

SITE AGREEMENT

THIS Site Agreement is made this _____ day of _____, 2012, by and between the City of Lawrence, Kansas, a municipal corporation, and New Cingular Wireless PCS, LLC, a Delaware limited liability company.

RECITALS

- A.** The City of Lawrence, Kansas ("City"), owns certain real property within the City, including a site commonly known as 3708 West Sixth Street, Lawrence, Douglas County, Kansas ("the Property"), upon which a Water Tower ("the Tower") is located. The legal description for the Property is affixed hereto as Exhibit A.
- B.** By way of an "Agreement for the Lease of City of Lawrence, Kansas, Property," dated August 10, 1998, the predecessor-in-interest of New Cingular Wireless PCS, LLC ("the Tenant"), leased certain space on the Property and the Tower for the location of a Communications Facility (as hereinafter defined).
- C.** On September 7, 2004, the City and Tenant's predecessor-in-interest entered into a "First Amendment to Agreement to Lease of City of Lawrence, Kansas, Property," whereby Tenant's predecessor-in-interest modified the permitted equipment of the Communications Facility on the Property and on the Tower.
- D.** On September 3, 2008, the City and Tenant's predecessor-in-interest entered into a "Second Amendment to Agreement to Lease of City of Lawrence, Kansas, Property," whereby Tenant's predecessor-in-interest again modified the permitted equipment of the Communications Facility on the Property and on the Tower.
- E.** On February 15, 2011, the City and Tenant entered into a "Third Amendment to Agreement to Lease of City of Lawrence, Kansas, Property," whereby Tenant modified the permitted equipment of the Communications Facility on the Property and on the Tower.
- F.** The initial term and all option terms of the original "Agreement for the Lease of City of Lawrence, Kansas, Property," expire at midnight on December 31, 2012.
- G.** The Tenant wishes to enter into this "Site Agreement," by which it will lease from the City space on the Property and the Tower for the continued location of its Communications Facility.
- H.** The City agrees to lease to the Tenant certain space on the Property and the Tower for the location of its Communications Facility contingent, *inter alia*, upon the execution of this Site Agreement and compliance with its terms.

AGREEMENT

NOW, THEREFORE, in light of the mutual promises and obligations contained herein, and in exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follow:

- 1. PROPERTY.** The property interests hereby leased and granted ("the Leased Property") by the City to the Tenant shall include the following:
 - (a)** Real property constituting approximately 768 square feet upon which are located an equipment building and a generator, as described in the approved plans;
 - (b)** Space sufficient for the installation and maintenance of wires, cables, conduit, and pipes to connect the equipment building and generator to antennas located on the Tower, as described in the approved plans;
 - (c)** Interior space on the Tower sufficient for cable runs to connect equipment and antennas, as described in the approved plans;
 - (d)** Non-exclusive easements over, under, or along the Property sufficient for the installation and maintenance of utility lines and cables from the nearest public right-of-way to the Property;
 - (e)** A non-exclusive easement over and across the Property for access ("the Access Easement"), as shown on Exhibit B and/or Exhibit C.

The legal description of the Property is affixed hereto as Exhibit A. The approved plans are affixed hereto as Exhibit B. Additional plans and specifications are affixed hereto as Exhibit C.

- 2. TERM.** The initial term of this Site Agreement shall be five years commencing on January 1, 2013 (the "Commencement Date"), and expiring at midnight on December 31, 2017.
- 3. OPTION TERMS.** Tenant may extend the term of the Agreement for two additional and successive five-year option periods (individually, an "Option Period" and, collectively, the "Option Periods"). Tenant shall be deemed to have elected to extend the term for the successive Option Period unless it gives the City written notice of its intention not to extend at least ninety days prior to the expiration of the then-current term. This Site Agreement, if all Option Periods are exhausted, shall expire by its own terms no later than midnight on December 31, 2027.

- 4. RENT.** Tenant's obligation to pay rent shall arise on the Commencement Date. Thereafter, Tenant shall pay the City monthly rent, in advance, on the first day of each calendar month. The monthly rent for the first year of the initial term shall be Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) ("Rent"), together with any applicable sales tax. Commencing on the first anniversary of the Commencement Date, and on each anniversary thereafter, during the initial term and any Option Periods (as defined in Section 3, *supra*), the annual Rent shall be increased by three percent (3 %) of the annual Rent for the immediately preceding year. All Rent shall be paid at the following address: City of Lawrence, Kansas, Attn: City Clerk, 6 East 6th Street, P.O. Box 708, Lawrence, Kansas 66044.
- 5. USE.** Tenant may use the Leased Property only as follows:
- (a)** Tenant may use the Leased Property for the transmission and reception of communications signals, for the installation, maintenance, operation, repair, and replacement of its communications facilities, fixtures, and related equipment, cables, accessories, and improvements (collectively, "the Communications Facility"), as described in Exhibits B and C, and for no other purpose. Minor modifications to the Communications Facility, such as replacement of antennas, coaxial cable, or base station equipment, shall not require the City's prior written consent, provided that the replacement facilities are not greater in number or size than the existing facilities and there is no change in their location on the Tower. Major modifications to the Communications Facility, such as relocation or expansion of the equipment or structures (including the addition of antennas and/or cables), shall require the City's prior written consent, which shall not be unreasonably conditioned, withheld, or delayed, and may also require the City's prior approval as a land use regulator. Tenant shall be responsible for installing, maintaining, operating, and repairing the Communications Facility on the Leased Property and may subcontract with qualified professionals to perform such services, all at Tenant's sole cost and expense.
 - (b)** Tenant warrants that all earth, turf, shrubbery, trees, sidewalk, paving, fences, public improvements, or improvements of any kind, that are either damaged or removed by Tenant, its contractors, subcontractors, or agents, during the installation, repair, and/or maintenance of the Communications Facility or any other use of the Leased Property or the Property shall be fully repaired or replaced within a reasonable time by Tenant, at Tenant's sole cost and expense and to the satisfaction of the City.

- (c) Tenant shall comply with all applicable federal, state, and local laws, statutes, rules, and regulations relating to its use of the Communications Facility on the Leased Property. Tenant also understands and agrees that this Site Agreement and Tenant's ability to use the Leased Property is contingent upon its obtaining, after the execution of this Site Agreement, all of the certificates, permits (including building permits), and other approvals ("Governmental Approvals") that may be required by any federal, state, or local authorities.
- (d) In the event that an application for requisite Government Approval should be finally rejected, Tenant determines that it may not be able to obtain requisite Government Approval in timely fashion, that requisite Government Approval issued to Tenant is canceled, expires, lapses, or is otherwise withdrawn or terminated by the governmental authority, or, in its sole discretion, determines that it will be unable to use the Leased Property for its intended purposes, or if Tenant determines that the Leased Property is no longer technically compatible for its intended use, then Tenant shall have the right to terminate this Site Agreement. In any such case, all Rent, including any increases thereto, paid to date shall be retained by the City.

6. CONSTRUCTION.

- (a) Prior to commencing any construction on the Leased Property, Tenant agrees to submit all plans and specifications for all improvements to the City and to receive the City's written approval, which approval shall not unreasonably be withheld or delayed. Also, prior to commencing any construction, Tenant must, in compliance with Section 5(c), *supra*, obtain all Governmental Approvals and permits (including a building permit) required by law. No improvement, construction, installation, or major modification shall commence until plans for such work have been approved by the City, the City has given written consent thereto, and Tenant has procured all Governmental Approvals and necessary permits.
- (b) Plans submitted by Tenant to the City shall include: Fully dimensioned site plans that are drawn to scale and show (i) the proposed location of the antennas, coaxial cable, equipment, shelters/cabinets, driveways, and parking areas, (ii) the proposed clearing and landscaping, (iii) the proposed type and height of any fencing, (iv) the proposed color of all structures, (v) the proposed type of construction material for all structures, including fencing, and (vi) any other details that the City may request.

- (c) Additionally, prior to commencing any construction on the Leased Property, Tenant shall provide to the City the name of the contractor that will be overseeing the construction of the improvements. The contractor is subject to prior written approval of the City, but such approval shall not unreasonably be withheld or delayed. All improvements shall be constructed in a workmanlike manner, without the attachment of any liens to the Leased Property or the Property, and shall be completed in compliance with all applicable laws, ordinances, rules, and regulations.
 - (i) Tenant or Tenant's contractor shall, prior to the commencement of any construction on the Leased Property, post a payment bond assuring that the improvements will be constructed without the attachment of any construction liens on the Leased Property or the Property.
- (d) No improvements or major modifications to the Leased Property shall be made without the City's written consent. *See* Section 5(a), *supra*. Such written consent shall not unreasonably be withheld or delayed by the City. Moreover, any such improvements or major modifications shall be subject to the conditions set forth in subsections (a), (b), and (c) of this Section.

7. INTERFERENCE.

- (a) Tenant warrants that its use of the Leased Property will not interfere with any existing radio frequency users on the Property, so long as the existing radio frequency users operate and continue to operate within the frequencies existing as of the date of this Site Agreement and in accordance with all applicable laws and regulations. If, at any time during the initial term or any Option Period of this Site Agreement, Tenant's use of the Leased Property interferes with any existing radio frequency user's operations, and after the City has notified Tenant of such interference, then Tenant shall take all necessary actions to discontinue the interference.
- (b) Tenant's use of the Leased Property (*See* Section 5, *supra*) shall, at all times, be subordinate to the City's or any other governmental entity's use of the Leased Property or the Property for any public purpose. Tenant shall relocate or adjust its Communications Facility or adjust its operations to accommodate the City's use within a reasonable time, when such relocation or adjustment is requested by the City to accommodate its use, or any governmental entity's use of the Leased Property or the Property for public purposes; provided, however, that in the event that the City requires such relocation or adjustment more than one time during the initial term or any Option Period of this Site Agreement, or if such

relocation or adjustment impairs Tenant's ability to use the Leased Property as a Communications Facility, then Tenant shall have the option to terminate this Site Agreement, effective as of the date such relocation or adjustment was to have taken effect. Any relocation or adjustment under this section shall be at the sole cost and expense of the Tenant.

- (c) If any interference with the City's or any other governmental entity's use of the Leased Property or the Property cannot be eliminated within three days after written notice thereof, Tenant agrees to suspend operations (transmissions) at the site while the interference problems are studied and a means is found to mitigate them. If said interference cannot be eliminated, then this Site Agreement will be terminated and Tenant shall remove its Communications Facility from the Property as agreed at Section 13, *infra*.
- (d) The City will not grant, after the date of this Site Agreement, a lease, license, or any other right to a third party, if the exercise of such grant may, in any way, adversely affect or interfere with the Communications Facility, the operations of Tenant, or the rights of Tenant under this Site Agreement. The City shall cause all subsequent users of the Tower to first coordinate with Tenant to ensure that their frequencies and antenna locations will be compatible with Tenant's and to require such subsequent users to agree to provisions similar to this Section. The City will cause any radio frequency interference or physical signal obstruction to cease within three work days after receipt of notice from Tenant. In the event any such interference does not cease within the aforementioned cure period, the City shall cause all operations which are suspected of causing interference to cease (except for intermittent testing to determine the cause of such interference) until the interference has been corrected.

8. TENANT'S ACCESS TO PROPERTY. The City shall provide Tenant with access to the Leased Property in accordance with the procedures outlined in this paragraph, twenty-four hours a day, seven days a week, for the purpose of repairing, maintaining, and making minor modifications to its Communications Facility. It is agreed that only authorized engineers, employees, or properly authorized contractors, or persons under their direct supervision of Tenant, will be permitted to enter the Leased Property. To obtain access to the Leased Property, Tenant's authorized person or persons shall sign in with the City. An employee of the City shall accompany Tenant's authorized person or persons to the Property and provide access to the Communications Facility on the Leased Property. In the event that this procedure shall be discontinued or no longer be available, the City shall provide an alternative procedure to allow Tenant access to the Leased Property, twenty-four hours a day, seven days a week.

9. CONDITION OF PROPERTY.

- (a)** The City agrees that it will maintain the Tower in good repair as required by all federal, state, and local laws. However, nothing in this Site Agreement shall be construed or interpreted as creating a guarantee or warranty enforceable against the City that the City Property, the Leased Property, or the Communications Facility will remain suitable for use in transmitting or receiving communications signals by Tenant.
- (b)** Tenant warrants that it will use no materials during any construction or installation of its antennas, transmission lines, or other equipment that would cause corrosion, rust, or deterioration of the Tower or its appurtenances.
- (c)** Tenant's antennas located on the Tower shall be identified by unobtrusive markings fastened securely to its bracket on the Tower. All transmission lines shall be tagged at the conduit opening where they enter Tenant's equipment space. Tenant shall also utilize any markings required by federal, state, or local laws. Said markings and tags shall be unobtrusive and shall not be used for advertisement purposes.

10. PROPERTY TAXES.

- (a)** Tenant shall pay all personal property taxes assessed against Tenant's Communications Facility location on the Leased Property as a result of Tenant's use or ownership of the Communications Facility. The City is a municipal corporation and is exempt from the payment of real property taxes. Thus, Tenant shall be responsible for any real property taxes assessed against the Property as the result of the use or development of the Leased Property by Tenant. In the event that it is assessed personal property taxes and to the extent that more than one tenant has leased space on the Property and the Tower, the City shall equitably allocate real estate taxes among the various tenants of the Property and the Tower.
- (b)** The City agrees to provide to Tenant a copy of any notice, assessment, or billing relating to real estate taxes, for which Tenant is responsible under this Site Agreement, upon receipt of the same. Tenant shall have no obligation to make payment of its proportionate share of real estate taxes until Tenant has received the notice, assessment, or billing relating to such taxes as provided in the preceding sentence. Should any such taxes or assessments be levied or assessed directly against the City and be paid by the City, Tenant shall reimburse the City in full for its proportionate share of the taxes within thirty days of receipt of the City's notice to Tenant of its payment of such taxes or assessments.

- (c) Tenant shall have the right, at its sole option and its sole cost and expense, to appeal, challenge, or seek modification of any tax assessment or billing for which Tenant is wholly or partially responsible for payment under this Site Agreement. The City shall reasonably cooperate with Tenant in filing, prosecuting, and perfecting any such appeal or challenge to such taxes as provided in the preceding sentence, including but not limited to executing any consent to appeal or other similar documents.
 - (d) Failure by Tenant to pay any taxes or assessments within thirty days after the City has given written notice of the same, or the tax due date, whichever is later, shall result in the immediate termination of this Site Agreement and the removal of Tenant's Communications Facility from the Property in accordance with Section 13, *infra*.
- 11. LIENS.** Tenant shall not allow any mechanic's or materialmen's liens to be placed on the Property as the result of its activity on the Leased Property. Tenant shall provide to the City, or shall cause its contractors to provide to the City, performance and payment bonds to assure timely performance of and payment for the work to be performed on the Leased Property in accordance with Section 6(c), *supra*.
- 12. UTILITIES.** Payment for electrical services and for telephone or other utility services used or consumed by Tenant on the Leased Property shall be the sole responsibility of Tenant. The City agrees to cooperate with Tenant in any effort to connect, at Tenant's sole expense, its Communications Facility to existing utility services. If such connection(s) is/are made, Tenant shall install a separate meter to record Tenant's electrical and other utilities usage associated with Tenant's use of the Leased Property or the Property and shall timely pay all costs associated therewith. Tenant shall not install a second power generator or fuel storage facilities on the Leased Property without a separate agreement or an amendment to this Site Agreement. However, after consulting with the City, to the extent that it is necessary, Tenant may install and operate, on a temporary basis only, during an extended loss of commercial power, a portable propane or diesel fueled emergency generator. The portable generator shall promptly be removed from the Leased Property after commercial power is restored.
- 13. REMOVAL OF COMMUNICATIONS FACILITY; ESCROW.**
- (a) Within ninety days after the expiration of this Site Agreement, or earlier, Tenant shall remove all personal property and trade fixtures of Tenant from the Leased Property and the Leased Property shall be surrendered to the City in substantially the same condition as it was on the Commencement Date, ordinary wear and tear excepted, unless the City

gives written consent to Tenant to leave any such personal property and trade fixtures on the Leased Property beyond such ninety-day period. The City agrees and acknowledges that all of the equipment, fixtures, and personal property of the Tenant shall remain the personal property of Tenant and that Tenant shall have the right to remove the same, whether or not said items are considered fixtures and attachments to real property under applicable law.

14. INSURANCE.

- (a)** Tenant, at its sole cost and expense, shall procure and maintain, until such date as all personal property, trade fixtures, equipment, and installations of Tenant have been removed by Tenant from the Leased Property, commercial general liability insurance insuring Tenant against liability for personal injury, death, or damage to personal property arising out of the use of the Leased Property by Tenant, with a minimum combined single limit of One Million and No/100 Dollars (\$1,000,000.00). Such insurance shall provide that the insurer shall make commercially reasonable efforts to provide the City with at least thirty days prior written notice of the cancellation of such policy for any reason. On or before the Commencement Date, and annually thereafter, Tenant shall provide to the City an insurance certificate evidencing the fact that Tenant maintains the insurance required by this Site Agreement. The City agrees that Tenant may self-insure against any loss or damage which could be covered by a commercial general liability policy; provided, however, that Tenant or its parent company maintains a minimum net worth of at least Twenty-Five Million and No/100 Dollars (\$25,000,000.00).
- (b)** The parties hereby waive any and all rights of action for negligence against the other which may hereafter arise on account of damage to the Leased Property or the Property, resulting from any fire or other casualty of the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the parties, or either of them. These waivers and releases shall apply between the parties and they shall also apply to any claims under or through either party as a result of any asserted right of subrogation. All policies of insurance covering property damage obtained by either party concerning the Leased Property shall waive the insurer's right to subrogation against the other party.

- (c)** In addition to the insurance requirements listed above, Tenant shall maintain, or cause to be maintained, in full force and effect and at its sole cost and expense, the following types and limits of insurance:
- (i)** Worker's compensation insurance meeting applicable statutory requirements and employer's liability insurance within minimum limits of One Hundred Thousand and No/100 Dollars (\$100,00.00) for each accident, One Hundred Thousand and No/100 Dollars (\$100,000.00) for each employee, and Five Hundred Thousand and No/100 Dollars (\$500,00.00) policy limits.
 - (ii)** Automobile liability insurance covering all owned, hired, and non-owned vehicles in use by Tenant, its employees and agents, with personal protection insurance and property protection insurance to comply with the provisions of state law with minimum limits of One Million and No/100 Dollars (\$1,000,000.00) as the combined single limit for each occurrence for bodily injury and property damage.
 - (iii)** At the commencement of and during the period of any construction or installation, property coverage covering cables, materials, machinery, and supplies of any nature whatsoever, which are to be used in or are incidental to the installation on the Tower. Upon completion of work on the Tower and on the existing Communications Facility, Tenant shall substitute for the foregoing "All Risk" property insurance policies on its personal property. The amount of insurance shall at all times be representative of the insurable values installed or constructed.
- (d)** All policies, except for "All Risk" property insurance and worker's compensation policies, shall include the City as an additional insured ("Additional Insured").
- (e)** Certificates of Insurance for each insurance policy required of Tenant under subsection (c) of this Section shall be filed and maintained with the City annually during the initial term or any Option Period of this Agreement.
- (f)** Tenant shall immediately advise the City of any claim or litigation that may result in liability to the City.
- (g)** The Certificate of Insurance described in subsection (e) of this Section shall be based on Insurance Service Office (ISO) Form CG 00 001 or a substitute form providing substantially equivalent coverage.

- (h) Once during each calendar year during the initial term or any Option Period of this Agreement, the City may review the insurance coverage to be carried by Tenant. If the City and Tenant mutually agree that higher limits of coverage are necessary to protect the interest of the City, or that Tenant has failed to comply with the insurance requirements as set forth in this Site Agreement, then Tenant shall obtain the additional limits of insurance, at its sole cost and expense.

15. TERMINATION.

- (a) Notwithstanding anything to the contrary contained herein, provided that Tenant is not in default hereunder and shall have paid all Rent and other sums due and payable to the City, Tenant shall have the right to terminate this Site Agreement upon its anniversary by giving ninety days' prior written notice to the City.
- (b) Notwithstanding anything to the contrary contained herein:
 - (i) the City shall have the right to terminate this Site Agreement upon at least one year's prior written notice to Tenant (unless an emergency or imminent danger exists) if City determines that, in its reasonable discretion, continued use of the Tower by Tenant is a threat to the public health, safety, or welfare or that it violates applicable laws or ordinances; or
 - (ii) the City shall have the right to terminate this Site Agreement upon at least two years' prior written notice to Tenant if, in the sole but reasonable discretion of the City, it becomes necessary to do so for reasons other than leasing space on the Tower to a company or companies that are in competition with Tenant.

16. DISCLAIMER. Except as otherwise provided by law, the City shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of Tenant's construction, maintenance, repair, use, operation, condition or dismantling of the Leased Property, the Tower, or the Property, except to the extent attributable to the negligent or intentional acts or omissions of the City, its employees, agents or independent contractors.

17. INDEMNIFICATION. The City and Tenant each indemnify the other against, and hold the other harmless from any and all costs (including reasonable attorneys' fees and expenses), and claims, actions, damages, obligations, liabilities, and liens which arise out of (a) the breach of this Agreement by the indemnifying party; and (b) the use and/or occupancy of

the Leased Property or the Property by such indemnifying party. This indemnity shall not apply to any claims, actions, damages, obligations, liabilities, and liens arising from any negligent or intentional misconduct on the part of the indemnified party and shall survive the termination of this Agreement. Except for the acts of the City and its employees or agents, the City shall not be liable for any loss or damages arising out of bodily injuries or property damage on the Leased Property.

18. HAZARDOUS SUBSTANCES.

- (a) The City warrants that it has no knowledge of any substance, chemical, or waste on the Property that is identified as hazardous, toxic, or dangerous in any applicable Federal, State or Local law or regulation as of the date of this Site Agreement.
- (b) Tenant represents and warrants that its use of the Leased Property herein will not generate any hazardous substance, and it will not store or dispose on the Leased Property or the Property nor transport to or over the Leased Property or the Property any hazardous substance in violation of applicable laws.
- (c) Tenant further agrees to hold the City harmless from and to indemnify the City, its officers, employees, agents, and contractors, against Tenant's release of any such hazardous substance and any damage, loss, or expense or liability directly resulting from such release, including all reasonable attorneys' fees, costs and penalties incurred as a result thereof except any release caused by the negligence of the City, its employees or agents. The City and Tenant acknowledge that Tenant shall, in the course of using the Property, be using and maintaining on the Property sealed batteries, propane/diesel/gasoline fuels, an HVAC system, and a halon/FM200 fire suppression system and that the use and maintenance of such items shall not constitute a violation or breach of this Agreement.
- (d) "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease.

- 19. CASUALTY.** If any portion of the Leased Property or the Property is damaged by any casualty and such damage adversely affects Tenant's use of or access to the Leased Property, then this Site Agreement shall terminate as of the date of the casualty if Tenant gives written notice of the same within thirty days after the occurrence of such casualty. In the event that the Leased Property or the Property is damaged and the Tenant does not elect to terminate the contract, the City shall allow, to the extent that it is possible or practicable, the Tenant to place a temporary transmission and reception facilities on the Property, but only until the Tenant is able to activate a replace transmission facility at another location or until the repair or reconstruction of the Leased Property and/or the Communication Facility is completed. The payment of Rent shall abate during the period following such casualty where Tenant is unable to use the Property or the Leased Property for its intended purpose.
- 20. CONDEMNATION.** If a condemning authority takes any portion of the Property and such taking adversely affects Tenant's use of or access to the Leased Property, this Site Agreement shall terminate as of the date the title vests in the condemning authority, if Tenant gives written notice of the same within thirty days after Tenant receives notice of the taking. In that event, Tenant would be entitled to reimbursement for any prepaid Rent on a *pro rata* basis. The parties shall be entitled to make claims in any condemnation proceeding for the value of their respective interests in the Property or Leased Property, as applicable.
- 21. QUIET ENJOYMENT.**
- (a)** Tenant, upon paying the Rent, shall peaceably and quietly have, hold and enjoy the Leased Property.
 - (b)** At City's option, this Site Agreement shall be subordinate to any mortgage or other security interest by the City which from time to time may encumber all or part of the Property or right-of-way; provided, however, every such mortgage or other security interest shall recognize the validity of this Site Agreement in the event of a foreclosure of City's interest and also Tenant's right to remain in occupancy of and have access to the Leased Property as long as Tenant is not in default of this Site Agreement. Tenant shall execute whatever instruments may reasonably be required to evidence this subordination clause. In the event the Property is encumbered by a mortgage or other security interest, the City immediately after this Agreement is executed will obtain and furnish to Tenant a non-disturbance agreement for each such mortgage or other security interest in recordable form.

- (c) In the event that the City defaults in the payment and/or other performance of any mortgage or other security interest encumbering the Property, Tenant, may, at its sole option and without obligation, cure or correct City's default and, upon doing so, Tenant shall be subrogated to any and all rights, titles, liens, and equities of the holders of such mortgage or security interest and the Tenant shall be entitled to deduct and to setoff against all Rent that may otherwise become due under this Site Agreement the sums paid by Tenant to cure or correct such defaults.

22. DEFAULT.

- (a) It shall be a default if Tenant defaults in the payment or provision of Rent or any other sums to the City when due, and does not cure such default within fourteen days after written notice from the City specifying the default complained thereof; if either party defaults in the performance of any covenant or condition of this Site Agreement and does not cure or make reasonable attempts to cure such default within fourteen days after written notice from the other party specifying the default complained of; if Tenant abandons or vacates the Leased Property; or if Tenant is adjudicated as bankrupt or makes any assignment for the benefit of creditors; or if Tenant becomes insolvent.
- (b) In the event of a default by Tenant, the City shall have the right, at its option, in addition to and not exclusive of any other remedy that it may have by operation of law, without any further demand or notice, to re-enter the Leased Property and eject all persons therefrom, and to terminate this Site Agreement, in which event Tenant shall immediately vacate the Leased Property (and proceed as set forth in Section 13, *supra*) and pay to the City a sum of money equal to the total of (i) the amount of the unpaid Rent accrued through the date of termination and (ii) liquidated damages equal to the lesser of (A) one year's Rent for the then-current term or (B) the amount of unpaid Rent reserved for the balance of the then-current term.
- (c) In the event of a default by the City, Tenant shall have the right, at its option, in addition to and not exclusive of any other remedy that it may have by operation of law or equity, without any further demand or notice, to terminate this Site Agreement.

(d) For purposes of this Site Agreement, "abandons or vacates" means, at any time during the term of this Site Agreement Tenant moves from or ceases to occupy the Leased Property, relinquishing or giving up with the intent, express or implied, to never again resume any interest or right created by this Site Agreement. Removal of equipment and antennas, without replacing the same in a reasonable time, shall be deemed an external manifestation of Tenant's intent to abandon or vacate.

23. CURE BY CITY. In the event of any default of this Site Agreement by Tenant, the City may at any time, after notice, cure the default for the account of and at the expense of the Tenant. If City is compelled to pay or elects to pay any sum of money or to do any act which that require the payment of any sum of money or is compelled to incur any expense in instituting, prosecuting, or defending any action to enforce the City's rights under this Site Agreement, then the sums so paid by City, with all interest, costs, expenses, and damages shall be deemed to be Additional Rental and shall be due from the Tenant to the City on the first day of the month following the incurring of the respective expenses, provided the City's payment, performance, or enforcement of rights is due to Tenant's breach of the Site Agreement, intentional misconduct, or negligence.

24. ASSIGNMENT AND SUBLETTING.

(a) Upon written notice, this Agreement may be sold, assigned, or transferred by the Tenant without any approval or consent of the City to the Tenant's principal, affiliates, or subsidiaries of its principal; to any entity which acquires all or substantially all of Tenant's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition, or other business reorganization; or to any entity which acquires or receives an interest in the majority of communication towers of the Tenant in the market defined by the Federal Communications Commission in which the Property is located.

(b) As to all other parties, this Site Agreement may not be sold, assigned, sublet or transferred without the written consent of the City, which such consent will not be unreasonably withheld or delayed. Consent by the City to any assignment shall not constitute a waiver of the necessity of such consent to any subsequent assignment. Upon the City's receipt of an agreement or acknowledgment by which Tenant's assignee agrees to assume and perform all of Tenant's duties and obligations under this Site Agreement, Tenant shall be released from performing all duties, obligations and liabilities under this Site Agreement that arise or accrue after the effective date of the assignment.

(c) Any person or entity to which this Site Agreement is assigned pursuant to the provisions of the Bankruptcy Code, 11 U.S.C. Sections 101, *et seq.*, shall be deemed without further act to have assumed all of the obligations of Tenant arising under this Site Agreement on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to the City 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 City, shall be the exclusive property of the City, and shall not constitute property of the Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. Any monies or other considerations constituting the Property under the preceding sentence not paid or delivered to the City shall be held in trust for the benefit of the City and be promptly paid to the City.

25. TREATMENT IN BANKRUPTCY. The parties to this Site Agreement hereby expressly agree and acknowledge that it is the intention of both parties that, in the event that during the term of this Site Agreement, Tenant shall become a debtor in any voluntary or involuntary bankruptcy proceeding under the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.* ("the Code"), which proceedings are not dismissed within one hundred twenty days, this Site Agreement is and shall be treated as an "unexpired lease of nonresidential real property" for purposes of Section 365 of the Code, 11 U.S.C. § 365, and, accordingly, shall be subject to the provision of subsections (d)(3) and (d)(4) of said Section 365.

26. LICENSE FEES. Tenant shall pay, as they become due and payable, all fees, charges, taxes and expenses required for licenses and/or permits required for or occasioned by Tenant's use of the Leased Property.

27. SIGNS/GRAFFITI. Tenant shall not place signs or advertising signs, except unobtrusive identification and/or safety-related signage, on the Leased Property, the Tower, or the Property. Tenant shall remove graffiti from the equipment shelter within thirty (30) days of written notification of the same. If Tenant fails to remove the graffiti after written notification, the City may enter the Leased Property and undertake any activities necessary to abate or remove the graffiti. Tenant shall reimburse the City all actual costs incurred by the City in connection with such abatement or removal within thirty days of the City's presenting Tenant with a statement of such costs.

- 28. MAINTENANCE.** Tenant shall, at its expense, maintain its own equipment and other personal property on the Leased Property and keep the same in good working order, condition and repair. Tenant shall keep the Leased Property free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or interference. The City may require Tenant to submit to an annual inspection of its improvements, equipment, fixtures, and personal property placed on the Leased Property by Tenant. As a part of the annual inspection, Tenant, may be required to make reasonable repairs, at its cost, for damage to the Leased Property, equipment, or personal property, attributable to Tenant's use.
- 29. ACCEPTANCE OF PROPERTY.** Except as explicitly provided in this Site Agreement, by taking possession of the Leased Property, Tenant accepts the Leased Property in the condition existing as of the Commencement Date. Except as explicitly provided in this Site Agreement, City makes no representation or warranty with respect to the condition of the Property and City shall not be liable for any latent or patent defect in the Leased Property.
- 30. ESTOPPEL CERTIFICATE.** Tenant shall, at any time and from time to time, upon not less than sixty days prior request by the City, deliver to the City a statement in writing certifying that: **(a)** the Site Agreement is unmodified and in full force (or if there have been modifications, that the Site Agreement is in full force as modified and identifying the modifications); **(b)** the dates to which Rent and other charges have been paid; **(c)** so far as the person making the certificate knows and with no duty to investigate, the City is not in default under any provisions of the Site Agreement; and **(d)** such other matters as the City may reasonably request.
- 31. NOTICES.** All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested or by a recognized overnight delivery service, to the following addresses:

If to the City, to:

City of Lawrence, Kansas
Attn: City Clerk
6 East 6th
P.O. Box 708
Lawrence, KS 66044

With a copy to:

Attn: City Attorney
Toni Ramirez Wheeler
6 East 6th
P.O. Box 708
Lawrence, KS 66044

If to Tenant, to:

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #: KS5152; Cell Site Name: Kasold
Fixed Asset No.: 10007328
12555 Cingular Way, Suite 1300
Alpharetta, GA 30004

And with a copy to:

New Cingular Wireless PCS, LLC
Attn: Legal Department
Re: Cell Site #: KS5152; Cell Site Name: Kasold
Fixed Asset No.: 10007328
15 East Midland Ave
Paramus, NJ 07652

Any such notice shall be deemed effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

- 32. SUCESSORS AND ASSIGNS.** This Site Agreement shall be binding upon and inure to the benefit of the parties, their respective heirs, personal representatives, successors and assigns.
- 33. NON-WAIVER.** Failure of either party to insist on strict performance of any of the conditions, covenants, terms, or provisions of this Site Agreement or to exercise any of its rights hereunder shall not waive such rights, but the City or Tenant shall have the right to enforce such rights at any time and to take such action as might be lawful or authorized hereunder, either in law or equity. The receipt of any sum paid by the City or Tenant after a breach of this Site Agreement shall not be deemed a waiver of such breach unless expressly set forth in writing.

34. IMMUNITY OF OFFICERS, EMPLOYEES, AND MEMBERS OF THE CITY.

No personal recourse shall be had for the creation of this Site Agreement or for any claim based thereon or upon any representation, obligation, covenant or agreement in this Site Agreement against any past, present or future officer, member, employee or agent of the City, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and any liability of any such officers, members, directors, employees or agents is hereby expressly waived and released as a condition of and consideration for the execution of this Site Agreement. Furthermore, no past, present or future officer, member, employee or agent of the City shall be personally liable to Tenant, or any successor-in-interest, for any default or breach by the City.

35. SALE OF CITY'S PROPERTY.

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

- i. Old deed to City's Property
- ii. New deed to City's Property
- iii. Bill of Sale or Transfer
- iv. Copy of current Tax Bill
- v. New IRS Form W-9
- vi. Completed and Signed AT&T Payment Direction Form
- vii. Full contact information for new owner including phone number(s)

36. MISCELLANEOUS.

- (a)** The recitals are adopted and incorporated into this Site Agreement by reference as if set forth in full.
- (b)** The City represents and warrants that it has full authority to enter into and sign this Site Agreement and has good and marketable title to the Property. The City and Tenant also represent and warrant that the

execution of this Site Agreement will not violate any other agreement to which they are a party or any order, decree, or judgment of any judicial or administrative entity.

- (c)** This Site Agreement supersedes all prior discussions and negotiations and contains all agreements and understandings between the City and Tenant with respect to the subject matter hereof. This Site Agreement may only be amended in writing signed by all parties.
- (d)** Exhibits "A", "B", and "C" are incorporated into this Site Agreement by reference.
- (e)** This Site Agreement shall be construed in accordance with the laws of the State of Kansas. Any legal actions related to or arising out of this Agreement must be instituted in the District Court of Douglas County, Kansas or, if federal jurisdiction exists, in the United States District Court for the District of Kansas.
- (f)** If any term of this Site Agreement is found to be void or invalid by a court of competent jurisdiction, such validity shall not affect the remaining terms of this Site Agreement, which shall continue in full force and effect.
- (g)** The City agrees to execute a Memorandum of this Site Agreement which Tenant may record with the appropriate Recording Officer. The date set forth in the Memorandum is for recording purposes only and bears no reference to commencement of either term or Rent payments.
- (h)** The provisions of the Site Agreement relating to indemnification shall survive any termination or expiration of this Site Agreement. Additionally, any provisions of this Site Agreement that require performance subsequent to the termination or expiration of this Site Agreement shall also survive such termination or expiration.
- (i)** This Agreement is not a franchise agreement under K.S.A. 12-2001 *et seq.*, nor is it a permit or license to use any public Right of Way. Any such franchise, permit, or license, if applicable, must be obtained separately from the City.
- (j)** In the event that any court or governmental authority of competent jurisdiction orders, decrees or otherwise requires the City to limit, restrict, or cease operating the Property as a Communications Facility or operating the Property as a Communications Facility would result in a violation of the Kansas Cash-Basis Law of 1933, K.S.A. 10-1101 *et seq.*, this Site Agreement shall immediately terminate without

further liability to either the City or Tenant. Tenant shall immediately remove any equipment, antennas, or personal property in accordance with the terms of Section 13 of this Site Agreement.

- (k)** This Site Agreement may be executed in duplicate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterpart(s) and such signature pages all attached to a single instrument.
- (l)** The prevailing party in any litigation arising hereunder shall be entitled to reimbursement from the other party of its reasonable attorneys' fees and court costs, including appeals, if any.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the undersigned has caused this Site Agreement to be executed as of the date noted above.

**THE CITY: CITY OF LAWRENCE,
KANSAS, a municipal corporation**

DAVID L. CORLISS
City Manager

ACKNOWLEDGMENT

THE STATE OF KANSAS)
)
THE COUNTY OF DOUGLAS) ss:

BE IT REMEMBERED, that on this ____ day of _____, 2012, before me the undersigned, a notary public in and for the County and State aforesaid, came David L. Corliss, as City Manager of the City of Lawrence, Kansas, who is personally known to me to be the same person who executed this instrument in writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last written above.

Notary Public

My Appointment Expires:

