENSOR.

28. Default. If the LICENSEE defaults on or otherwise fails to comply with this Agreement, the LICENSOR shall issue a written notice of default to the LICENSEE by hand-delivery or certified or registered first-class mail, postage prepaid, return receipt requested. Any defaults noted in the written notice must be cured by the LICENSEE within fifteen (15) days for a monetary default and within thirty (30) days for a non-monetary default. The LICENSEE shall have such extended periods as may be required beyond the thirty (30) day cure period to cure any non-monetary default if the nature of the cure is such that it reasonably requires more than thirty (30) days to cure, and the LICENSEE commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. If all defaults are not cured within the applicable time period, this Agreement, or portions thereof, may be terminated by the LICENSOR in accordance with Paragraph 32: Termination.

29. Assumption of Risks. LICENSEE has inspected the Licensed Area and knows the conditions thereof, accepts the condition of the Licensed Area "as is," fully assumes the risk that adverse physical conditions may not have been revealed by its investigation, and assumes all risks incident to the use of the Licensed Area.

30. Waiver of Claims. That the LICENSEE hereby waives any claim against the LICENSOR because of damage to its improvements arising out of the use of the Property by the public or by the LICENSOR, its officers, employees or agents of either or both of them, or from any other cause whatsoever except damages due to the negligence or intentional misconduct of LICENSOR, its officers, employees or agents, except to the extent caused by the willful misconduct or negligence of LICENSOR.

31. Non-transferability of Agreement and Licensed Area. Except for co-locations pursuant to Paragraph 22, this License, the Licensed Area or any rights granted herein shall not be sold, assigned, conveyed, mortgaged or otherwise transferred or disposed of, directly or by operation of law without LICENSOR's consent, such consent not to be unreasonably withheld, conditioned or delayed, except that LICENSEE may assign this License without the LICENSOR's consent to any of LICENSEE's parent, subsidiary, or affiliated entities or pursuant to the sale of all or substantially all of the assets or stock of LICENSEE or pursuant to the sale of all or substantially all of the assets or operations of the division of LICENSEE that is operating the Antenna Facility pursuant to this License.

32. Termination/Surrender of Subject Property. Upon termination of this Agreement, the LICENSEE shall peaceably surrender and deliver up possession of the Licensed Area in good order and condition, less ordinary wear and tear and casualty loss, to LICENSOR. LICENSEE shall remove the

Antenna Facility and other appurtenant equipment and restore the surface of the Licensed Area to its original condition that existed as of the commencement of construction less ordinary wear and tear and casualty loss.

33. Interpretation of Agreement/Disputes. In case of any doubt as to the interpretation of any term or provision herein, the interpretation given and made by the Director, Department of Budget and Fiscal Services, shall govern and control the LICENSOR's interpretation. In addition, said Director shall have the sole power to decide and resolve matters on behalf of the LICENSOR which may come up in the future which are not covered by this Agreement. LICENSEE shall have the right to exercise all remedies available by law if LICENSEE does not agree with the Director's decision.

34. Complete Agreement; Amendment; Severability. This Agreement constitutes the entire Agreement and understanding between the parties, and supersedes all offers, negotiations and other agreements concerning the subject matter contained herein. Any amendments to this Agreement must be in writing and executed by both parties. If any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

35. Sexual Harassment Policy. The LICENSEE shall have and enforce a policy prohibiting sexual harassment. The LICENSEE's sexual harassment policy must set forth the same or greater protection than those contained or required by City Ordinance No. 93-84. City Ordinance No. 93-84 is on file and available for viewing in the Purchasing Division, or if a copy is needed, the LICENSEE may pick up the ordinance from the Office of the City Clerk, Room 203, City Hall, 530 S. King Street, Honolulu, Hawaii 96813.

36. Governing Law. The provisions of this Agreement shall be interpreted in accordance with the law of the State of Hawaii as that law is construed and amended from time to time.

37. Headings. The titles of headings of sections, subsections, and paragraphs are intended for convenience of reference and shall not be considered as having any bearing on their interpretation.

38. Construction. All words used in the singular shall extend to and include the plural. All words used in the plural shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

39. Attorneys' Fees. Should an action be instituted by either of the parties hereto in any court of law or equity pertaining to the enforcement of any of the provisions of this Agreement, the prevailing party in any final or non-appealable decision on the merits shall be entitled to recover, in addition to any judgment or decree rendered therein, all court costs and reasonable attorneys' fees as determined by a court of competent jurisdiction.

40. No Party Deemed Drafter. The parties agree that neither party shall be deemed to be the drafter of this Agreement and that in the event this Agreement is ever construed by a court of law, such court shall not construe this Agreement or any provision hereof against either party as the drafter of the Agreement, LICENSOR and LICENSEE acknowledging that both parties have contributed substantially and materially to the preparation of this Agreement.

41. Compliance with Laws. LICENSEE shall, at all times during the entirety of this Agreement, comply with all applicable laws, statutes, ordinances, and regulations whether State, County or Federal, which are now or hereafter may be in effect, including but not limited to, the laws applicable to the use of the Licensed Area and the securing of any and all necessary governmental approvals and permits for the use of the Licensed Area and the Property.

42. Authority of Executors. The persons who have executed this Agreement represent and warrant that they are duly authorized to execute this Agreement in their individual or representative capacity as indicated.

43. Counterparts. This Agreement may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which shall constitute a single instrument.

44. Miscellaneous.

(a) Utilities. LICENSEE will pay for all utilities used by it at the Antenna Facilities.

[*Execution Page Follows*]

DRAFT

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands on the day and year first above written.

CITY AND COUNTY OF HONOLULU

_____
ANDREW T. KAWANO, DIRECTOR
DEPARTMENT OF BUDGET AND FISCAL SERVICES

LICENSOR

NEW CINGULAR WIRELESS PCS, LLC,
a Delaware limited liability company

By: CCATT LLC,
a Delaware limited liability company
Its: Attorney In Fact

By: _____
Its: _____

LICENSEE

APPROVED AS TO CONTENTS:

_____
LAURA H. THIELEN, DIRECTOR
DEPARTMENT OF PARKS & RECREATION

APPROVED AS TO FORM
AND LEGALITY:

_____
Deputy Corporation Counsel

**EXHIBIT A**

**LEGAL DESCRIPTION**
**(MILILANI MAUKA PARK)**

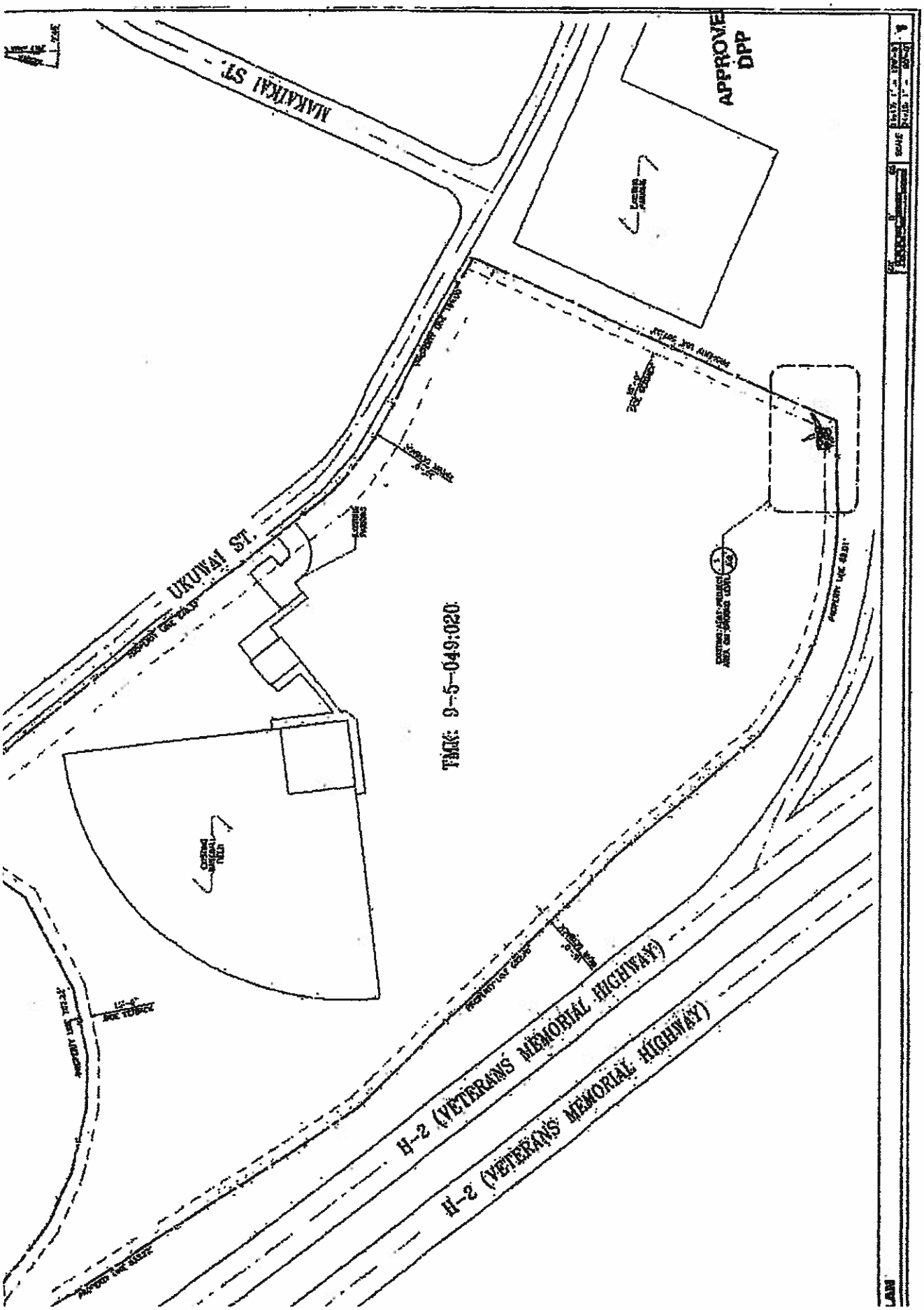
That certain parcel of land situated at Waipio, Ewa, Oahu, State of Hawaii, more particularly described as Lot 13365; area 16.075 acres, as shown on Map 825, filed in the office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1000 of John II Estate, Limited, and being a portion of the lands described in Transfer Certificate of Title No. 468715 issued to Castle and Cooke Homes Hawaii, Inc.

Parcel ID 95049020

THIS BEING the same property conveyed to the City and County of Honolulu by Castle & Cooke Homes Hawaii, Inc., by Deed with Reservations and Covenants dated September 14, 2001 and recorded October 15, 2003 as Instrument Number 3011028 in Honolulu County, Hawaii.

Property Commonly Known As: **Mililani Mauka District Park, 95-1069 Ukuwai Street Mililani, HI 96789**

EXHIBIT B


MAKAIKAI ST.
UKUWAI ST.
H-2 (VETERANS MEMORIAL HIGHWAY)
H-2 (VETERANS MEMORIAL HIGHWAY)
TMK: 9-5-049:020
APPROVE
DPP