

COMMUNICATIONS SITE LICENSE AGREEMENT

THIS COMMUNICATIONS SITE LICENSE AGREEMENT (“Agreement”), dated as of the latter of the signature dates below (the “Effective Date”), is entered into by the Town of Erie, Colorado (“Licensor”), a statutory municipality created and organized pursuant to Title 31, Colorado Revised Statutes and New Cingular Wireless PCS, LLC, with its principal office at 1025 Lenox Park Blvd NE 3rd Floor, Atlanta, GA 30319 (“Licensee”).

BACKGROUND

Licensor is the owner of the lightpole, located at 3000 Northeast County Line Road, Erie, Colorado (the “Property”). Licensee is a wireless communications provider, and permitted, licensed or otherwise authorized by the applicable federal or state governmental authority to operate in the Town of Erie. Licensor desires to permit use by Licensee and the Licensee desires to use a portion of the Property as described below in order to enable Licensee to erect, operate and maintain certain communication equipment of Licensee in connection with its wireless communications business.

1. RIGHT TO LICENSE.

Licensor grants to Licensee a license to a portion of the Property consisting of specified portions of the ground space and the adjacent lightpole together with such easements as are necessary for the installation of antennas, cables and other ancillary facilities as further described on Exhibit A. The physical space being licensed pursuant to this Agreement, as depicted in Exhibit A is referred to as the “Licensed Premises.” The Property is briefly described as follows:

Lot 1A-1, Block 15, Erie Commons Filing No. 1 Minor Subdivision,
3rd Amendment, County of Weld, State of Colorado

2. PERMITTED USE.

(a) The Licensed Premises may be used for the transmission and reception of communications signals and the installation, construction, maintenance and operation of communication fixtures and related equipment, cables, accessories and improvements, which may include a suitable support structure, associated antennas, equipment shelters or cabinets and any other items necessary to the successful and secure use of the Licensed Premises, and which are all described on Exhibit A (collectively, the “Light Pole Facilities”).

(b) Licensee shall bear all costs associated with the replacement of the existing lightpole on the Premises with a eighty foot (80’) monopole as shown on Exhibit A. Such costs shall include, but are not limited to, costs for dismantling, removal and disposal of the existing lightpole and appurtenances, removal and replacement of foundation, geotechnical analysis (as appropriate for soil and foundation stability, etc.), and installation of the new monopole, together with the replacement of Licensor’s lighting at sixty feet (60’). As used in this Agreement, “Light Pole Facilities” shall be deemed to include Licensee’s replacement monopole. Upon inspection

and acceptance by Licensor, Licensee agrees to convey ownership of the replacement monopole (together with the foundation and related access conduits, handholds, etc.) to Licensor, and prepare any ancillary documentation or agreement. Licensor may require Licensee to deliver written evidence (reasonably acceptable to Licensor) of bill of sale of the replacement monopole (together with the foundation and related access conduits, handholds, etc.), along with the assignment of any warranties applicable to the replacement pole, including, without limitation, manufacturer's, installation, and other service provider warranties.

(c) Licensee shall be responsible to manage the project and coordinate with Licensor's representative to ensure that all work is completed to Licensor's satisfaction.

(d) Licensee's Light Pole Facilities shall not corrode or damage the surface of any structure nor cause degradation of any coatings. Licensee has the right to install and operate transmission cables from the equipment shelter or cabinet to the antennas, electric lines from the main feed to the equipment shelter or cabinet and communication lines from the main entry point to the equipment shelter or cabinet in the locations depicted on Exhibit A. Licensee agrees to comply with all applicable governmental laws, rules, statutes and regulations, relating to its use of the Light Pole Facilities on the Property.

(e) Except as provided herein, prior to any alteration or modification to the Light Pole Facilities Licensee shall submit copies of the site plan, floor plans, sections, elevations, structural plans, and specifications to Licensor for prior approval. Licensor shall give such written approval or provide Licensee with its requirements for changes upon completion of the development application review process. Notwithstanding the foregoing, prior approval of Licensor is not required for routine maintenance, repairs, the like-kind replacement of the Light Pole Facilities, so long as the resulting Light Pole Facilities are of comparable size and exterior appearance, do not extend beyond the space indicated for any of the Light Pole Facilities identified on Exhibit A, and are in full compliance with this Agreement and all applicable laws and regulations.

(f) Smoking; Solicitations; Dangerous Activities. The Licensed Premises are a smoke-free environment. Licensee shall not permit any smoking, canvassing, soliciting or peddling on the Licensed Premises. Licensee shall not permit dangerous activities on the Licensed Premises.

3. TERM.

(a) The initial term of this Agreement shall be five (5) years commencing upon the Effective Date. Licensor and Licensee agree that they shall acknowledge in writing the Term Commencement Date. The Initial Term will terminate on the fifth (5th) annual anniversary of the Term Commencement Date.

(b) This Agreement will automatically renew for four (4) additional five (5) year terms (the "Extension Term"), upon the same terms and conditions unless the Licensee notifies Licensor in writing of Licensee's intention not to renew this Agreement at least sixty (60) days prior to the expiration of the existing Term or any subsequent Extension Term.

(c) The Initial Term and any Extension Terms are collectively referred to as the "Term."

4. RENT.

(a) Licensee shall pay to Licensor an annual rental in the amount twenty-five thousand, two hundred dollars (\$25,200.00), (Rent), at the address set forth below. The first rental payment is prorated to the end of the current calendar year, shall be in the amount of _____ (\$____) Dollars payable within within fifteen (15) days of the execution of this Agreement. Annual payments are due on or before the first (1st) day of January in each subsequent year. Rent shall be payable to Licensor at Town of Erie, Town of Erie, P.O. Box 750, Erie, CO 80516; Attention: Finance Department

(b) The Rent shall increase three percent (3%) annually on the second full year after the Term Commencement Date.

5. TITLE.

Licensee has the right to obtain a title report or commitment for a leasehold title policy (or similar) from a title insurance company of its choice and to have the Property surveyed by a surveyor of Licensee's choice, and Licensee shall be responsible for any costs or fees incurred in connection therewith. In the event Licensee determines, in its reasonable discretion, due to the title report results or survey results, that the condition of the Licensed Premises will not permit the use granted under this Agreement, Licensee will have the right to terminate this Agreement upon thirty (30) days written notice to Licensor.

6. TERMINATION. This Agreement may be terminated as follows:

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

(b) by Licensee upon six (6) months prior written notice to Licensor, if Licensee is unable to obtain, or maintain, any required Government Approval(s) necessary for the construction or operation of the Light Pole Facilities as now and hereafter intended by Licensee or if Licensee determines in its reasonable discretion that the cost of obtaining or retaining the same is commercially unreasonable; or

(c) by Licensee upon sixty (60) days prior written notice to Licensor for any reason, so long as Licensee pays Licensor a termination fee equal to one (1) years' Rent, at the then current rate; provided, however, that no such termination fee will be payable on account of the termination of this Agreement by Licensee under any one or more of Sections 5(b) Approvals, 6(a) Termination, 6(b) Termination, 11(c) Hazardous Substances, 18 Condemnation, 19 Casualty or 24(j) Severability of this Agreement.

(d) by Licensor if any government body, other than Licensor, passes an ordinance, law or regulation for the protection the public health, safety or welfare that would interfere or render impossible performance of this Agreement or if following the fifth (5th) anniversary of the Effective Date the structure to which Licensee's equipment is attached is scheduled for removal or deconstruction. In such cases, Licensor shall use best efforts to provide a relocation on Licensor property, if a property is available and can reasonably accommodate the equipment. If permissible, Licensor shall provide Licensee with ninety (90) days' notice to surrender the Licensed Premises and all interests to the Licensor. Licensee shall have no claim against the Licensor for any loss or damage.

(e) This Agreement shall terminate automatically if events occur and notice is provided as described in Sections 18 and 19 of this Agreement.

(f) Force Majeure. Neither party shall be liable for its inability to perform its obligations under this Agreement if caused by conditions beyond its reasonable control including but not limited to acts of terrorism, environmental conditions, perils and hazards and acts of God. In the event either party is prevented or delayed in the performance of any of its obligations under this Agreement by reason beyond its control, that party shall have a reasonable time, under the circumstances, to perform the affected obligation under this Agreement or to procure a substitute for such obligation which is satisfactory to the other party. If either party believes that a reason beyond its control has prevented or delayed its compliance with the terms of this Agreement, that party shall provide documentation as reasonably required by the other party to substantiate the claim. If the party has not yet cured the deficiency, it shall also provide the other party with its proposed plan for remediation, including the timing for such cure.

7. INSURANCE.

(a) During the term of the Agreement, Licensee shall maintain, or cause to be maintained, in full force 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 limits of One Hundred Thousand Dollars (\$100,000.00) for each accident, each disease policy limit, each disease each employee.

(ii) Commercial general liability insurance on ISO Form CG 00 01 or its equivalent with a limit of Five Million Dollars (\$5,000,000.00) per occurrence for bodily injury (including death) and property damage and in the aggregate as the combined single limit for each occurrence of bodily injury, personal injury and property damage. The policy shall provide contractual liability coverage, 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 known as XCU coverage.

(iii) Commercial automobile liability insurance covering all owned, hired, and non-owned vehicles in use by Licensee and its employees, with personal protection insurance and property protection insurance to comply with the provisions of state law with a limit of One and One-half Million Dollars (\$1,500,000.00) as the combined single limit for each accident for bodily injury and property damage.

(iv) At the start of and during the period of any construction, builders all-risk insurance, together with an installation floater or equivalent property coverage covering Licensee's cables, materials, machinery and supplies of any nature whatsoever which are to be used in or incidental to the installation of the Light Pole Facilities. Upon completion of the installation of the Light Pole Facilities, Licensee shall substitute for the foregoing insurance policies of fire, extended coverage and vandalism and malicious mischief insurance on the Light Pole Facilities. The amount of insurance at all times shall be representative of the insurable values installed or constructed.

(v) Licensee shall provide Special Form Cause of Loss (formerly known as "All Risk") property coverage for full replacement value of alterations to the Light Pole Facilities, including coverage for fire. Licensee self-insures this risk and will include Licensor as joint loss payee to the extent of Licensor's insurable interest.

(b) All policies other than those for Worker's Compensation (which includes Employer's Liability) shall be written on an occurrence and not on a claims made basis.

(c) The coverage amounts set forth above may be met by any combination of underlying and umbrella/excess policies so long as in combination the limits equal those stated.

(d) All policies, except for worker's compensation, shall include Licensor and its officers, boards, commissions, and employees as additional insureds by endorsement as their interests may appear under this Agreement (herein referred to as the "Additional Insureds") with respect to the operations of the named insured.

(e) Certificates of insurance for each insurance policy required to be obtained by Licensee in compliance with this paragraph shall be filed and maintained with Licensor annually during the term of the Agreement. Licensee shall immediately advise Licensor of any claim or litigation that may result in liability to Licensor.

(f) Cancellation of Policies of Insurance. Upon receipt of notice from its insurer(s), Licensee shall provide the Town with thirty (30) days prior written notice of cancellation of any required coverage. Such notice shall be given to the Risk Manager of the Town of Erie by first class or registered mail.

(g) Insurance Companies. All required insurance shall be effected under valid and enforceable policies, insured by insurers licensed, authorized or permitted to do business by the State of Colorado or surplus line carriers on the State of Colorado Insurance Commissioner's approved list of companies qualified to do business in the State of Colorado. All insurance carriers and surplus line carriers shall be rated A- VII or better by A.M. Best Company.

(h) Deductibles. Licensee agrees to indemnify and hold harmless Licensor, the Indemnitees, and Additional Insureds from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished by this Agreement.

(i) Contractors. Licensee shall require that every one of its contractors and their subcontractors who perform work on the Licensed Premises carry, in full force, workers' compensation, commercial general liability and commercial automobile liability insurance coverages of the type which Licensee is required to obtain under the terms of this paragraph excepting any changes in coverage types approved in writing by Licensor. The general liability limit of insurance for contractors and subcontractors shall be \$1,000,000 per occurrence and \$2,000,000 general aggregate. The automobile liability limit of insurance shall be \$1,000,000 combined single limit unless otherwise approved by Licensor. Such policies shall meet the additional insureds requirements of subparagraph (c) above.

(j) Review of Limits. Once during each Extension Term year during the term of this Agreement, Licensor may review the insurance coverages to be carried by Licensee in accordance with reasonably prudent risk management practices and insurance industry standards. If Licensor reasonably determines that higher limits of coverage are necessary to protect the interests of Licensor or the Additional Insureds, Licensee shall be provided sixty (60) days' advance written notice and shall obtain the additional limits of insurance, at its sole cost and expense.

(k) Self-Insurance. Notwithstanding the foregoing, Licensee shall have the right to self-insure the coverages required in this Section 7. In the event Licensee elects to self-insure its obligation to include Licensor as an additional insured, the following provisions shall apply: (i) Licensee or its parent company shall have and continuously maintain a tangible net worth of at least one hundred million dollars (\$100,000,000.00); (ii) Licensee continuously maintains appropriate loss reserves for the amount of its self-insurance obligations under this Section 7, which reserves are annually approved by Ernst & Young, or any successor auditing company; (iii) Licensee shall undertake the defense of any self-insured claim for which a defense and/or coverage would have been available from the insurance company, including a defense of Licensor, at Licensee's sole cost and expense, with counsel selected by Licensee and reasonably acceptable to Licensor; (iv) Licensee shall use its own funds to pay any claim or replace property or otherwise provide the funding which would have been available from insurance proceeds but for Licensee's election to self-insure; (v) Licensee shall pay any and all amounts due in lieu of insurance proceeds which would have been payable if Licensee had carried the insurance policies, which amounts shall be treated as insurance proceeds for all purposes under this Agreement; and (vi) All amounts which Licensee pays or is required to pay and all loss or damages resulting from risks for which Licensee has elected to self-insure shall not limit Licensee's indemnification obligations set forth in this Agreement. Any failure by Licensee to provide through self-insurance coverages meeting all of the requirements and provisions of this Section 7 shall be deemed a default, for which the Licensor may exercise its remedies pursuant to Section 15, including without limitation revocation of Licensor's rights hereunder. Further, in the event of any such default, Licensor in its sole discretion may procure any policy(ies) affording the coverage required of Licensee hereunder and may pay any and all premiums in connection therewith, and all monies so paid by the Licensor shall be repaid by Licensee upon demand.

8. INTERFERENCE.

(a) Upon the written request of the Licensee, where there are existing radio frequency user(s) on the Property, the Licensor (to the best of its abilities) will provide Licensee with a list of all existing radio frequency user(s) on the Property to allow Licensee to evaluate the potential for interference. Licensee warrants that its use of the Licensed Premises will not interfere with existing radio frequency user(s) on the Property so disclosed by Licensor, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations. Licensee further agrees that it will cooperate with Licensor and with any other radio frequency user(s) Licensor permits to be on the Property, by sharing the requisite information to determine what potential interference issues may exist and to take all reasonable steps necessary to avoid such interference.

(b) The Licensee's Communications Facilities shall be of the type and frequency which will not cause measurable interference, as defined by the Federal Communications Commission ("FCC"), to any currently leased and operating communications equipment of Town, other existing entities on the Property, or adjacent landowners. In the event Licensee's Communications Facilities causes such interference, Licensee shall take all reasonable steps necessary to correct and eliminate the interference.

(c) Prior to commencing operations of its Communications Facilities, Licensee shall provide written assurance, in a format reasonable and customarily accepted by the federal government, ensuring that Licensee's Communications Facilities comply with all federal requirements for RF emissions, and that Licensee's Communications Facilities will not cause measurable interference with the equipment located on the Property and/or adjacent property. The Licensor may, at the commencement of any renewal term or at any other time in its reasonable discretion, but no more frequently than once every two years, require Licensee to engage in testing through a qualified radio frequency engineer, to determine RF emissions levels at the Property. All costs of testing and compliance shall be born by Licensee.

(d) Licensee understands that no use of the Licensed Premises and/or Property will be permitted which exceeds federal RF emissions standards within and at the boundaries of the Licensed Premises and/or Property. If the cumulative RF emissions levels ever exceed federal standards, all users of the Licensed Premises and/or Property that are not public sector entities, including Licensee, will be required to modify operations on a reasonably comparable level, in order to bring the overall RF emissions into compliance.

(e) Notwithstanding any other provision to the contrary, Licensee's activities shall not interfere with the peaceful enjoyment of the Licensed Premises by Licensor's operations at the Property or endanger the health or safety of Licensor's employees and/or tenants, lessees or licensees. However, Licensor agrees that to the extent it permits any other tenants, licensees, or users, to use the Property such third party will be permitted to install only such equipment that is of the type and frequency which will not cause harmful interference which is measurable in accordance with the existing industry standards to the then existing equipment of Licensee; provided, however that this exception shall not apply to the extent such equipment is deployed for

the purpose of public health and safety. The parties acknowledge that Licensor does not have the expertise to determine if there is harmful interference, and that Licensor can rely on documentation provided by the third party that its equipment does not interfere with Licensee's Light Pole Facilities.

9. INDEMNIFICATION.

(a) Licensee agrees to indemnify, defend and hold Licensor harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses arising from the installation, use, maintenance, repair or removal of the Light Pole Facilities or Licensee's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Licensor, its employees, agents or independent contractors.

(b) Notwithstanding anything to the contrary in this Agreement, Licensee and Licensor each waives any claims that each may have against the other with respect to consequential, incidental or special damages.

10. WARRANTIES.

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

(b) Licensor represents and warrants that as of the Effective Date: (i) Licensor solely owns the Property as a legal lot in fee simple, or controls the Property by lease or license and solely owns the lightpole on the Property; (ii) the Property is not encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect Licensee's permitted use and enjoyment of the Licensed Premises under this Agreement; (iii) as long as Licensee is not in default then Licensor grants to Licensee sole, actual, quiet and peaceful use, enjoyment and possession of the Licensed Premises; and (iv) Licensor's execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on the Licensor.

11. HAZARDOUS SUBSTANCES.

(a) Licensee represents and warrants that its use of the Licensed Premises herein will not generate any Hazardous Substance, and it will not store or dispose on the Licensed Premises nor transport to or over the Licensed Premises any Hazardous Substance. Licensee further represents and warrants that its installation and maintenance of its Light Pole Facilities will not involve the bringing of any asbestos containing material onto the Property. Licensee further agrees to hold Licensor harmless from and indemnify Licensor against any release of any such Hazardous Substance and any damage, loss, or expense or liability resulting from such release including all attorneys' fees, costs and penalties incurred as a result thereof except any release caused by the negligence of Licensor, its employees or agents. Licensor shall be responsible for any release of a

Hazardous Substance caused by Licensor, including any damage, loss, or expense or liability resulting from such release. "Hazardous Substance" shall be interpreted broadly to mean any substance or material defined or designated, 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 be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease.

(b) The indemnifications of this Section 11 specifically include reasonable costs, expenses and fees incurred in connection with any investigation of Property conditions or any clean-up, remediation, removal or restoration work required by any governmental authority.

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

(d) Notwithstanding anything to the contrary herein, Licensee shall have the right to store and use standard quantities of batteries, diesel fuel for backup generators, and any other substances required for the operation of Licensee's Communications Facilities so long as it does so in full compliance with all applicable laws.

12. ACCESS.

(a) At all times throughout the Term of this Agreement, and at no additional charge to Licensee, Licensee and its employees, agents, and contractors, will have reasonable access, including emergency access, twenty-four (24) hour per day, seven (7) day per week pedestrian and vehicular access to and over the Property, to the Licensed Premises, for the installation, maintenance and operation of the Light Pole Facilities and any utilities serving the Licensed Premises. All work to the maximum extent possible, however shall be performed by Licensee on a non-holiday week day from 7:00 am to 7:00 pm or dusk. Licensee shall immediately call Licensor at 303-926-2857 to report any emergency. If access during an emergency necessitates, in the sole discretion of the Licensor, a need for Licensor personnel to access the site to effectuate emergency repairs, in no event shall Licensee enter the Property without express prior verbal permission. Licensee's and its contractors' vehicles shall be clearly marked with a company logo. Licensee and its contractors are required to check in at the main office of the Property prior to entering the Property and shall supply state or federal issued identification. Licensee shall be responsible for all costs incurred by the Licensor to facilitate such access. Licensor grants to Licensee a license for such access and Licensor agrees to provide to Licensee such codes, keys and other instruments necessary for such access at no additional cost to Licensee. In the event any public utility is unable to use the access provided to Licensee then the Licensor agrees to work with Licensee to identify and grant additional access in a location acceptable to both parties either to Licensee or to the public utility, for the benefit of Licensee, at no cost to Licensee.

(b) Security and Invitees: Licensor does not represent that the Property or Licensed Premises are safe from theft, injury or damage to Licensee or Licensee's property. Licensor does not represent that locks or security services or equipment, if any, are provided to protect Licensee's safety, property, or Licensed Premises. Notwithstanding any provision to the contrary, Licensor is not liable for any lack of security with respect to the Property or Licensed Premises or for any damages caused by any error or other action regarding the admission to or exclusion from the Property of any person, except to the extent such damages are caused by Licensor's negligence or willful misconduct. Licensee is solely responsible for the security of the Licensed Premises and its personal property on the Licensed Premises. Licensee shall make good faith efforts to monitor and control the conduct of its staff and agents while on the Licensed Premises.

13. REMOVAL/RESTORATION. All equipment attached to the replacement monopole and any related equipment as described on Exhibit A, brought onto the Licensed Premises by Licensee will be and will remain Licensee's personal property and, at Licensee's option, may be removed by Licensee at any time during the Term. Licensor covenants and agrees that no part of the equipment constructed, erected or placed on the Licensed Premises by Licensee other than the replacement monopole and light fixture itself (or any replacement monopole and light fixture) will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of the Licensor that all improvements of every kind and nature constructed, erected or placed by Licensee on the Licensed Premises will be and remain the property of the Licensee and may be removed by Licensee at any time during the Term. Within ninety (90) days of the termination of this Agreement, Licensee will remove all of Licensee's improvements and Licensee will restore the Licensed Premises to its condition at the commencement of the Agreement, reasonable wear and tear and loss by casualty or other causes beyond Licensee's control excepted. Any property not removed within ninety (90) days shall be deemed abandoned and Licensor shall have a right to seek compensation through Section 23 of this Agreement.

14. MAINTENANCE/UTILITIES.

(a) Licensee will keep and maintain the Licensed Premises in good condition. Licensee shall maintain the outward appearance of any ground equipment and will remove any graffiti that may be drawn on the equipment by unknown third parties within seven (7) days after it has knowledge of such graffiti. At Licensee's sole expense, any ground facilities shall be screened to the Licensor's satisfaction, as depicted on Exhibit A. Licensor will maintain and repair the Property and access thereto, in good and tenantable condition, subject to reasonable wear and tear and damage from the elements.

(b) Notwithstanding any other provision to the contrary, at Licensor's sole discretion, Licensor may at any time examine, inspect and protect the Property and make alterations, renovations, restorations, repairs and or improvements to the Property (collectively Work).

(c) Licensee's installation shall not interfere with Licensor's maintenance and repairs to Licensor's Property components near or adjacent to Licensee's installation.

(d) Licensee shall be responsible for obtaining its own electric source to power Licensee's equipment. All costs associated with the Licensee's electrical requirement shall be at the Licensee's expense. Licensee shall be required to secure its own utility metered electric service and shall be responsible for permitting the new electric service as well as any line extension costs, metering equipment, and any related fees. If applicable, Licensee may enter into an agreement with the Licensor, as part of the rental fees, for an unmetered energy rate based on the wattage of the Licensee's equipment.

15. DEFAULT AND RIGHT TO CURE.

(a) The following will be deemed a default by Licensee and a breach of this Agreement: (i) non-payment of Rent if such Rent remains unpaid for more than thirty (30) days after receipt of written notice from Licensor of such failure to pay; (ii) Licensee's failure to perform any other term or condition under this Agreement within forty-five (45) days after receipt of written notice from Licensor specifying the failure; or (iii) if Licensee is adjudicated as bankrupt, makes any assignment for the benefit of creditors, or if Licensee becomes insolvent. No such failure, however, except for payment of rent, will be deemed to exist if Licensee has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence, and complies with all other provisions of Section 6(i). Delay in curing a default, except for payment of rent, will be excused if due to causes beyond the reasonable control of Licensee. If Licensee remains in default beyond any applicable cure period, Licensor will have the right to exercise any and all rights and remedies available to it under law and equity.

(b) The following will be deemed a default by Licensor and a breach of this Agreement: (i) Licensor's failure to provide access to Licensed Premises or cure any interference problem within twenty-four (24) hours after written notice of such default; or (ii) Licensor's failure to perform any term, condition, or breach of any warranty or covenant under this Agreement within forty-five (45) days after receipt of written notice from Licensee specifying the failure. No such failure, however, will be deemed to exist if Licensor has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence, and complies with all other provisions of Section 6(i). Delay in curing a default will be excused if due to causes beyond the reasonable control of Licensor. If Licensor remains in default beyond any applicable cure period, Licensee will have the right to exercise any and all rights available to it under law and equity, including the right to cure Licensor's default and to deduct the costs of such cure from any monies due to Licensor by Licensee.

16. ASSIGNMENT.

(a) Licensee may not assign, sublet or otherwise transfer any portion of its interest in this Agreement or to the Light Pole Facilities, by operation of law or otherwise, without the prior written consent of Licensor, which may be withheld in Licensor's sole and absolute discretion. A violation of this section is null and void and unenforceable against Licensor. Notwithstanding the immediately preceding sentences, Licensee may assign its interest under this Agreement and to the Light Pole Facilities without Licensor's consent but upon at least thirty (30) days prior written notice to Licensor to (a) one or more entities which shall control, be controlled by, or be under common control with, Licensee, or (b) or to any entity which acquires all or substantially all of

Licensee's stock or assets in the market defined by the Federal Communications Commission in which the Property is located, in connection with any merger, consolidation or reorganization of Licensee. Any assignment must acknowledge the assignee's obligation to comply with all duties and obligations under this Agreement, including curing of any pending violations of Licensee prior to any assignment.

(b) Effective immediately upon transfer by Licensor of Licensor's interest in the Licensed Premises, Licensor shall be released from all obligations and liabilities arising out of this Agreement.

(c) The parties hereby expressly agree and acknowledge that it is the intention of both parties that in the event that during the term of this Agreement, Licensee shall become a debtor in any voluntary or involuntary bankruptcy proceeding (a Proceeding) under the United States Bankruptcy Code, 11 U.S.C. 101, et seq. (the Code), for the purposes of proceeding under the Code, this Agreement shall be treated as an unexpired lease of nonresidential real property under Section 365 of the Code, 11 U.S.C. 365 (as may be amended), and, accordingly, shall be subject to the provisions of subsections (d)(3) and (d)(4) of said Section 365. Any person or entity to which this Agreement is assigned pursuant to the provisions of the Code, shall be deemed without further act to have assumed all of the obligations of the Licensee arising under this Agreement both before and after the date of such assignment. Any such assignee shall upon demand execute and deliver to the Licensor 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 the Licensor, shall be the exclusive property of the Licensor, and shall not constitute property of the Licensee or of the estate of the Licensee within the meaning of the Code. Any monies or other considerations constituting the Licensor's property under the preceding sentence not paid or delivered to the Licensor shall be held in trust for the benefit of the Licensor and be promptly paid to the Licensor.

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

If to Licensee: New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #: COL03246
Cell Site Name: CO.BDN_Add_6893_COL03246_Erie_Community_Park_(CO)
Fixed Asset #: 14719011
1025 Lenox Park Blvd NE 3rd Floor,
Atlanta, GA 30319

With a copy to: New Cingular Wireless PCS, LLC
Attn.: Legal Dept – Network Operations
Re: Cell Site #: COL03246
Cell Site Name:
CO.BDN_Add_6893_COL03246_Erie_Community_Park_(CO)
Fixed Asset #: 14719011

If to Licensor: Town of Erie, Colorado
P.O.Box 750
Erie, CO 80516
Attention: Public Works Director

Either party hereto may change the place for the giving of notice to it by thirty (30) days written notice to the other as provided herein.

18. CONDEMNATION AND EMINENT DOMAIN.

(a) In the event Licensor receives notification of any condemnation proceedings affecting the Property, Licensor will provide notice of the proceeding to Licensee within fifteen (15) days. If a condemning authority takes all of the Property, or a portion sufficient, in Licensee's reasonable determination, to render the Licensed Premises unsuitable for Licensee, this Agreement will terminate as of the date the title vests in the condemning authority. Licensee shall have the right at its sole option and at its sole cost and expense, to claim and recover from the condemning authority, but not from Licensor, such compensation as may be separately awarded or recoverable by Licensee on account of any and all damage to Licensee's business and any costs or expenses incurred by Licensee in moving/removing its Equipment, personal property and leasehold improvements.

(b) If the entire Property or a portion sufficient to render the Property unfit for occupancy or make it impossible for Licensee to conduct its business by the power of eminent domain, this Agreement shall terminate as of the date of taking. Licensee shall immediately surrender the Licensed Premises and all interests to the Licensor. Licensee shall have no claim against Licensor for any loss or damage.

19. CASUALTY. Licensor will provide notice to Licensee of any casualty affecting the Property within seven (7) days of the casualty if the casualty is not caused by Licensee, its employees, agents or contractors, and if such casualty renders the Licensed Premises unsuitable for Licensee's operations. If any part of the Light Pole Facilities or Property is damaged by fire or other casualty so as to render the Licensed Premises unsuitable, in Licensee's reasonable determination, then Licensee may terminate this Agreement by providing written notice to the Licensor, which termination will be effective as of the date of such damage or destruction so long as such damage is not caused by Licensee, its employees, agents or independent contractors. Upon such termination, Licensee will be entitled to collect all insurance proceeds payable to Licensee on account thereof and to be reimbursed for any prepaid Rent on a prorata basis. Licensee shall have no other claims against Licensor for any loss by fire, the elements or other cause, except as specifically provided herein. If notice of termination is given, or if Licensor or Licensee undertake to rebuild the Light Pole Facilities, Licensor agrees to use its reasonable efforts to permit Licensee to place temporary transmission and reception facilities on the Property at no additional Rent until such time as Licensee is able to activate a replacement transmission facility at another location or the reconstruction of the Light Pole Facilities are completed.

20. WAIVER OF LICENSOR'S LIENS. Licensor waives all lien rights it may have, statutory or otherwise, concerning the Light Pole Facilities or any portion thereof. The Light Pole Facilities shall be deemed personal property for purposes of this Agreement, regardless of whether any portion is deemed real or personal property under applicable law, and Licensor consents to Licensee's right to remove all or any portion of the Light Pole Facilities from time to time in Licensee's sole discretion and without Licensor's consent.

21. MECHANICS' AND MATERIALMANS' LIENS. Licensee shall not permit any mechanics' or material's liens to be filed against the Licensed Premises or the Property by reason of work, labor, services or materials performed or furnished to or for the benefit of Licensee, its transferees, successors, or assigns. If any such lien is filed, Licensee may contest the same in good faith, but notwithstanding contest, Licensee shall, within thirty (30) days after the filing thereof, cause such lien to be released of record by payment, bond, entry of an order of court of competent jurisdiction, or otherwise.

22. TAXES.

(a) Licensor is exempt from paying taxes. Licensee shall be solely responsible for and shall timely pay all personal property taxes levied and assessed against it or its personal property. Licensee shall reimburse the Licensor for Licensee's proportionate share of the real estate taxes if any, upon timely receipt of a copy of the tax bill and request for reimbursement from the Licensor. For purposes herein, Licensee's proportionate share shall be determined based upon the square footage of the Licensed Premises relative to Licensor's entire parcel of real estate (using, in the case of building space, the net usable square footage of the building, and in the case of licensed land, the unimproved portion of Licensor's real estate (including parking areas)). At the request of either party, the other shall provide evidence of payment of taxes.

(b) Licensee shall have the right to, at its sole option and at its sole cost and expense, to contest all taxes, assessments, charges and impositions assessed against its personal property or improvements.

23. SECURITY DEPOSIT. Licensee shall provide to Licensor a security deposit equal to 3 month's rent, to cover Licensor's costs or damages incurred as a result of any Licensee violation of this Agreement. Within forty-five (45) days after termination or expiration of this Agreement, Licensor shall either return the security deposit to Licensee or provide a written account of the damages or costs incurred for which all or part of the security deposit was retained.

24. MISCELLANEOUS.

(a) **Amendment/Waiver.** This Agreement cannot be amended, modified or revised unless done in writing and signed by an authorized agent of the Licensor and an authorized agent of the Licensee. No provision may be waived except in a writing signed by both parties. Licensor's expressed or implied assent to Licensee's breach of this Agreement is not a waiver of any other breach.

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

(c) **Third Party Rights.** This Agreement does not create a standard of care for Licensor and does not enlarge Licensor's duties under any applicable law, regulation or ordinance. This Agreement is for the sole benefit of and binds the parties, their successors and assigns. This Agreement affords no claim, benefit, or right of action to any third party. Any party besides Licensor or Licensee receiving services or benefits under this Agreement is only an incidental beneficiary.

(d) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement.

(e) **Governing Law/Venue.** This Agreement will be governed solely by the laws of the State of Colorado. Venue for any proceeding brought pursuant to this Agreement shall be in Boulder County, Colorado.

(f) **Interpretation.** Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term "including" will be interpreted to mean "including, without limitation"; (iii) whenever a party's consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of the Agreement and are incorporated by reference into this Agreement; (v) use of the terms "termination" or "expiration" are interchangeable; and (vi) reference to a default will take into consideration any applicable notice, grace and cure periods.

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

(h) **W-9.** Licensor agrees to provide Licensee with a completed IRS Form W-9, or its equivalent, upon execution of this Agreement and at such other times as may be reasonably requested by Licensee.

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

(j) **Counterparts.** This Agreement may be executed in two (2) or more counterparts, all of which shall be considered on and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties. It being understood that all parties need not sign the same counterpart.

[SIGNATURES APPEAR ON THE NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of the last signature below.

**LICENSOR
Town of Erie, Colorado**

DATE: _____

By: _____

Name: _____

Its: Mayor

(As to form and execution)

DATE: _____

By: _____

Name: _____

Its: Town Attorney

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

DATE: _____

By: Becky John-Haney
Name: Becky John-Haney
Its: Area Manager

EXHIBIT A

Description of Licensed Premises, with drawings and description/location of Licensee Communications Facilities and related utility easements

Page 1 of 2 to the Agreement dated _____, 20____, by and between the Town of Erie, Colorado, as Licensor, and New Cingular Wireless PCS, LLC, a Delaware limited liability company

A DESCRIPTION OF A PROPOSED TWENTY FOOT (20') BY THIRTY FEET (30') LICENSE AREA SITUATED IN SECTION 19, TOWNSHIP 1 NORTH, RANGE 68 WEST, COUNTY OF WELD, STATE OF COLORADO. ALSO KNOWN AS LOT 1-A, BLOCK 15, ERIE COMMONS FILING 1 MINOR SUBDIVISION, 3RD AMENDMENT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT FOUND SOUTHWEST CORNER OF THE OF SAID SECTION 19, WHENCE THE QUARTER CORNER THEREOF BEARS S89°37'33"W, A DISTANCE OF 1331.42 FEET; THENCE N00°33'28"W, ALONG THE WEST LINE OF SAID SECTION 19, A DISTANCE OF 1028.31; THENCE N89°29'38"E, A DISTANCE OF 80.55 FEET TO THE POINT OF BEGINNING; THENCE THE FOLLOWING FIVE (5) COURSES AND DISTANCES:

1. N00°35'17"W, A DISTANCE OF 10.00 FEET TO A CALCULATED POINT;
2. N89°28'55"W, A DISTANCE OF 30.00 FEET TO A CALCULATED POINT;
3. S00°35'17"E, A DISTANCE OF 20.00 FEET TO A CALCULATED POINT;
4. S89°28'55"E, A DISTANCE OF 30.00 FEET TO A CALCULATED POINT;
5. N00°35'17"W, A DISTANCE OF 10.00 FEET TO POINT A AND THE POINT OF BEGINNING.

PARCEL CONTAINS 600.00 SQ FT OR 0.013 ACRES

A DESCRIPTION OF A PROPOSED 15 FOOT (15') WIDE PROPOSED ACCESS AND UTILITY EASEMENT CENTERLINE SITUATED IN THE SECTION 19, TOWNSHIP 1 NORTH, RANGE 68 WEST, COUNTY OF WELD, STATE OF COLORADO. ALSO KNOWN AS LOT 1-A, BLOCK 15, ERIE COMMONS FILING 1 MINOR SUBDIVISION, 3RD AMENDMENT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT FOUND SOUTHWEST CORNER OF THE OF SAID SECTION 19, THENCE N00°33'28"W, ALONG THE WEST LINE OF SAID SECTION 19, A DISTANCE OF 1028.31; THENCE N89°29'38"E, A DISTANCE OF 13.21 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING N89°29'38"E, A DISTANCE OF 67.31 FEET TO THE POINT OF TERMINUS.

PARCEL CONTAINS 1,018.63 SQ FT OR 0.023 ACRES

EXHIBIT A

Description of Licensed Premises, with drawings and description/location of Licensee Communications Facilities and related utility easements

Page 2 of 2

