

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("**Agreement**"), dated as of the latter of the signature dates below (the "**Effective Date**"), is entered into by City of Los Altos, a California municipal corporation, having a mailing address of 707 Fremont Avenue, Los Altos, CA 94024 (collectively, ("**Licensors**") 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 ("**Licensee**").

BACKGROUND

Licensors own or control that certain plot, parcel or tract of land, as described on **Exhibit 1**, together with all rights and privileges arising in connection therewith, located at 707 Fremont Avenue, Los Altos, in the County of Santa Clara, State of California 94024 (collectively, the "**Property**"). Licensors desire to grant to Licensee the right to use a portion of the Property in accordance with this Agreement.

The parties agree as follows:

- 1. LICENSE.** Licensors grant to Licensee a license to use a certain portion of the Property containing approximately 900 square feet including the air space above such ground space (up to 80' tall), as described on attached **Exhibit 1**, (the "**Premises**"), for the placement of a Communication Facility in accordance with the terms of this Agreement.
- 2. PERMITTED USE.** Licensee 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 ("**Structure**"), associated antennas, equipment shelters or cabinets and fencing and any other items necessary to the successful and secure use of (collectively, the "**Communication Facility**"), as well as the right to test, survey and review title on the Property; Licensee 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 Licensee or Licensors (collectively, the "**Permitted Use**"). Licensors and Licensee agree that any portion of the Communication Facility that may be conceptually described on **Exhibit 1** will not be deemed to limit Licensee's Permitted Use. If **Exhibit 1** includes drawings of the initial installation of the Communication Facility, Licensors' execution of this Agreement will signify Licensors' approval of **Exhibit 1**. For a period of ninety (90) days following the start of construction, Licensors grant Licensee, its subtenants, licensees and sublicensees, the right to use such portions of Licensors' contiguous, adjoining or surrounding property (the "**Surrounding Property**") as may reasonably be required during construction and installation of the Communication Facility. Licensee has the right to install and operate transmission cables from the equipment shelter or cabinet to the antennas, electric lines from the main feed to the equipment shelter or cabinet and communication lines from the Property's main entry point to the equipment shelter or cabinet, install a generator and to make other improvements, alterations, upgrades or additions appropriate for Licensee's Permitted Use, including the right to construct a fence around the Premises or equipment, install warning signs to make individuals aware of risks, install protective barriers, install any other control measures reasonably required by Tenant's safety procedures or applicable law, and undertake any other appropriate means to secure the Premises or equipment at the Licensee's expense. Licensee agrees to comply with all applicable governmental laws, rules, statutes and regulations, relating to its use of the Communication Facility on the Property. Licensee has the right to modify, supplement, replace, upgrade, expand the Communication Facility (including, for example, increasing the number of antennas or adding microwave dishes) or relocate the Communication Facility within the Premises at any time during the Term of this Agreement. Subject to the other provisions of this Agreement, Licensee will be allowed to make such alterations to the Property in order to ensure that Licensee's Communication Facility complies with all applicable federal, state or local laws, rules or regulations. Licensee shall exercise any rights

granted hereunder in a manner calculated to cause the least interruption or interference with Licensor's operation of Licensor's business on the Property and shall consult with Licensor at any time where such interruption or interference may occur in order to minimize the same.

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 Licensee notifies Licensor in writing of Licensee'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.

(c) Unless (i) Licensor or Licensee notifies the other in writing of its intention to terminate this Agreement at least six (6) months prior to the expiration of the final Extension Term, or (ii) the Agreement is terminated as otherwise permitted by this Agreement prior to the end of the final Extension Term, this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of one (1) year, and for annual terms thereafter ("**Annual Term**") until terminated by either party hereto by giving to the other party hereto written notice of its intention to so terminate at least six (6) months prior to the end of any such Annual Term. Monthly rent during such Annual Terms shall be equal to the License Fee paid for the last month of the final Extension Term. If Licensee remains in possession of the Premises after the termination of this Agreement, then Licensee 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.

(d) The Initial Term, any Extension Terms, any Annual Terms and any Holdover Term are collectively referred to as the "**Term.**"

(e) Notwithstanding anything in this Agreement or at law to the contrary, this Agreement shall not be terminable "at will," it may only be terminated in strict compliance with the terms set forth in this Agreement.

4. LICENSE FEE.

(a) Commencing on the issuance of a building permit ("**License Fee Commencement Date**"), Licensee will pay Licensor on or before the fifth (5th) day of each calendar month in advance, Four Thousand Three Hundred and No/100 Dollars (\$4,300.00) (the "**License Fee**"), at the address set forth above. In any partial month occurring after the License Fee Commencement Date, the License Fee will be prorated. The initial License Fee payment will be forwarded by Licensee to Licensor within sixty (60) days after the License Fee Commencement Date.

(b) In year two (2) of the Initial Term, and each year thereafter, including throughout any Extension Terms exercised, the monthly License Fee will increase by three percent (3%) over the License Fee paid during the previous year.

(c) All charges payable under this Agreement such as utilities and taxes shall be billed by Licensor within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by Licensor, and shall not be payable by Licensee. The foregoing shall not apply to monthly License Fee which is due and payable without a requirement that it be billed by Licensor. The provisions of this subsection shall survive the termination or expiration of this Agreement.

(d) Administrative Fee: Tenant shall pay Licensor a one-time Administrative Fee in the amount of Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) within sixty (60) days of the Effective Date.

5. APPROVALS.

(a) Licensor agrees that Licensee's ability to use the Premises is contingent upon the suitability of the Premises for Licensee's Permitted Use and Licensee's ability to obtain and maintain all governmental licenses, permits, approvals or other relief required of or deemed necessary or appropriate by Tenant for its use of the Premises, including without limitation applications for zoning variances, zoning ordinances, amendments, special use permits, and construction permits (collectively, the "**Government Approvals**"). Licensor authorizes Licensee to prepare, execute and file all required applications and pay applicable planning, building and engineering fees

to obtain Government Approvals for Licensee's Permitted Use under this Agreement and agrees to reasonably assist Licensee with such applications and with obtaining and maintaining the Government Approvals.

(b) Prior to the License Fee Commencement Date, Licensee, at Licensee's sole cost and expense, has the right to obtain a title report or commitment for a title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of Licensee's choice. In the event Licensee determines, in its sole discretion, due to the title report results or survey results, that the condition of the Premises is unsatisfactory, Licensee will have the right to terminate this Agreement upon written notice to Licensors, provided that Licensee do so on or before the License Fee Commencement Date.

(c) Prior to the License Fee Commencement Date, Licensee may also perform and obtain, at Licensee'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 the Licensee's use of the Premises will be compatible with Licensee's engineering specifications, system, design, operations or Government Approvals. Notwithstanding the above, Licensee must obtain Licensors' prior approval for any borings, or destructive testing that Licensee reasonable desires, and if Licensors disapproves, Licensee may terminate this Agreement upon written notice to Licensors, provided that Licensee do so on or before the License Fee Commencement Date.

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 Paragraph 15 of this Agreement after the applicable cure periods;

(b) by Licensee upon written notice to Licensors, if Licensee 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 and hereafter intended by Licensee, or if Licensee determines in its sole discretion that the cost of obtaining or retaining the same is commercially unreasonable, provided that Licensee do so on or before the License Fee Commencement Date; or

(c) by Licensee, upon written notice to Licensors, if Licensee 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 Licensee upon written notice to Licensors for any reason or no reason, at any time prior to commencement of construction by Licensee; or

(e) by Licensee upon sixty (60) days' prior written notice to Licensors for any reason or no reason, so long as Licensee pays Licensors a termination fee equal to twelve (12) month's License Fee, at the then-current rate, provided, however, that no such termination fee will be payable on account of the termination of this Agreement by Licensee 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 11(d) Environmental, Section 08 Condemnation or Section 19 Casualty.

7. INSURANCE. Licensee will carry during the Term, at its own cost and expense, the following insurance:

(i) "All Risk" property insurance for its property's replacement cost, which coverage Licensee may self-insure; (ii) commercial general liability insurance with a limit of liability of Two Million Five Hundred Thousand Dollars (\$2,500,000) combined single limit for bodily injury or death/property damage arising out of any one occurrence and in the aggregate; and (iii) Workers' Compensation Insurance as required by law. Licensors will be included as an Additional Insured on the commercial general liability policy by endorsement as respects this agreement, with respect to Licensors' liability caused in whole or in part by its interest in the Property.

8. INTERFERENCE.

(a) Where there are existing radio frequency user(s) on the Property as of the Effective Date, the Licensors will provide Licensee with a list of all existing radio frequency user(s) on the Property to allow Licensee to evaluate the potential for interference. Licensee warrants that its use of the Premises will not interfere with existing radio frequency user(s) on the Property so disclosed by Licensors, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations.

(b) Licensors will not grant, after the Effective Date, a lease, license or any other right to any third party, if the exercise of such grant may in any way adversely affect or interfere with the Communication Facility, the operations of Licensee or the rights of Licensee under this Agreement. Licensors will notify Licensee in writing prior to granting any third party the right to install and operate communications equipment on the Property.

(c) Licensors will not, nor will Licensors permit its employees, tenants, licensees, invitees, agents or independent contractors to interfere in any way with the Communication Facility, the operations of Licensee or the rights of Licensee under this Agreement. Licensors will cause such interference to cease within twenty-four (24) hours after receipt of notice of interference from Licensee. In the event any such interference does not cease within the aforementioned cure period, Licensors shall cease all operations which are suspected of causing interference (except for intermittent testing to determine the cause of such interference) until the interference has been corrected.

(d) For the purposes of this Agreement, "interference" may include, but is not limited to, any use on the Property or Surrounding Property that causes electronic or physical obstruction with, or degradation of, the communications signals from the Communication Facility.

9. INDEMNIFICATION.

(a) Licensee agrees to indemnify, defend and hold Licensors harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising from or related to Licensee's (or its agents, employees and contractors) entry onto, activities on, and access to the Property, or its installation, use, operation, maintenance, repair or removal of the Communication Facility or Licensee's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Licensors, its employees, agents or independent contractors.

(b) The indemnified party: (i) shall promptly provide the indemnifying party with written notice of any claim, demand, lawsuit, or the like for which it seeks indemnification pursuant to this Section 9 and provide the indemnifying party with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of the indemnifying party; and (iii) shall fully cooperate with the indemnifying party in the defense of the claim, demand, lawsuit, or the like. A delay in notice shall not relieve the indemnifying party of its indemnity obligation, except (1) to the extent the indemnifying party can show it was prejudiced by the delay; and (2) the indemnifying party shall not be liable for any settlement or litigation expenses incurred before the time when notice is given.

10. WARRANTIES.

(a) Licensee and Licensors each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power and authority to enter into this Agreement and bind itself hereto through the party or individual set forth as signatory for the party below.

(b) Licensors represents, warrants and agrees that: (i) Licensors solely owns the Property as a legal lot in fee simple, or controls the Property by lease or license; (ii) the Property is not and will not be encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect Licensee's Permitted Use and enjoyment of the Premises under this Agreement; (iii) Licensors grants to Licensee sole, actual, quiet and peaceful use, enjoyment and possession of the Premises in accordance with the terms of this Agreement without hindrance or ejection by any persons lawfully claiming under Licensors; (iv) Licensors execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on Licensors and (v) if the Property is or becomes encumbered by a deed to secure a debt, mortgage or other security interest, then Licensors will provide promptly to Licensee a mutually agreeable subordination, non-disturbance and attornment agreement executed by Licensors and the holder of such security interest.

11. ENVIRONMENTAL.

(a) Licensors represents and warrants, to the best of their knowledge, (i) the Property, as of the Effective Date, is free of hazardous substances, including asbestos-containing materials and lead paint, and (ii)

the Property has never been subject to any contamination or hazardous conditions resulting in any environmental investigation, inquiry or remediation. Licensors and Licensee agree that each will be responsible for compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene condition or other matters as may now or at any time hereafter be in effect, that are now or were related to that party's activity conducted in, or on the Property.

(b) Licensors and Licensee agree to hold harmless and indemnify the other from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of the indemnifying party for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding ("**Claims**"), to the extent arising from that party's breach of its obligations or representations under Section 11(a). Licensors agree to hold harmless and indemnify Licensee from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of Licensors for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from subsurface or other contamination of the Property with hazardous substances prior to the Effective Date or from such contamination caused by the acts or omissions of Licensors during the Term. Licensee agrees to hold harmless and indemnify Licensors from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of Licensee for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from hazardous substances brought onto the Property by Licensee.

(c) The indemnifications of this Paragraph 11 specifically include reasonable costs, expenses and fees incurred in connection with any investigation of Property conditions or any clean-up, remediation, removal or restoration work required by any governmental authority. The provisions of this Paragraph 11 will survive the expiration or termination of this Agreement.

(d) In the event Licensee becomes aware of any hazardous materials on the Property, or any environmental or industrial hygiene condition or matter relating to the Property that, in Licensee's reasonable determination, renders the condition of the Premises or Property unsuitable for Licensee's use, or if Licensee reasonably believes that the licensing or continued licensing of the Premises would expose Licensee to undue risks of government action, intervention or third-party liability, Licensee will have the right, in addition to any other rights it may have at law or in equity, to terminate this Agreement upon written notice to Licensors.

12. ACCESS. Licensors agree to allow Licensee access to the Premises during ordinary business hours (8:00 a.m. – 5:00 p.m. Monday through Friday) for regular maintenance and repairs, with seventy-two (72) hours prior notice, and twenty-four (24) hours a day, seven (7) days a week for unscheduled repairs and other emergency purposes. In the event Licensee needs access after business hours, Licensee will provide written notice to Licensors of the reason for its after-hours access within twenty-four (24) hours thereafter. Licensors grants to Licensee reasonable pedestrian and vehicular access to and over the Property, from an open and improved public road to the Premises, for the installation, maintenance and operation of the Communication Facility and any utilities serving the Premises. Licensors grants to Licensee an easement for such access and Licensors agrees to provide to Licensee such codes, keys and other instruments necessary for such access at no additional cost to Licensee. If Licensors fails to provide the access granted by this Paragraph 12, such failure shall be a default under this Agreement. In the event any public utility is unable to use the access or easement provided to Licensee then the Licensors agrees to grant additional access or an easement either to Licensee or to the public utility, for the benefit of Licensee, at no cost to Licensee.

13. REMOVAL/RESTORATION. All portions of the Communication Facility brought onto the Property by Licensee will be and remain Licensee's personal property and, at Licensee's option, may be removed by Licensee at any time during the Term. Licensors covenants and agrees that no part of the Communication Facility constructed, erected or placed on the Premises by Licensee will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of the Licensors that all improvements of every kind and nature constructed, erected or placed by Licensee on the Premises will be and remain the property of the Licensee and may be removed by Licensee at any time during the Term, provided that Licensors shall have the option to require that all wiring, conduit, raceways and other utility infrastructure not be removed and remain a part of the Property.

On or thereafter the termination of this Agreement, Licensee will remove all of Licensee's above-ground improvements and Licensee will restore the Premises to its condition at the commencement of the Agreement, reasonable wear and tear and loss by casualty or other causes beyond Licensee's control excepted. Notwithstanding the foregoing, Licensee will not be responsible for the replacement of any trees, shrubs or other vegetation, unless damaged or removed by Licensee, nor will Licensee be required to remove from the Premises or the Property any structural steel any foundations or underground utilities.

14. MAINTENANCE/UTILITIES.

(a) Licensee will keep and maintain the Premises in good condition, reasonable wear and tear and damage from the elements excepted. Unless any damage is caused by Licensee, Licensors will maintain and repair the Property and access thereto, in good and tenantable condition, subject to reasonable wear and tear and damage from the elements. In particular, Licensee shall ensure that at all times Licensee's improvements will cause no damage to the Property, and no water leakage or seepage arising from or related to any of the improvements made by Licensee on or to the Property. Licensee shall make regular periodic inspections of the Premises, , no less than once in each calendar quarter.

(b) Licensee will be responsible for paying on a monthly or quarterly basis all utilities charges for electricity, telephone service or any other utility used or consumed by Licensee on the Premises. Licensee shall exercise its best efforts to obtain a separate meter to measure Licensee's utility usage, but if Licensee cannot secure its own metered electrical supply, Licensee will have the right, at its own cost and expense, to submeter from the Licensors. When submetering is required under this Agreement, Licensors will read the meter and provide Licensee with an invoice and usage data on a monthly basis. Licensors agree that it will not include a markup on the utility charges. Licensors further agree to provide the usage data and invoice on forms provided by Licensee and to send such forms to such address and/or agent designated by Licensee. Licensee will remit payment within thirty (30) days of receipt of the usage data and required forms. Licensors shall maintain accurate and detailed records of all utility expenses, invoices and payments applicable to Licensee reimbursement obligations hereunder. Within fifteen (15) days after a request from Licensee, Licensors shall provide copies of such utility billing records to the Licensee in the form of copies of invoices, contracts and cancelled checks. If the utility billing records reflect an overpayment by Licensee, then Licensee shall have the right to deduct the amount of such overpayment from any monies due to Licensors from Licensee.

(c) As noted in Section 4(c) above, any failure by Licensors to perform this function will limit utility fee recovery by Licensors to a 12-month period. If Licensee submeters electricity from Licensors, Licensors agree to give Licensee at least 24 hours advanced notice of any planned interruptions of said electricity. Licensors acknowledge that Licensee provides a communication service, which requires electrical power to operate and must operate twenty-four (24) hour per day, seven (7) day per week. If the interruption is for an extended period of time, in Licensee's reasonable determination, the Licensors agree to allow Licensee the right to bring in a temporary source of power for the duration of the interruption. Licensors will fully cooperate with any utility company requesting an easement over, under and across the Property in order for the utility company to provide service to the Licensee. Licensors will not be responsible for interference with, interruption of or failure, beyond the reasonable control of Licensors, of such services to be furnished or supplied by Licensors.

(d) Licensee will have the right to install utilities, at Licensee's expense, and to improve present utilities on the Property and the Premises. Licensors hereby grants to any service company providing utility or similar services, including electric power and telecommunications, to Licensee an easement over the Property, from an open and improved public road to the Premises, and upon the Premises, for the purpose of constructing, operating and maintaining such lines, wires, circuits, and conduits, associated equipment cabinets and such appurtenances thereto, as such service companies may from time to time require in order to provide such services to the Premises. Upon Licensee's or service company's request, Licensors will execute a separate recordable easement evidencing this grant, at no cost to Licensee or the service company.

15. DEFAULT AND RIGHT TO CURE.

(a) The following will be deemed a default by Licensee and a breach of this Agreement: (i) non-payment of the License Fee, if such License Fee remains unpaid for more than thirty (30) days after receipt of written notice from Licensors of such failure to pay, or (ii) Licensee's failure to perform any other term or condition

under this Agreement promptly, and within thirty (30) days after receipt of written notice from Licensor specifying the failure. No such failure, however, will be deemed to exist if Licensee has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Licensee. If Licensee remains in default beyond any applicable cure period, Licensor will have the right to exercise any and all rights and remedies available to it under law and equity. No delay in curing any default shall relieve Licensee of any liability under this Agreement.

(b) The following will be deemed a default by Licensor and a breach of this Agreement: (i) failure to provide access to the Premises as required by Section 12 within twenty-four (24) hours after receipt of written notice of such failure; (ii) Licensor's failure to cure an interference problem as required by Section 8 within twenty-four (24) hours after written notice of such failure; or (iii) Licensor's failure to perform any term, condition, or breach of any warranty or covenant under this Agreement promptly, and within thirty (30) days after receipt of written notice from Licensee specifying the failure. No such failure, however, will be deemed to exist if Licensor has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Licensor. If Licensor remains in default beyond any applicable cure period, Licensee will have the right to exercise any and all rights available to it under law and equity, including the right to cure Licensor's default and to deduct the costs of such cure from any monies due to Licensor by Licensee.

16. ASSIGNMENT/SUBLEASE. Licensee will have the right to assign this Agreement or sublicense the Premises and its rights herein, in whole or in part, without Licensor's consent, and upon such assignment, Licensee will be relieved of all future performance, liabilities and obligations under the Agreement to the extent of such assignment; provided that the assignee or sublicensee is experienced in the operation of a business similar to Licensee's business or the management of communication facilities at the time of such assignment or sublicense, and financially able to perform Licensee's obligations under this Agreement.

17. NOTICES. All notices, requests and demands hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties hereto as follows:

If to Licensee: New Cingular Wireless PCS, LLC
Attn: Tower Asset Group - Lease Administration
Name: CCL06325; Cell Site Name: Los Altos City Maintenance (CA)
Fixed Asset #: 15530353
1025 Lenox Park Blvd NE
3rd Floor
Atlanta, GA 30319

With a copy to: New Cingular Wireless PCS, LLC
Attn.: Legal Dept – Network Operations
Name: CCL06325; Cell Site Name: Los Altos City Maintenance (CA)
Fixed Asset #: 15530353
208 S. Akard Street
Dallas, TX 75202-4206

The copy sent to the Legal Department is an administrative step which alone does not constitute legal notice.

If to Licensor: City of Los Altos
707 Fremont Avenue
Los Altos, CA 94024

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 Licensors receives notification of any condemnation proceedings affecting the Premises, Licensors will provide notice of the proceeding to Licensee within fifteen (15) days. If a condemning authority takes all of the Property, or a portion sufficient, in Licensee's sole determination, to render the Premises unsuitable for Licensee, 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, which for Licensee will include, where applicable, the value of its Communication Facility, moving expenses, prepaid License Fee, and business dislocation expenses, but excluding any value for the Term of this Agreement, provided that any award to Licensee will not diminish Licensors' recovery. Licensee will be entitled to reimbursement for any prepaid License Fee on a prorata basis. See also Section 25(e) herein below.

19. CASUALTY. Licensors will provide notice to Licensee of any casualty affecting the Premises within forty-eight (48) hours of the casualty. If any part of the Communication Facility or Property is damaged by fire or other casualty so as to render the Premises unsuitable, in Licensee's sole determination, then Licensee may terminate this Agreement by providing written notice to the Licensors, which termination will be effective as of the date of such damage or destruction. Upon such termination, Licensee will be entitled to collect all insurance proceeds payable to Licensee on account thereof and to be reimbursed for any prepaid License Fee on a prorata basis. If notice of termination is given, or if Licensors or Licensee undertake to rebuild the Communication Facility, Licensors agrees to use its reasonable efforts to permit Licensee to place temporary transmission and reception facilities on the Property until such time as Licensee is able to activate a replacement transmission facility at another location or the reconstruction of the Communication Facility is completed. The License Fee for such temporary transmission and reception facilities shall be negotiated between Licensors and Licensee, based on the License Fee contained in this Agreement. See also Section 25(e) herein below.

20. WAIVER OF LICENSOR'S LIENS. Licensors waives any and all lien rights it may have, statutory or otherwise, concerning the Communication Facility or any portion thereof. The Communication Facility shall be deemed personal property for purposes of this Agreement, regardless of whether any portion is deemed real or personal property under applicable law, and Licensors consents to Licensee's right to remove all or any portion of the Communication Facility from time to time in Licensee's sole discretion and without Licensors's consent. Licensee shall repair all damage caused by removal of the Communication Facility, restore the Property to its condition prior to the installation of the Communication Facility, normal wear and tear excepted, and leave the Property free from leaks.

21. TAXES.

(a) Licensors shall be responsible for payment of all ad valorem taxes levied upon the lands, improvements and other property of Licensors. Licensee shall be responsible for all taxes levied upon Licensee's improvements (including any of Licensee's equipment building and tower) on the Premises. Licensors shall provide Licensee with copies of all assessment notices on or including the Premises immediately upon receipt, but in no event later than thirty (30) days after receipt by Licensors. If Licensors fails to provide such notice within such time frame, Licensors shall be responsible for all increases in taxes for the year covered by the assessment. Licensee shall have the right to contest, in good faith, the validity or the amount of any tax or assessment levied against the Premises by such appellate or other proceedings as may be appropriate in the jurisdiction, and may defer payment of such obligations, pay same under protest, or take such other steps as Licensee may deem appropriate. This right shall include the ability to institute any legal, regulatory or informal action in the name of Licensors, Licensee, or both, with respect to the valuation of the Premises. Licensors shall cooperate in the institution and prosecution of any such proceedings and will execute any documents required therefore. The expense of any such proceedings shall be borne by Licensee and any refunds or rebates secured as a result of Licensee's action shall belong to Licensee.

(b) Licensee shall have the right but not the obligation to pay any taxes due by Licensors hereunder if Licensors fails to timely do so, in addition to any other rights or remedies of Licensee. In the event that Licensee

exercises its rights under this Section 21(b) due to such Licensor default, Licensee shall have the right to deduct such tax amounts paid from any monies due to Licensor from Licensee as provided in Section 15(b), provided that Licensee may exercise such right without having provided to Licensor notice and the opportunity to cure per Section 15(b).

(c) Any tax-related notices shall be sent to Licensee in the manner set forth in Section 17. Promptly after the Effective Date, Licensor shall provide Licensee's notice address to the taxing authority for the authority's use in the event the authority needs to communicate with Licensee. In the event that Licensee's tax address changes by notice to Licensor, Licensor shall be required to provide Licensee's new tax address to the taxing authority or authorities.

22. SALE OF PROPERTY.

(a) Licensor may sell the Property or a portion thereof to a third party, provided: (i) the sale is made subject to the terms of this Agreement; and (ii) if the sale does not include the assignment of Licensor's full interest in this Agreement, the purchaser must agree to perform, without requiring compensation from Licensee or any subtenant, any obligation of Licensor under this Agreement, including Licensor's obligation to cooperate with Licensee as provided hereunder.

(b) If Licensor, at any time during the Term of this Agreement, decides to rezone or sell, subdivide or otherwise transfer all or any part of the Premises, or all or any part of the Property or the Surrounding Property, to a purchaser other than Licensee, Licensor shall promptly notify Licensee in writing, and such rezoning, sale, subdivision or transfer shall be subject to this Agreement and Licensee's rights hereunder. In the event of a change in ownership, transfer or sale of the Property, within ten (10) days of such transfer, Licensor or its successor shall send the documents listed below in this Section 2222(b) to Licensee. Until Licensee receives all such documents, Licensee's failure to make payments under this Agreement shall not be an event of default and Licensee reserves the right to hold payments due under this Agreement.

- i. Old deed to Property
- ii. New deed to Property
- iii. Bill of Sale or Transfer
- iv. Copy of current Tax Bill
- v. New IRS Form W-9
- vi. Completed and Signed Licensee Payment Direction Form
- vii. Full contact information for new Licensor including phone number(s)

(c) Licensor agrees not to sell, lease or use any areas of the Property or the Surrounding Property for the installation, operation or maintenance of other wireless communication facilities if such installation, operation or maintenance would interfere with Licensee's Permitted Use or communications equipment as determined by radio propagation tests performed by Licensee in its sole discretion.

(d) If the Property is transferred, the new owner shall have a duty at the time of such transfer to provide Licensee with a completed IRS Form W-9, or its equivalent, and other related paper work to affect a transfer in Fee to the new owner. The provisions of this Paragraph 22 shall in no way limit or impair the obligations of Licensor under this Agreement.

23. INTENTIONALLY OMITTED.

24. MISCELLANEOUS.

(a) **Amendment/Waiver.** This Agreement cannot be amended, modified or revised unless done in writing and signed by an authorized agent of the Licensor and an authorized agent of the Licensee. No provision may be waived except in a writing signed by both parties.

(b) **Limitation of Liability.** Except for the indemnity obligations set forth in this Agreement, and otherwise notwithstanding anything to the contrary in this Agreement, Licensee and Licensor 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.

(c) **Compliance with Law.** Licensee agrees to comply with all federal, state and local laws, orders, rules and regulations (“**Laws**”) applicable to Licensee’s use of the Communication Facility on the Property. Licensors agree to comply with all Laws relating to Licensors’ ownership and use of the Property and any improvements on the Property.

(d) **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.

(e) **Entire Agreement/Recording.** 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. 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. Neither this Agreement nor a memorandum of this Agreement shall be recorded.

(f) **Governing Law.** This Agreement will be governed by the laws of the state in which the Premises are located, without regard to conflicts of law.

(g) **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, unless otherwise indicated; (iv) exhibits are an integral part of the 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; and (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.

(h) **Affiliates.** All references to “Licensee” 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 Licensee 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.

(i) **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.

(j) **Estoppel.** Either party will, at any time upon twenty (20) business days prior written notice from the other, execute, acknowledge and deliver to the other a statement in writing (i) certifying that this Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying this Agreement, as so modified, is in full force and effect) and the date to which the License Fee and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to such party’s knowledge, any uncured defaults on the part of the other party hereunder, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrance of the Premises or Property. The requested party’s failure to deliver such a statement within such time will be conclusively relied upon by the requesting party that (i) this Agreement is in full force and effect, without modification except as may be properly represented by the requesting party, (ii) there are no uncured defaults in either party’s performance, and (iii) no more than one month’s License Fee has been paid in advance.

(k) **W-9/FTB 590.** As a condition precedent to payment, Licensors agree to provide Licensee with both a completed IRS Form W-9 and CA FTB Form 590, or their respective equivalents, upon execution of this Agreement and at such other times as may be reasonably requested by Licensee, including any change in Licensors’ name or address.

(l) **No Electronic Signature/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 an Agreement only upon the handwritten legal execution, acknowledgment and delivery hereof by Licensor and Licensee.

(m) **Severability** If any term or condition of this Agreement is found unenforceable, the remaining terms and conditions will remain binding upon the parties as though said unenforceable provision were not contained herein. However, if the invalid, illegal or unenforceable provision materially affects this Agreement then the Agreement may be terminated by either party on ten (10) business days prior written notice to the other party hereto.

(n) **Counterparts.** 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. It being understood that all parties need not sign the same counterpart.

25. ADDITIONAL PROVISIONS.

(a) **Attorneys' Fees.** In the event of the bringing of any proceeding, action or suit, including arbitration and any other similar proceeding, by a party against another party by reason of any breach of any of the covenants or agreements or on the part of the other party arising out of this Agreement, the prevailing party in such proceeding, action or dispute, whether by final arbitration decision, judgment, or out of court settlement, shall be entitled to have and recover of and from the other party all reasonable costs and expenses of the proceeding, action and suit, including reasonable attorneys' fees and costs, including any reasonable attorneys' fees and costs incurred executing upon or appealing any judgment.

(b) **Waiver of Jury Trial.** Each party, to the extent permitted by law, knowingly, voluntarily and intentionally waives its right to a trial by jury in any action or proceeding under any theory of liability arising out of or in any way connected with this Agreement or the transactions it contemplates.

(c) **No Additional Fees/Incidental Fees.** Unless otherwise specified in this Agreement, all rights and obligations set forth in the Agreement shall be provided by Licensor and/or Licensee as the case may be, at no additional cost. No unilateral fees or additional costs or expenses are to be applied by either party to the other party, for any task or service including, but not limited to, review of plans, structural analyses, consents, provision of documents or other communications between the parties.

(d) **Further Acts.** Upon request, Licensor will cause to be promptly and duly taken, executed, acknowledged and delivered all such further acts, documents, and assurances as Licensee may request from time to time in order to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement and all transactions and permitted use contemplated by this Agreement.

(e) **Demolition, Damage or Condemnation.** If the Property, or the real property portion of the Premises, are damaged, destroyed, condemned or transferred in lieu of condemnation, Licensor shall have no obligation to rebuild the Property or the Premises, and both parties shall have the right to terminate this Agreement. In no event shall Licensor have any obligation to rebuild the Property or to rebuild the Property to accommodate Licensee. If, after the Property and/or the Premises are damaged, or condemned or transferred in lieu of condemnation, and Licensor elects to rebuild the Property and/or the Premises, Licensor shall have no obligation to design any replacement improvements to permit Licensee's Communication Facility to be located anywhere therein or thereon.

[SIGNATURES APPEAR ON NEXT PAGE]

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

“LICENSOR”

City of Los Altos,
a California municipal corporation

By: _____
Print Name: [_____]]
Its: _____ [Insert Title]
Date: _____ [Insert Date]

“LICENSEE”

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

By: AT&T Mobility Corporation
Its: Manager

By: _____
Print Name: [_____]]
Its: _____ [Insert Title]
Date: _____ [Insert Date]

EXHIBIT 1

DESCRIPTION OF PROPERTY AND PREMISES

Page of

to the License Agreement dated [Insert Date] , 20 , by and between City of Los Altos, a California municipal corporation, as Licensor, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Licensee.

The Property is legally described as follows:

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 LICENSEE.
2. ANY SETBACK OF THE PREMISES FROM THE PROPERTY'S BOUNDARIES SHALL BE THE DISTANCE REQUIRED BY THE APPLICABLE GOVERNMENTAL AUTHORITIES.
3. WIDTH OF ACCESS ROAD SHALL BE THE WIDTH REQUIRED BY THE APPLICABLE GOVERNMENTAL 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 Licensor's Letterhead }

[Insert Date]

Building Staff / Security Staff
[Licensor, 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.

Licensor Signature