

10190-01.0
Nottingham 1

NH02258-S

SITE AGREEMENT

Site Name **NOTTINGHAM**

Site Address **165 OLD TURNPIKE RD / NOTTINGHAM**

**EXHIBIT
D**

Site I. D. **NH 4-A / GILLESPIE**

1. **Premises and Use.** The undersigned (jointly and severally, the "Owner") hereby leases to Associated Telecommunications Consultants, a Maine corporation ("ATC"), or its permitted assignee, the site described below:

Real property consisting of approximately Four Thousand Nine Hundred (4,900) square feet of land, as approximately described and shown on Exhibit A attached hereto, together with a non-exclusive easement for reasonable access thereto and to the appropriate, in the discretion of ATC, source of electric and telephone facilities (collectively, the "Site"). The Site will be used by ATC for the purpose of installing, maintaining and/or operating, at its expense, a wireless communications facility, including, without limitation, an antenna tower or pole, foundation, utility lines, equipment shelters, radio equipment, antennas, and supporting equipment thereto (collectively, the "Facility"). Title to the Facility shall be held by ATC and the Facility shall remain ATC's personal property and in no event shall be construed as fixtures. ATC will use the Site and the Facility in a manner which will not unreasonably disturb the occupancy of the Owner or, if applicable, the owner's other tenants.

2. **Term.** The term of this Agreement (the "Initial Term") is five years, commencing on the date ("Commencement Date") ATC signs this Agreement. This Agreement will be automatically renewed for three additional terms (each a "Renewal Term") of five years each, unless ATC provides Owner notice of intention not to renew not less than 90 days prior to the expiration of the Initial Term or any Renewal Term.

3. **Rent.** Beginning with the earlier of (a) the date which is 60 days after the issuance of a building permit for construction/installation of the Facility, or (b) the date upon which construction of the Facility is completed, rent will be paid in equal monthly installments, payable in advance, of \$800.00, equaling an initial annual rent of \$9,600 (until increased as set forth herein), partial months to be prorated. Rent for each Renewal Term will be the annual rent in effect for the final year of the Initial Term or prior Renewal Term, as the case may be, increased by three percent (3%), non-compounded.

4. **Title, Quiet Possession, and Access.** Owner represents and agrees (a) that it is the owner of the Site pursuant to the instrument set forth on Exhibit A attached hereto; (b) that the Site is free from all encumbrances except as set forth on Exhibit A attached hereto, (c) that it has the right to enter into this Agreement; (d) that the person signing this Agreement has the authority to sign; (e) that ATC, its employees, agents, subcontractors, clients, and invitees are entitled to access to the Site at all times and to the quiet possession of the Site throughout the Initial Term and each Renewal Term so long as ATC is not in default beyond the expiration of any cure period; and (f) that Owner will not have unsupervised access to the Site or to the related Facility. Owner shall maintain any access roadways to the site in a manner sufficient to allow pedestrian and vehicular access at all times under normal weather conditions.

5. **Assignment/Subletting.** Neither Owner nor ATC will assign or transfer this Agreement (except to an entity owned in whole or in part by a shareholder of ATC or a successor of ATC) without the prior written consent of the other party, which consent will not be unreasonably withheld, delayed or conditioned; provided, however, ATC may assign without Owner's prior written consent to an entity owned in whole or in part by a shareholder of ATC or a successor of ATC, or to any party which acquires substantially all of the assets of ATC. Upon such permitted assignment or transfer ATC will have no further liability under the Agreement. Notwithstanding the foregoing, it is the express intention of the parties that ATC shall be allowed to sublet, or otherwise grant use rights to, all or any portion of the Site or the Facility without the prior written consent of Owner, it being the express intention of ATC to lease antenna and related space of the Facility to separate wireless communication carriers.

6. **Sale of Site Premises.** Owner may sell the Site property provided it is sold subject to this Site Agreement, and any instrument effectuating said conveyance shall specifically refer to this Site Agreement.

7. **Notices.** All notices must be in writing and are effective when deposited in the U.S. mail, certified and postage prepaid, or when sent via overnight delivery, to the address set forth below, or as otherwise provided by law.

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8. **Improvements and Taxes.** ATC may, at its expense, make such further improvements on the Site as it deems necessary from time to time for the operation of a transmitter site for wireless voice and data communications, which improvements, when made, shall be considered part of the Facility. Owner agrees to cooperate with ATC with respect to obtaining any required zoning approvals for the Site and such improvements. Upon termination or expiration of this Agreement, ATC may remove the Facility and any and all of its other property located upon the Site, and will restore the Site to substantially the condition existing on the Commencement Date, except for ordinary wear and tear and casualty loss. If personal property taxes are assessed, ATC will be responsible and pay for such portion of the personal property taxes attributable to the Facility. ATC shall pay any and all increases in real estate taxes imposed upon the Property as a result of the construction or installation of the Facility on the Site. Owner shall provide written evidence of all such increases in taxes, to ATC in a timely manner.

9. **Compliance with Laws.** Owner represents that Owners property (including the Site), and all improvements located thereon, are in substantial compliance with building, life/safety, disability and other laws, codes and regulations of applicable governmental authorities. ATC will substantially comply with all applicable laws relating to its possession and use of the Site.

10. **Interference.** ATC shall make every reasonable effort to ensure that it, and any sublessee or other user deriving their right to use the Site or Facility from ATC, shall comply with any and all regulations or industry accepted practices regarding technical interference at the Site. Likewise, Owner will not permit the installation of any future equipment on the Site which results in technical interference problems with ATC's, or any sublessee's or user's, then existing equipment comprising the Facility.

11. **Utilities.** Owner represents that utilities (electricity and telco) adequate for ATC's use of the Site are available on, to, or close to the Site. ATC will pay for all utility connections to the Site, the cost of installing separate meters, as well as the recurring cost of utilities used by it at the Site. Owner will cooperate with ATC in ATC's efforts to obtain utilities from any location provided by Owner or the servicing utility and, if required, Owner agrees to grant easements as may be required by said utility companies to provide such service to the site.

12. **Termination.** ATC may terminate this Agreement at any time by notice to Owner without further liability if ATC does not obtain all permits or other approvals (collectively, "approval") required from any municipal and/or governmental authority or any easements required from any third party to construct/operate the facility for its intended use, or if any such approval is canceled, expires or is withdrawn or terminated, or if Owner fails to have proper ownership of the Site or authority to enter into this Agreement, or if ATC, for any other reason, in its sole discretion, determines that it will be unable to use the Site for its intended purpose.

13. **Default.** If either party is in default under this Agreement for a period of (a) ten (10) days following receipt of notice from the non-defaulting party with respect to a default which may be cured solely by the payment of money, or (b) thirty (30) days following receipt of notice from the non-defaulting party with respect to a default which may not be cured solely by the payment of money, but may otherwise be cured within thirty (30) days, then, in either event, the non-defaulting party may pursue any remedies available to it against the defaulting party under applicable law, including, but not limited to, the right to terminate this Agreement. If the non-monetary default may not reasonably be cured within a thirty (30) day period, this Agreement may not be terminated if the defaulting party commences action to cure the default within such 30 day period and said default is substantially cured within ninety (90) days of the initial notice of default.

14. **Indemnity.** Owner and ATC each indemnifies the other against and holds the other harmless from any and all costs (including reasonable attorneys' fees) and claims of liability or loss which arise out of the use and/or occupancy of the Site or Facility by or default of the indemnifying party. This indemnity does not apply to any claims arising from the sole negligence or intentional misconduct or omission of the indemnified party.

15. **Hazardous Substances.** Owner represents that it has no knowledge of any substance, ground contamination, chemical or waste (collectively, "substance") on the Site that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. ATC will not introduce or use any such substance on the Site in violation of any applicable law.

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16. **Waiver of Owner's Lien.** (a) Owner waives any lien rights it may have concerning the Facility, which is deemed ATC's personal property and not fixtures, and ATC has the right to remove the same at any time without Owner's consent and (b) Owner acknowledges that ATC, or any other authorized sublessee or user, has or may enter into financing arrangements for the financing of the Facility, and/or their leasehold or other use rights in connection therewith, with third party financing entities. In connection therewith, Owner (i) disclaims any interest, now or in the future, in and to the Facility, as fixtures or otherwise; (ii) agrees that the Facility and the leasehold or other use interest of ATC or its authorized sublessees or users, shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any rent due or to become due. and (iii) agrees to provide any such lender with a statement regarding the above facts and any other information reasonably requested, such as the lack of a default hereunder, within five (5) days from Owner receiving a request to do so.

17. **Insurance.** ATC, at it's sole cost and expense, shall procure and maintain bodily injury and property insurance on the communication facility with a combined single limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall insure, on as occurrence basis, against all liability of ATC, its employees and agents arising out of or in connection with ATC's use of the site as provided herein. Owner shall be named as an additional insured on ATC's policy, a copy of which shall be furnished to Owner within 30 days of written request.

18. **Miscellaneous.** (a) This Agreement applies to and binds the heirs, successors, executors, administrators and assigns of the parties to this Agreement; (b) This Agreement is governed by the laws of the State in which the Site is located; (c) Owner agrees promptly to execute and deliver to ATC, simultaneously herewith or forthwith hereafter, a recordable Memorandum of this Agreement in the form of Exhibit B; (d) This Agreement (including the Exhibits) constitutes the entire agreement between the parties and supersedes all prior written and verbal agreements, representations, promises or understandings between the parties.; any amendments to this Agreement must be in writing and executed by both parties; (e) 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, will not be affected and each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law; (f) The prevailing party in any action or proceeding in court or mutually agreed upon arbitration proceeding to enforce the terms of this Agreement is entitled to receive its reasonable attorneys' fees and other reasonable enforcement costs and expenses from the non-prevailing party; (g) upon request Owner will provide ATC with a non disturbance Agreement from Owner's lender, and (h) The parties agree to prepare a Notice of Agreement for recording.

The following Exhibits are attached to and made a part of this Agreement: Exhibit A & B

OWNER: *Brett Gillespie*

Brett Gillespie

S.S./Tax I.D. No.: 013 44 0156

Address: 165 Old Turnpike Road

Nottingham, NH 03290

Date: 7/9/98

ASSOCIATED TELECOMMUNICATIONS CONSULTANTS

By: *Adam D. Brink*

Its: Vice President

44 Exchange Street, Suite 301

Portland, Maine 04101

Date: 7/8/98

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EXHIBIT A

Site Agreement - Site Description

Site Name: NOTTINGHAM

Site I.D. NH 4-64A/ GILLESPIE

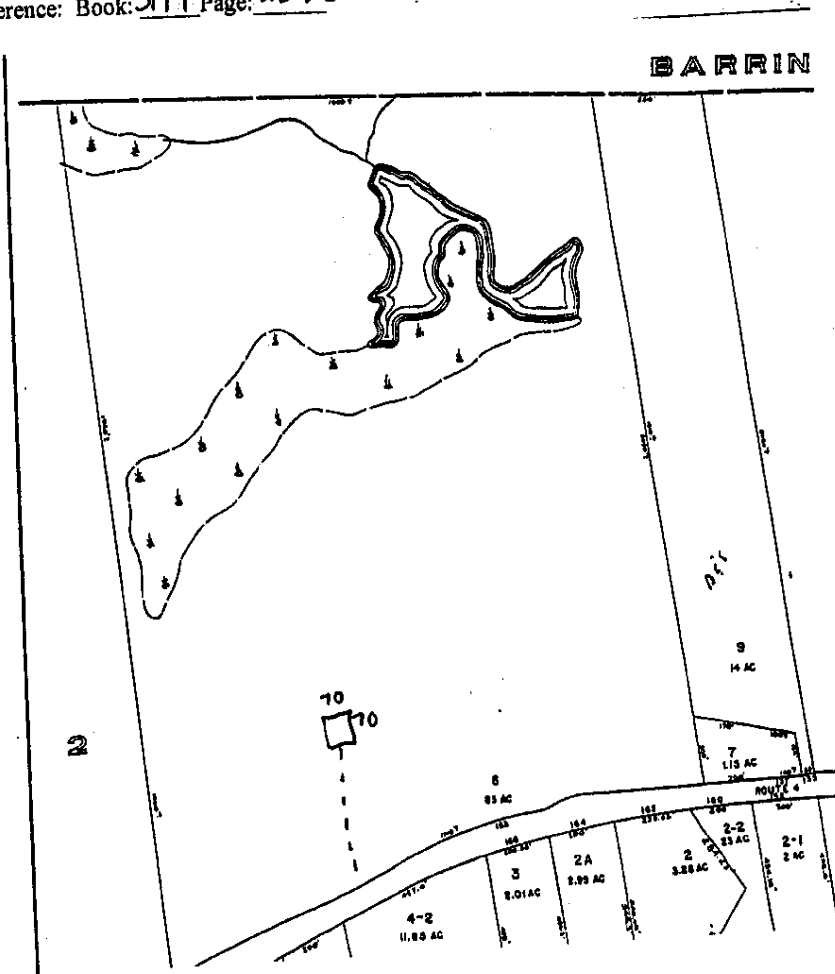
Site situated in the Town of Nottingham, County of Rockingham, State of New Hampshire commonly described as follows:

Legal Description:

See Attached Deed

Recording Office Book and Page reference: Book: 3194 Page: 2248

Sketch of Site:



Owner Initials

AS

ATC Initials

Note: Owner and ATC may, at ATC's option, replace this Exhibit with an exhibit setting forth the legal description of the property on which the Site is located and/or an as-built drawing depicting the Site.

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WARRANTY DEED

HUB OF THE PLAINS PARTNERS VI LTD., a Texas Limited Partnership, and having a principal office at 2574 74th Street, Suite 211, Lubbock, Texas, 79423

for consideration paid, and in full consideration of One hundred five thousand (105,000.00) dollars

grants to Brett Gillespie, a married man, of 2 Mitchell Road, Lee, New Hampshire 03824

with Warranty Covenants

a certain tract of land with the buildings thereon, situated in Nottingham, County of Rockingham and State of New Hampshire, containing one hundred fifteen (115) acres, more or less, and bounded and described as follows:

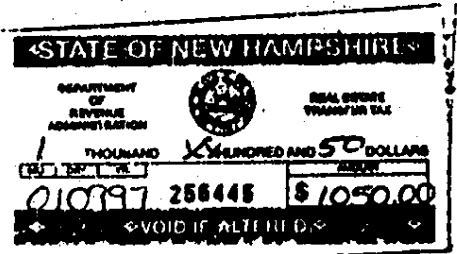
Beginning on the north side of the Old Turnpike Road leading from Concord to Portsmouth at the corner of land owned by Charles H. Chesley and running northeasterly by land of said Charles H. Chesley by a line of stakes and stones to the County line; thence northwesterly by said County line to the east corner of the Gilman Batchelder land, now owned by Thomas E. Fernald; thence southwesterly by said Batchelder land to the Turnpike Road; thence easterly by said Turnpike Road to the first mentioned bound.

EXCEPTING AND RESERVING, however, from the provisions of this conveyance is that small tract of land conveyed to the state of New Hampshire for highway purposes as well as a small tract of land in the southeasterly corner of said property that was conveyed to True W. Chesley, duly recorded.

Meaning and intending to convey the premises described in the deed from Asset Recovery & Management Corporation recorded herewith.

IN WITNESS WHEREOF, the said HUB OF THE PLAINS PARTNERS VI LTD., has caused its seal to be hereto affixed and these presents to be signed, acknowledged and delivered in its name and behalf by Duane Swofford, President of Hub of the Plains Investment Corporation, its General Partner this 19th day of December, 1996.

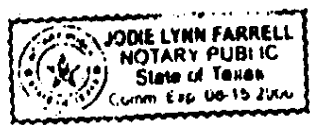
0001166
JAN 9 3 14 PM '97
ROCKINGHAM COUNTY
REGISTRY OF DEEDS



Duane Swofford
Hub of the Plains Partners VI Ltd.
by Duane Swofford, President of its
General Partner, Hub of the Plains
Investment Corporation

STATE OF Texas
Lubbock County December 19, 1996

Then personally appeared Duane Swofford, President of Hub of the Plains Investment Corporation, its General Partner and acknowledged the foregoing to be the free act and deed of Hub of the Plains Partners VI Ltd. before me.



Jodie Farrell
Notary Public
My commission expires:

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EXHIBIT A

Site Agreement - Site Description

Site Name: **NOTTINGHAM 1**

Site I.D. NH 4-64A/ GILLESPIE

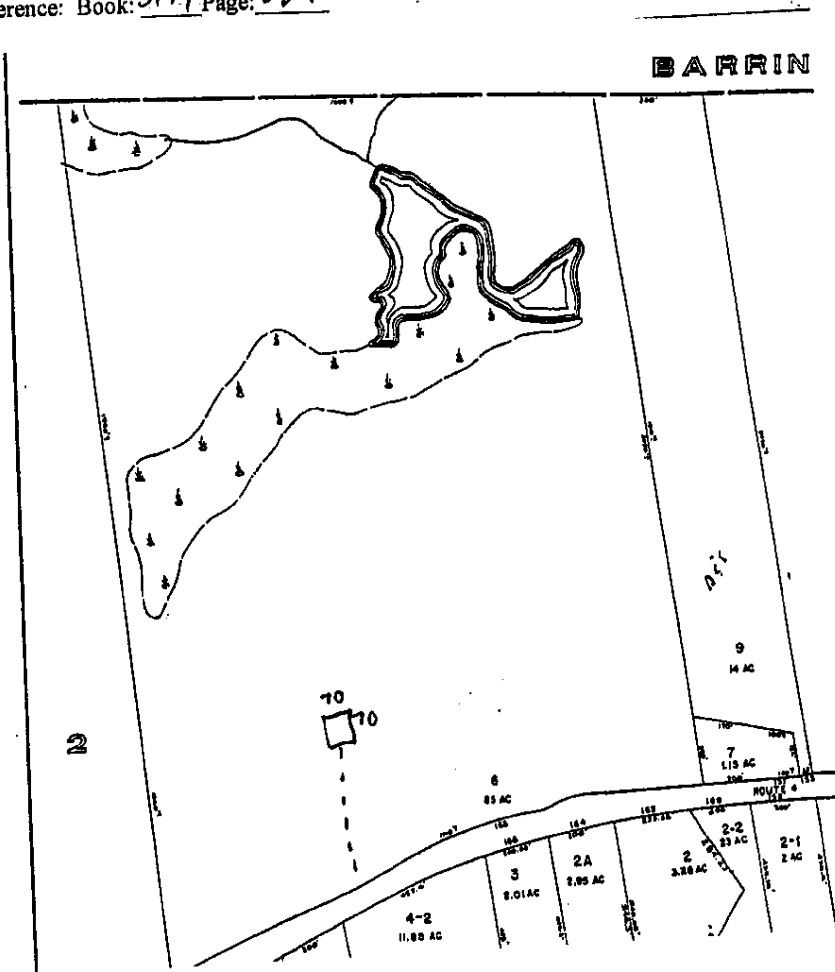
Site situated in the Town of Nottingham, County of Rockingham, State of New Hampshire commonly described as follows:

Legal Description:

See Attached Deed

Recording Office Book and Page reference: Book: 3194 Page: 2248

Sketch of Site:



Owner Initials 460
 ATC Initials AS

Note: Owner and ATC may, at ATC's option, replace this Exhibit with an exhibit setting forth the legal description of the property on which the Site is located and/or an as-built drawing depicting the Site.

DRIVE

EXHIBIT B
Memorandum of Site Agreement

Site Name: NOTTINGHAM

Site I.D. NH 4-4A / GILLESPIE

This memorandum evidences that a lease was made and entered into by written Site Agreement dated 7-8 1998, between Brett Gillespie ("Owner") and Associated Telecommunications Consultants, a Maine Corporation ("ATC"), the terms and conditions of which are incorporated herein by reference.

Such Agreement provides in part that Owner leases to ATC a portion of a certain site ("Site") located at 165 Old Turnpike Road, Town of Nottingham, County of Rockingham State of New Hampshire, owned by Owner, as described in Exhibit A attached hereto, with grant of easement for unrestricted rights of access thereto and to electric and telephone facilities for an initial term of five (5) years commencing on 7-8, 1998 which term is subject to three (3) additional five (5) year extension periods by ATC.

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

OWNER: [Signature]

ASSOCIATED TELECOMMUNICATIONS CONSULTANTS

Brett Gillespie

By: [Signature]

S.S./Tax I.D. No.: 013 44 015 6

Its: Vice President

Address: 165 Old Turnpike Road

44 Exchange Street, Suite 301

Nottingham, NH 03290

Portland, Maine 04101

Date: 7/9/98

Date: 7/8/98

STATE OF NEW HAMPSHIRE

COUNTY OF ROCKINGHAM

The foregoing instrument was acknowledged before me this _____ day of _____, 19____, by _____.

(AFFIX NOTARIAL SEAL)

(OFFICIAL NOTARY SIGNATURE)
NOTARY PUBLIC - STATE OF NEW HAMPSHIRE

My commission expires:

(PRINTED, STAMPED OR TYPED NAME)

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