

OPTION AND COMMUNICATIONS SITE LEASE AGREEMENT

This OPTION AND COMMUNICATIONS SITE LEASE AGREEMENT (this “Agreement”) will become effective when all parties have signed the Agreement (the “Effective Date”). This Agreement is entered into by the **Kenai Peninsula Borough**, a municipal corporation, whose mailing address is 144 North Binkley Street, Soldotna, Alaska 99669 (hereinafter the “KPB” or “Lessor”), and **New Cingular Wireless PCS, LLC**, a Delaware limited liability company, whose mailing address is 1025 Lenox Park Blvd. NE, 3rd Floor, Atlanta, GA 30319 (hereinafter “Lessee”).

PART I. BACKGROUND, AUTHORIZED CONTACT AND CONTRACT DOCUMENTS

1. Background. The KPB owns certain real property located in the Kenai Peninsula Borough, in the State of Alaska, that is more particularly described and/or depicted in Exhibit 1 attached hereto (the “Property”). For good and valuable consideration, the parties agree that the KPB will grant the Lessee the right to use a portion of the Property in accordance with the terms of this Agreement.

2. Authorized Contact. All communications about this Agreement shall be directed as follows, any reliance on a communication with a person other than the listed below is at the party’s own risk.

KPB

Name: Kenai Peninsula Borough
Attn: Land Management Division
144 N. Binkley St.
Soldotna, AK 99669

LESSEE

Name: New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #: AN2640; Forest Offload AK
Fixed Asset#: 14738331
1025 Lenox Park Blvd. NE, 3rd Floor
Atlanta, GA 30319

New Cingular Wireless PCS, LLC
Attn: Legal Dept – Network Operations
Re: Cell Site #: AN2640; Forest Offload AK
Fixed Asset #: 14738331
208 S. Akard Street
Dallas, TX 75202-4206

3. Contract Documents. As authorized by KPB Ordinance 2020-___, this lease agreement (“Agreement”) is the final and complete understanding of the parties. The following exhibits and appendices are attached and are considered part of this Agreement as well as anything incorporated by reference or attached to those exhibits or appendices:

Appendix A: Lease Provisions Required by KPB 17.10

Exhibit 1: Description of the “Property” and the “Leased Premises”

Exhibit 2: Leased Premises site sketch

Exhibit 3: Memorandum of Lease

If in conflict, the Agreement shall control. If in conflict the order of precedence shall be: the Agreement, Appendix A, Exhibit 1, Exhibit 2, and then Exhibit 3.

PART II. LEASE DESCRIPTION AND TERMS

4. DESCRIPTION OF PROPERTY; OPTION.

(a) Subject to the terms and conditions of this Agreement, KPB hereby grants to Lessee an exclusive option to lease a certain portion of the Property containing approximately 1,600 square feet (40' x 40') including the air space above such ground space as described and depicted on Exhibit 1 and Exhibit 2 attached hereto (the “Leased Premises”) for the placement of the Communication Facilities. In addition, a buffer area ten (10) feet in width around the perimeter of the Leased Premises may be utilized by the Lessee strictly for purposes of complying with Section 10(b) below.

(b) During the Option Term, and during the Term, Lessee and its agents, engineers, surveyors and other representatives will have the right to enter upon the Property to inspect, examine, conduct soil borings, drainage testing, material sampling, radio frequency testing and other geological or engineering tests or studies of the Property (collectively, the “Tests”), to apply for and obtain licenses, permits, approvals, or other relief required of or deemed necessary or appropriate at Lessee’s sole discretion for its use of the Leased Premises and include, without limitation, applications for zoning variances, zoning ordinances, amendments, special use permits, and construction permits (collectively, the “Government Approvals”), initiate the ordering and/or scheduling of necessary utilities, and otherwise to do those things on or off the Property that, in the opinion of Lessee, are necessary in Lessee’s sole discretion to determine the physical condition of the Property, the environmental history of the Property, KPB’s title to the Property and the feasibility or suitability of the Property for Lessee’s permitted use, all at Lessee’s expense. Lessee will not be liable to KPB or any third party on account of any pre-existing defect or condition on or with respect to the Property, whether or not such defect or condition is disclosed by Lessee’s inspection. Lessee will restore the Property to its condition as it existed at the commencement of the Option Term, reasonable wear and tear and loss by casualty or other causes beyond Lessee’s control excepted.

(c) In consideration of KPB granting Lessee the Option, Lessee agrees to pay KPB the sum of Three Thousand Five Hundred and No/100 Dollars (\$3,500.00) within thirty (30) business days after the Effective Date. The Option may be exercised during an initial term of one (1) year commencing on the Effective Date (the “Option Term”).

(d) Lessee may assign this Option to any person or entity, at any time with prior written consent of KPB’s mayor which will not be unreasonably withheld or delayed so long as the Assignee agrees to the assignment and novation and complies with all terms of this Agreement. Notwithstanding the foregoing, upon thirty (30) days’ written notice to KPB, Lessee may assign this Option or its rights or obligations to (a) any person or entity controlling, controlled by, or under common control with Lessee, or (b) in connection with the sale or other transfer of substantially all of Lessee’s assets in the FCC market area where the Leased Premises is located. If this Option is assigned, the assignee shall comply with all terms of the assignment, this Agreement, and applicable borough code.

(e) During the Option Term, Lessee may exercise the Option by notifying KPB in writing. If Lessee exercises the Option, then KPB leases the Leased Premises to Lessee subject to the terms and conditions of this Agreement. If Lessee does not exercise the Option during the Initial Option Term or any extension thereof, then this Agreement will terminate, and the parties will have no further liability to each other.

(f) If during the Option Term, or during the Term if the Option is exercised, KPB decides to subdivide, sell, or change the status of the zoning of the Leased Premises, the Property or any of KPB's contiguous, adjoining or surrounding property (the "Surrounding Property"), or in the event of a threatened foreclosure on any of the foregoing, KPB shall immediately notify Lessee in writing. KPB agrees that during the Option Term, or during the Term if the Option is exercised, KPB shall not initiate or consent to any change in the zoning of the Leased Premises, the Property or the Surrounding Property or impose or consent to any other use or restriction that would prevent or limit Lessee from using the Leased Premises for the permitted use. Any and all terms and conditions of this Agreement that by their sense and context are intended to be applicable during the Option Term shall be so applicable.

5. TERM.

(a) The initial term will be five (5) years (the "Initial Term"), commencing on the effective date of written notification by Lessee to KPB of Lessee's exercise of the Option (the "Term Commencement Date").

(b) Lessee will have the option to extend the term of this Agreement for four (4) successive terms of five (5) years each (each, a "Renewal Term"). Each Renewal Term will commence automatically, unless Lessee delivers notice to KPB, not less than thirty (30) days prior to the end of the then-current Term, of Lessee's intent not to renew. For purposes of this Agreement, "Term" includes the Initial Term and any applicable Renewal Term(s).

(c) Should Lessee or any assignee, sublessee or licensee of Lessee hold over the Leased Premises or any part thereof after the expiration of this Agreement, such holdover shall constitute and be construed as a tenancy from month-to-month only, but otherwise upon the same terms and conditions.

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

(a) by Lessee upon written notice to KPB, if Lessee is unable to obtain, or maintain any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now or hereafter intended by Lessee; or if Lessee in its sole discretion that the cost of or delay in obtaining or retaining the same is commercially unreasonable;

(b) by Lessee, upon written notice to KPB, if Lessee determines, in its sole discretion, due to the title reports or survey results, that the condition of the Leased Premises is unsatisfactory for its intended uses;

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

(d) by Lessee upon sixty (60) days' prior written notice to KPB for any reason or no reason, so long as Lessee pays KPB a termination fee equal to six (6) months' Rent, at the then-current rate, and subject to removal requirements contained within Section 12. No such termination fee will be payable on account of the termination of this Agreement by Lessee under any termination provision contained in any other Section of this Agreement.

7. RENT. Beginning on the first day of the month following the date that Lessee exercises the Option (the "Rent Commencement Date"), Lessee shall pay to KPB a monthly rent payment of One Thousand Four Hundred and No/100 Dollars (\$1,400.00) ("Rent"), at the address set forth above on or before the fifth (5th) day of each calendar month in which Rent is due, in advance. Rent will be prorated for any partial month. On each anniversary of the Term Commencement Date, Rent shall adjust annually by Two and Five Tenths percent (2.5%) over the prior year's Rent amount.

8. TAXES. Lessee shall pay any real or personal property taxes assessed on, or any portion of such taxes attributable to, the Communication Facilities located on the Leased Premises, including any taxable private leasehold interests.

9. USE. The Leased Premises are being leased for the purpose of erecting, installing, operating and maintaining radio or communications towers, transmitting and receiving equipment, antennas, dishes, mounting structures, equipment shelters and other supporting structures, and related equipment (collectively, the "**Communication Facilities**"). Lessee may, subject to the foregoing, make any improvement, alteration or modification to the Leased Premises as are deemed appropriate by Lessee for the permitted use herein. Lessee will have the right to clear the Leased Premises of any trees, vegetation, or undergrowth which interferes with Lessee's use of the Leased Premises for the intended purposes. Notwithstanding Section 14 below, Lessee will have the exclusive right to install and operate upon the Leased Premises communications towers, buildings, equipment, antennas, dishes, fencing, and other accessories related thereto, and to alter, supplement, and/or modify same as may be necessary.

10. SECURITY AND BUFFER LANDSCAPING.

(a) **Fence & Site Security.** Notwithstanding Section 4 above, the Lessee will install a locked, sight-obscuring fence at least six feet (6') in height around the perimeter of the Leased Premises to protect against unauthorized access to the Leased Premises. The fence must be of a color that blends in with the surrounding landscape (i.e. brown, green or similar color). Lessee may also elect, at its expense, to construct such other enclosures and/or fences as Lessee reasonably determines to be necessary to secure its improvements, including the tower(s), building(s), guy anchors, and related improvements situated upon the Leased Premises. Lessee may also undertake any other appropriate means to restrict access to its communications towers, buildings, applicable guy anchors, applicable guy wires, and related improvements, including, without limitation, posting signs for security purposes.

(b) **Buffer Landscaping.** To blend with the surrounding use of the Property as a trail system and outdoor space, the Lessee will only clear Leased Premises to the extent necessary for its Communication Facilities. Within thirty (30) days of completing fence installation around the Leased Premises, the Lessee will install a landscaping bed with a width of 10 feet outside of the fenced-in area of the Leased Premises, as shown in Exhibit 2, excluding the access drive, to ensure a vegetative buffer exists between the leased area and the trail system and outdoor space. Trees must be planted within the landscaping bed at intervals no greater than 15 feet on center. Evergreen trees must be a minimum of 6 feet in height at time of planting, and deciduous trees must have a minimum caliper of one and one-half-inch. No more than 50 percent of planted trees may be deciduous. At least one shrub with a minimum height of 18 inches at planting will be

planted for every 100 square feet of landscaping bed. Existing native trees and shrubs may be used to meet buffer landscaping requirements.

(c) **Performance Bond; Two-Year Replacement Period.** Lessee shall provide a performance bond either in the form of cash or through a corporate surety qualified to do business in the state in the amount of \$2500, prior to the KPB's execution of this Agreement. The bond may be used for the purpose of replacement of any dead trees or bushes within a period of two years after initial installation and any unused portion of the security will be released to the Lessee following the expiration of the two-year replacement period. Following the expiration of the two-year replacement period, KPB shall be solely responsible for replacement of dead trees or bushes within the landscaping buffer.

11. ACCESS, MAINTENANCE, AND UTILITIES.

(a) **Access.** During the Term, Lessee, and its guests, agents, customers, lessees, sublessees and assigns will have the unrestricted, exclusive right to use, and will have free and unfettered access to, the Leased Premises seven (7) days a week, twenty-four (24) hours a day. KPB for itself, its successors and assigns, hereby grants and conveys unto Lessee, its customers, employees, agents, invitees, sublessees, sublicensees, successors and assigns a nonexclusive easement to the extent depicted on Exhibit 2 (a) for ingress and egress, and (b) for the construction, installation, operation and maintenance of overhead and underground electric and other utility facilities (including fiber, backhaul, wires, poles, guys, cables, conduits and appurtenant equipment), with the right to reconstruct, improve, add to, enlarge, change and remove such facilities, over, across and through any easement for the benefit of and access to the Leased Premises, subject to the terms and conditions herein set forth. KPB agrees to cooperate with Lessee's efforts to obtain such utilities and services. If there are utilities already existing on the Leased Premises which serve the Leased Premises, Lessee may utilize such utilities and services. Upon Lessee's request, KPB will execute and deliver to Lessee requisite recordable documents evidencing the easements contemplated hereunder within fifteen (15) days of Lessee's request.

(b) **Maintenance.** Lessee will keep and maintain the Leased Premises in good condition.

(c) **Utilities.** The Lessee is solely responsible for installing separate meters for utility use and payment, as applicable, and shall not connect to any KPB-owned electrical, communication, or other utility without KPB's prior written approval, which shall not be unreasonably withheld, conditioned, or delayed.

12. EQUIPMENT, FIXTURES AND REMOVAL. The Communication Facilities will at all times be the personal property of Lessee and/or its sublessees and licensees, as applicable. Lessee or its customers shall have the right to erect, install, maintain, and operate on the Leased Premises such equipment, structures, fixtures, signs, and personal property as Lessee may deem necessary or appropriate, and such property, including the equipment, structures, fixtures, signs, and personal property currently on the Leased Premises, will not be deemed to be part of the Leased Premises, but will remain the property of Lessee or its customers. Unless otherwise agreed to in writing by the parties, within ninety (90) days after the expiration or earlier termination of this Agreement (the "Removal Period"), Lessee must remove its improvements and restore the Leased Premises to grade in a natural condition free of contamination, reasonable wear and tear excepted, which shall include removal of all concrete and other foundation materials to a depth of five feet (5') below grade, and perform all obligations under this Agreement during the Removal Period, including without limitation, the payment of Rent on a prorated per diem basis, at the rate in effect upon the expiration or termination of this Agreement. Any property not so removed shall be deemed abandoned and may be removed and disposed of by KPB in such manner as KPB will determine,

without any obligation on the part of KPB to account to Lessee for any proceeds therefrom. Time is of the essence.

13. ASSIGNMENT. Lessee may assign this Agreement to any person or entity, at any time with prior written consent of KPB's mayor which will not be unreasonably withheld or delayed so long as the Assignee agrees to the assignment and novation and complies with all terms of this Agreement. Notwithstanding the foregoing, upon thirty (30) days' written notice to KPB, Lessee may assign this Agreement or its rights or obligations to (a) any person or entity controlling, controlled by, or under common control with Lessee, or (b) in connection with the sale or other transfer of substantially all of Lessee's assets in the FCC market area where the Leased Premises is located.

14. SUBLEASING AND REVENUE SHARE.

(a) **Subleasing.** Lessee will have the exclusive right to sublease or grant licenses to use the improvements or any other towers, structures, equipment, or ground space on the Leased Premises, provided that Lessee sends Lessor written notice within (15) days of such sublease or grant licenses.

(b) **Revenue Share.** In addition to and separate from the Rent, Lessee shall pay to the Lessor thirty-three percent (33%) of rents actually collected by Lessee from any applicable sublessees, exclusive of non-recurring fees (e.g. structural analysis fees, mount analysis fees, and capital expenditures) and reimbursements (such as for taxes and utilities) ("Revenue Share"). The Revenue Share shall be paid to Lessor with the Rent in the month immediately following receipt by Lessee from the applicable sublessee. Upon reasonable written request, Lessee will provide Lessor redacted copies of any applicable Sublease for the purpose of confirming relevant financial terms and information. For the purposes of this Agreement: (i) "Sublease" is defined as any arrangement in which the Lessee or any sublessee leases to another party or entity, any portion of the Lease Premises described in this Agreement or improvements thereon, including but not limited to a sublease for an antenna, microwave dish, or wireless communications equipment; and (ii) "Sublessee" means any sublessee or licensee of Lessee, that: (A) has entered into a sublease or license with Lessee for the use of the improvements after the Effective Date; and (B) is not paying any rent or fees directly to Lessor for the use of ground space related to the use of Lessee's improvements.

(c) **Authorized Contact of Sublessee.** Lessee shall provide the KPB the name, telephone number, and email address of the authorized contact for the sublessee who is responsible for sublessee's day-to-day operations or activities on the Leased Premises.

15. CO-LOCATE RIGHTS RESERVED BY KPB. KPB reserves the right, on payment to Lessee of rental fees consistent with market rates for other similarly situated uses in the region, to install emergency response communication equipment on Lessee's tower. Ninety (90) days prior to the exercise of this reservation, KPB shall provide Lessee with a complete inventory of equipment and proposed vertical location. Lessee shall confirm KPB's equipment will not interfere with Lessee's or then-existing sublessee's equipment or propose an alternate location. Upon installation of KPB's equipment on the Leased Premises, any future sublessee's equipment shall not interfere with KPB's emergency response communication equipment, provided such equipment is properly installed and lawfully operated. Notwithstanding the foregoing, KPB's right to install equipment on Lessee's tower will be subject to Lessee's reasonable determination that, at the time in which KPB proposes to install its equipment, Lessee's tower shall have sufficient space and structural capacity to accommodate the additional loading associated with KPB's proposed equipment installation. In connection with the foregoing, each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, instruments and documents, as the other party may reasonably request

in order to carry out the intent and accomplish the purposes of this Section 15 and the consummation of the transactions contemplated hereby.

16. COVENANTS, WARRANTIES AND REPRESENTATIONS.

(a) KPB represents and warrants that KPB is the owner in fee simple of the Property, free and clear of all liens and encumbrances except as to those which may have been disclosed to Lessee in writing prior to the execution hereof, and that KPB alone has full right to lease the Leased Premises for the Term.

(b) KPB shall not do or knowingly permit anything during the Term that will unreasonably interfere with or negate any Lessee's quiet enjoyment and use of the Leased Premises or cause Lessee's use of the Leased Premises to be in nonconformance with applicable local, state, or federal laws. KPB will cooperate with Lessee in any effort by Lessee to obtain certificates, permits, licenses and other approvals that may be required by any governmental authorities. KPB agrees to promptly execute any necessary applications, consents or other documents as may be reasonably necessary for Lessee to apply for and obtain the proper zoning approvals required to use and maintain the Leased Premises and the Communication Facilities.

(c) To the best of KPB's knowledge, KPB has complied and will comply with all laws with respect to the Property. No asbestos-containing thermal insulation or products containing PCB, formaldehyde, chlordane, or heptachlor or other hazardous materials have been placed on or in the Property by KPB or, to the knowledge of KPB, by any prior owner or user of the Property. To the knowledge of KPB, there has been no release of or contamination by hazardous materials on the Property.

(d) Subject to Section 11 above, Lessee will have access to all utilities required for the operation of Lessee's improvements on the Leased Premises that are existing on the Property.

(e) Except for the sublessees and licensees of Lessee, there currently exist no licenses, sublicenses, or other agreements, written or oral, granting to any party or parties the right of use or occupancy of any portion of the Leased Premises; there are no outstanding options or rights of first refusal to purchase the Property or any portion thereof or interest therein, or any equity or interest in KPB if KPB is an entity; and there are no parties (other than KPB) in possession of the Leased Premises except as to those that may have been disclosed to Lessee in writing prior to the execution hereof.

(f) Each party hereto warrants and represents that it has the necessary power and authority to enter into and perform its respective obligations under this Agreement.

17. WAIVERS.

(a) KPB hereby waives any and all lien rights it may have, statutory or otherwise, in and to the Communication Facilities or any portion thereof, regardless of whether or not such is deemed real or personal property under applicable laws. KPB will not assert any claim whatsoever against Lessee for loss of anticipatory profits or any other indirect, special, incidental or consequential damages incurred by KPB as a result of the construction, maintenance, operation or use of the Leased Premises by Lessee.

(b) EACH PARTY HERETO WAIVES ANY AND ALL CLAIMS AGAINST THE OTHER FOR ANY LOSS, COST, DAMAGE, EXPENSE, INJURY OR OTHER LIABILITY WHICH IS IN THE NATURE OF INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES WHICH ARE SUFFERED OR INCURRED AS THE RESULT OF, ARISE OUT OF, OR ARE IN ANY

WAY CONNECTED TO THE PERFORMANCE OF THE OBLIGATIONS UNDER THIS AGREEMENT.

18. INSURANCE. Lessee and any sublessees or assignees shall carry and maintain for the duration of the Term, including renewals and the Removal Period, insurance against claims for injuries to persons or property which may arise from or in connection with the Lessee's operation, use, or occupancy of the Leased Premises. The Lessee, including any sublessees or assignees, will bear the cost of such insurance. Coverage and policy limits will be as follows:

(a) Commercial General Liability (CGL): CGL insurance on ISO Form CG 00 01 (or its equivalent) on an "occurrence" basis, including property damage, bodily injury and personal injury with limits of \$1,000,000 per occurrence. If a general aggregate limit applies, the general aggregate limit shall be twice the required occurrence limit.

(b) Umbrella / Excess policy: With limits of \$2,000,000 per occurrence and in the aggregate. Lessee may use any combination of primary and excess insurance to meet the total limits required.

(c) Worker's Compensation Insurance: Insurance as required by the State of Alaska, with Statutory Limits, and Employer's liability Insurance limits of \$500,000 per accident for bodily injury or disease and per disease policy limit.

(d) Property Insurance: Insuring against all risks of loss to any Lessee improvements at full replacement cost with no insurance penalty provision. Lessee shall have the right to self-insure such Property Insurance.

(e) Automobile Liability: Commercial automobile liability coverage for all owned, hired, and non-owned autos with limits of \$1,000,000 per accident for bodily injury and property damage.

19. OTHER INSURANCE PROVISIONS.

(a) The insurance coverage provided for herein may be maintained pursuant to master policies of insurance covering other communication facilities of Lessee and its corporate affiliates. All insurance policies required to be maintained by Lessee hereunder must be with responsible insurance companies, eligible to do business in the state of Alaska. Lessee shall provide at least thirty (30) days' prior written notice to KPBC of cancellation or nonrenewal of any required insurance that is not replaced. Lessee must evidence such insurance coverage by delivering to KPBC, if requested, a copy of a certificate of insurance of such policies issued by the insurance companies underwriting such risks or Lessee's form of self-insurance.

(b) The KPBC shall be included as additional insured with respect to liability caused, in whole or in part, by Lessee's operations under this Agreement.

(c) The Lessee's insurance coverage, except for workers' compensation/employer's liability insurance and self-insured property coverage, shall be primary insurance with respect to the KPBC and the Lessee's use and occupation of the Leased Premises. Any insurance maintained by the KPBC will be excess of the Lessee's insurance and will not contribute to it.

(d) The Property Insurance or self-insurance must include the KPB as Joint Loss Payee as its interest may appear, and the provision of Joint Loss Payee status satisfies any requirement for waiver of subrogation for Lessee's self-insured property coverage.

(e) Notwithstanding the foregoing, Lessee may self-insure any required coverage under the same terms as required by this Agreement.

20. WAIVER OF SUBROGATION. To the extent allowed by law, Lessee hereby grants to KPB a waiver of any right of subrogation which any insurer of said Lessee may acquire against the KPB by virtue of the payment of any loss under such insurance. This provision applies regardless of whether or not the KPB has received a waiver of subrogation endorsement from the insurer.

21. NON-EXCLUSIVITY. KPB acknowledges and agrees that, except as may be disclosed to Lessee in writing prior to the execution hereof, there are no prior existing rights, uses, or authorization granted to third parties or retained by KPB to locate improvements below grade or in proximity to the Leased Premises. Upon at least sixty (60) days prior written notice to Lessee, KPB reserves the right to grant further or additional rights or authorization to locate improvements below grade or in proximity to the Leased Premises to the extent such rights or authorizations do not unreasonably interfere with Lessee's equipment or operations.

22. LESSEE LIABILITIES. In addition to other liabilities under this Agreement, the Lessee has the following liabilities and agrees:

(a) The Lessee assumes all risk of loss, damage or destruction to Lessee's improvements on the Leased Premises.

(b) The Lessee will comply with all applicable federal, state, and local laws or regulations, including relevant environmental laws, as well as public health and safety laws and other laws relating to the sitting, permitting, construction, operation and maintenance of any facility, improvement or equipment on the Leased Premises.

(c) The KPB has no duty, either before or during the lease term, to inspect the Leased Premises or warn of hazards and if the KPB inspects the Leased premises, it shall incur no additional duty nor any liability for hazards not identified or discovered through such inspections. This Section shall survive the termination or revocation of this Agreement, regardless of cause.

(d) The Lessee has an affirmative duty to protect from damage the Property and interests of the KPB related to this Agreement.

23. INDEMNIFICATION.

(a) Lessee agrees to defend, indemnify, and hold harmless KPB, its employees, public officials, and volunteers, with respect to any action claim or lawsuit arising out of (1) a breach of this Agreement or (2) the use and occupancy of the Leased Premises or the Property by the Lessee. This agreement to defend, indemnify, and hold harmless includes all losses and liabilities without limitation as to any damages resulting from judgment, or verdict, and includes the award of any attorney's fees even if in excess of Alaska Civil Rule 82. The obligations of Lessee arise immediately upon notice to the KPB of any action, claim, or lawsuit. KPB will notify Lessee in a timely manner of the need for indemnification but such notice is not a condition precedent to Lessee's obligation and may be waived where the Lessee has

actual notice. This agreement applies and is in full force and effect whenever and wherever any action, claim or lawsuit is initiated, filed, or otherwise brought against KPB relating to the Lessee's use and occupancy of the Leased Premises or the Property. Notwithstanding the foregoing, Lessee's duty to indemnify, defend, and hold harmless KPB as set forth above shall not apply to the extent a claim arises from the negligence or willful misconduct of KPB, its employees, public officials, and volunteers.

(b) To the extent allowed by law and subject to a specific appropriation by the KPB Assembly for this purpose, KPB agrees to defend, indemnify, and hold harmless Lessee, its employees, affiliates, officers, directors, successors and assigns, with respect to any action claim or lawsuit arising out of (1) a breach of this Agreement or (2) the use and occupancy of the Leased Premises or the Property by the KPB. This agreement to defend, indemnify, and hold harmless includes all losses and liabilities without limitation as to any damages resulting from judgment, or verdict, and includes the award of any attorney's fees even if in excess of Alaska Civil Rule 82. The obligations of KPB arise immediately upon notice to the Lessee of any action, claim, or lawsuit. Lessee will notify KPB in a timely manner of the need for indemnification but such notice is not a condition precedent to KPB's obligation and may be waived where the KPB has actual notice. This agreement applies and is in full force and effect whenever and wherever any action, claim or lawsuit is initiated, filed, or otherwise brought against Lessee relating to the KPB's use and occupancy of the Leased Premises or the Property. Notwithstanding the foregoing, KPB's duty to indemnify, defend, and hold harmless Lessee as set forth above shall not apply to the extent a claim arises from the negligence or willful misconduct of Lessee, its employees, its employees, affiliates, officers, directors, successors and assigns. Lessee further acknowledges the following: (1) KPB currently has no appropriation currently available to it to defend and indemnify Lessee under this provision; (2) the enactment of any such appropriation remains in the sole discretion of the KPB Assembly; and (3) the KPB Assembly's failure to make such an appropriation creates no further obligation or duty on behalf of KPB.

24. INSPECTION. The KPB reserves the right to enter upon and inspect the Leased Premises at any time to assure compliance with the conditions of this Lease. Except in case of emergency, KPB shall provide Lessee with at least forty-eight (48) hours' prior written notice of KPB's intention to enter upon and inspect the Leased Premises. Lessee reserves the right to have a representative present at all times during KPB's inspection.

25. FORCE MAJEURE. The time for performance by KPB or Lessee of any term, provision, or covenant of this Agreement will be deemed extended by time lost due to delays resulting from acts of God, strikes, civil riots, floods, material or labor restrictions by governmental authority, and any other cause not within the control of KPB or Lessee, as the case may be.

26. DEFAULT. The failure of Lessee or KPB to perform any of the covenants of this Agreement will constitute a default. The non-defaulting party must give the other written notice of such default, and the defaulting party must cure such default within thirty (30) days after receipt of such notice. In the event any such default cannot reasonably be cured within such thirty (30) day period, the defaulting party must provide prompt notice of inability to cure and provide a plan to cure the default within a time frame provided. The time for curing a default will be extended for such period of time as may be necessary and reasonable; however, in no event will this extension of time to cure be in excess of ninety (90) days, unless agreed upon in writing by the non-defaulting party.

27. REMEDIES. Should the defaulting party fail to cure a default under this Agreement, the other party will have all remedies available either at law or in equity, including the right to terminate this Agreement.

28. LESSEE MORTGAGES.

(a) KPB consents to the granting by Lessee of a lien and security interest (each, a “**Lessee Mortgage**”) in Lessee’s interest in this Agreement and all of Lessee’s personal property and fixtures attached to the real property described herein to one or more lenders (any such lender, and any successor, assign, designee or nominee of such lender, hereinafter a “**Lender**”) only to the extent and amount necessary to maintain improvements on the Leased Premises. The Lessee may not encumber the leasehold interest or the Leased Premises to finance projects or improvements outside of the Leased Premises. KPB agrees to recognize Lender as Lessee hereunder upon any such exercise by Lender of its rights of foreclosure. Any such encumbrance shall be subordinate to KPB’s rights and interest in the Leased Premises and the Property. Any such encumbrance shall be limited to the Lessee’s interest in the Leased Premises. It is a material breach of this Agreement for Lessee to attempt to encumber any interest in KPB’s title to or interest in the Leased Premises or the Property.

(b) KPB acknowledges that nothing contained herein shall be deemed or construed to obligate Lender to take any action hereunder, or to perform or discharge any obligation, duty or liability of Lessee under this Agreement. No Lender shall become liable under the provisions of this Agreement unless and until such time as the Lender assumes ownership of the leasehold estate created hereby and agrees to comply with the terms and conditions of this Agreement or any extensions and modifications thereof.

29. MISCELLANEOUS.

(a) **Survival.** If any term of this Agreement is found to be void or invalid, such invalidity will not affect the remaining terms of this Agreement, which will continue in full force and effect.

(b) **Non-waiver.** Failure of party to insist on strict performance of any of the conditions or provisions of this Agreement, or failure to exercise any of a party’s rights hereunder, will not waive such rights.

(c) **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Alaska.

(d) **Bind and Benefit.** This Agreement is binding upon and will inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

(e) **Memorandum.** A short-form Memorandum of Lease may be recorded at KPB or Lessee’s option in the form as depicted in Exhibit 3, attached hereto. KPB will promptly execute any Memorandum of Lease or Memorandum of Amendment to Lease, or corrective amendments thereto, upon written request of Lessee.

(f) **W-9.** As a condition precedent to payment, the KPB agrees to provide the Lessee with a complete IRS Form W-9, or its equivalent, upon execution of this Agreement.

(g) **Counterparts.** This Agreement may be executed in counterpart, each of which when so executed and delivered shall be considered an original and all of which when taken together will constitute one and the same instrument.

(h) **Entire Agreement.** This Agreement and exhibits, appendices or incorporated attachments hereto, constitute the entire agreement and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement.

[SIGNATURES BEGIN ON NEXT PAGE]

PART III. EXECUTION

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date (date last signed by a party hereto).

LESSOR: The Kenai Peninsula Borough

By: _____

Print Name: _____

Date: _____

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

By: AT&T Mobility Corporation
Its: Manager

By: _____

Print Name: _____

Its: _____

Date: _____

ATTEST:

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

Johni Blankenship, Borough Clerk

Sean Kelley, Deputy Borough Attorney

LESSOR ACKNOWLEDGEMENT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____ 2020, by Charlie Pierce, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, for and on behalf of the corporation.

Notary Public for State of Alaska
My Commission Expires: _____

LESSEE ACKNOWLEDGMENT

STATE OF _____)
) ss:
COUNTY OF _____)

On the ____ day of _____, 20____, before me personally appeared _____, and acknowledged under oath that he/she is the _____ of AT&T Mobility Corporation, the Manager of New Cingular Wireless PCS, LLC, the Tenant named in the attached instrument, and as such was authorized to execute this instrument on behalf of the Tenant.

Notary Public: _____
My Commission Expires: _____

APPENDIX A

LEASE PROVISIONS REQUIRED BY KPB 17.10

[INSERT KPB 17.10]

EXHIBIT 1

DESCRIPTION OF PROPERTY AND PREMISES

Page 1 of 1

The Property is legally described as follows:

The South one-half of the Southeast one-quarter of the Northwest one-quarter (S1/2 SE1/4 NW1/4) in Section 31, Township 6 North, Range 11 West, Seward Meridian, Kenai Recording District, Third Judicial District, State of Alaska.

The Leased Premises are described and/or depicted as follows:

A 40-foot by 40-foot area (1,600 square feet) and 25' wide access road from Fifth Avenue located on the west half of the above described Property, as depicted on Exhibit 2.

EXHIBIT 2

Leased Premises

(Attached)

The Premises are described and/or depicted as follows:

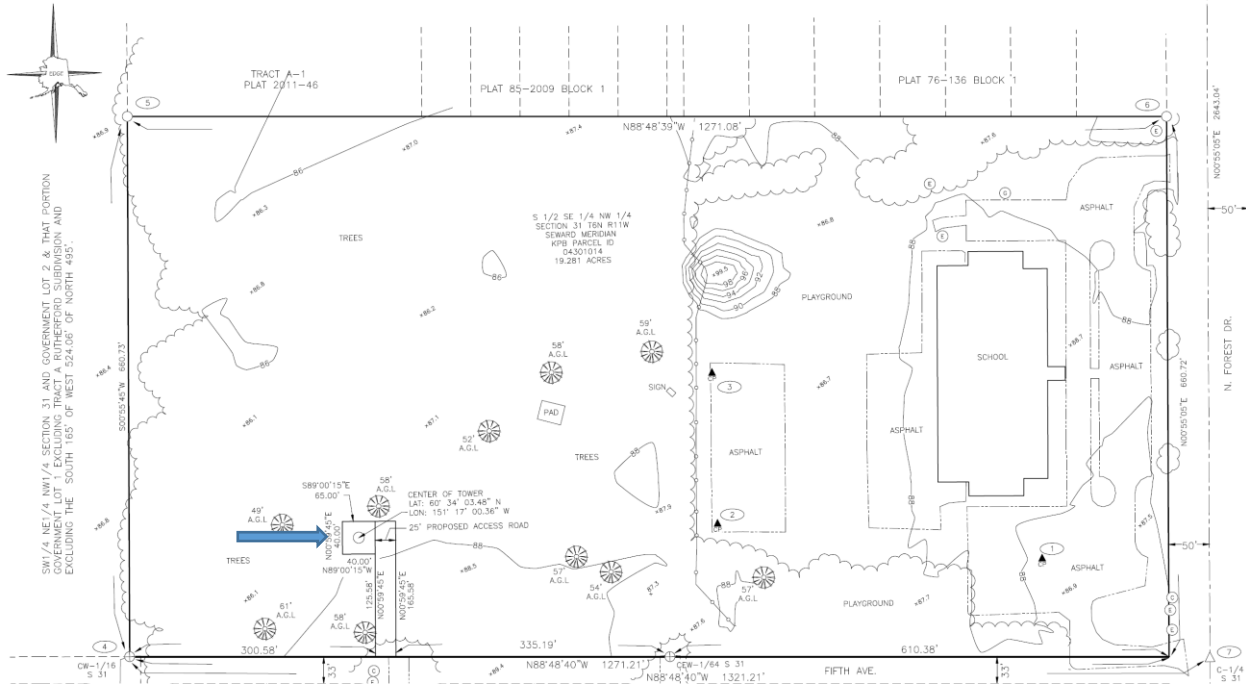


EXHIBIT 3

Memorandum of Lease

(Attached)

(Above 2" Space for Recorder's Use Only)

Prepared by and Return to:

Kenai Peninsula Borough
Attn: Land Management Division
144 N. Binkley St.
Soldotna, AK 99669

Grantor: Kenai Peninsula Borough
Grantee: New Cingular Wireless PCS, LLC
Legal Description: Attached as Exhibit 1
Tax Parcel ID #: 04301014
Cell Site #: AN640
Cell Site Name: Forest Offload
State: Alaska
Borough: Kenai Peninsula Borough
Recording District: Kenai, Third Judicial

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("Memorandum") is entered into by and between **KENAI PENINSULA BOROUGH**, an Alaska Municipal Corporation, having a mailing address of 144 N. Binkley St., Soldotna, AK 99669 (hereinafter called "**Landlord**") and **NEW CINGULAR WIRELESS PCS, LLC**, an Alaska limited liability company, having a mailing address of 1025 Lenox Park Blvd. NE, 3rd Floor, Atlanta, GA 30319 ("**Tenant**").

1. Landlord and Tenant entered into a certain Option and Communications Site Lease Agreement ("Agreement") on the ___ day of _____, 20___, for the purpose of installing, operating and maintaining a communication facility and other improvements. All of the foregoing is set forth in the Agreement.
2. The initial lease term will be five (5) years commencing on the effective date of written notification by Tenant to Landlord of Tenant's exercise of the option, with four (4) successive automatic five (5) year options to renew.
3. The portion of the land being leased to Tenant ("Premises") and associated easements are described in Exhibit 1 annexed hereto.
4. Landlord and Tenant now desire to execute this Memorandum to provide constructive knowledge of Tenant's lease of the Premises.
5. This Memorandum and Agreement are governed by the laws of the state of Alaska.

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

LESSOR: The Kenai Peninsula Borough

By: _____

Print Name: _____

Date: _____

LESSEE:

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

By: AT&T Mobility Corporation
Its: Manager

By: _____

Print Name: _____

Its: _____

Date: _____

LESSOR ACKNOWLEDGEMENT

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this ____ day of _____ 2020, by Charlie Pierce, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, for and on behalf of the corporation.

Notary Public for State of Alaska
My Commission Expires: _____

LESSEE ACKNOWLEDGMENT

STATE OF _____)
) ss:
COUNTY OF _____)

On the ____ day of _____, 20____, before me personally appeared _____, and acknowledged under oath that he/she is the _____ of AT&T Mobility Corporation, the Manager of New Cingular Wireless PCS, LLC, the Tenant named in the attached instrument, and as such was authorized to execute this instrument on behalf of the Tenant.

Notary Public: _____
My Commission Expires: _____

EXHIBIT 1 TO MEMORANDUM OF LEASE
DESCRIPTION OF PROPERTY AND PREMISES

Page 1 of 1

to the Memorandum of Lease dated _____, 2020, by and between The Kenai Peninsula Borough, as Landlord, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Tenant.

The Property is legally described as follows:

The South one-half of the Southeast one-quarter of the Northwest one-quarter (S1/2 SE1/4 NW1/4) in Section 31, Township 6 North, Range 11 West, Seward Meridian, Kenai Recording District, Third Judicial District, State of Alaska.

The Premises are described and/or depicted as follows:

