

Ordinance No. \_\_\_\_\_

An ordinance approving a lease agreement between the Metropolitan Government of Nashville and Davidson County and Midwest Communications Inc. for real property located at 8072 Old Charlotte Pike, Nashville, Tennessee (Map/Parcel No. 113000010.00) (Proposal No. 2019M-002AG-001).

WHEREAS, Midwest Communications, Inc. owns certain real property located at 8072 Old Charlotte Pike, Nashville, Tennessee (“the Premises”); and,

WHEREAS, pursuant to BL098-1363, the Metropolitan Government was granted a twenty-year lease of real property on the Premises that has since expired; and

WHEREAS, pursuant to BL098-1363, the Metropolitan Government constructed a broadcasting tower and facilities for related equipment on the Farmhouse Site located on the Premises; and,

WHEREAS, the Metropolitan Government of Nashville and Davidson County and Midwest Communications Inc. have negotiated a new Lease Agreement attached hereto and incorporated herein as Exhibit 1; and,

WHEREAS, this ordinance has been mandatorily referred to the Planning Commission pursuant to Section 11.505 of the Metropolitan Charter and has been assigned Proposal No. 2019M-002AG-001, which has been administratively reviewed and recommended for approval; and,

WHEREAS, it is to the benefit of the citizens of the Metropolitan Government of Nashville and Davidson County that this agreement be approved.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That the Lease Agreement between the Metropolitan Government of Nashville and Davidson County and Midwest Communications, Inc. attached hereto as Exhibit 1, is hereby approved and the Director of Public Property Administration, or his designee, is hereby authorized to execute the same.

Section 2. That any amendment to this Lease Agreement shall be approved by resolution of the Metropolitan Council receiving at least twenty-one (21) affirmative votes.

Section 3. This ordinance shall take effect from and after its final passage, the welfare of the Metropolitan Government of Nashville and Davidson County requiring it.

RECOMMENDED BY:

  
Sean McGuire, Director  
Public Property Administration

INTRODUCED BY:

  
  
Member(s) of Council

APPROVED AS TO AVAILABILITY  
OF FUNDS:

  
Kevin Crumbo, Director  
Department of Finance

APPROVED AS TO FORM AND  
LEGALITY:

  
Assistant Metropolitan Attorney

**LEASE AGREEMENT**  
**between the**  
**METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY**  
**and**  
**MIDWEST COMMUNICATIONS, INC.**

This Lease Agreement is made and entered into on this the \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between The Metropolitan Government of Nashville and Davidson County hereinafter referred to as the “Metropolitan Government”) and Midwest Communications, Inc., a Wisconsin corporation (hereinafter referred to as “Lessor”).

**WITNESSETH**

WHEREAS, Lessor is the owner of the Main Site located at 8072 Old Charlotte Pike, Nashville, Tennessee as more fully described in Exhibit A attached hereto; and

WHEREAS, the Farmhouse Site is a portion of the Main Site as shown on Exhibit B attached hereto and incorporated herein; and

WHEREAS, BL098-1363 approved a 20-year lease for the Farmhouse Site; and

WHEREAS, pursuant to a prior lease, the Metropolitan Government constructed a broadcasting tower and facilities for related equipment on the Farmhouse Site, which lease expired by its terms as of July 31, 2018; and

WHEREAS, the Metropolitan Government has been in a hold over tenant position since the expiration of the prior lease and the Metropolitan Government desires to enter into a new lease for the Farmhouse Site with Lessor and Lessor is willing to lease such property to the Metropolitan Government.

NOW, THEREFORE, in consideration of the mutual covenants, terms, provisions, and conditions hereby contained, the Lessor and the Metropolitan Government agree as follows:

1. Definitions. For purposes of this Lease Agreement, the following terms shall have the following meanings:
  - a. Communications Facility. The Transmitter Building, the Metro Tower, the Equipment, the Leasehold Improvements, and any other equipment or leasehold improvements added to the Farmhouse Site by the Metropolitan Government.
  - b. Equipment. The broadcasting and communications equipment.

- c. Farmhouse Site. That parcel of real property more particularly described on Exhibit B which is attached hereto and incorporated herein, located on Old Charlotte Road on a site known as Sullivan's Ridge.
  - d. Lessor. Midwest Communications, Inc., a Wisconsin corporation with its office and principal place of business at 904 Grand Avenue, Wausau, Wisconsin 54403
  - e. Leased Premises. The Farmhouse Site.
  - f. Leasehold Improvements. The Transmitter Building, the Metro Tower, and the other leasehold improvements to be constructed by the Tenant upon the Farmhouse Site.
  - g. Main Site. That parcel of real property in Davidson County, Tennessee upon which Lessor operates a broadcasting facility more particularly described in Exhibit A, which is attached hereto and incorporated herein by reference.
  - h. Metro Tower. The radio tower upon the Farmhouse Site owned and operated by the Metropolitan Government.
  - i. Transmitter Building. The building constructed by the Metropolitan Government for the purpose of housing certain Equipment located on the Farmhouse Site.
2. Lease. Lessor hereby leases to Metropolitan Government and Metropolitan Government hereby leases from Lessor the Leased Premises solely for the purpose of Lessor to install and operate the Communication Facility on the Leased Premises pursuant to the terms and conditions set forth herein.
3. Operational Covenants. Metropolitan Government represents and warrants as follows:
- a. Metropolitan Government will not, by the operation of its Communications Facility, cause any interference with or degradation of Lessor's operation of a communications tower or cause any interference to other users on the Lessor's tower or at the Main Site.
  - b. Lessor will take all necessary precautions to protect itself, its contractors, agents, employees, and third persons from injury in the installation, operation, and maintenance of the Communications Facility and that Metropolitan Government will conform its use to the applicable requirements of federal, state, and local laws or agreements governing such activity and the use of Leased Premises as provided herein.

4. Access to Leased Premises. During the Term, the Metropolitan Government shall have access to the Leased Premises over existing roadways constructed on the Main Site for purposes of maintaining the Communications Facility.
5. Rent. The Metropolitan Government agrees to pay to Lessor monthly rent in the amount of \$1,455.25, which shall be payable on the first day of each month. The rental amount shall be adjusted five percent (5%) annually on the anniversary date of each year during the Term of this Lease Agreement. If the Lease term commences on a date other than the first day of the month, rent for the first month shall be prorated, unless holdover rent has already been paid for such month.
6. Term. The term of this Lease (the "Term") shall commence on the effective date hereof and expire on the last day of the full calendar month of the 20<sup>th</sup> anniversary of the effective date; provided, however, that Metropolitan Government shall having the right to terminate the Lease Agreement upon a 6-months' written notice to Lessor.
7. Breach. Should either party fail or neglect to comply with any term or condition of this Lease Agreement, the non-breaching party shall be entitled to pursue any and all remedies available under Tennessee law.
8. Termination for Lack of Funding. Should funding for this Lease Agreement be discontinued, then the Metropolitan Government shall have the right to terminate the Lease Agreement upon thirty (30) days written notice to Lessor.
9. Termination. Metropolitan Government shall remove the Communications Facility no later than the date of the lawful termination of Metropolitan Government's right to occupy the Farmhouse Site or the expiration or earlier termination of this Lease Agreement and restore any damage caused by such removal. In the event any portion of the Communications Facility remains on the Farmhouse Site following such termination of occupancy rights, or termination or expiration of this Lease Agreement, such items shall be deemed abandoned and shall immediately become property of Lessor, unless a new lease is negotiated and approved between the parties hereto with respect to the leased premises within fifteen (15) days of such termination or expiration.
10. Compliance with laws. The parties hereto agree to comply with any applicable federal, state and local laws and regulations.
11. Notices.

Notices to the Metropolitan Government shall be sent to:

Metropolitan Government of Nashville and Davidson County  
Finance Department  
Attn: Director of Public Property  
P.O. Box 196300

Nashville, TN 37219-6300

Notices to Lessor shall be sent to:

Midwest Communications, Inc.  
904 Grand Avenue  
Wausau, Wisconsin 54403  
Attn: Chief Financial Officer

12. Amendment of Lease. This Lease Agreement may be modified only by written amendment executed by all parties and their signatories hereto and approved by the Metropolitan Government.
13. Partnership/Joint Venture. Nothing herein shall in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto shall hold itself out in a manner contrary to the terms of this paragraph. No party shall become liable for any representation, act or omission of any other party contrary to the terms of this paragraph.
14. Taxes. Lessor is responsible for paying all real estate taxes associated with the Main Site.
15. Utilities. The Metropolitan Government agrees to be responsible for all electricity and other utility charges incurred by it as a result of its activities on the Leased Premises.
16. Waiver. No waiver of any provision of this contract shall affect the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.
17. Employment. Lessor shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, or which is in violation of applicable laws concerning the employment of individuals with disabilities.
18. Insurance. The Metropolitan Government shall be responsible for and maintain during the Term property insurance for the full replacement cost of all property belonging to the Metropolitan Government that shall be kept within the Leased Premises. The Metropolitan Government shall not be responsible for providing property insurance for any property that does not belong to the Metropolitan Government. Metropolitan Government is a self-insured entity under the Tennessee Governmental Tort Liability Act, Tenn. Code Ann. § 29-20-201 et seq. The Metropolitan Government will provide self-insured liability coverage for any damage caused by the negligent acts or omissions of the employees or agents of the Metropolitan Government subject to the limitations and exclusions of the Tennessee Governmental Tort Liability Act.

19. Fire and Other Damage to Premises. In the event that the Communications Facility is destroyed or damaged by fire, lightning, windstorm, explosion, collapse, aircraft, or other vehicle damage, earthquake, riots, acts of war, acts of God, or other casualty, not caused by the fault or negligence of Metropolitan Government, either party may elect to terminate this Lease upon thirty (30) days' written notice to the other party. If no such termination is undertaken within such time period, this Lease shall continue in effect and Metropolitan Government may elect to restore and repair the Communications Facility at Metropolitan Government's sole cost.
20. Contingent Fees. Lessor hereby represents that Lessor has not been retained or retained any persons to solicit or secure a Metropolitan Government contract upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. Breach of the provisions of this paragraph is, in addition to a breach of this contract, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under Metropolitan Government contracts.
21. Gratuities and Kickbacks. It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in collection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therefor. It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or a person associated therewith, as an inducement for the award of a subcontract or order. Breach of the provisions of this paragraph is, in addition to a breach of this contract, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under Metropolitan Government contracts.
22. Assignment--Consent Required. The provisions of this Lease Agreement shall inure to the benefit of and shall be binding upon the respective successors and assignees of the parties hereto. Neither this Lease Agreement nor any of the rights and obligations hereunder shall be assigned or transferred in whole or in part without the prior written consent Lessor. Any assignment or transfer shall not release Metropolitan Government from its obligations hereunder unless the Lessor consents to a transfer or assignment.

23. Repairs and Maintenance. The Metropolitan Government, at its sole cost and expense, shall maintain and repair the Communications Facility. Metropolitan Government shall maintain the Leased Premises in good repair and condition.
24. Radio Frequency Radiation Regulation Compliance and Condition of Tower. The Metropolitan Government warrants that its use of the Leased Premises will not interfere with Lessor's broadcasting or communications operations on the Main Site. The Metropolitan Government agrees that it will maintain the operations of the Communications Facility so as to assure compliance with the relevant rules of the Federal Communications Commission and electrical codes of the City and/or State respecting radio frequency radiation in compliance with existing ANSI provisions. The Metropolitan Government acknowledges that it shall be responsible for maintenance of the Metro Tower and for compliance with all tower lighting and marking which may be required by the FAA or the FCC or any other governmental entity. Metropolitan Government will take all necessary precautions to protect itself, its contractors, agents, employees, and third persons from injury in the installation, operation, and maintenance of the Communications Facility and will conform its use to the applicable requirements of federal, state, and local laws or agreements governing such activity.
25. Condition of Property. Metropolitan Government undertakes and assumes for its officers, agents, affiliates, contractors, subcontractors, and employees all risks of dangerous conditions, if any, on or about the Leased Premises, and hereby accepts the Leased Premises in the condition existing as of the Commencement Date on an "AS-IS", "WHERE IS" and "WITH ALL FAULTS" basis. Lessor makes no representation or warranty with respect to the condition of the Leased Premises and shall not be liable for any latent or patent, known or unknown, defect in the Leased Premises. Metropolitan Government undertakes and assumes for its officers, agents, affiliates, contractors, subcontractors, and employees all risks of dangerous conditions, if any, on or about the Leased Premises.
26. Force Majeure. No party shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by force majeure, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of Government, act of public enemy, or other cause of similar or dissimilar nature beyond its control.
27. Quiet Enjoyment. Lessor covenants that Lessor has good title to the Leased Premises, and is under no disability that would impair Lessor's right to enter into this Lease Agreement. Metropolitan Government, upon the payment of the rent herein provided and upon performance of all terms and conditions hereof, shall quietly have and enjoy the Leased Premises during the Term hereof without hindrance by or disturbance from Lessor or anyone claiming by or through Lessor.

28. Maintenance of Records. Lessor shall maintain documentation for all charges under this Lease against the Metropolitan Government. The books, records, and documents of Lessor insofar as they relate to work performed or money received under the Lease Agreement, must be maintained for period of three (3) full years from the date of final payment and will be subject to audit, at any responsible time and upon reasonable notice by the Metropolitan Government or its duly appointed representative. The records shall be maintained in accordance with generally accepted accounting principles.
29. Broker's Commission. There will be no brokerage commission payable since no broker is involved in the lease.
30. Governing Law. The validity, construction and effect of this Lease Agreement and any and all extensions and/or modifications thereof shall be governed by the laws of the State of Tennessee.
31. Venue. Any action between the parties arising from this Lease Agreement shall be maintained in the courts of Davidson County, Tennessee.
32. Severability. Should any provision of this Lease Agreement be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this Lease Agreement.
33. Effective Date. This Lease Agreement shall not be binding upon the parties until it has been signed first by the Lessor and then by the authorized representatives of the Metropolitan Government and approved by the Metropolitan Council.
34. Entire Agreement. This Lease Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of the parties. Any prior lease or other agreement between the parties with respect to the Leased Premises is hereby deemed terminated and of no further force and effect.
35. Limitation of Liability. Any obligation or liability whatsoever of Lessor which may arise at any time under this Agreement or any obligation or liability which may be incurred by Lessor pursuant to any other instrument, transaction, or undertaking contemplated hereby shall not be personally binding upon, nor shall resort for the enforcement thereof be had as to the property of, Lessor's officers or board members, employees, or agents, regardless of whether such obligation or liability is in the nature of contract, tort, or otherwise.
36. Subordination. This Lease Agreement is subject to and subordinated to all present and future leases, mortgages, deeds of trust, encumbrances, and use agreements affecting the Main Site.

**THE METROPOLITAN GOVERNMENT  
OF NASHVILLE AND DAVIDSON  
COUNTY**

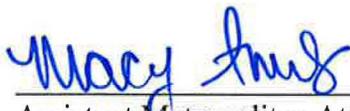
**RECOMMENDED BY:**

  
Sean McGuire, Director  
Public Property Administration

**APPROVED AS TO AVAILABILITY OF  
FUNDS:**

  
Kevin Crumbo, Director  
Department of Finance

**APPROVED AS TO FORM AND  
LEGALITY:**

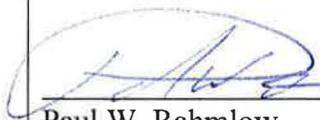
  
Assistant Metropolitan Attorney

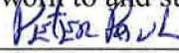
**ATTEST:**  
FILED IN THE OFFICE OF THE  
METROPOLITAN CLERK:

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

**LESSOR**

**MIDWEST COMMUNICATIONS, INC.**

  
Paul W. Rahmlow  
Chief Financial Officer

Sworn to and subscribed to before me,  
, a Notary Public, this  
25 day of February, 2020, by Paul  
W. Rahmlow, as Chief Financial Officer of  
Midwest Communications, Inc. who is duly  
authorized to execute this instrument on the  
Lessor's behalf.

  
Notary Public



My Commission Expires 10/15/21

## Exhibit A

### Sullivan's Ridge Site Ingress and Egress Easement Description

Beginning at an iron pin located on the easterly Right-of-Way of Old Charlotte Road, being the southwesterly corner of South Central Communications Corp. property (D.B. 7482, PG. 356) and common southerly corner of Phillip M. Denning and Wife property (D.B. 5122, PG. 983). Thence along the easterly Right-of-Way of Old Charlotte Road, S 11°20'26" E, 77.25 feet to a point.

Thence, continuing along the easterly Right of Way of Old Charolotte Road, S 22°40'02" E, 97.97 feet to a point. This point being the true point of beginning of the centerline of a 30 foot wide Ingress and Egress Easement as follows:

Leaving the easterly Right-Of-Way of Old Charlotte Road and following approximately the centerline of an existing asphalt drive N 18°56'35" E, 100.00 feet to a point. Thence, N 26°09'59" E, 50.00 feet to a point. Thence N 28°54'04" E, 50.00 feet to a point. Thence N 32°57'25" E, 30.00 feet to a point. Thence, N 38°54'21" E, 30.72 feet to a point. Thence N 44°42'34" E, 13.48 feet to a point.

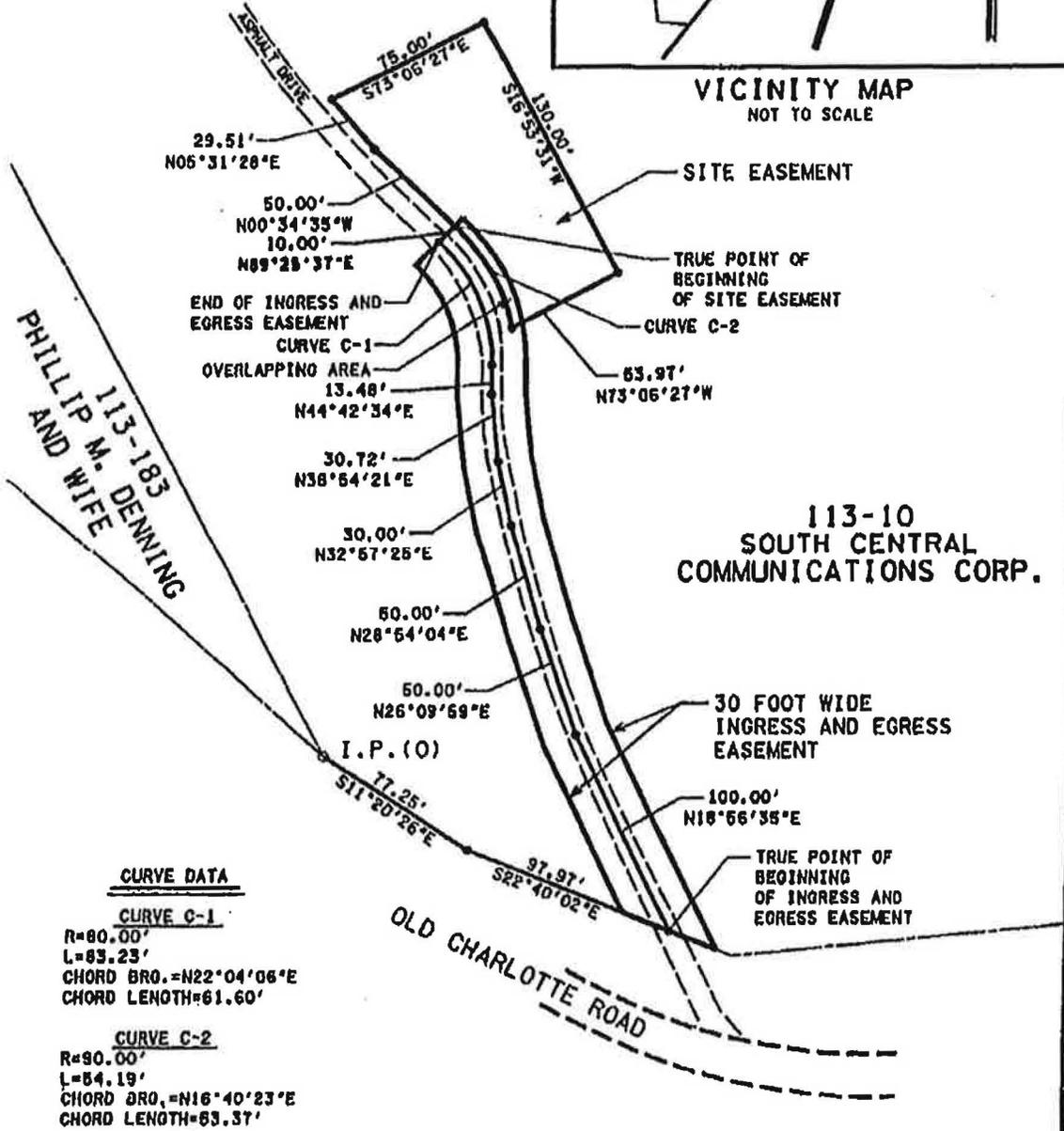
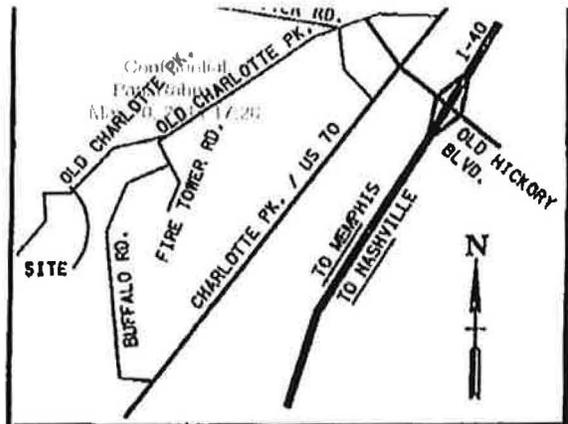
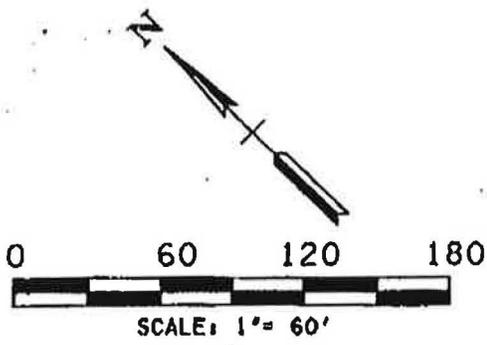
Thence with a curve to the left, said curve having a central angle of 45°17'17", a radius of 80.00 feet, a curve length of 63.23 feet, a chord bearing of N 22°04'06" E, a distance of 61.60 feet to a point. This point being the beginning point of a description for a Site Easement to construct a radio tower and appurtenances. Containing 10,122.84 square feet or 0.23 acres, more or less.

Included in this description but excluded from the Ingress and Egress Easement is an area which overlaps the Site Easement. Area less overlap (10,122.84 sq.ft. – 274.65 sq. ft. = 9,848.19 sq. ft. or 0.23 acres, more or less)

### Sullivans Ridge Site Site Easement Description

Beginning at a point at the end of the centerline of a 30 foot wide Ingress and Egress Easement to this site, N 89°25'37" E, 10.00 feet to a point. This point being the true point of beginning of the easement described herein.

Thence N 00°34'35" W, 50.00 feet to a point. Thence N 05°31'28" E, 29.51 feet to a point. Thence, S 73°06'27" E, 75.00 feet to a point. Thence S 16°53'31" W, 130.00 feet to a point. Thence, N 73°06'27" W, 53.97 feet to a point, said point being 10.00 feet from the centerline of above mentioned 30 foot wide Ingress and Egress Easement. Thence, with a curve to the left, parallel and 10.00 feet easterly from the centerline of the above mentioned 30 foot wide Ingress and Egress Easement, said curve having a central angle of 34°29'52", a radius of 90.00 feet, a curve length of 54.19 feet, a chord bearing of N 16°40'23" E, a distance of 53.37 feet to the point of beginning. Containing 7,768.97 square feet or 0.18 acres, more or less.



**CURVE DATA**

**CURVE C-1**

R=80.00'  
L=83.23'  
CHORD BRO.=N22°04'06"E  
CHORD LENGTH=61.60'

**CURVE C-2**

R=90.00'  
L=54.19'  
CHORD BRO.=N16°40'23"E  
CHORD LENGTH=53.37'

**EXHIBIT "A"**  
**EASEMENTS FOR SULLIVAN'S RIDGE RADIO TOWER SITE**  
**METRO DEPARTMENT OF WATER AND SEWERAGE SERVICES**

03/27/90  
Paul Robinson  
May 20 2014 17:26

{N0333570.1}



# ORIGINAL

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*METROPOLITAN COUNTY COUNCIL*

**Bill No.** \_\_\_\_\_

An ordinance approving a lease agreement between the Metropolitan Government of Nashville and Davidson County and Midwest Communications Inc. for real property located at 8072 Old Charlotte Pike, Nashville, Tennessee.

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*Introduced* \_\_\_\_\_

*Passed First Reading* \_\_\_\_\_

*Amended* \_\_\_\_\_

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*Passed Second Reading* \_\_\_\_\_

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*Passed Third Reading* \_\_\_\_\_

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*Approved* \_\_\_\_\_

*By* \_\_\_\_\_  
*Metropolitan Mayor*

*Advertised* \_\_\_\_\_

*Effective Date* \_\_\_\_\_

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