

RESOLUTION #20-25:

A RESOLUTION GRANTING A UTILITY EASEMENT TO CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS FOR THE VILLAGE OF PINEHURST, NORTH CAROLINA.

WHEREAS, the Cellco Partnership D/B/A Verizon Wireless has requested a non-exclusive access and underground utility easement on property owned by the Village of Pinehurst, as described in "Exhibit A"; and

WHEREAS, the Cellco Partnership D/B/A Verizon Wireless has requested such easement from the Village of Pinehurst for installation and maintenance of underground utilities; and

WHEREAS, the Village has determined that granting the requested easement is in the best interest of the citizens of Pinehurst; and

WHEREAS, G.S. 160A-273 provides municipalities the authority to grant easements over, though, under, or across any of its property.

NOW, THEREFORE, BE IT RESOLVED by the Village Council of the Village of Pinehurst, North Carolina, in the regular meeting assembled this 14th day of July, 2020, as follows:

SECTION 1. The requested easement as depicted on "Exhibit A" is hereby granted to the Cellco Partnership D/B/A Verizon Wireless.

SECTION 2. The Village Manger is hereby authorized to execute any and all documents necessary to facilitate the easement.

SECTION 3. Copies of this resolution shall be furnished to the Village Clerk and the Village Manager and Assistant Village Manager for Operations for their direction and implementation.

THIS RESOLUTION passed and adopted this 14th day of July, 2020.

(Municipal Seal)



Attest:

Beth Dunn
Beth Dunn Village Clerk

VILLAGE OF PINEHURST
VILLAGE COUNCIL

By: John C. Strickland
John C. Strickland, Mayor

Approved as to Form:

Michael J. Newman
Michael J. Newman, Village Attorney

EXHIBIT A

MOORE HOSPITAL (EASEMENT)

This Instrument Was Prepared By
and When Recorded Mail to:

Jeffrey M. Clark
Miller & Martin, PLLC
401 Commerce Street, Suite 720
Nashville, TN 37219

STATE OF NORTH CAROLINA)
)
COUNTY OF MOORE) **UTILITY EASEMENT**
) **AGREEMENT**

UTILITY EASEMENT AGREEMENT

THIS UTILITY EASEMENT AGREEMENT (the "Agreement") is made and executed between **VILLAGE OF PINEHURST, a North Carolina Municipal Corporation**, with a mailing address of 395 Magnolia Road, Pinehurst, North Carolina 28374, hereinafter designated **GRANTOR**, and **CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS** with its principal offices at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920, hereinafter designated **GRANTEE**.

WHEREAS, Grantor is the owner of certain real property situated in Moore County, North Carolina, shown on the Tax Map of Moore County as a portion of Parcel ID 00029686, and further described in Deed Book 535 at Page 33, as recorded in the Register's Office of Moore County, North Carolina (the "Grantor Property"); and

WHEREAS, pursuant to a lease agreement between the COUNTY OF MOORE ("Lessor") and Grantee as Lessee (the "Lease Agreement"), Grantee is leasing from Lessor certain property (the "Land Space") on a tract adjoining the Grantor Property, for the purpose of constructing, maintaining and operating a telecommunications facility; and

WHEREAS, GRANTEE desires to obtain from GRANTOR, and GRANTOR desires to grant to GRANTEE, upon the terms and conditions stated in this Agreement, non-exclusive easements in and to a portion of GRANTOR's property for installation and maintenance of underground utilities, including but not limited to fiber along (i) a forty foot (40') wide easement extending from SHORT ROAD to the Land Space and (ii) a thirty foot (30') wide easement extending from YADKIN ROAD to the Land Space.

WITNESSETH:

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that GRANTOR for and in consideration of the sum set forth in Section 3 below, and other good and valuable consideration as stated herein, paid by GRANTEE to GRANTOR, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release, unto the GRANTEE, its successors and assigns, non-exclusive easements (the "Easements"), for the purpose of installation of fiber and utilities, as well installation and maintenance of utility wires, cables, conduits, and pipes underground and within the Easements as substantially described on **Exhibits A and B** attached hereto and incorporated herein.

PROVISIONS

1. It is the intent of this Agreement to convey to GRANTEE non-exclusive underground easements for the purposes as set forth herein through the Easements. However, to the extent the grant made hereby shall fail in any respect, or is held to be invalid, in whole or in part, including but not limited to the effectiveness of the grant made hereby, this Agreement shall continue in full force and effect to the full extent of GRANTOR's interest in and to any part of the Easements.
2. GRANTEE, its successors, assigns, agents, independent contractors, subtenants, licensees, tenants, utility providers, and invitees shall have the use of the Easements as described herein for the purpose of installation and maintenance of fiber lines, utility wires, cables, conduits, and pipes underground and through the Easements. GRANTEE has GRANTOR's consent for all necessary utility installation activities including, but not limited to trenching, or boring.
3. As consideration for the rights granted herein, GRANTEE shall pay to GRANTOR a one-time lump sum rent payment of \$7,009.00 within ninety (90) days of the full execution of this Agreement.
4. GRANTEE shall pay for all costs incurred in connection with any improvements desired by GRANTEE within the Easements.
5. To the extent required by any public utility or fiber provider, GRANTOR agrees to execute and deliver an easement agreement covering the easement area directly with the public utility or fiber provider on the form which may be required by the public utility or fiber

provider.

6. The term of this Agreement shall be equal to and shall correspond with the term of the Lease Agreement entered into between GRANTEE and LESSOR as such Agreement may be extended or amended from time to time. Upon the termination of the Lease Agreement, this Agreement shall terminate ninety (90) days thereafter.
7. GRANTOR covenants that GRANTOR is seized of good and sufficient title and interest to the Easement and has full authority to enter into and execute this Agreement. GRANTOR further covenants that there are no other liens, judgments or impediments of title on the Easement or affecting GRANTOR's title to the same and that there are no covenants, easements or restrictions which prevent the use of the Easements by GRANTEE as set forth above.
8. GRANTEE shall indemnify, defend, and hold GRANTOR harmless from and against any and all claims arising in connection with or attributable to loss of life, personal injury, damage to property or business, or any other loss, illness, or injury arising out of GRANTEE'S use of the Easements by any employee, agent, contractor, invitee, or other person acting on behalf of GRANTEE, unless caused or materially contributed to by GRANTOR.
9. GRANTEE shall conduct its business in compliance with all applicable laws governing the protection of the environment or employee health and safety (collectively, "EH&S Laws"). GRANTEE shall indemnify and hold harmless the GRANTOR from claims to the extent resulting from GRANTEE's violation of any applicable EH&S Laws or to the extent that GRANTEE causes a release of any regulated substance to the environment. GRANTOR shall indemnify and hold harmless GRANTEE from all claims resulting from the violation of any applicable EH&S Laws or a release of any regulated substance to the environment except to the extent resulting from the activities of GRANTEE. The Parties recognize that the Easements are only a small portion of GRANTOR's property and that GRANTEE shall not be responsible for any environmental condition or issue except to the extent resulting from GRANTEE's specific activities and responsibilities. In the event that GRANTEE encounters any hazardous substances that do not result from GRANTEE'S activities and if GRANTEE desires to remove at its own cost all or some the hazardous substances or materials (such as soil) containing those hazardous substances, GRANTOR agrees to sign any necessary waste manifest associated with the removal, transportation and/or disposal of such substances.
10. It is agreed and understood that this Agreement contains all agreements, promises and understandings between GRANTOR and GRANTEE and that no verbal or oral agreements, promises or understandings shall be binding upon either GRANTOR or GRANTEE in any dispute, controversy or proceeding at law, and any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing and signed by the parties hereto.

11. This Agreement and the performance thereof shall be governed, interpreted, construed, and regulated by the laws of the State in which the Easements are located.
12. Any notices regarding this Agreement must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the party to be notified may have designated to the sender by like notice):

GRANTOR: Village of Pinehurst
395 Magnolia Road, Pinehurst
North Carolina 28374

GRANTEE: Cellco Partnership
d/b/a Verizon Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
Attention: Network Real Estate

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

13. This Agreement may be sold, assigned or transferred by GRANTEE without any approval or consent of GRANTOR to GRANTEE's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of GRANTEE's assets in the market defined by the Federal Communications Commission in which the Easements are located by reason of a merger, acquisition or other business reorganization. As to other parties, this Agreement may not be sold, assigned or transferred without the written consent of GRANTOR, which such consent will not be unreasonably withheld, delayed or conditioned. No change of stock ownership, partnership interest or control of GRANTEE or transfer upon partnership or corporate dissolution of GRANTEE shall constitute an assignment hereunder.
14. This Agreement shall extend to and bind the heirs, personal representatives, successors and assigns of the parties hereto.

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the Easement belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all the interests, rights, and privileges herein granted in and to the Easements before described unto GRANTEE, its successors and assigns, for the term as stated herein, it being agreed that said Easements shall run with and be appurtenant to the Land Space and the leasehold interest therein of GRANTEE.

GRANTOR does hereby bind GRANTOR and GRANTOR's heirs, successors or executors and administrators, to warrant and forever defend all and singular the said Easements unto GRANTEE and GRANTEE'S successors and assigns against GRANTOR and GRANTOR's heirs and against every person whomsoever lawfully claiming or to claim the same, or any part thereof. Any reference in this instrument to the plural shall include the singular, and vice versa. Any reference to one gender shall include the others; including the neuter. Such words of inheritance shall be applicable as are required by the gender of GRANTEE or GRANTOR. The designation GRANTOR and GRANTEE as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, GRANTOR and GRANTEE have executed this Agreement under seal effective as of the _____ day of _____ 2020.

GRANTOR:

VILLAGE OF PINEHURST, a North Carolina Municipal Corporation

By: _____

Print Name: _____

Print Title: _____

Date: _____

GRANTEE:

CELLCO PARTNERSHIP d/b/a Verizon Wireless

By: _____

Eric A. Mann
Director-Network Field Engineering

Date: _____

STATE OF NORTH CAROLINA)

COUNTY OF _____)

I, the undersigned, a notary public in and for _____ County, North Carolina, do hereby certify that _____ (insert name of signatory), the _____ (insert title), of VILLAGE OF PINEHURST, known to me to be the same person whose name is subscribed to the foregoing UTILITY EASEMENT AGREEMENT, appeared before me this day in person and acknowledged that, pursuant to his/her authority, he/she signed the said Memorandum as his/her free and voluntary act on behalf of the named Grantor entity, for the uses and purposes therein stated.

Given under my hand and seal this ____ day of _____, 2020.

[NOTARY SEAL]

Notary Public

My commission expires _____

STATE OF NORTH CAROLINA)

COUNTY OF MECKLENBURG)

I, the undersigned, a notary public in and for _____ County, North Carolina, do hereby certify that ERIC A. MANN, Director-Network Field Engineering of CELLCO PARTNERSHIP d/b/a Verizon Wireless, known to me to be the same person whose name is subscribed to the foregoing UTILITY EASEMENT AGREEMENT, appeared before me this day in person and acknowledged that, pursuant to his authority, he signed the said Memorandum as his free and voluntary act on behalf of the named Grantee entity, for the uses and purposes therein stated.

Given under my hand and seal this ____ day of _____, 2020.

[NOTARY SEAL]

Notary Public

My commission expires _____

EXHIBIT A (Page 1 of 2)

WRITTEN DESCRIPTION OF EASEMENTS

GRANTEE 30' NON-EXCLUSIVE UTILITY EASEMENT

Together with a Grantee 30-foot wide Non-Exclusive Utility Easement lying and being in Mineral Springs Township, Moore County, North Carolina, being a part of the lands conveyed to Village of Pinehurst by North Carolina General Warranty Deed recorded in Deed Book 535 Page 33 in the Office of the Register of Deeds of Moore County, being more particularly described as follows:

To find the point of beginning, commence at a ½-inch rebar found at the easternmost corner of the lands conveyed to the County of Moore by Warranty Deed recorded in Deed Book 1838 Page 172 in the Office of the Register of Deeds of Moore County, said rebar having a North Carolina Grid North, NAD83, Value of N: 529827.5700, E: 1862082.8646; thence along the northeast line of said Moore County lands, North 40°49'17" West, 30.04 feet to a point; Thence leaving said northeast line and running, North 46°20'50" East, 100.83 feet to a point on the southwesterly right-of-way line of Yadkin Road (also known as North Carolina Highway 211); Thence along said southwesterly right-of-way line of Yadkin Road, South 71°49'07" East, 34.03 feet to a concrete monument found; Thence leaving said southwesterly right-of-way line of Yadkin Road and running along the southeasterly line of said Village of Pinehurst lands, South 46°20'50" West, 118.38 feet to a ½-inch rebar found and the POINT OF BEGINNING.

Said easement contains 0.0755 acres (3,288 square feet), more or less, as shown in a survey prepared for Verizon Wireless by POINT TO POINT LAND SURVEYORS, INC. dated June 16, 2017, and last revised January 20, 2020.

GRANTEE 40' NON-EXCLUSIVE ACCESS & UTILITY EASEMENT

Together with a Grantee 40-foot wide Non-Exclusive Access and Utility Easement lying and being in Mineral Springs Township, Moore County, North Carolina, being a part of the lands conveyed to Village of Pinehurst by North Carolina General Warranty Deed recorded in Deed Book 535 Page 33 in the Office of the Register of Deeds of Moore County, being more particularly described as follows:

To find the point of beginning, commence at a ½-inch rebar found at the easternmost corner of the lands conveyed to the County of Moore by Warranty Deed recorded in Deed Book 1838 Page 172 in the Office of the Register of Deeds of Moore County, said rebar having a North Carolina Grid North, NAD83, Value of N: 529827.5700, E: 1862082.8646; thence along the southeast line of said Moore County lands, South 46°03'41" West, 208.92 feet to a point and the true POINT OF BEGINNING; Thence leaving said Moore County lands and running along the southeast line of said Village of Pinehurst lands, South 46°13'17" West, 111.90 feet to a concrete monument found

EXHIBIT A (Page 2 of 2)

on the northeast right-of-way line of Short Road (having a 60-foot right-of-way); Thence along said northeast right-of-way line of Short Road, North 41°04'31" West, 40.04 feet to a ½-inch rebar found; Thence leaving said northeast right-of-way line of Short Road and running, North 46°13'17" East, 112.02 feet to a point on the southwest line of said Moore County lands; Thence along said southwest line, South 40°53'51" East, 40.05 feet to a point and the POINT OF BEGINNING.

Said easement contains 0.1028 acres (4478 square feet), more or less, as shown in a survey prepared for Verizon Wireless by POINT TO POINT LAND SURVEYORS, INC. dated June 16, 2017, and last revised January 20, 2020.

