

RES16-012

Wilmington, Delaware
February 18, 2016

#4165

Sponsor:

Council
Member
Shabazz

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WILMINGTON that the "License Agreement" between the CITY OF WILMINGTON, a municipal corporation of the State of Delaware, and NEW CINGULAR WIRELESS PCS, LLC, a Delaware limited liability company ("New Cingular"), also known as AT&T, to continue to permit New Cingular to operate and maintain wireless communications equipment (including up to nine antennas) on the City water tower located at Rock Manor Golf Course, Route 202, New Castle County, Delaware, a copy of which, in substantial form, is attached as Exhibit "A" hereto and made a part hereof, is hereby approved, and the Mayor or his designee and the City Clerk are hereby authorized to execute as many copies of said License Agreement as may be necessary.

Passed by City Council,
February 18, 2016

ATTEST: 
City Clerk

Approved as to form,
February 17, 2016


First Assistant City Solicitor

SYNOPSIS: This Resolution approves the "License Agreement" ("the License") between the City and New Cingular Wireless PCS, LLC, a Delaware limited liability company ("New Cingular"), to permit New Cingular to continue to operate and maintain communications equipment at the City-owned water tower located at Rock Manor Golf Course, Route 202, New Castle County, Delaware. This equipment is part of New Cingular's network for the operation of wireless communications services.

The term of the License will be for a period of five years starting from March 1, 2016, with two additional extension periods of five years each thereafter. New Cingular will pay the City a license fee in the amount of \$3,000.00 per month, i.e., \$36,000.00 for the first year, which will be increased annually by 3 percent.

New Cingular's communications equipment will consist of nine antennas arranged in three arrays of three antennas each. The antennas are mounted on the railing of the walkway which surrounds the water tower. Each antenna is approximately four feet high by six inches wide by six inches deep (4' x 6" x 6"). In addition, a small building has been installed on the ground near the tower to operate the communications equipment.

New Cingular is the successor to Wilmington Cellular Telephone Company with which the City entered into a Lease Agreement for the premises on September 12, 1995.

EXHIBIT "A"

**LICENSE
AGREEMENT**

THIS LICENSE AGREEMENT (the "License") made as of this _____ day of _____, 2016, by and between:

THE CITY OF WILMINGTON, a municipal corporation of the State of Delaware, having a mailing address c/o Commissioner of Public Works, 800 French Street, 6th Floor, Wilmington, DE 19801 ("Licensor");

and

NEW CINGULAR WIRELESS, PCS, LLC, a Delaware limited liability company, having a mailing address of AT&T Network Real Estate Administration, 575 Morosgo Drive, Atlanta, GA 30324 ("Licensee").

WITNESSETH:

WHEREAS:

A. Licensor is the owner in fee simple of certain real property located at Rock Manor Golf Course, Route 202, Brandywine Hundred, New Castle County, Delaware, as more particularly described on Exhibit A, attached hereto and made a part hereof (the "Property") upon which there is located a tower (the "Tower") owned by Licensor, the location of which is shown on the map or site plan attached hereto and made a part hereof as Exhibit B; and

B. Licensor and Wilmington Cellular Telephone Company ("Wilmington Cellular"), predecessor to Licensee, entered into that certain Existing Tower Site Lease Agreement (the "Lease Agreement") dated September 12, 1995, whereby Wilmington Cellular leased a portion of the Property from Licensor to construct thereon a communications shelter building and to install, operate, repair, replace and maintain its communication facilities on the Tower as described therein; and

C. Licensee is the successor to Wilmington Cellular; and

D. The Lease Agreement, as extended, will expire on February 29, 2016; and

E. Licensor and Licensee desire to enter into this License Agreement to enable Licensee to continue to use the Property in connection with Licensee's building and facilities upon the terms and conditions as hereinafter set forth, which License Agreement

shall supersede the Lease Agreement on the Commencement Date, as hereinafter defined

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration the receipt whereof is hereby acknowledged, the parties hereto agree as follows:

1. **LICENSE**

1.1 Licensor hereby grants Licensee a license to use that portion of the Property more particularly described on Exhibit B (the "Premises") and grants to Licensee the right from time to time to install, operate, repair, replace and maintain upon the Tower Licensee's antennas and related equipment, (the "Facilities") at the heights and locations, all as more particularly described on Exhibit C, attached hereto and made a part hereof, upon the terms and conditions herein contained.

1.2 Licensor hereby grants to Licensee a non-exclusive easement during the term of this License for ingress and egress to the Premises upon and across the Property and the adjacent properties, if any, of Licensor for the movement of men, machinery, vehicles and equipment for the purpose of constructing, operating, repairing and maintaining the Improvements (as hereinafter defined). Such access for operation, repair and maintenance shall be on a 24-hour a day, 365 days a year basis. Licensee shall also have the right in common with others to use the parking spaces, roads and driveways located on the Property, subject to the approval of Licensor, which approval shall not be unreasonably withheld, conditioned, or delayed. Licensor shall have access to inspect the Building (hereinafter defined) and the Facilities during the term of this License upon reasonable notice to Licensee for compliance with the provisions of this License, and at all times during emergency circumstances. Such access shall not unreasonably interfere with Licensee's use of the Building or the Facilities. If Licensor fails to provide the access granted by this Section 1.2, such failure shall be a default under this License, which default can be cured by Licensor granting such access. In no event, however, shall Licensee be entitled to money damages as a result of Licensor's failure to provide such access.

1.3 During the term of this License, Licensee shall also have the right to use the Property for providing electric, telephone and other utility services to the Premises, which services are to be connected, installed, operated, repaired, replaced and maintained at Licensee's sole cost and expense, in such locations as shall have been approved by Licensor, such approval not to be unreasonably withheld, conditioned, or delayed. The routes and locations of the utility lines shall be subject to Licensor's approval, which approval shall not be unreasonably withheld, conditioned, or delayed. Licensee shall restore the Property, or any part thereof, which has been disturbed due to the installation of such utilities or to other construction, to its original condition, reasonable wear and tear excepted. Licensor hereby agrees to execute and deliver, at Licensee's expense, whatever easements may be reasonably necessary to the utility companies providing such service. The route(s) and location(s) of the utility lines shall be subject to Licensor's approval, such approval not to be unreasonably withheld, conditioned, or delayed.

1.4 Licensor does not guarantee access or utility service to the Property. Licensee shall be solely responsible to satisfy itself that Licensee has such access and utility service capabilities to the Property as it may require.

2. TERMS AND RENEWALS

2.1 The initial term of this License shall be for five (5) years and shall commence on March 1, 2016 (the "Commencement Date").

2.2 This License shall automatically renew for two (2) additional five (5) year terms, upon the same terms and conditions set forth herein, except for the adjustment to fees which is described in paragraph 3.1 below. This License shall automatically be renewed for such renewal terms, unless Licensee shall notify Licensor of Licensee's intent not to renew this License no later than ninety (90) days prior to the expiration of the original term or the first renewal term, whichever is applicable. Absent such notice by Licensee, the applicable term shall automatically renew without the necessity of any notice.

3. LICENSE FEES

3.1 The annual base fee for the first twelve months of the term shall be the sum of Thirty-Six Thousand Dollars (\$36,000.00). The annual base fee for each subsequent year of the term and renewal term shall be increased by three percent (3%).

3.2 All fee payments for the initial term and any renewal terms shall be made in equal monthly installments, in advance. The first such installment shall be forwarded by Licensee to Licensor within forty-five (45) days after the Commencement Date, with each subsequent installment being due on the fifth day of each calendar month.

3.3 As additional fees, Licensee shall pay to Licensor any and all increases in real estate taxes with respect to the Property which are directly attributable to the Improvements placed on the Property by Licensee. As a condition precedent to its right to receive such payment, Licensor agrees to promptly furnish proof of any such increases to Licensee including true copies of the real property tax bills rendered to Licensor. Licensee shall have the right to appeal any such taxes in its own name or that of Licensor.

4. USE

4.1 Licensee shall continue to use the Premises for the purpose of installing, maintaining, repairing, replacing, and operating a communications facility together with uses incidental thereto involving the transmission and/or receipt of wireless communication signals, all in accordance with applicable laws.

4.2 During the term of the Lease Agreement, Licensee constructed a building and appurtenant facilities (the "Building"), signs, and perimeter security fencing on the Property. The foregoing together with the Facilities, plus any additional construction or equipment installed by Licensee during the term of the License (all to be accomplished at Licensee's expense and in accordance with applicable law) are sometimes herein collectively referred to as the "Improvements." Licensee shall be solely responsible for obtaining all Federal, State, County and Municipal approvals, licenses, certificates and permits (collectively the "Permits") as are necessary to construct, install, repair, operate and maintain the Improvements. All plans and specifications for the Improvements shall be subject to Licensor's prior written approval, which shall not be unreasonably withheld, conditioned, or delayed but shall not exceed thirty (30) days from receipt thereof. It is expressly agreed that the Exhibits annexed to this License do not constitute consent by Licensor to Licensee's final plans. Such final plans and specifications shall be submitted to Licensor for approval, which approval shall not be unreasonably withheld, conditioned, or delayed, as aforesaid (a) prior to submission to the governmental authorities having jurisdiction for final land use approvals; and (b) with respect to final construction drawings, prior to submission to the governmental authorities having jurisdiction for a building permit. Unless otherwise agreed to by Licensor in writing, Licensee shall not add or install any equipment or additional Improvements of any kind other than those contained in the final plans which have been approved by Licensor, not to be unreasonably withheld, conditioned, or delayed, without a subsequent agreement for the payment of additional license fees to Licensor.

4.3 Throughout the term of this License, Licensee shall, at its own expense, maintain its Facilities on the Tower in a safe condition, in good order and repair and in such manner, so as not to not conflict or interfere with the existing uses of the Tower by Licensor or other licensees of Licensor.

4.4 Licensee covenants and agrees that the Facilities and the installation, operation and maintenance thereof will not damage or impair the strength of the Tower and the accessories thereto nor interfere with the maintenance thereof or with the lighting system, if any, of the Tower.

4.5 Only qualified contractors and employees of Licensee shall be permitted to install, repair and remove the Facilities from the Tower.

4.6 Payment of the license fee shall entitle Licensee to install up to nine (9) antennas (3 arrays of 3) on the Tower. In the event Licensee desires to install more antennas on the Tower, Licensee shall be required to obtain the written approval of Licensor, not to be unreasonably withheld, conditioned, or delayed, as well as a subsequent agreement with Licensor for the payment of additional license fees.

5. COOPERATION OF LICENSOR

Licensor shall reasonably cooperate with Licensee in its effort to obtain the

Permits with respect to the proposed use of the Property by Licensee. The costs shall be borne by Licensee exclusive of the time spent by Licensor in assisting with this process.

6. **TAXES**

6.1 Except as otherwise provided herein, Licensee shall not be responsible to pay any real estate taxes on the Property.

6.2 Licensee shall pay all personal property taxes assessed upon the Improvements, as well as any increase in real estate taxes as described in paragraph 3.3 above, that are directly attributed to Licensee's use of the Property.

7. **INSURANCE**

During the term of this License and any renewal thereof, Licensee will carry, at its own cost and expense, the following insurance: (a) workers' compensation insurance as required by law; and (b) commercial general liability (CGL) insurance with respect to its activities on the Property, such insurance to afford protection of Three Million Dollars (\$3,000,000) per occurrence and Six Million Dollars (\$6,000,000) general aggregate, based on Insurance Services Office (ISO) Form CG 00 01 or a substitute form providing substantially equivalent coverage. Licensee's CGL insurance shall contain a provision including Licensor as an additional insured. Such additional insured coverage:

(i) shall be limited to bodily injury, property damage or personal and advertising injury caused, in whole or in part, by Licensee, its employees, agents or independent contractors;

(ii) shall not extend to claims for punitive or exemplary damages arising out of the acts or omissions of Licensor, its employees, agents or independent contractors or where such coverage is prohibited by law or to claims arising out of the gross negligence of Licensor, its employees, agents or independent contractors; and

(iii) shall not exceed Licensee's indemnification obligation under this Agreement, if any.

8. **REPAIR AND MAINTENANCE**

8.1 Licensor shall keep and maintain the Property and Tower in good order and repair.

8.2 Licensee shall keep and maintain the Premises and the Improvements in good order and repair.

8.3 Licensee recognizes that the Tower may from time to time require maintenance by Licensor, such as repainting, sandblasting, refinishing, repairs, and otherwise. Licensor and Licensee agree to mutually cooperate with each other in connection with such maintenance so as to expedite the work and minimize any

disruption to Licensee's operations on the Tower. Licensor agrees to give Licensee not less than ninety (90) days written notice of any routine maintenance work on the Tower, which may interfere or disrupt Licensee's operations so as to afford Licensee the opportunity to prepare for same. In the case of emergency or non-routine maintenance to the Tower which may affect Licensee's operations, Licensor shall make its best efforts to notify Licensee promptly thereof as circumstances may allow.

8.4 Upon the above-said notice from Licensor, Licensee, at its sole cost and expense, shall make any necessary arrangements to either temporarily protect or remove all or portions of its Facilities as a result of Licensor's painting or other maintenance of the Tower. Licensor and Licensee shall, and they shall cause their respective contractors to, reasonably cooperate with each other in order to (i) facilitate and coordinate their respective activities and obligations with respect to Licensor's maintenance and painting of the Tower, and (ii) limit any disruption and disturbance to Licensee and the operation of its Facilities to the fullest extent possible under the circumstances. If Licensee and Licensor agree that it is reasonable to keep all or any portion of the Facilities in place during such painting or other maintenance of the Tower by Licensor, to the extent any additional expense of repainting, repairing, or maintaining the Tower is reasonably and actually incurred by Licensor and caused by the presence of Licensee's Facilities, Licensee shall pay Licensor such reasonably and actually incurred cost upon Licensor's notice to Licensee of such additional reasonable and actual cost, but Licensor must first provide Licensee at least thirty (30) days' prior written notice of such additional costs or expenses with a sufficiently detailed invoice. Should Licensor and Licensee agree that the scheduled maintenance or painting of the Tower will prevent Licensee from using the Tower as Licensee's Facilities, and it is more reasonable for Licensee to temporarily relocate rather than leave in place and protect its Facilities, then Licensee shall have the right to install, repair, maintain, replace and operate a temporary facility (including a Cell-on-Wheels) on a mutually acceptable location on the Property. Licensee shall have the continuing right to access the Premises and its Facilities while Licensor performs maintenance on or paints the Tower.

8.5 Licensee shall supply As-Built drawings of all Improvements, including underground utilities, to Licensor.

8.6 When Licensee submits plans for additions or changes to equipment on the Tower or the Property, Licensor's engineer must review Licensee's submissions. The cost of this plan review shall be paid by Licensee. An estimate of such cost shall be provided to Licensee prior to the start of the plan review.

9. UTILITIES

9.1 Licensee shall be responsible at its sole cost and expense for bringing utilities to the Premises and causing an electric meter to be installed.

9.2 Licensee shall pay for all utility services used at the Premises as well as for the power needed to operate the Facilities. In the event Licensee cannot secure its own

metered electrical supply from the local utility company, Licensee may, with the approval of Licensor, which approval shall not be unreasonably withheld, conditioned, or delayed, and at its own cost and expense, sub-meter from Licensor, on a monthly basis, for the electric consumed by Licensee. Licensee shall pay monthly the current local utility company rate for sub-metered electric, after the meter is read by the Licensor and billed to Licensee. In addition, Licensee agrees to pay Licensor a One Hundred Dollar (\$100.00) per month administrative fee in return for Licensor reading the sub-meter in a timely manner each month and remitting to Licensee a breakdown of all utility charges associated with Licensee's communications facilities. Licensor acknowledges that Licensee provides a communication service which requires electrical power to operate twenty-four (24) hours per day, seven (7) days per week. If the interruption is for an extended period of time, subject to the reasonable approval of Licensor, Licensor agrees to allow Licensee the right to bring in a temporary source of power for the duration of the interruption. Licensor will not be responsible for interference with, interruption of or failure of such services to be furnished or supplied to Licensee.

9.3 Subject to the sole approval of Licensor, Licensor hereby grants to any company providing utility or similar services, including electrical power and telecommunications, to Licensee an easement over the Property 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 companies may from time to time require in order to provide such services to the Premises. In such event and upon Licensee's or the service company's request, Licensor will execute a separate recordable easement evidencing this grant. All costs for such utilities, easement, and the recordation thereof shall be borne solely by Licensee.

10. REMOVAL OF IMPROVEMENTS; SURRENDER

10.1 It is expressly acknowledged and agreed that the Facilities are and shall remain the personal property of Licensee, removable and replaceable at any time and from time to time by Licensee, notwithstanding any physical annexation thereof to the land.

10.2 At the termination of this License, the Licensee shall remove the Improvements from the Property. Licensee shall restore the Premises to its original condition, reasonable wear and tear excepted. If such time for removal causes Licensee to remain on the Property after termination of this License, Licensee shall be deemed to be a month to month licensee until such time as the removal of the Improvements are completed; provided, however, that if the Improvements are not removed within sixty (60) days after the termination of this License, they may be deemed to have been abandoned and may become the property of Licensor or removed at the election of Licensor at the expense of Licensee, unless otherwise agreed by Licensor.

11. AUTHORIZED USE

11.1 Licensor covenants, represents and agrees that it is the owner of the Property and the Tower, and it has the full right, power and authority to enter into, execute and deliver

this License. Further, if applicable, the undersigned individuals represent that they are corporate officers or partners of the Licensor, as applicable and have the right, power, and authority to bind the Licensor.

11.2 Subject to the terms of this License, Licensor covenants and agrees that the Licensee, on paying the fees and performing the conditions and covenants herein, may use the Premises and have the rights herein granted for the term hereof, and during any extension or renewal thereof.

12. MANAGEMENT OF SITE ENGINEERING

12.1 Licensee agrees not to interfere with communications transmission or reception equipment owned by Licensor or others of which the Licensed Premises forms a part, as shown on Exhibit C, a copy of which is attached hereto and made a part hereof, properly located on the Property provided that such equipment is actually in place as of the date of this License. Licensee also agrees not to improperly or unlawfully interfere with any communications transmission or reception equipment that may be attached to the Property in the future by any other person. If Licensee should cause such improper or unlawful interference, Licensee shall eliminate it immediately, except for brief tests necessary for the elimination of such interference.

12.2 If any measurable interference is caused by Licensor or anyone now or in the future holding a license or other interest from or under Licensor due to improper or unlawful operation, or any subsequent change or addition of equipment or improvements by Licensor or any such other holder on the Property, Licensor agrees to endeavor to assist Licensee to eliminate same in a prompt and timely manner upon written notice from Licensee to Licensor in accordance with Paragraph 12.4. Notwithstanding anything contained herein to the contrary, Licensor shall not be required to cause the elimination of interference that is beyond Licensor's control, such as interference caused by parties now or in the future holding a license or other interest for the operation of communications equipment from or under Licensor. In the event such interference is caused by a party holding such an interest from or under Licensor, Licensor shall not be required to act as a mediator in resolving any disputes between such party and Licensee after Licensor has in good faith and with due diligence attempted to assist Licensee to resolve the interference experienced by Licensee. In such event, Licensee may pursue all rights and remedies exclusively with the FCC against the third party causing the improper or unlawful interference, but shall not pursue any claims against Licensor for such third party's interference. Licensee may terminate this License if such third party refuses to cease the operations causing such interference, and neither party to this License shall have any liability to the other.

12.3 Notwithstanding anything herein contained to the contrary, Licensee acknowledges the existing uses at the Property and states that none of them will cause interference with Licensee's operations.

12.4 In accordance with the terms of this License, Licensor and Licensee agree to cooperate with each other in order to try to avoid the use of any equipment which will cause interference to the other or to anyone now or in the future holding a Property interest from or under Licensor.

The cooperative efforts shall include, but not be limited to the following types of actions:

- (i) written notification to each other at least ten (10) days prior to the initial installation of any subsequent wireless communications antennas on the Property; or
- (ii) in the event of interference, the aggrieved party shall provide evidence of such interference and such evidence shall ascertain, with a good degree of certainty, the source of such interference.

13. COMPLIANCE WITH LAWS

13.1 Licensee covenants and agrees to comply with all applicable governmental laws, rules, regulations and orders respecting the Improvements, and its use thereof, including but not limited to, those of the Federal Communications Commission ("FCC"), the Delaware Department of Natural Resources and Environmental Control ("DNREC") and the United States Environmental Protection Agency ("EPA"). Licensee will be allowed to make such alterations to the Premises in order to ensure that Licensee's improvements comply with all applicable federal, state, or local laws, rules or regulations, provided, however, that such alterations shall be subject to the approval of Licensor, such approval not to be unreasonably withheld, conditioned, or delayed, and which may be subject to the payment of additional License fees to Licensor.

13.2 Licensor covenants and agrees to use its best efforts to comply with all applicable governmental laws, rules, regulations and orders respecting the Property, the Tower and the use thereof, including but not limited to, those of the Federal Aviation Administration, DNREC and the EPA. Licensee accepts the Property, Tower, and the Building in their "as-is, where is" condition.

13.3 Licensor acknowledges and agrees that Licensor is responsible for painting and lighting, if required, of its Tower and tower structures subject to this License. To the best of both parties' knowledge, at present, the Tower is not required to have any special painting or illumination features. In the event Licensor is required to paint or illuminate the Tower due to Licensee's Facilities and/or Improvements, Licensee shall cause the Tower to comply with FCC regulations at Licensee's own cost and expense, provided, however, that all such work shall be subject to the reasonable approval of Licensor, which approval shall not be unreasonably withheld, conditioned, or delayed.

14. INDEMNIFICATION

14.1 Licensee hereby agrees to defend, indemnify and hold Licensor harmless from and against any claim, liability, loss or expense (including reasonable attorneys' fees) from personal injury (including death), property damage or other liability, including but not limited to, claims or loss to the extent due to interference with or from the communications equipment of Licensee or that of others at or near the Property to the

extent resulting from or arising out of the use and/or occupancy of the Premises and the Tower by the Licensee, its employees, agents, contractors or invitees, and the installation, operation, use, maintenance, repair or removal of the Facilities by Licensee and such persons acting on its behalf excepting, however, to the extent such claims, liabilities or damages as may be due to or caused by the negligent or intentional wrongful acts or omissions of the Licensor, or its employees, agents, contractors or invitees.

14.2 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 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, which consent shall not be unreasonably withheld, conditioned, or delayed; and (iii) shall reasonably cooperate with the indemnifying party in the defense of the claim, demand, lawsuit, or the like.

15. DEFAULT

15.1 If Licensee defaults in the payment of license base fees, or any additional fees, or defaults in the performance of any other covenants or conditions herein contained, Licensor may give notice of such default, and if Licensee does not cure any fee default within thirty (30) days of such notice or within forty-five (45) days of such notice of nonmonetary default (or if such nonmonetary default is of such nature that it cannot be completely cured within forty-five (45) days), if Licensee does not commence remedial action within such forty-five (45) days and thereafter proceed with reasonable diligence and in good faith to cure such default within an additional thirty (30) days, then Licensor may terminate this License on not less than fifteen (15) days' notice to Licensee, and on the date specified in said notice, Licensee's right to possession of the Premises shall cease, and Licensee shall quit and surrender the Premises to Licensor and this License shall terminate as of such termination date.

15.2 Licensor shall also have any and all other rights and remedies as may be provided in law or equity in the event Licensee defaults hereunder and fails to cure such default within the applicable grace period provided for in paragraph

15.3 In the event Licensor defaults in any of its covenants and obligations hereunder, Licensee shall provide Licensor with notice thereof, and Licensor shall have forty-five (45) days from such notice of default to cure such default. If such default is of such nature that it cannot be completely cured within forty-five (45) days, and Licensor does not commence remedial action within such forty-five (45) days and thereafter proceed with reasonable diligence and in good faith to cure such default within an additional thirty (30) days, the Licensee may terminate this License on not less than fifteen (15) days' notice to Licensor. Such termination shall be the sole remedy of Licensee and Licensor shall bear no further liability to Licensee, provided, however, that in the event

Licensor unreasonably or improperly fails to provide Licensee with access to the Property or Premises, Licensee may seek to obtain specific performance in a court of competent jurisdiction in the State of Delaware to regain such access. In no event, however, shall Licensee be entitled to money damages against Licensor as a result of Licensor's failure to provide such access.

16. TERMINATION

16.1 This License may be terminated by Licensee without any penalty or further liability (except as hereinafter provided) upon one hundred twenty (120) days written notice to Licensor upon the occurrence of any of the following: (a) Licensee is unable to obtain or maintain any Permit as described in paragraph 4.2 or any and all easements or rights of way required by a third party; or (b) the Property, the Tower or the Premises is or becomes unacceptable under the Licensee's design or engineering specifications for Licensee's tower facilities or communications systems; or (c) Licensee's license to operate is revoked, removed or suspended; or (d) the Improvements, the Tower, or any material portion thereof are destroyed by fire or other casualty. In the event that Licensee terminates this License by reason of this paragraph and such termination comes within the original five (5) year term, Licensee shall be responsible for and shall pay to Licensor the License fee for the remainder of such term.

16.2 This License may be terminated by Licensor without penalty or liability to Licensor therefor upon one hundred twenty (120) days' written notice to Licensee in the event that Licensor removes any tower, tank or supporting structure from the Premises because of structural, water-related, or environmental reasons, the adoption of new laws or regulations affecting the use of the Premises, or other similar reasons related to the inability of Licensee to continue to use the Premises for its present purpose. In addition, this License may be so terminated if the Tower, tank, or supporting structure becomes seriously impaired for any reason.

17. CONDEMNATION

If a condemning authority takes all of the Premises or the Property, or a portion sufficient in Licensee's sole determination, to render the Premises or Tower unsuitable for the use which Licensee was then making thereof, this License shall terminate and be of no further force or effect as of the date the title vests in the condemning authority. Licensor agrees to provide Licensee with prompt notice of any condemnation proceedings. Licensee shall have no right to participate in the condemnation proceeds for the value of the land taken, but shall be entitled to make claim for its moving expenses, if cognizable under applicable law, provided that the same does not diminish the Licensor's condemnation award. Sale of all or part of the Property to a purchaser with the power of eminent domain under the threat of condemnation shall be treated as a taking by condemnation under this Article.

18. ASSIGNMENT

18.1 Licensor may assign this License upon written notice to Licensee and said assignee will be responsible to Licensee for the performance of all the terms and

conditions of this License.

18.2 Licenser agrees that Licensee may assign all rights, benefits, duties and obligations under this License without Licenser's consent to any corporation, firm or person licensed by governmental agencies to operate a wireless communications system which is (a) controlled by Licensee, or (b) controlling Licensee, or (c) otherwise affiliated with Licensee by giving Licenser thirty (30) days written notice. Licensee shall not otherwise be permitted to assign or sublet this License to any other party without the prior written consent of Licenser, such consent not to be unreasonably withheld. Except for such assignments permitted without Licensee's consent as stated in (a), (b), and (c) above, Licensee shall remain liable to Licenser in connection with all of Licensee's duties and obligations under this License. Notwithstanding the foregoing, in connection with any assignment requiring Licenser's consent, Licenser may, in its sole discretion, agree to accept and consent to such assignment and to relieve the assignor Licensee from its duties and obligations under this License as of the date of such assignment.

19. MEMORANDUM OF LICENSE

Upon request, Licenser agrees to execute a memorandum of this License in recordable form which Licensee may record in the recording office of the County in which the Property is located.

20. MISCELLANEOUS

20.1 This License contains all agreements, promises and understandings between the Licenser and Licensee. The Lease Agreement shall be of no further force or effect as of the Commencement Date. No verbal or oral agreements, promises or understandings shall be binding upon either the Licenser or Licensee in any dispute, controversy or proceeding at law, and any addition, variation or modification to this License shall be void and ineffective unless made in writing signed by the parties.

20.2 This License and the performance thereof shall be governed, interpreted, construed and regulated by the Laws of the State of Delaware, and all disputes shall be resolved solely in the courts of the State of Delaware.

20.3 All notices hereunder, in order to be effective, must be in writing (unless otherwise expressly provided for herein) and shall be given by either certified mail return receipt requested, or by nationally recognized overnight courier service, addressed as follows (or any other address that the party to be notified may have designated to the sender by like notice):

To Licenser: City of Wilmington
Attn: Commissioner of Public Works
Department of Public Works
800 French Street, 6th Floor
Wilmington, DE 19801

With a copy to: City of Wilmington
Attn: City Solicitor
City of Wilmington Law Department,
800 French Street, 9th Floor,
Wilmington, DE 19801

To Licensee: New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site Name: Fairfax (DE)
FA Number 10009893
575 Morosgo Drive
Atlanta, GA 30324

With copies to: New Cingular Wireless PCS, LLC
Attn: Legal Department
Re: Cell Site Name: Fairfax (DE)
FA Number 10009893
208 S. Akard Street
Dallas, TX 75202-4206

New Cingular Wireless PCS, LLC
Attn: Lease Administration – Mail Drop 370
Re: Cell Site Name: Fairfax (DE)
FA Number 10009893
200 North Warner Road
King of Prussia, PA 19406

20.4 Either party shall, from time to time, on not less than thirty (30) days prior written request by the other, execute, acknowledge and deliver a written statement certifying to such party's best knowledge, that this License is unmodified and in full force and effect, or that the License is in full force and effect as modified and listing the instruments of modification; the dates to which license fees have been paid; and whether or not the other party is in default hereunder, and if so, specifying the nature of the default. It is intended that any such statement may be relied upon by the requesting party's prospective purchaser, mortgagee, sublicensee or assignee.

20.5 No consent or waiver, express or implied, by either party to or of any breach of any covenant, condition or duty of the other shall be construed as a consent or waiver to or of any other breach of the same or any other covenant, condition or duty.

20.6 This License shall be binding upon the parties hereto, their respective heirs, executors, administrators, successors in interest, successors in title and assigns.

20.7 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.

21. **HAZARDOUS WASTE**

21.1 Licensee represents and warrants that its use of the Property will not generate and that Licensee will not store or dispose on the Property nor transport over or to the Property any hazardous substance. Licensee shall be responsible for compliance with all hazardous waste laws (including for any required clean-up) pertaining to its operation on the Property and Licensee will defend, indemnify and hold harmless Licensor from and against any and all liabilities, damages, losses, costs, assessments, penalties, fines, expenses and fees including reasonable legal fees, to the extent of Licensee's obligations to comply therewith, or breach thereof. This indemnity specifically includes reasonable costs, expenses and fees incurred by Licensor in connection with any investigation of Property conditions or clean-up, removal or restoration of the Property related to hazardous wastes of Licensee required by any governmental authority. This indemnification shall survive the expiration or earlier termination of this License Agreement.

21.2 In the event Licensee becomes aware of any hazardous materials on the Property, or any environmental, health or safety condition or matter relating to the Property, that, in Licensee's sole determination, renders the condition of the Premises or Property unsuitable for Licensee's use, or if Licensee believes that the licensing or continued licensing of the Premises would expose Licensee to undue risks of liability to a government agency or third party, Licensee will have the right to terminate this Agreement upon written notice to Licensor. Such termination shall be the sole remedy of Licensee and Licensor shall bear no further liability to Licensee of any kind whatsoever.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this License Agreement to be duly executed by their authorized representatives as of the date first above written.

LICENSOR:

THE CITY OF WILMINGTON

By: _____

Print Name:

Its:

Date: _____

LICENSEE:

NEW CINGULAR WIRELESS PCS, LLC

By: AT&T Mobility Corporation

Its: Manager

By: _____

Name: John Green

Title: Area Manager, Construction & Engineering

Date: _____

Approved as to Form:

First Assistant City Solicitor

EXHIBIT A

DESCRIPTION OF PROPERTY

Page 1 of 2

to the License Agreement dated _____, 2016, by and between The City of Wilmington, a municipal corporation of the State of Delaware, as Licensor, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Licensee.

The Property is legally described 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 B

DESCRIPTION OF PREMISES

Page 1 of 2

to the License Agreement dated _____, 2016, by and between The City of Wilmington, a municipal corporation of the State of Delaware, as Licensor, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Licensee.

The Premises are legally described 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 C

DESCRIPTION OF FACILITIES

Page 1 of 2

to the License Agreement dated _____, 2016, by and between The City of Wilmington, a municipal corporation of the State of Delaware, as Licensor, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Licensee.

The Facilities are described 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.