

Market: MIDWEST – ILLINOIS/WISCONSIN  
Cell Site Number: IL0776  
Cell Site Name: IL0776  
Fixed Asset Number: 12565616

## TOWER STRUCTURE LEASE AGREEMENT

THIS TOWER STRUCTURE AGREEMENT (“**Agreement**”), dated as of the latter of the signature dates below (the “**Effective Date**”), is entered into by City of Naperville, an Illinois municipal corporation, having a mailing address of 400 S. Eagle Street, Naperville, IL 60540 (“**Landlord**”) and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd NE, 3rd Floor, Atlanta, GA 30319 (“**Tenant**”).

### BACKGROUND

Landlord owns that certain plot, parcel or tract of land, as described on **Exhibit 1**, improved with a monopole tower structure (the “**Tower**”), together with all rights and privileges arising in connection therewith, located at 1301 Clyde Drive, in the County of DuPage, State of Illinois (collectively, the “**Property**”). Landlord desires to grant to Tenant the right to use a portion of the Property in accordance with this Agreement.

The parties agree as follows:

**1. LEASE OF PREMISES.** Landlord hereby leases to Tenant a portion of the Property consisting of:

(a) Approximately 356 square feet, as described on attached **Exhibit 1**, of space within the equipment shelter adjacent to the base of the Tower for the placement of Tenant’s equipment (the “**Ground Space**”);

(b) The portion of the Tower selected by Tenant and dedicated for Tenant’s exclusive use and consisting of an envelope of twelve (12) contiguous vertical feet of space within which any portion of Tenant’s communication equipment and improvements might be located, operated or maintained (the “**RAD Space**”). The RAD Space includes any area on a horizontal plane, extending in all directions from the Tower, that is perpendicular to such 12-foot vertical envelope. The location of the RAD Space is identified in **Exhibit 1**.

(c) Those certain areas where Tenant’s conduits, wires, cables, cable trays and other necessary connections (and the cables, wires, and other necessary connections and improvements of such third parties related to Tenant, such as Tenant’s utility providers) are located between the Ground Space and the RAD Space and between the electric power, and telephone, fiber, and fuel sources for the Property (hereinafter collectively referred to as the “**Connection Space**”). Landlord agrees that Tenant shall have the right to install connections between Tenant’s equipment in the Ground Space and RAD Space; and between Tenant’s equipment in the Ground Space and the electric power, telephone, and fuel sources for the Property, and any other improvements. Landlord further agrees that Tenant shall have the right to install, replace and maintain utility lines, wires, poles, cables, conduits, pipes and other necessary connections over or along any right-of-way extending from the aforementioned public right-of-way to the Premises. The Ground Space, RAD Space, and Connection Space are hereinafter collectively referred to as the “**Premises.**”

**2. PERMITTED USE.** Tenant may use the Premises for the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair, replacement and upgrade of communications fixtures and related equipment, cables, accessories and improvements, which may include a suitable support structure, associated antennas, not to exceed twelve antennas, and any other items necessary to the successful and secure use of the Premises (the “**Communication Facility**” or “**Communication Facilities**”), as well as the right to test, survey and review title on the Property; Tenant further has the right but not the obligation to add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including, but not limited to, emergency 911 communication services, at no additional cost to Tenant or Landlord (collectively, the “**Permitted Use**”). Tenant will be allowed to make such alterations

to the Property in order to ensure that the Communication Facility complies with all applicable federal, state or local laws, rules or regulations.

**3. TERM.**

(a) The initial lease term will be five (5) years (the “**Initial Term**”), commencing on the Effective Date. The Initial Term will terminate on the fifth (5th) anniversary of the Effective Date.

(b) This Agreement will automatically renew for four (4) additional five (5) year term(s) (each additional five (5) year term shall be defined as an “**Extension Term**”), upon the same terms and conditions set forth herein unless Tenant notifies Landlord in writing of Tenant’s intention not to renew this Agreement at least sixty (60) days prior to the expiration of the Initial Term or the then-existing Extension Term. If Tenant remains in possession of the Premises after the termination of this Agreement, then Tenant will be deemed to be occupying the Premises on a month-to-month basis (the “**Holdover Term**”), subject to the terms and conditions of this Agreement.

(c) The Initial Term, any Extension Terms, and any Holdover Term are collectively referred to as the “**Term.**”

**4. RENT.**

(a) Commencing on the first day of the month following the date that Landlord notifies the Tenant that the Tower is ready for Tenant’s installation (the “**Rent Commencement Date**”), Tenant will pay Landlord on or before the fifth (5<sup>th</sup>) day of each calendar month in advance, Four Thousand Two Hundred and No/100 Dollars (\$4,200.00) (the “**Rent**”), at the address set forth above. In any partial month occurring after the Rent Commencement Date, the Rent will be prorated. The initial Rent payment will be forwarded by Tenant to Landlord within forty-five (45) days after the Rent Commencement Date.

(b) Upon the first anniversary of the Rent Commencement Date, the monthly Rent will increase annually by three percent (3.0%) over the applicable Rent in effect during the previous one (1) year.

(c) Upon the Rent Commencement Date, Tenant shall pay a one-third (1/3rd) share in the total actual costs and expenses in construction, permitting, and installation of the equipment shelter, totaling \$46,816.42. Payment for the equipment shelter shall be made via a check mailed to:

T-Mobile USA, Inc.  
12920 SE 38<sup>th</sup> Street  
Bellevue, WA 98006  
Attn: Lease Compliance/Site ID: CH95363A

**5. APPROVALS.**

(a) Landlord agrees that Tenant’s ability to use the Premises is contingent upon the suitability of the Premises and Property for the Permitted Use and Tenant’s ability to obtain and maintain all Government Approvals. Landlord authorizes Tenant to prepare, execute and file all required applications to obtain Government Approvals for the Permitted Use and agrees to reasonably assist Tenant with such applications and with obtaining and maintaining the Government Approvals.

(b) Tenant has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of its choice.

(c) Tenant may also perform and obtain, at Tenant’s sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports on, over, and under the Property, necessary to determine if Tenant’s use of the Premises will be compatible with Tenant’s engineering specifications, system, design, operations or Government Approvals.

**6. TERMINATION.** This Agreement may be terminated, without penalty or further liability, as follows:

(a) by either party on thirty (30) days prior written notice, if the other party remains in default under Section 15 of this Agreement after the applicable cure periods;

(b) by Tenant upon written notice to Landlord, if Tenant is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority

necessary for the construction or operation of the Communication Facility as now or hereafter intended by Tenant; or if Tenant determines, in its sole discretion that the cost of or delay in obtaining or retaining the same is commercially unreasonable;

(c) by Tenant, upon written notice to Landlord, if Tenant determines, in its sole discretion, due to the title report results or survey results, that the condition of the Premises is unsatisfactory for its intended uses;

(d) by Tenant upon written notice to Landlord for any reason or no reason, at any time prior to commencement of construction by Tenant; or

(e) by Tenant upon sixty (60) days' prior written notice to Landlord for any reason or no reason, so long as Tenant pays Landlord a termination fee equal to three (3) months' Rent, at the then-current rate, provided, however, that no such termination fee will be payable on account of the termination of this Agreement by Tenant under any termination provision contained in any other Section of this Agreement, including the following: Section 5 Approvals, Section 6(a) Termination, Section 6(b) Termination, Section 6(c) Termination, Section 6(d) Termination, Section 18 Condemnation or Section 19 Casualty;

7. **INSURANCE.** At all times during the effective period of this Agreement, or any extension thereof, the Tenant shall carry and maintain in effect insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Tenant's Permitted Use. The cost of such insurance shall be borne by the Tenant.

(a) Said required insurance policies shall be maintained in following Limits:

- (1) Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits of \$3,000,000 per occurrence and \$6,000,000 general aggregate.
- (2) Commercial Automobile Liability: Insurance Services Office Form CA 0001 covering Code 1 (any auto), with limits of \$1,000,000 per accident for bodily injury and property damage.
- (3) Workers' Compensation as required by the State of Illinois with statutory limits and Employer's Liability with limits of \$1,000,000 each accident/disease per employee/policy limit.

(b) Tenant may use a combination of excess liability coverage to meet insurance limits.

(c) Said required policies shall include the following Special Endorsements:

- (1) Landlord shall be included as an additional insured by endorsement as respects to this Agreement on all commercial general and commercial automobile liability policies including umbrella or excess policies. Such insurance shall be primary as to Tenant's Facilities and Tenant's own actions or misdeeds.
- (2) Landlord shall be given thirty (30) days' prior written notice in the event of any cancellation of any of the insurance policies required herein that is not replaced. Notice shall be given to Landlord at the email address provided herein.
- (3) Waiver of Subrogation: To the extent allowed by law the Commercial General Liability Insurance and Commercial Automobile Liability Insurance will be endorsed to include a waiver of subrogation in favor of Landlord.
- (4) All insurance policies required hereunder shall be issued by companies eligible to do business in the state of Illinois that hold a current Policy holder Alphabetic Category Rating of not less than "A-" and Financial Size Category Rating of not less than "VIII" according to the latest edition of Best's Key Rating Guide.

(d) Tenant shall provide Landlord with a Certificate of Insurance evidencing compliance with this Section.

**8. INTERFERENCE.**

(a) If the Landlord proposes to grant additional licenses or leases of space on the Tower for any purpose, and an intermodulation study determines the proposed use to be incompatible with the Tenant's activity at the Property, Landlord shall not grant such additional licenses or leases during the term of this Agreement.

(b) Landlord shall require any subsequent user of the Property to abate any objectionable interference, as that term is defined in subsection 8(d) hereof, for which the subsequent user may be responsible. Tenant shall have the right to exercise all legal and equitable rights and remedies to end the interference, including the right to terminate this Agreement.

(c) Subject to 8(b) above, neither party to this Agreement shall erect or allow to be erected on the Property any structure which will constitute an objectionable interference with the proper operation of the equipment of any of the occupants of the Premises.

(d) An "objectionable interference" shall exist if:

- (1) An authorized representative of the Federal Communications Commission makes that determination; or
- (2) Any of the occupants of the Premises reasonably determine that a condition exists which constitutes a broadcast interference within the meaning of the recommended practices of the Electronics Industries Association (EIA) and the rules and regulations of the FCC then in effect.

(e) If, at any time, any of the conditions described in Subsections 8(d)(1) or 8(d)(2) exist, the party causing the interference, promptly upon receipt of notice from the non-interfering party, shall:

- (1) Immediately discontinue the interfering activity (subject to intermittent testing to confirm the interference is resolved) or immediately repair any malfunctioning equipment; and
- (2) Make every reasonable effort to either correct the interfering aspect of the new activity or malfunction of an existing activity or remove or cause it to be removed from the Property.

**9. INDEMNIFICATION.**

(a) Except claims arising from Landlord's, or its employees', agents' or contractors' ("**Landlord Indemnitees**") intentional misconduct, to the fullest extent permitted by law, Tenant, at its sole expense, shall defend, indemnify and hold harmless Landlord and Landlord Indemnitees (with counsel reasonably satisfactory to Landlord) from and against costs, claims, action liability or damages to the extent arising from:

- (1) Tenant's use and occupancy of the Premises or any activity done or permitted by Tenant in, on or about the Property or any activity done or permitted by Tenant as one of its obligations under this Agreement;
- (2) Negligent, tortious, or illegal act or omission of Tenant, its agents, employees, invitees, licensees, or contractors except where caused by the intentional acts or omissions of the Landlord or any Landlord Indemnitee.

(b) Landlord shall not be liable to Tenant or any other person or entity for any damages arising from any action or omission of any other tenant, licensee or tenant of space on the Tower or adjacent to the base of the Tower.

**10. WARRANTIES.**

(a) Landlord hereby represents and warrants to the Tenant that Landlord has the authority to grant this lease and rights being provided to Tenant under this Agreement. Landlord acknowledges that Tenant is relying upon the foregoing representation in entering into this Agreement and in expending money in connection therewith.

(b) Notwithstanding the foregoing, in the event the use of the Premises is prevented by law, ordinance, government regulation, injunction or court order, Tenant's sole and exclusive remedy shall be limited to the

termination of this Agreement, and in such event Landlord shall not be liable for any damages incurred by Tenant as a result of the termination of this Agreement.

(c) Tenant hereby represents to Landlord that Tenant has the full right and authority to enter into and perform this Agreement and to install, operate and maintain the Communication Facilities.

#### **11. ENVIRONMENTAL.**

(a) Tenant shall not use, generate, store or dispose of any Hazardous Material on, under, about or within the Premises or anywhere on the Landlord's Property in violation of or as would give rise to liability under any law or regulation.

(b) Landlord represents and warrants that to the best of its knowledge, neither Landlord nor any third party has used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any Hazardous Material on, under, about or within the Property in violation of any law or regulation.

(c) Landlord shall not, and shall not permit any third party to use, generate, store or dispose of any Hazardous Material on, under, about or within the Property in violation of any law or regulation.

(d) As used in this section, "Hazardous Material" shall mean any waste, material, substance or mixture of materials or substances which are toxic, flammable, corrosive, explosive, carcinogenic or radioactive including, but not limited to, any substance or material which is designated a hazardous material pursuant to the "Hazardous Materials Transportation Act" (49 U.S.C.A., sections 1801 *et seq.*) in a quantity and form which may pose a substantial present or potential hazard to human health, property or the environment when improperly released, treated, stored, transported, disposed of, or otherwise managed.

#### **12. ACCESS.**

(a) At all times throughout the Term of this Agreement, and at no additional charge to Tenant, Tenant and its employees, agents, and subcontractors, will have twenty-four (24) hour per day, seven (7) day per week pedestrian and vehicular access ("Access") to and over the Property for the purpose of routine or emergency maintenance and repairs of the Communication Facility. Such access shall not include the South Waterworks driveway.

(b) Tenant shall notify Landlord concerning major or extensive maintenance or repair of the Communication Facilities on the Property and comply with all applicable requirements in Section 14(h).

(c) Tenant shall provide Landlord with a list of any maintenance agencies whose personnel have authorized access to the Property.

(d) The parties shall cooperate to determine a mutually convenient schedule for major or extensive maintenance or repairs to any Communication Facilities on the Premises.

#### **13. REMOVAL/RESTORATION.**

(a) All portions of the Communication Facility brought onto the Premises by Tenant will be and remain Tenant's personal property and may be removed by Tenant at any time during the Term. Landlord agrees that no part of the Communication Facility constructed, erected or placed on the Premises by Tenant will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of Landlord that all improvements of every kind and nature constructed, erected or placed by Tenant on the Premises will be and remain the property of Tenant. Landlord shall, at all times during the term of this Agreement or any extension or renewal thereof, be the sole and exclusive owner of the Premises including the real property, tower, and equipment shelter upon which the Communication Facility is situated, subject to Tenant's lease rights set forth herein.

(b) Tenant shall have up to one hundred and twenty days (120) days after the effective date of the expiration, termination, or cancellation within which to remove its Communication Facility and personal property from Property. Before Tenant removes any of the Tenant's Communication Facility, Tenant shall provide, to the Landlord, (i) cash or cash equivalent of Fifteen Thousand and zero/100 Dollars (\$15,000.00), or (ii) a bond in the amount of Fifteen Thousand and 00/100 Dollars (\$15,000.00) issued by a surety company authorized to do business in the state where the Premises are located and reasonably acceptable to Landlord (the "Bond"), in each case to be held by the Landlord (or, in the case of the Bond, maintained in full force and effect) as security to assure that none of the other equipment on the Tower is damaged and that there is no damage to the Premises or the Landlord's adjacent property. After any removal of the Tenant's Communication Facility, the Tenant shall, at

the direction of Landlord, restore Premises to the conditions which existed before the Tenant's use of the property, reasonable wear and tear excepted. After the Tenant's Communication Facility is removed, Landlord shall inspect the Tower to determine whether any of the other facilities on the Tower is damaged or whether there is any damage to the Premises or the City's adjacent property. The balance of the cash or cash equivalent shall be returned to the posting party, after Landlord deducts for any damage incurred. In the case of a Bond, the Bond shall name Landlord as obligee, shall be on commercially reasonable terms, and shall remain in effect until Tenant's removal activities are complete and any resulting damage has been repaired to Landlord's reasonable satisfaction.

(c) Any of the Tenant's property that is not removed within one hundred and twenty (120) days after the termination of this Agreement may be removed and stored by Landlord at the Tenant's sole cost and expense for a period not to exceed an additional ninety (90) days. After that time, the City may dispose of such property.

#### **14. MAINTENANCE/UTILITIES.**

(a) Tenant will keep and maintain the Premises in good condition, reasonable wear and tear and damage from the elements excepted.

(b) Landlord will maintain and repair the Property and access thereto, the Tower, and all areas of the Premises where Tenant does not have exclusive control, in good and tenantable condition, subject to reasonable wear and tear and damage from the elements. Landlord shall maintain the Tower's structural integrity at all times (which shall mean that at no time will Landlord allow the Tower's condition to become, or remain, overstressed under the applicable structural standards set forth in the then-current version of the ANSI TIA-222).

(c) After twenty-one (21) calendar days' written notice to Landlord, Tenant may from time to time replace any of its Communication Facilities with new or different items with the same or different specifications so long as such installation causes no "objectionable interference" as that term is defined in Section 8 hereof, and complies with all applicable laws, ordinances, and codes. Tenant will bear the cost of any electric service upgrades required to serve the new or different items.

(d) Following the initial installation of the Communication Facilities on the Tower described on **Exhibit 1**, in the event Tenant desires to modify any design, construct, install, or perform maintenance, repairs, replacement or alterations to its Communication Facilities on the Tower that will increase Tower loading, then at its sole cost and expense, the Tenant shall provide to Landlord an evaluation of the effect of the proposed work on the structural integrity of the Tower.

- (1) Such evaluation shall be conducted by an individual or company reasonably acceptable to Landlord.
- (2) If the evaluation determines that the Tenant's work would cause the structural integrity of the Tower to fail or otherwise have a deleterious effect on the Tower, then Tenant will not be allowed to perform the proposed work.

(e) Tenant at its sole cost shall provide in writing to the City, an RF MPE compliance analysis which will contain frequency information for each of its antennas, the Effective Radiated Power (ERP) for each antenna, and the area around each antenna which is considered unsafe for personnel to be nearby.

(f) Notwithstanding any other provisions of this Agreement, Tenant shall not make any alteration, additions, installations, substitutes or improvements (hereinafter collectively referred to as "**Alterations**") to the Communication Facilities on the Tower before the City has approved Alterations, which shall not be unreasonably withheld, conditioned, or delayed, except in cases of emergency where like equipment is being replaced by like-kind, like-for-less or similar equipment with notice being given to Landlord. Tenant may perform modifications to the Facilities located in the equipment shelter at any time so long as such modifications do not exceed the leased space within such equipment shelter.

(g) Tenant shall be solely responsible for the expenses and quality of any work and shall comply with all code requirements and regulations of governmental agencies having jurisdiction over the work including, but not limited to, regulations effecting the construction of public buildings and service areas used by public employees, FCC rules and regulations, and the "Radio Frequency Protection Guides" published by the American National Standards Institute. Tenant shall remedy or correct any deficiencies with such compliance.

(h) Tenant shall, at its sole cost and expense, secure any permits required for any work on the Premises, and all work shall be conducted by authorized and licensed personnel and performed in compliance with local and state requirements for construction activities upon public property.

(i) Tenant shall be solely responsible for the effect of any of its work on the Tower's structure or systems ("Work"), notwithstanding that Landlord has consented to such work.

(j) Tenant shall repair any damage by reason of faulty work or damage to the Tower caused by Tenant or its contractors. Tenant shall have thirty (30) days to repair such damage following written notice or telephonic notice. If emergency repairs or maintenance are required because of the faulty work or damage caused by Tenant or its contractors, then repair work may be performed after Landlord provides telephonic notice to Tenant. Immediately following performance of repairs or maintenance by Landlord, Landlord must notify Tenant by written notice, describing the actions taken by Landlord due to the emergency.

(k) Upon completion of any Work, Tenant shall provide Landlord with a complete set of "as built" plans within sixty (60) days.

(l) All Work shall proceed with minimum interference or disruption to the Landlord's current operation of the Tower facilities or its concurrent use by Landlord or other tenants.

(m) Tenant shall keep Premises and its interest therein free of any liens or claims of liens and shall discharge any such liens within thirty (30) days after receipt of written notice of their filing.

(n) As a condition of issuance of any permit, the Tenant or its agents or contractors shall provide any payment, performance and lien indemnity bond required by Landlord.

(o) To the fullest extent permitted by law, Tenant shall indemnify, defend and hold Landlord harmless from and against all liens or claim for liens for material or labor by reason of any work done or material furnished by or to Tenant in connection with any Work undertaken at any time by Tenant in or upon the Tower or equipment shelter.

(p) Tenant may, at its sole cost and expense, connect to the existing electrical service provided by Landlord at the Property. Landlord does not guarantee the service is of adequate size or voltage class to serve the Tenant's needs.

(q) If either party in any way disturbs, interrupts or interferes with the utility service of the other party or any of the other occupants of the Landlord's Property, the party causing the interference shall, upon receipt of written notice and at its sole expense, promptly provide for complete repair and restoration of the utility service.

## **15. DEFAULT AND RIGHT TO CURE.**

(a) In addition to any other remedies which may be available to Landlord at law or in equity, upon thirty (30) days' prior written notice to Tenant, Landlord may terminate this Agreement, and the Tenant's rights under this Agreement if:

(1) Tenant shall be in default of the payment of the Rent, and such default shall continue for thirty (30) days after written notice thereof is given to the Tenant by Landlord; or

(2) Tenant shall default in the performance of any other of the Tenant's material obligations contained in this Agreement and such default shall continue for thirty (30) days after written notice thereof is given to Tenant by Landlord. If a non-monetary default cannot reasonably be cured within a 30-day period, this Agreement may not be terminated if Tenant commences action to cure the default within the 30-day period and proceeds with due diligence to fully cure the default and such cure is completed within 15 days of commencement thereof.

(b) In the event Landlord shall be in default of the performance of any of its material obligations under this Agreement or takes any action in violation of the terms and conditions of this Agreement which impairs Tenant's exercise of its rights under this Agreement or Tenant's use of Premises in accordance with this Agreement, and such default or action shall continue in effect for thirty (30) days after written notice thereof is received by Landlord, then in addition to any other remedies at law or in equity which may be available to Tenant, upon thirty (30) days' prior written notice to Landlord, the Tenant may terminate this Agreement. If a non-monetary default cannot reasonably be cured within a 30-day period, this Agreement may not be terminated if Landlord commences action to cure the default within the 30-day period and proceeds with due diligence to fully cure the default.

## **16. ASSIGNMENT/SUBLEASE.**

(a) Tenant shall have the right to assign, sublease or otherwise transfer this Agreement without Landlord consent to any person or business entity which is a parent, subsidiary or affiliate of Tenant, controls or is controlled by or under common control with Tenant, is merged or consolidated with Tenant or purchases more than fifty percent (50%) of either ownership interest in Tenant or the assets of Tenant in the “Metropolitan Trading Area” or “Basic Trading Area” (as those terms are defined by the FCC) in which the leased Property is located. Tenant shall provide written notice of Tenant’s assignment of this Agreement within thirty (30) days following such an assignment. Upon such assignment, Tenant shall be relieved of all liabilities and obligations hereunder and Landlord shall look solely to the assignee for performance under this Agreement and all obligations hereunder. Any other assignment, sublease or transfer of this Agreement will require the consent of Landlord, such consent not to be unreasonably withheld, conditioned or delayed.

(b) Landlord may assign this Agreement only to a successor owner of Property upon written notice to Tenant, subject to the assignee assuming all of Landlord’s obligations in this Agreement and providing Tenant will written verification of such sale or transfer of Property or Premises. Until Tenant receives required information and documents, the Tenant shall not be responsible for any failure to make payments under this Agreement and reserves the right to hold payments due under this Agreement.

**17. NOTICES.** All notices, requests, payments of rent, demands, and other communications required or permitted hereunder shall be given as follows:

For Notices of Default to Tenant:

- a) To Tenant’s Lease Administration Department at [NoticeIntake@att.com](mailto:NoticeIntake@att.com) with reference to Cell Site Name: IL0776 (IL); Fixed Asset #: 12565616 in subject line;
- b) To Tenant’s Law Department via First Class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid:

New Cingular Wireless PCS, LLC  
Attn.: Legal Dept – Network Operations  
Re: Cell Site #: IL0776; Cell Site Name: IL0776 (IL)  
Fixed Asset #: 12565616  
208 Akard Street  
Dallas, TX 75202-4206

For Notices of Default to Landlord:

- a) To Landlord via First Class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid:

City of Naperville  
Attn: City Manager  
400 S. Eagle Street  
Naperville, IL 60540

With Copy to:

City of Naperville  
Attn: City Attorney  
400 S. Eagle Street  
Naperville, IL 60540

All other Notices will be sent:

- a) To Tenant’s Lease Administration Department at [NoticeIntake@att.com](mailto:NoticeIntake@att.com) with reference to Cell Site Name: IL0776 (IL); Fixed Asset #: 12565616 in subject line.

b) To Landlord at

City of Naperville  
Attn: City Manager  
400 S. Eagle Street  
Naperville, IL 60540

With Copy to:

City of Naperville  
Attn: City Attorney  
400 S. Eagle Street  
Naperville, IL 60540

Notices by email will be effective on the first calendar day after it was sent unless the sender receives an automated message that the email has not been delivered. All other Notices shall be effective when received unless returned undelivered. Either party hereto may change the place for the giving of notice to it by thirty (30) days' prior written notice to the other party hereto as provided herein.

**18. CONDEMNATION.** In the event Landlord receives notification of any condemnation proceedings affecting the Property, Landlord will provide notice of the proceeding to Tenant within twenty-four (24) hours. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's sole determination, to render the Premises unsuitable for Tenant, this Agreement will terminate as of the date the title vests in the condemning authority. The parties will each be entitled to pursue their own separate awards in the condemnation proceeds. Tenant will be entitled to reimbursement for any prepaid Rent on a *pro rata* basis.

**19. CASUALTY.**

(a) Either party may terminate this Agreement upon giving the other party thirty (30) days' notice that Property have been destroyed or damaged in such a way as to interfere with or interrupt the Tenant's Communications Facilities, and neither Landlord nor Tenant has elected to repair or restore Property. If necessary to maintain service, Tenant shall have the right to locate a temporary antenna facility, (e.g. a cell-on-wheels) on the Property, including all utilities associated with the use of the temporary antenna facility. Landlord shall cooperate with the placement of the temporary facility at a mutually acceptable location.

(b) If the parties mutually make an election pursuant to Section 19(a) above, Tenant shall have the right to reconstruct the Tower or equipment shelter. If Tenant elects to reconstruct the facility, Landlord shall continue to own said newly constructed facilities free and clear of any liens or claims. Rent will abate for such a period that Tenant is not commercially operational at Premises. In the event Tenant installs a temporary antenna facility, Rent will continue to remain due and owing during the operation of any temporary facility by Tenant. If Tenant elects to install a temporary antenna facility, Tenant may thereafter terminate this Agreement at any time on thirty (30) days' notice to City.

**20. TAXES.**

(a) Landlord shall take all steps required to maintain the tax-exempt status of the Property.

(b) Landlord shall notify the DuPage County Supervisor of Assessments of the Tenant's rights and interest created by this Agreement within thirty (30) days after the parties' execution of this Agreement.

(c) Tenant shall be solely responsible for any tax assessment resulting from its leasehold interest in the Premises.

(d) Landlord shall immediately forward to the Tenant by certified mail, return receipt requested, at the address listed in Section 17 of this Agreement, a copy of any notice of increase in taxes, assessments or other

charges received from the local assessor within fifteen (15) days of Landlord's receipt of such assessment, for which Tenant is liable in whole or in part.

(e) Tenant shall be solely responsible for and shall timely pay all personal property taxes levied and assessed against it or its personal property.

(f) Tenant shall have the right to contest all taxes, assessments, charges, and impositions, and Landlord agrees to join in such contest, if required by law, and to permit the Tenant to proceed with the contest in the Landlord's name, provided that the expense of the contest is borne by Tenant.

(g) If Landlord initiates an action to contest taxes or other items, the Tenant may join in such action if Tenant pays its own expenses.

## 24. MISCELLANEOUS.

(a) **Amendment/Waiver.** This Agreement cannot be amended, modified or revised unless done in writing and signed by Landlord and Tenant. No provision may be waived except in a writing signed by both parties. The failure by a party to enforce any provision of this Agreement or to require performance by the other party will not be construed to be a waiver, or in any way affect the right of either party to enforce such provision thereafter.

(b) **Limitation of Liability.** Except for the indemnity obligations set forth in this Agreement, and otherwise notwithstanding anything to the contrary in this Agreement, Tenant and Landlord each waives any claims that each may have against the other with respect to consequential, incidental or special damages, however caused, based on any theory of liability.

(d) **Compliance with Law.** Tenant agrees to comply with all federal, state and local laws, orders, rules and regulations ("Laws") applicable to Tenant's use of the Communication Facility on the Property. Landlord agrees to comply with all Laws relating to Landlord's ownership and use of the Property and any improvements on the Property.

(e) **Bind and Benefit.** The terms and conditions contained in this Agreement will run with the Property and bind and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns.

(f) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement. Exhibits are numbered to correspond to the Section wherein they are first referenced. Except as otherwise stated in this Agreement, each party shall bear its own fees and expenses (including the fees and expenses of its agents, brokers, representatives, attorneys, and accountants) incurred in connection with the negotiation, drafting, execution and performance of this Agreement and the transactions it contemplates.

(g) **Governing Law.** This Agreement will be governed by the laws of Illinois, with venue in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.

(h) **Interpretation.** Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term "including" will be interpreted to mean "including but not limited to"; (iii) whenever a party's consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of this Agreement and are incorporated by reference into this Agreement; (v) use of the terms "termination" or "expiration" are interchangeable; (vi) reference to a default will take into consideration any applicable notice, grace and cure periods; (vii) to the extent there is any issue with respect to any alleged, perceived or actual ambiguity in this Agreement, the ambiguity shall not be resolved on the basis of who drafted the Agreement; (viii) the singular use of words includes the plural where appropriate; and (ix) if any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force if the overall purpose of the Agreement is not rendered impossible and the original purpose, intent or consideration is not materially impaired.

(i) **Affiliates.** All references to "Tenant" shall be deemed to include any Affiliate of New Cingular Wireless PCS, LLC using the Premises for any Permitted Use or otherwise exercising the rights of Tenant pursuant to this Agreement. "Affiliate" means with respect to a party to this Agreement, any person or entity that (directly or indirectly) controls, is controlled by, or under common control with, that party. "Control" of a person or entity

means the power (directly or indirectly) to direct the management or policies of that person or entity, whether through the ownership of voting securities, by contract, by agency or otherwise.

(j) **Survival.** Any provisions of this Agreement relating to indemnification shall survive the termination or expiration hereof. In addition, any terms and conditions contained in this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall so survive.

(k) **W-9.** As a condition precedent to payment, Landlord agrees to provide Tenant with a completed IRS Form W-9, or its equivalent, upon execution of this Agreement and at such other times as may be reasonably requested by Tenant, including any change in Landlord's name or address.

(l) **Execution/No Option.** The submission of this Agreement to any party for examination or consideration does not constitute an offer, reservation of or option for the Premises based on the terms set forth herein. This Agreement will become effective as a binding Agreement only upon the handwritten legal execution, acknowledgment and delivery hereof by Landlord and Tenant. This Agreement may be executed in two (2) or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties. All parties need not sign the same counterpart.

(m) **Attorneys' Fees.** In the event that any dispute between the parties related to this Agreement should result in litigation, the prevailing party in such litigation shall be entitled to recover from the other party all reasonable fees and expenses of enforcing any right of the prevailing party, including reasonable attorneys' fees and expenses. Prevailing party means the party determined by the court to have most nearly prevailed even if such party did not prevail in all matters. This provision will not be construed to entitle any party other than Landlord, Tenant and their respective Affiliates to recover their fees and expenses.

(n) **Incidental Fees.** Unless specified in this Agreement, no unilateral fees or additional costs or expenses are to be applied by either party to the other party, including review of plans, structural analyses, consents, provision of documents or other communications between the parties.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**[SIGNATURES APPEAR ON NEXT PAGE]**

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be effective as of the Effective Date.

**“LANDLORD”**

City of Naperville,  
An Illinois municipal corporation

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

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

**“TENANT”**

New Cingular Wireless PCS, LLC,  
a Delaware limited liability company

By: AT&T Mobility Corporation

Its: Manager

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

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

**[ACKNOWLEDGMENTS APPEAR ON NEXT PAGE]**



**EXHIBIT 1**

**DESCRIPTION OF PROPERTY AND PREMISES**

Page      of

to the Tower Structure Lease Agreement dated \_\_\_\_\_, 20\_\_\_\_, by and between City of Naperville, an Illinois municipal corporation, as Landlord, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Tenant.

The Property is legally described as follows:

THAT PART OF SECTION 30, TOWNSHIP 38 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:  
COMMENCING AT THE SOUTHEAST CORNER OF OLYMPIC TERRACE UNIT NO. 1, A SUBDIVISION OF PART OF SECTIONS 19 AND 30, TOWNSHIP 38 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN RECORDED AS DOCUMENT NO. 968050, AND RUNNING THENCE SOUTH ALONG THE EAST LINE OF SAID OLYMPIC TERRACE UNIT NO. 1 EXTENDED SOUTH 1,146.87 FEET; THENCE NORTH 87 DEGREES, 4 MINUTES, 32 SECONDS EAST, 709.72 FEET TO THE PLACE OF BEGINNING; THENCE CONTINUING NORTH 87 DEGREES, 4 MINUTES, 32 SECONDS EAST, 200 FEET, THENCE SOUTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, 270 FEET, THENCE SOUTH 87 DEGREES, 4 MINUTES, 32 SECONDS WEST, 200 FEET, THENCE NORTH 270 FEET TO THE PLACE OF BEGINNING, ALL IN DUPAGE COUNTY, ILLINOIS.

The Premises are described and/or depicted as follows:

**Notes:**

1. THIS EXHIBIT MAY BE REPLACED BY A LAND SURVEY AND/OR CONSTRUCTION DRAWINGS OF THE PREMISES ONCE RECEIVED BY TENANT.
2. ANY SETBACK OF THE PREMISES FROM THE PROPERTY'S BOUNDARIES SHALL BE THE DISTANCE REQUIRED BY THE APPLICABLE GOVERNMENT AUTHORITIES.
3. WIDTH OF ACCESS ROAD SHALL BE THE WIDTH REQUIRED BY THE APPLICABLE GOVERNMENT AUTHORITIES, INCLUDING POLICE AND FIRE DEPARTMENTS.
4. THE TYPE, NUMBER AND MOUNTING POSITIONS AND LOCATIONS OF ANTENNAS AND TRANSMISSION LINES ARE ILLUSTRATIVE ONLY. ACTUAL TYPES, NUMBERS AND MOUNTING POSITIONS MAY VARY FROM WHAT IS SHOWN ABOVE.

**EXHIBIT 12**

**STANDARD ACCESS LETTER**

[FOLLOWS ON NEXT PAGE]

{This Letter Goes On Landlord's Letterhead}

[Insert Date]

Building Staff / Security Staff  
[Landlord, Lessee, Licensee]  
[Street Address]  
[City, State, Zip]

Re: Authorized Access granted to [ ]

Dear Building and Security Staff,

Please be advised that we have signed a lease with [ ] permitting [ ] to install, operate and maintain telecommunications equipment at the property. The terms of the lease grant [ ] and its representatives, employees, agents and subcontractors (“representatives”) 24 hour per day, 7 day per week access to the leased area.

To avoid impact on telephone service during the day, [ ] representatives may be seeking access to the property outside of normal business hours. [ ] representatives have been instructed to keep noise levels at a minimum during their visit.

Please grant the bearer of a copy of this letter access to the property and to leased area. Thank you for your assistance.

---

Landlord Signature

**W-9 FORM**

[FOLLOWS ON NEXT PAGE]

