

## **LEASE AGREEMENT**

THIS LEASE AGREEMENT ("Lease") entered into as of this \_\_\_ day of \_\_\_\_\_, 2007, by and between the City of Overland Park, Kansas, a municipal corporation ("Lessor") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, ("Lessee").

### **Background**

- A. Lessor is the owner in fee simple of a parcel of land located at 12401 Hemlock, Overland Park, Kansas, ("Land") and Lessor owns a communications tower ("Tower"). The Land is legally described on the attached Exhibit A.
- B. Lessee is a wireless communications provider that offers products and services for wireless communications.
- C. Lessee desires to lease from Lessor, Tower antenna space, cable runs to connect equipment to antennas and ground space on the Land for Lessee to place an Equipment Building to locate a building, cabinets or shelter to house Lessee's equipment on the Land.
- D. Lessee further desires to lease from Lessor the right to utilize, during the term of the Lease, a twenty (20) foot wide roadway for ingress and egress, extending from the Tower to Hemlock Street.
- E. This is a non-exclusive Lease. Lessee agrees and acknowledges that Lessor may, from time to time, at its option, offer for rent to other Lessees, space on the Tower and ancillary ground shelter area without the consent of Lessee.
- F. Accordingly, the parties are entering into this Lease on the terms and conditions set forth herein.

### **Terms**

In consideration of the mutual covenants contained in this Lease, the parties agree as follows:

#### 1. Lease Terminations

In the event of any inconsistencies between this Lease and any other Leases and associated documents entered into between Lessor and Lessee regarding this Land, the terms of this Lease shall control. This Lease replaces the Lease

between The City of Overland Park and Overland Park Volunteer Fire Department, dated November 21, 1994, and the Sublease between Overland Park Fire Department, and Kansas SMSA Limited Partnership, dated November 24, 1994.

2. Leased Premises.

- a. Lessor leases to Lessee, Tower antenna space, cable runs to connect equipment to antennas and ground space for placement of an Equipment Building, together with a non-exclusive easement for ingress, egress and utilities over the adjacent real property collectively referred to as the "Premises" and as more fully described and depicted in attached Exhibit B.
- b. This Lease is not a franchise pursuant to K.S.A. 12-2001 et seq., nor is it a permit or license to use any public Right of Way other than the Premises described herein. Any such franchise, permit or license if applicable must be obtained separately from Lessor.
- c. In the event any Court or Governmental Authority of competent jurisdiction orders, decrees or otherwise requires Lessor to limit, restrict or cease operating the Premises as a Communications Facility or operating the Premises as a Communications Facility becomes economically not viable for Lessor, this Lease shall immediately terminate without further liability to either Lessor or Lessee. Lessee shall immediately remove any equipment, antennas or personal property in accordance with the terms of this Lease.

2. Lease Term.

The Lease shall commence on upon execution hereof ("Commencement Date") and shall continue for a term of one (1) year ("Lease Term"), renewable automatically from year to year ("Renewal Term"), until terminated for any reason by either party, giving the other party written notice of its intention to so terminate at least six (6) months prior to the end of such term.

Rent.

- a. Lessee shall pay Lessor as rent for the Premises each month during the initial term of this Lease the sum of One Thousand, Seven Hundred Dollars (\$1,700.00) ("Base Rent"). The Base Rent shall be paid prior to the fifth (5<sup>th</sup>) day of each calendar month in advance. In partial months occurring after the Commencement Date, rent will be prorated. All rent shall be paid by Lessee to Lessor at the address herein set forth: City Clerk, City of Overland Park, 8500 Santa Fe, Overland Park, Kansas 66212.

- b. Lessee shall pay Lessor a late payment charge equal to five percent (5%) of the rental amount for any month where rent payment has not been timely made. Any rental payment received after the due date shall be deemed "late" and subject to the provisions of this paragraph, subject to the provisions set forth in Section 18 (d).
  - c. The Base Rent shall be increased, at the commencement of each Renewal Term, by the amount listed in the attached Rent Schedule, Exhibit B.
  - d. Base Rent and all other consideration to be paid or provided by Lessee to Lessor shall constitute rent and shall be paid or provided without offset.
  - e. Lessor agrees to provide Lessee any information necessary to allow Lessee to make all rent payments through direct deposit or similar paperless transfer of funds.
  - f. If this Lease is terminated at a time other than the last day of the month, Base Rent shall be prorated as of the date of termination and, in the event of termination for any reason other than Lessee's default, all prepaid rents shall be refunded to the Lessee.
4. Use of Premises
- a. Prior to the Commencement Date, Lessee may, at its sole cost and expense, enter upon the Premises and conduct such studies, as Lessee deems necessary to determine the site suitability for Lessee's intended use. These studies may include surveys, soil tests, environmental evaluations, radio wave propagation measurements, field strength test and such other analyses and studies as Lessee deems necessary or desirable, provided that such tests may not cause any harmful interference or otherwise damage any other equipment, structures or operations on the Premises, including use of the Premises by Lessor or any of Lessor's assignees or Lessees.
  - b. Lessee shall use the Premises for the construction, maintenance repair, replacement and operation of a wireless telecommunications facility and for no other purpose. Lessee shall, at its expense, comply with all present and future federal, state, and local laws, ordinances, rules and regulations (including but not limited to laws and ordinances relating to health, safety, radio frequency emissions, and radiation) in connection with the use, operation, maintenance, construction and/or installation on the Premises.

- c. Lessor shall provide Lessee with twenty-four (24) hour, seven (7) day a week, year around access to the Premises, provided that the Lessee shall give the Lessor twenty-four (24) hours' telephonic notice at telephone # 913-895-6300, prior to its accessing the Premises except in case of emergency, when Lessee will provide Lessor as much telephonic notice as reasonably practicable under the circumstances.
5. Attachment of Antennas, Construction of Ground Equipment, Improvements, Removal
- a. (1) Lessee shall attach antennas at the 150 & 103-foot centerline level of the Tower, as well as construct the necessary ground equipment and ancillary support facilities and structures needed to perform the expressed intended purpose of this Lease. Prior to commencing construction, Lessee shall submit plans and specifications for all improvements to Lessor for Lessor's written approval, such approval not to be unreasonably withheld or delayed. No improvement, construction, installation or alteration shall be commenced until plans for such work have been approved by the Lessor and all necessary permits have been properly issued.
  - (2) Such plans shall include: Fully dimensioned site plans that are drawn to scale and show (i) the proposed location of the antennas, equipment shelter/cabinets, driveway and parking areas, (ii) the proposed clearing and landscaping, (iii) the proposed type and height of fencing, (iv) the proposed color of all structures, including fencing, (v) the proposed type of construction material for all structures, including fencing, and any other details that the Lessor may request.
  - (3) Prior to commencing construction, Lessee shall provide Lessor with the name of the contractor that will be constructing the improvements. The contractor is subject to the prior written approval of Lessor, such approval not to be unreasonably withheld or delayed. All improvements shall be constructed in a workmanlike manner without the attachment of any liens to the Premises and shall be completed in compliance with all applicable laws, rules, ordinances and regulations.
- b. Lessee or Lessee's Contractor shall, prior to commencing any construction on the Premises, post a payment bond assuring that the improvements will be constructed without the attachment of any construction liens.

- c. (1) The Premises and Tower shall remain the property of Lessor and Lessee shall remove Lessee's equipment, antennas and personal property upon termination of the Lease by its terms. Such removal shall be done in a workmanlike and careful manner and without interference or damage to any other equipment, structures or operations on the Premises, including use of the Premises by Lessor or any of Lessor's assignees or other lessees. If, however, Lessee requests permission not to remove all or a portion of the improvements, and Lessor consents to such non-removal, title to the affected improvements shall thereupon transfer to Lessor and the same thereafter shall be the sole and entire property of Lessor, and Lessee shall be relieved of its duty to otherwise remove the same. All other alterations, improvements and structures located or constructed on the Premises (except for movable equipment and trade fixtures), shall become the property of Lessor upon termination of the Lease, except that Lessor may, by written notice to Lessee, require Lessee to remove all such improvements upon termination of the Lease. Should the Lessee fail to remove Lessee's facilities from the Premises within thirty (30) days after the termination or expiration of the Lease, Lessor may remove and store Lessee's facilities at Lessee's sole cost and expense. If Lessee does not claim Lessee's facilities, and provided Lessor has given Lessee sixty (60) days written notice, Lessee's facilities shall be deemed to be abandoned.
- (2) Upon removal of the improvements (or portions thereof) as provided above in subpart (1), Lessee shall restore the affected area of the Premises to the same condition as on the Commencement Date, reasonable wear and tear and insured casualty excepted.
- (3) All costs and expenses for the removal and restoration to be performed by Lessee pursuant to subparts (1) and (2) above shall be borne by Lessee, and Lessee shall hold Lessor harmless from any portion thereof.
- d. No improvements or modifications to the Premises shall be made without the Lessor's consent. Such consent by the Lessor shall not be unreasonably withheld, delayed or conditioned. Moreover, any such improvements or modifications are subject to the conditions set forth in section a (1), (2) and (3) above.

6. Use by Other Lessees

- a. Lessee shall cooperate with any existing or future lessee on the Tower in connection with their locating and placing their antennas and other facilities on the Tower and in constructing the ancillary support facilities. If the location and placement can not be agreed to after a good faith effort has been made, Lessor shall make a final resolution that binds both Lessee and the current or future lessees; provided, however, that in no event shall Lessee be required to move its antennas from the location and height originally constructed by Lessee.
- b. Current and future lessees shall be solely responsible for the cost of locating and placing their equipment onto the Tower and in constructing the ancillary support facilities, including any support buildings. The current or future lessees shall also be responsible for any liabilities that arise from their use of the Tower. Lessee agrees not to interfere with the use and or operation of any other lessee. Lessor agrees to take all reasonable steps necessary to assure that all current and future lessees do not interfere with the use and operation of the Premises by Lessee.
- c. Lessor may elect at any time to rent space on the Tower to another lessee. Lessee shall cooperate with Lessor in connection with Lessor's locating and placing the future lessee's antennas and other facilities on the Tower and into the ancillary support facilities. If the location and placement can not be agreed to, Lessor shall make the final resolution and plan, which shall bind both Lessee and Lessor as outlined in paragraphs a. and b. above; provided however, that in no event shall Lessee be required to move its antennas from the location and height originally constructed by Lessee. The collection of rent from any other lessee shall in no way alter Lessee's responsibility under this Lease to pay its Base Rent.
- d. Lessor or Lessee may require any future lessee on the Tower to obtain an interference study to indicate whether the future lessee's intended use of the Tower will interfere with Lessor's or Lessee's use of the Tower. In the event that such a study indicates that any future lessee's use will potentially interfere with Lessor's or Lessee's use of the Tower, Lessor or Lessee may require the future lessee, at the future lessee's expense (as appropriate), to relocate the future lessee's antenna and other equipment so as to minimize the interference.
- e. Lessee shall operate the Lessee's facilities in a manner that will not cause interference to Lessor and other lessees or licensees of the Land and Tower, provided that their installations predate that of the Lessee's facilities.

- f. Subsequent to the installation of the Lessee's facilities, Lessor shall not permit itself, its lessees or licensees to install new equipment on the Land, or property contiguous thereto owned or controlled by Lessor, if such equipment is believed to cause interference with Lessee's operation. Lessor and Lessee shall be bound by paragraphs a and b above. In the event interference occurs, Lessor shall take all reasonable action necessary to eliminate such interference. In the event Lessor fails to resolve the interference pursuant to paragraphs a and b above, Lessee's sole remedy is termination of this Lease.
7. Net Lease. The parties agree that this is a net Lease intended to assure Lessor the Base Rents are reserved on an absolute net basis.
8. Signs\Graffiti. Lessee may place signs on the Premises subject to applicable governmental regulations; however, Lessee shall first obtain the Lessor's written consent to design, size and location. Lessor at any time may enter the Premises and undertake any activities necessary to abate or remove graffiti located therein.
9. Maintenance. Lessee shall, at its expense, maintain its own, equipment and other personal property on the Premises and keep the same in good working order, condition and repair. Lessee shall keep the Premises free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or interference. Lessor shall, at its sole expense, maintain all common areas on the Premises. Lessor may require Lessee to submit to an annual inspection of its improvements, equipment, fixtures and personal property placed on the Premises by Lessee. As a part of the annual inspection, Lessee, may be required to make reasonable repairs, at its cost, for damage to the Premises, equipment or personal property, attributable to Lessee's use.
10. Access. Lessor and its agents shall have the right to enter the Premises at reasonable times and upon reasonable notice to examine, inspect and use the Premises; provided, however, that neither Lessor nor its agents will remove, relocate, modify, alter or otherwise tamper with Lessee's equipment on the Premises, unless emergency circumstances dictate otherwise.
11. Utilities.
  - a. Lessee shall be responsible for obtaining any utility service to the Premises that it desires. Lessee shall pay when due all charges for utilities to the Premises during the term of the Lease.
  - b. Lessee shall not install power generators or fuel storage facilities on the Premises; however, in consultation with Lessor, Lessee may

install and operate, on a temporary basis during an extended loss of commercial power, a portable mobile propane or diesel fueled emergency generator. The generator shall be promptly removed from the Premises after restoral of commercial power.

12. License Fees. Lessee shall pay, as they become due and payable, all fees, charges, taxes associated with the Premises, and expenses required for licenses and/or permits required for or occasioned by Lessee's use of the Premises.
13. Governmental Approvals. This Lease is contingent upon Lessee's obtaining all necessary governmental approvals, permits or licenses that are necessary.
14. Default and Lessor's Remedies. It shall be a default; if Lessee defaults in the payment or provision of Base Rent or any other sums to Lessor when due, and does not cure such default within ten (10) days after written notice from Lessor specifying the default complained thereof; or if Lessee defaults in the performance of any other covenant or condition of this Lease and does not cure or make reasonable attempts to cure, such other default within thirty (30) days after written notice from Lessor specifying the default complained of; or if Lessee abandons or vacates the Premises; or if Lessee is adjudicated as bankrupt or makes any assignment for the benefit of creditors; or if Lessee becomes insolvent or Lessor reasonably believes itself to be insecure.

In the event of a default, Lessor shall have the right, at its option, in addition to and not exclusive of any other remedy Lessor may have by operation of law, without any further demand or notice, to re-enter the Premises and eject all persons therefrom, and either (a) declare this Lease at an end, in which event Lessee shall immediately vacate the Premises (and proceed as set forth in paragraph 5) and pay Lessor a sum of money equal to the total of (i) the amount of the unpaid Base Rent and Additional Rent accrued through the date of termination and (ii) liquidated damages equal to the lesser of (A) one (1) year's Base Rent for the then-current term, or (B) the amount of unpaid Base Rent reserved for the balance of the then-current term or (b) without terminating this Lease, relet the Premises, or any part thereof, for the account of Lessee upon such terms and conditions as Lessor may deem advisable, and any monies received from such reletting shall be applied first to the expenses of such reletting and collection, and if a sufficient sum shall not be thus realized to pay such sums and other charges, Lessee shall pay Lessor any deficiency monthly, notwithstanding that Lessor may have received rental in excess of the rental stipulated in this Lease in previous or subsequent months, and Lessor may bring an action therefor as such monthly deficiency shall arise.



No re-entry and taking of possession of the Premises by Lessor shall be construed as an election or waiver on Lessor's part to terminate this Lease, regardless of the extent of renovations and alterations by Lessor, unless a written notice of such intention is given to Lessee by Lessor. Notwithstanding any reletting without termination, Lessor may at any time thereafter elect to terminate this Lease for such previous breach.

If suit shall be brought by Lessor for recovery of possession of the Premises, for the recovery of any Base Rent or Additional Rent or any other amount due under the provisions of this Lease, or because of the breach of any other covenant, the Lessee shall pay to the Lessor all expenses incurred therefor, including reasonable attorney fees, if Lessor prevails in its recovery action.

For purposes of this agreement, "abandons or vacates" means, at any time during the term of this Lease Lessee moves from or ceases to occupy the Premises, relinquishing or giving up with the intent, express or implied, to never again resume any interest or right created by this Lease. Removal of equipment or antennas, without replacing the same in a reasonable time, shall be deemed an external act of Lessee's intent to abandon or vacate.

15. Cure by Lessor. In the event of any default of this Lease by Lessee, the Lessor may at any time, after notice and the expiration of any cure periods, cure the default for the account of and at the expense of the Lessee. If Lessor is compelled to pay or elects to pay any sum of money or to do any act which will require the payment of any sum of money or is compelled to incur any expense in instituting, prosecuting or defending any action to enforce the Lessor's rights under this Lease, the sums so paid by Lessor, with all interest, costs (including but not limited to actual attorney's fees) and damages shall be deemed to be Additional Rental and shall be due from the Lessee to Lessor on the first day of the month following the incurring of the respective expenses, provided the Lessor's payment, performance or enforcement of rights is due to Lessee's breach of the Lease, intentional misconduct or negligence.
16. Damage or Destruction. If the Tower or any portion of the Tower is destroyed or damaged so as to materially hinder effective use of the Tower through no fault or negligence of Lessee, Lessee may elect to terminate this Lease upon thirty (30) days' written notice to Lessor. In such event, Lessor and Lessee shall proceed as set forth in 5c above. This Lease (and Lessee's obligation to pay rent) shall terminate upon Lessee's fulfillment of the obligations set forth in the preceding sentence, at which termination Lessee shall be entitled to the reimbursement of any Base Rent prepaid by Lessee. Lessor shall have no obligation to repair any damage to any portion of the Premises.

17. Condemnation. In the event the Premises are taken by eminent domain, this Lease shall terminate as of the date title to the Premises vests in the condemning authority. In the event a portion of the Premises is taken by eminent domain so as to materially hinder effective use of the Premises by Lessee, either party shall have the right to terminate this Lease as of said date of title transfer, by giving thirty (30) days' written notice to the other party. In the event of any taking under the power of eminent domain, Lessee shall not be entitled to any portion of the reward paid for the taking and the Lessor shall receive full amount of such award. Lessee shall hereby expressly waive any right or claim to any portion thereof although all damages, whether awarded as compensation for diminution in value of the leasehold or to the fee of the Premises, shall belong to Lessor, Lessee shall have the right to claim and recover from the condemning authority, but not from Lessor, such compensation as may be separately awarded or recoverable by Lessee on account of any and all damage to Lessee's business and any costs or expenses incurred by Lessee in moving\removing its equipment, personal property, and leasehold improvements.
18. Indemnity and Insurance
- a. Disclaimer of Liability: Except as otherwise provided by law, Lessor shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of Lessee's construction, maintenance, repair, use, operation, condition or dismantling of the Premises or Tower, except to the extent attributable to the negligent or intentional act or omission of Lessor, its employees, agents or independent contractors.
- b. Indemnification: Lessee shall indemnify and hold harmless Lessor and its employees, agents, and contractors (hereinafter referred to as "Indemnitees"), from and against:
- (i) Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any act or omission of the indemnifying party's employees, agents, contractors or subcontractors, resulting in their personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, and unauthorized use of any trademark, trade name, copyright, patent, service mark or any other right of any person, firm or corporation, which may arise out of or be in any way connected with the construction, installation, operation, maintenance, use or condition of the Premises or

the failure to comply with any federal, state or local statute, ordinance or regulation.

- (ii) Any and all liabilities, obligations, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and other consultants), which are imposed upon, incurred by or asserted against the Indemnitees by reason of any claim or lien arising out of work, labor, materials or supplies provided or supplied to the indemnifying party, its contractors or subcontractors, for the installation, construction, operation, maintenance or use of the Premises, and, upon the written request of an Indemnitee, the indemnifying party shall cause such claim or lien covering Lessor's property to be discharged or bonded within thirty (30) days following such request.
  - (iii) Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any financing or securities offering by Lessee or its affiliates for violations of the common law or any laws, statutes, or regulations of the State of Kansas or United States, including those of the Federal Securities and Exchange Commission, whether by Lessee or otherwise.
- c. Defenses of Indemnitees: In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, indemnitors shall, upon notice from any of the Indemnitees, at their sole cost and expense, resist and defend the same with legal counsel; provided however, that indemnitors shall not admit liability in any such matter on behalf of the Indemnitees without the written consent of Indemnitees and provided further that Indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without the prior written consent of indemnitor.
  - d. Notice: Each party shall give the other party prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this paragraph.
  - e. Insurance: During any term of the Lease, Lessee shall maintain, or cause to be maintained, in full force and effect and at its sole cost and expense, the following types and limits of insurance:

- (i) Worker's compensation insurance meeting applicable statutory requirements and employer's liability insurance with minimum limits of One Hundred Thousand Dollars (\$100,000) for each accident, One Hundred Thousand Dollars (\$100,000) for each employee and Five Hundred Thousand Dollars (\$500,000) policy limit.
- (ii) Commercial general liability insurance with limits of One Million Dollars (\$1,000,000) as the combined single limit for each occurrence of bodily injury, personal injury and property damage. The policy shall provide blanket contractual liability insurance and shall include coverage for products and completed operations liability, independent contractor's liability; coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly know as XCU coverage.
- (iii) Automobile liability insurance covering all owned, hired and nonowned vehicles in use by Lessee, its employees and agents, with personal protection insurance and property protection insurance to comply with the provisions of state law with minimum limits of One Million Dollars (\$1,000,000) as the combined single limit for each occurrence for bodily injury and property damage.
- (iv) At the start of and during the period of construction or installation, property coverage covering cables, materials, machinery and supplies of any nature whatsoever which are to be used in or incidental to the installation on the Tower. Upon completion of the installation on the Tower, Lessee shall substitute for the foregoing insurance policies of fire, extended coverage and vandalism and malicious mischief insurance on its personal property. The amount of insurance at all times shall be representative of the insurable values installed or constructed.
- (v) Business interruption insurance coverage in an amount sufficient to cover such loss of revenues, for the period of time which it would take, under normal circumstances, to repair or replace that part(s) of the Premises which is damaged and caused the loss of revenue.
- (vi) All policies other than those for Worker's Compensation shall be written on an occurrence basis.

- (viii) The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated.
  - f. Additional Insureds: All policies, except for fire, extended coverage and vandalism and malicious mischief, business interruption and worker's compensation policies, shall name Lessor as an additional insured (herein referred to as to the "Additional Insureds"). Lessor will be named as Additional Insured on Lessee's coverage with respect to indemnification contained in this Agreement.
  - g. Evidence of Insurance: Certificates of Insurance for each insurance policy required to be obtained by Lessee in compliance with this paragraph, shall be filed and maintained with Lessor annually during the term of the Lease. Lessee shall immediately advise Lessor of any claim or litigation that may result in liability to Lessor.
  - h. Cancellation of Policies of Insurance: The Certificate of Insurance, shall contain the following:

"At least thirty (30) days prior written notice shall be given to Lessor by the insurer of any intention not to renew such policy or to cancel or replace same."
  - i. Insurance Companies: All insurance shall be effected under valid and enforceable policies, insured by insurers licensed to do business by the State of Kansas or surplus line carriers on the State of Kansas Insurance Commissioner's approval list of companies qualified to do business in the State of Kansas.
  - j. Contractors: Lessee shall require that each and every one of its contractors and their subcontractors who perform work on the Premises to carry, in full force and effect, worker's compensation, comprehensive general liability and automobile liability insurance coverage's of the type which Lessee is required to obtain under the terms of this paragraph with appropriate limits of insurance.
  - k. Review of Limits: Once during each calendar year during the term of this Lease, Lessor may review the insurance coverage's to be carried by Lessee. If Lessor and Lessee mutually agree that higher limits of coverage are necessary to protect the interest of Lessor or the Additional Insureds, or that Lessee has failed to comply with the insurance requirements as stated in the Lease, Lessee shall obtain the additional limits of insurance, at its sole cost and expense.
19. Hazardous Substance Indemnification. Lessee represents and warrant that its use of the Premises herein will not generate any hazardous

substance, and it will not store or dispose on the Premises nor transport to or over the Premises any hazardous substance. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease.

20. Acceptance of Premises. By taking possession of the Premises, Lessee accepts the Premises in the condition existing as of the Commencement Date.
21. Estoppel Certificate. Lessor and Lessee shall, at any time and from time to time upon not less than ten (10) days prior request by either party, deliver to the requesting party a statement in writing certifying that (a) the Lease is unmodified and in full force (or if there have been modifications, that the Lease is in full force as modified and identifying the modifications); (b) the dates to which rent and other charges have been paid; (c) so far as the person making the certificate knows, neither party is in default under any provision of the Lease; and (d) such other matters as either party may reasonably request.
22. Notices. All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested; or if delivered by a nationally recognized courier services, to the following addresses;

**To Lessor:                   City Clerk  
                                      8500 Santa Fe Drive  
                                      Overland Park, KS 66212**

**With Copy To:           Vicki Irey  
                                      Director of Information Technology  
                                      8500 Antioch Road  
                                      Overland Park, KS 66212**

**If to Lessee:               c/o Cingular Wireless LLC  
                                      Attn: Network Real Estate Administration  
                                      Re: FA# 10008279 Center Code: 4484  
                                      6100 Atlantic Boulevard  
                                      Norcross, Georgia 30071**

**With copies to:         Cingular Wireless  
                                      Attn: Legal Department**

**Re: FA# 10008279 Center Code: 4484  
15 E, Midland Avenue  
Paramus, NJ 07652**

23. Assignment and Subletting. Subject to the provisions of paragraph 6, Lessee shall not assign this Lease in whole or in part, or sublet all or any part of the Premises without the Lessor's prior written consent, except Lessee may assign to (i) any person or business entity which is parent, subsidiary or affiliate of Lessee; (ii) any person or business entity that controls or is controlled by or under common control with Lessee; (iii) any person or business entity that is merged or consolidated with Lessee or purchases a majority or controlling interest in the ownership or assets of Lessee. Consent by Lessor to any other assignment or subletting shall not constitute a waiver of the necessity of such consent to any subsequent assignment or subletting. This prohibition against any assignment or subletting shall be construed to include a prohibition against any subletting or assignment by operation of law. If this Lease is assigned, or if the Premises or any part thereof is sublet or occupied by anyone other than Lessee, Lessor may collect Base Rent and Additional Rent from the assignee, sublessee or occupant and apply the net amount collected to the Base Rent and Additional Rent and other obligations of Lessee hereunder reserved, but no such assignment, subletting, occupancy or collection shall be deemed a waiver or release of Lessee from the further performance by Lessee of the covenants on the part of Lessee hereunder contained. Notwithstanding any assignment or sublease, Lessee shall remain fully liable on this Lease and shall not be released from performing any of the terms, covenants and conditions of this Lease unless Lessee is released from such liability in writing by Lessor.

Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code, 11 USC sections 101, et seq., shall be deemed without further act to have assumed all of the obligations of Lessee arising under this Lease on and after the date of such assignment. Any such assignee shall, upon demand, execute and deliver to Lessor an instrument confirming such assumption. Any monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid to Lessor, shall be the exclusive property of Lessor, and shall not constitute property of the Lessee or of the estate of Lessee within the meaning of the Bankruptcy Code. Any monies or other considerations constituting Lessor's property under the preceding sentence not paid or delivered to Lessor shall be held in trust for the benefit of Lessor and be promptly paid to Lessor.

24. Successors and Assigns. This Lease shall run with the Land and be binding on and inure to the benefit of the parties, their respective heirs, personal representatives, successors and assigns.

25. Non-Waiver. Failure of either party to insist on strict performance of any of the conditions, covenants, terms or provisions of this Agreement or to exercise any of its rights hereunder shall not waive such rights, but either party shall have the right to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity. The receipt of any sum paid by Lessee to Lessor after a breach of this Agreement shall not be deemed a waiver of such breach unless expressly set forth in writing.

26. Taxes

- a. Lessee shall pay all real and personal property taxes (or payments in lieu of taxes) and assessments for the Premises, including but not limited to real and personal property taxes if any, which become due and payable during the term of this Lease; provided, however, Lessor shall require any other providers to share and pay, on a pro rata basis with Lessee, the foregoing taxes. Lessee will be provided with a yearly statement for its share of said taxes. All such payments shall be made, and evidence of all such payments shall be provided to Lessor, at least ten (10) days prior to the delinquency date of the payment. Lessee shall pay all taxes on its personal property on the Premises.
- b. Lessee shall indemnify Lessor from any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against Lessee in relation to the taxes owed or assessed on the Premises directly resulting from the use\occupancy of the Premises by Lessee.
- c. If the methods of taxation in effect at the Commencement Date of the Lease are altered so that in lieu of or as a substitute for any portion of the property taxes and special assessments now imposed on property there is imposed a tax on or against the rentals payable by Lessee to Lessor, Lessee shall pay those amounts in the same manner as provided for the payment of real and personal property taxes.
- d. In the event Lessor leases additional space on the Premises to another Lessee, any taxes due pursuant to paragraph (a) above shall be divided between Lessee and any other lessee(s) on a pro rata basis.

27. Miscellaneous

- a. To promote co-location and to reduce the proliferation of wireless telecommunications towers, all Lessees on the Tower will be encouraged by Lessor to consider the Premises as a "collocation



site” with other wireless telecommunications companies for the purpose of allowing each other to locate in the future on any sites in and around the City of Overland Park, Kansas.

- b. Lessor and Lessee represent that each, respectively, has full right, power, and authority to execute this Lease.
- c. This Lease constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations, and other agreements of any kind with respect to the subject matter hereof. There are no representations or understandings of any kind not set forth herein. Any modification of or amendment to this Lease must be in writing and executed by both parties.
- d. This Lease shall be construed in accordance with the laws of the State of Kansas.
- e. If any term of this Lease is found to be void or invalid, such finding shall not affect the remaining terms of this Lease, which shall continue in full force and effect.
- f. Lessee, upon paying the Rent and otherwise being in compliance with the terms of this Lease, shall peaceably and quietly have, hold and enjoy the Premises.
- g. To the extent permitted by law and as long as Lessee is not in default of this Lease, Lessor hereby waives any and all lien rights it has or may have, statutory or otherwise, concerning Lessee’s facilities and equipment on the Premises, all of which shall be deemed personal property and not fixtures for the purposes of this Lease, regardless of whether or not the same is deemed real or personal property under applicable law and Lessee has the right to remove same at any time without Lessor’s consent.
- h. Lessor acknowledges that Lessee may have entered into financing arrangement including promissory notes and financial and security agreements for the financing of the Lessee’s facilities (the “Collateral”) with a third party financing entity (and may in the future enter into additional financing arrangements with other financing entities). In connection therewith, so long as Lessee is not in default, Lessor (i) consents to the installation of the Collateral; (ii) disclaims any interest in the Collateral, as fixtures or otherwise; and (iii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any rent due or to become due and that such Collateral may be removed at any time without recourse to legal proceedings.

- i. In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under the Lease, such party shall not unreasonably delay, condition or withhold its approval or consent.
- j. All Riders and Exhibits annexed hereto form material parts of this Lease and are incorporated herein by reference.
- k. This Lease may be executed in duplicate counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument.
- l. Lessor agrees to provide Lessee with a completed IRS Form W-9, or its equivalent, upon execution of this Lease and at such other times as may be reasonably requested by Lessee.

This Lease was executed as of the date first set forth above.

**LESSOR:**

City of Overland Park, Kansas

**LESSEE:**

New Cingular Wireless PCS, LLC

\_\_\_\_\_  
Carl Gerlach, Mayor

By: \_\_\_\_\_  
Name: Steven T. Dreon  
Title: Executive Director

Attest:

\_\_\_\_\_  
Marian Cook, City Clerk

Approved As To Form:

\_\_\_\_\_  
Tammy Williams  
Senior Assistant City Attorney

## EXHIBIT A

### Legal Description of Land

All that part of the N ½ of the SW ¼, of Section 19, Township 13, Range 25, now in the City of Overland Park, Johnson County, Kansas, more particularly described as follows: Commencing at the Northwest corner of the SW ¼ of said Section 19; thence S 1° 43' 55" E, along the West line of the N ½ of the SW ¼ of said Section 19, a distance of 1326.30 feet, to the Southwest corner thereof; thence N 87° 49' 25" E, along the South line of the N ½ of the SW ¼ of said Section 19, a distance of 616.44 feet, to the true point of beginning of subject tract; thence continuing N 87° 49' 25" E, along the South line of the N ½ of the SW ¼ of said Section 19, a distance of 991.26 feet, to a point on the Southwesterly right-of-way line of U.S. Highway No. 69, as now established; thence Northwesterly, along the Southwesterly right-of-way line of said U.S. Highway No. 69, said line being on a curve to the left, having a radius of 4217.57 feet, a central angle of 17° 16' 51", and whose initial tangent bearing is N 44° 33' 13" W, a distance of 1272.06 feet; thence S 1° 43' 55" E, along a line parallel to the West line of the N ½ of the SW ¼ of said Section 19, a distance of 797.22 feet, to the true point of beginning of subject tract.

## **EXHIBIT B**

### Rent Schedule

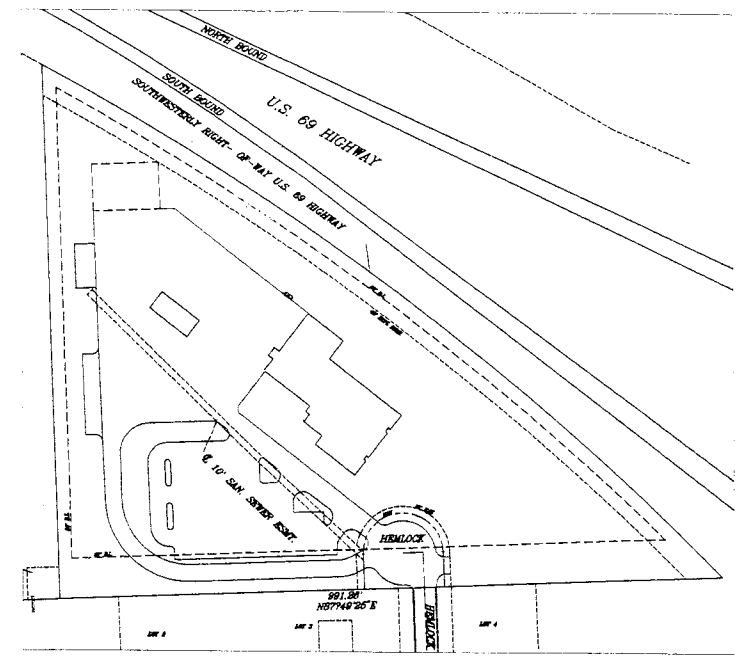
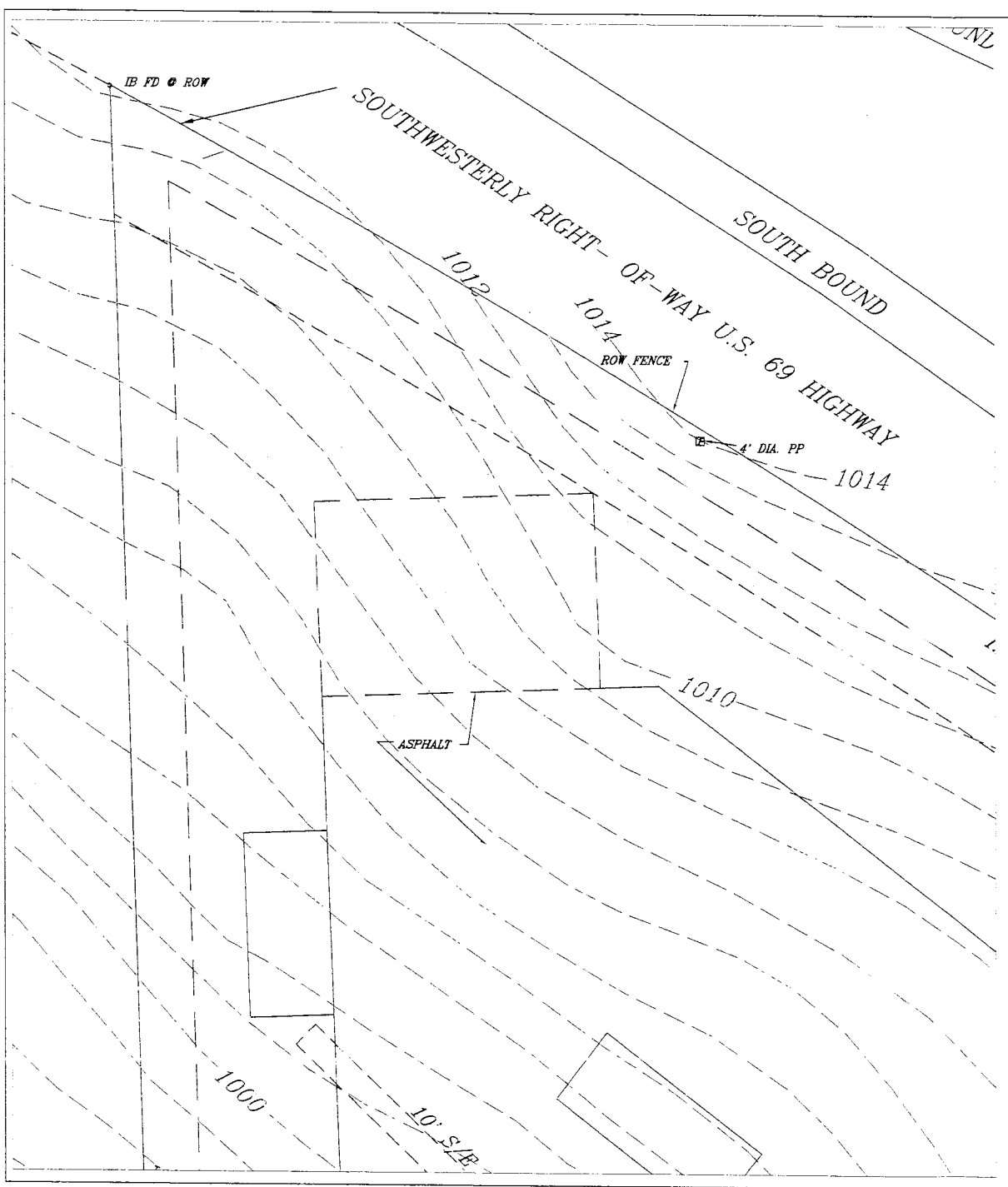
The Base Rent established in the Cell Tower Lease Agreement shall be adjusted annually to coincide with changes in the Index now known as "United States Bureau of Labor Statistics, Consumer Price Index-All Urban Consumers," hereinafter referred to as the "Index". Except that in no event shall the amount of the Base Rent decrease from the previous year. The parties agree that the June 2006 Index is two hundred and two point nine (202.9) (base period 1982-84 = 100) If such Index shall be discontinued with no successor or comparable successor Index, the parties shall attempt to agree upon a substitute formula, if the parties are unable to agree upon a substitute formula, the Lessor may at its discretion adopt a widely used comparable formula.

The first adjustments shall be made on the one year anniversary of the Commencement Date and shall be accomplished by multiplying the Base Rent by a fraction, the numerator of which shall be the most recently published monthly Index preceding the one year anniversary of the Commencement Date, the denominator of which fraction shall be the published monthly Index twelve months prior to the Index used in the numerator. Said sums shall be added to the Base Rent to determine the new rent. All succeeding rents shall similarly be increased in reference to changes in the Index multiplied against the prior year's rent.

**EXHIBIT C**

Site Plan and Construction Drawing for Lessee's Premises and Equipment

SEE ATTACHED



EDWARD A. SCHLASEL LS-615      DATE

04-20-04  
 C. LANG  
 82-832

SURVEY FOR SWB  
 COMMUNICATION TOWER

1 1