## STATE OF CONNECTICUT CONNECTICUT SITING COUNCIL

IN RE:

APPLICATION OF NEW CINGULAR
WIRELESS PCS, LLC (AT&T) FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED FOR
THE CONSTRUCTION, MAINTENANCE
AND OPERATION OF A
TELECOMMUNICATIONS TOWER
FACILITY LOCATED AT 95 BALANCE
ROCK ROAD IN THE TOWN OF
HARTLAND, CONNECTICUT

DOCKET NO.

DOCKET NO. 408

OCTOBER 13, 2010



CONNECTICUT SITING COUNCIL

MOTION FOR A PROTECTIVE ORDER RELATED TO DISCLOSURE OF THE EXACT MONTHLY RENT AND FINANCIAL TERMS INCLUDED IN THE LEASE AGREEMENT BETWEEN AT&T AND THE RING MOUNTAIN HUNT CLUB

In furtherance of the Council's ruling in Docket 366, the Applicant respectfully moves for a protective order related to the disclosure of the exact monthly rent in its lease agreement with The Ring Mountain Hunt Club ("Landlord"). The Siting Council's evaluation of AT&T's proposed facility should not be based on the financial terms of AT&T's agreement with the Landlord as it does not relate to the criteria set forth in Section 16-50p of the Connecticut General Statutes. Additionally, AT&T considers the specific amount of rent and other financial terms that these parties agreed upon as proprietary corporate information. It is respectfully submitted that the specific monthly rent of the lease agreement between AT&T and the Landlord as well as other financial terms is not relevant to this proceeding and should be excluded from any public disclosure. In furtherance of this motion, an unredacted copy of the lease pages specifying the monthly rent and other financial terms has been provided in the attached sealed envelope and marked "Proprietary-Confidential" with a redacted copy of the lease attached to this motion and provided in furtherance of Section 16-50o(c) of the Connecticut General Statutes.

Lucia Chiocchio, Esq.

## STATE OF CONNECTICUT CONNECTICUT SITING COUNCIL

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IN RE:

APPLICATION OF NEW CINGULAR WIRELESS PCS, LLC (AT&T) FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED FOR THE CONSTRUCTION, MAINTENANCE AND OPERATION OF A TELECOMMUNICATIONS TOWER FACILITY LOCATED AT 95 BALANCE ROCK ROAD IN THE TOWN OF HARTLAND, CONNECTICUT

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OCTOBER 13, 2010

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### AFFIDAVIT OF MICHELE G. BRIGGS

Michele G. Briggs, being duly sworn, deposes and states that:

- 1. I am over the eighteen years of age and understand the obligation of making a statement under oath.
- 2. I am a Real Estate and Construction Manager with AT&T Mobility ("AT&T").
- 3. I am familiar with AT&T's Application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance and operation of a telecommunications tower facility located at 95 Balance Rock Road in Hartland, Connecticut ("AT&T's Application").
- 4. I am familiar with the lease between AT&T and The Ring Mountain Hunt Club that was submitted with AT&T's Application ("lease").
- 5. A redacted copy of the lease between AT&T and The Ring Mountain Hunt Club was submitted in connection with AT&T's Application.
- 6. The redacted provisions relate to the amount of rent and related financial information to be paid by AT&T during the term of the lease and any extensions thereof ("Confidential Information").
- 7. The Confidential Information is proprietary, confidential and commercially valuable information that constitutes trade secrets.
- 8. AT&T would be harmed by the disclosure of the Confidential Information.
- 9. AT&T has used its best efforts to maintain the Confidential Information as secret in order to avoid the harm that would result from the disclosure of the Confidential Information.

Michele G. Briggs

## TITLE

New Cingular Wireless PCS LLC (AT&T)

Notary Public

My commission expires: 2011
LUCIA CHIOCCHIO
Notary Public, State of New York
No. 6100353
Qualified in Westchester County
Commission Expires October 14, 20

## STATE OF CONNECTICUT CONNECTICUT SITING COUNCIL

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IN RE:

APPLICATION OF NEW CINGULAR WIRELESS PCS, LLC (AT&T) FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED FOR THE CONSTRUCTION, MAINTENANCE AND OPERATION OF A TELECOMMUNICATIONS TOWER FACILITY LOCATED AT 95 BALANCE ROCK ROAD IN THE TOWN OF HARTLAND, CONNECTICUT

OCTOBER 13, 2010

DOCKET NO.

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#### **PROTECTIVE ORDER**

WHEREAS, the financial provisions in the lease between AT&T and The Ring Mountain Hunt Club (the "lease") are proprietary, confidential and commercially valuable information ("Confidential Information");

WHEREAS, the Confidential Information qualifies as "trade secrets" as defined by Connecticut Law;

WHEREAS, AT&T would be harmed by the disclosure of the Confidential Information;

WHEREAS, AT&T is willing to provide the Confidential Information to the Siting Council subject to a protective order;

NOW, THEREFORE, it is hereby ordered that a protective order enter with respect to the Confidential Information and that the following is adopted for the protection of the Confidential Information:

- 1. The Confidential Information shall be governed by the terms of this Order.
- 2. The Confidential Information is proprietary, confidential and constitutes trade secrets.
- 3. The Confidential Information shall be given solely to the Siting Council and its staff and the Siting Council and its staff shall take all reasonable precautions to maintain the confidentiality of the Confidential Information.

- 4. The Confidential Information is subject to this Order and shall in no event be disclosed to any person or entity.
- 5. The Confidential Information shall be delivered in a sealed envelope to the Siting Council and marked as follows: "Confidential: Disclosure of the Contents is Bound by Protective Order Issued by the Siting Council."
- 6. Nothing herein shall be interpreted as a determination that any of the Confidential Information will be admissible as substantive evidence in this proceeding or at any hearing or trial. Any party seeking to change the terms of this Order shall do so by motion and serve all parties. No information protected by this Order shall be made public until the Siting Council rules on any such motion to change the terms of this Order.
- 7. The Siting Council and its staff shall not access, use or disclose the Confidential Information in any proceeding, nor make the Confidential Information available to any party, intervenor or interested individual or entity in any proceeding.
- 8. The Confidential Information shall remain confidential and proprietary after the conclusion of all proceedings in this docket.
- 9. All copies of the Confidential Information shall be returned to AT&T no later than thirty (30) days after the expiration of all appeal periods applicable to the final decision rendered in this proceeding.

By:	
Dated:	, 2010

CONNECTICUT SITING COUNCIL

## CONNECTICUT SITING COUNCIL

and SITING COUN

DOCKET NO. 408

Market: New England Cell Site Number: SR 2587 Cell Site Name: West Hartland Fixed Asset Number: 10133872

#### OPTION AND LEASE AGREEMENT

THIS OPTION AND LEASE AGREEMENT ("Agreement"), dated as of the latter of the signature dates below (the "Effective Date"), is entered into by The Ring Mountain Hunt Club, Incorporated a Connecticut domestic non-stock corporation having a mailing address of 17 Balance Rock Road, Hartland, CT 06027 (hereinafter referred to as "Landlord") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 12555 Cingular Way, Suite 1300, Alpharetta, GA 30004-(hereinafter referred to as "Tenant").

#### BACKGROUND

Landlord owns or controls that certain plot, parcel or tract of land, together with all rights and privileges arising in connection therewith, located at Balance Rock Road, Hartland, CT, in the County of Litchfield, State of Connecticut (collectively, the "Property"). Tenant desires to use a portion of the Property in connection with its federally licensed communications business. Landlord desires to grant to Tenant the right to use a portion of the Property in accordance with this Agreement.

The parties agree as follows:

#### 1. OPTION TO LEASE.

- (a) Landlord grants to Tenant an option (the "Option") to lease a certain portion of the Property containing approximately one thousand square feet including the air space above such room/cabinet/ground space as described on attached Exhibit 1, together with unrestricted access for Tenant's uses from the nearest public right-of-way along the Property to the Premises as described on the attached Exhibit 1 (collectively, the "Premises").
- During the Option period and any extension thereof, and during the term of this Agreement, (b) Tenant and its agents, engineers, surveyors and other representatives will have the right to enter upon the Property to inspect, examine, conduct soil borings, drainage testing, material sampling, radio frequency testing and other geological or engineering tests or studies of the Property (collectively, the "Tests"), to apply for and obtain licenses, permits, approvals, or other relief required of or deemed necessary or appropriate at Tenant's sole discretion for its use of the Premises and include, without limitation, applications for zoning variances, zoning ordinances, amendments, special use permits, and construction permits so long as same does not adversely impact Landlord's current use of the Property and/or require Landlord to unreasonably participate in such endeavors (collectively, the "Government Approvals"), initiate the ordering and/or scheduling of necessary utilities, and otherwise to do those things on or off the Property that, in the opinion of Tenant, are necessary in Tenant's sole discretion to determine the physical condition of the Property, the environmental history of the Property, Landlord's title to the Property and the feasibility or suitability of the Property for Tenant's Permitted Use, all at Tenant's expense. Tenant will not be liable to Landlord or any third party on account of any preexisting defect or condition on or with respect to the Property, whether or not such defect or condition is disclosed by Tenant's inspection. Tenant will restore the Property to its condition as it existed at the commencement of the Option Term (as defined below), reasonable wear and tear and casualty not caused by Tenant excepted. In addition, Tenant shall indemnify, defend and hold Landlord harmless from and against any and all injury, loss, damage or claims arising directly out of Tenant's Tests.
- (c) In consideration of Landlord granting Tenant the Option, Tenant agrees to pay Landlord the sum:

  within thirty (30) business days of the Effective Date. The Option will be for an initial term of one (1) year commencing on the Effective Date (the "Initial Option Term") and may be renewed by Tenant for an additional one (1) year upon written notification to Landlord and the

expiration date of the Initial Option Term.

The Option may be sold, assigned or transferred at any time by Tenant to Tenant's parent company or member if Tenant is a limited liability company or any affiliate or subsidiary of, or partner in, Tenant or its parent company or member, or to any third party agreeing to be subject to the terms hereof. Otherwise, the Option may not be sold, assigned or transferred without the written consent of Landlord, such consent not to be unreasonably withheld, conditioned or delayed. From and after the date the Option has been sold, assigned or transferred by Tenant to a third party agreeing to be subject to the terms hereof, Tenant shall immediately be released from any and all liability under this Agreement, including the payment of any rental or other sums due, without any further action.

During the Initial Option Term and any extension thereof, Tenant may exercise the Option by notifying Landlord in writing. If Tenant exercises the Option then Landlord leases the Premises to the Tenant subject to the terms and conditions of this Agreement. If Tenant does not exercise the Option during the Initial Option Term or any extension thereof, this Agreement will terminate and the parties will have no further

liability to each other.

- If during the Initial Option Term or any extension thereof, or during the term of this Agreement (f) if the Option is exercised, Landlord decides to subdivide, sell, or change the status of the zoning of the Premises, Property or any of Landlord's contiguous, adjoining or surrounding property (the "Surrounding Property,") or in the event of foreclosure, Landlord shall immediately notify Tenant in writing. Any sale of the Property shall be subject to Tenant's rights under this Agreement. Landlord agrees that during the Initial Option Term or any extension thereof, or during the Term of this Agreement if the Option is exercised, Landlord shall not initiate or consent to any change in the zoning of the Premises, Property or Surrounding Property or impose or consent to any other restriction that would prevent or limit Tenant from using the Premises for the uses intended by Tenant as hereinafter set forth in this Agreement.
- 2. PERMITTED USE. Provided Tenant receives all necessary Governmental Approvals and Tenant exercises its Option. Tenant may use the Premises for the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair, replacement and upgrade of its communications fixtures and related equipment, cables, accessories and improvements, which may include a suitable support structure, associated antennas, equipment shelters or cabinets and fencing and any other items necessary to the successful and secure use of the Premises (collectively, the "Communication Facility"), as well as the right to test, survey and review title on the Property; Tenant further has the right but not the obligation to add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including, but not limited to, emergency 911 communication services, at no additional cost to Tenant or Landlord (collectively, the "Permitted Use"). Landlord and Tenant agree that any portion of the Communication Facility that may be conceptually described on Exhibit 1 will not be deemed to limit Tenant's Permitted Use. If Exhibit 1 includes drawings of the initial installation of the Communication Facility, Landlord's execution of this Agreement will signify Landlord's approval of Exhibit 1. For a period of ninety (90) days following the start of construction, Landlord grants Tenant, its subtenants, licensees and sublicensees, the right to use such portions of Landlord's contiguous, adjoining or Surrounding Property as described on Exhibit 1 as may reasonably be required during construction and installation of the Communications Facility. Tenant shall have the obligation to restore such portions of Landlord's contiguous, adjoining or Surrounding Property used by Tenant, its subtenants, licensees and sublicenses to its condition prior to such use, normal wear and tear and damage from the elements excepted. Tenant 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, and to make Property improvements, alterations, upgrades or additions appropriate for Tenant's use ("Tenant Changes"). Tenant Changes include the obligation to construct a fence around the Premises and to make any and all necessary safety improvements which shall be mutually agreed upon by Tenant and Landlord such as construction of a backstop or berm sufficient to ensure safety of any individuals entering upon the Premises in light of the acknowledged presence of a shooting range on the Property and also to include the Tenant's rights to undertake any other appropriate means to secure the Premises all at Tenant's

sole expense. Tenant agrees to comply with all applicable governmental laws, rules, statutes and regulations, relating to its use of the Communication Facility on the Property. Tenant has the right to modify, supplement, replace, upgrade, expand the equipment, increase the number of antennas or relocate the Communication Facility within the Premises at any time during the term of this Agreement. Tenant will be allowed to make such alterations to the Property in order to accomplish Tenant's Changes or to insure that Tenant's Communication Facility complies with all applicable federal, state or local laws, rules or regulations. In the event Tenant desires to modify or upgrade the Communication Facility, and Tenant requires are additional portion of the Property (the "Additional Premises") for such modification or upgrade, Landlord agrees to lease to Tenant the Additional Premises, so long as such leasing does not impact adversely upon the Landlord's use of the Property and does not constitute a zoning violation or violation of any other municipal, state or federal law. Such lease of the Additional Premises to be upon the same terms and conditions set forth herein, except that the Rent shall increase, in conjunction with the lease of the Additional Premises by a reasonable amount consistent with the rental rates being charged for comparable portions of real property being in the same area. Landlord agrees to take such actions and enter into and deliver to Tenant such documents as Tenant reasonably requests in order to effect and memorialize the lease of the Additional Premises to Tenant.

#### 3. TERM.

(a) The initial lease term will be five (5) years ("Initial Term"), commencing on the effective date of written notification by Tenant to Landlord of Tenant's exercise of the Option (the "Term Commencement Date"). The Initial Term will terminate on the fifth (5<sup>th</sup>) annual anniversary of the Term Commencement Date.

(b) This Agreement will automatically renew for four (4) additional five (5) year term(s) (each five (5) year term shall be defined as the "Extension Term"), upon the same terms and conditions unless the Tenant notifies the Landlord in writing of Tenant's intention not to renew this Agreement at least sixty (60) days prior to the expiration of the existing Term.

- (c) If, at least sixty (60) days prior to the end of the fourth (4<sup>th</sup>) extended term, either Landlord or Tenant has not given the other written notice of its desire that the term of this Agreement end at the expiration of the fourth (4<sup>th</sup>) extended term, then upon the expiration of the fourth (4<sup>th</sup>) extended term this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of one (1) year, and for annual terms thereafter until terminated by either party by giving to the other written notice of its intention to so terminate at least six (6) months prior to the end of any such annual term. Monthly rental during such annual terms shall be equal to the rent paid for the last month of the fourth (4<sup>th</sup>) extended term. If Tenant remains in possession of the Premises after the termination of this Agreement then Tenant will be deemed to be occupying the Premises on a month to month basis (the "Holdover Term"), subject to the terms and conditions of this Agreement.
- (d) The Initial Term, the Extension Term and the Holdover Term are collectively referred to as the Term ("Term").

#### 4. RENT.

(a) Commencing on the first day of the month following the date that Tenant commences construction (the "Rent Commencement Date"), Tenant will pay the Landlord a

It the address set forth above, on or before the fifth (5<sup>th</sup>) day of each calendar month in advance. In partial months occurring after the Rent Commencement Date, Rent will be prorated. The initial Rent payment will be forwarded by Tenant to Landlord within thirty (30) days after the Rent Commencement Date.

- (b) In year two (2) of the Initial Term, and each year thereafter, including throughout any Extension Terms exercised, the monthly rent will er the Rent paid during the previous year.
- (c) All charges payable under this Agreement such as utilities and taxes shall be billed by Landlord within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by Landlord, and shall not be payable by Tenant. The foregoing shall not apply to monthly rent which is due and payable without a requirement that it be billed by Landlord. The provisions of the foregoing sentence shall survive the termination or expiration of this Agreement.

(d) In addition to the above rent, additional rent shall be payable under Assignment/Sublease Agreement in sub paragraph 16A.

#### 5. APPROVALS.

(a) Landlord agrees that Tenant's ability to use the Premises is contingent upon the suitability of the Premises for Tenant's Permitted Use and Tenant's ability to obtain and maintain all Government Approvals. Landlord authorizes Tenant to prepare, execute and file all required applications to obtain Government Approvals for Tenant's Permitted Use under this Agreement and agrees to reasonably assist Tenant with such applications and with obtaining and maintaining the Government Approvals.

(b) Tenant has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of Tenant's choice. In the event Tenant determines, in its sole discretion, due to the title report results or survey results, that the condition of the Premises is unsatisfactory, Tenant will have the right to terminate this Agreement upon notice to Landlord. Tenant shall provide Landlord a copy of the title reports and/or survey results however Landlord shall not rely on said title or survey reports and shall indemnify tenant and hold tenant harmless from such

findings. Furthermore, Landlord shall not releases such documents to any third party.

(c) Tenant may also perform and obtain, at Tenant's sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports on, over, and under the Property, necessary to determine if the Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system, design, operations or Government Approvals. Tenant shall provide to Landlord a copy of environmental studies which will be filled with the State of Connecticut citing application form and become public record. Landlord agrees it will not rely upon the findings in the environmental studies and releases Tenant and any and all parties that prepared the environmental studies from any and all claims that arise in conjunction with release of the environmental studies.

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

(a) by either party on thirty (30) days prior written notice, if the other party remains in default

under Paragraph 15 of this Agreement after the applicable cure periods;

- (b) by Tenant upon written notice to Landlord, if Tenant is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now or hereafter intended by Tenant; or if Tenant determines in its sole discretion that the cost of obtaining or retaining the same is commercially unreasonable;
- (c) by Tenant upon written notice to Landlord for any reason or no reason, at any time prior to commencement of construction by Tenant; or
- (d) by Tenant upon sixty (60) days prior written notice to Landlord for any reason, so long as Tenant pays Landlord a termination fee equal to three (3) months 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 Tenant under any one or more of Paragraphs 5(b), 6(a), 6(b), 6(c), 8, 11(d), 18, 19 or 23(j) of this Agreement.

#### 7. INSURANCE.

Tenant will carry during the Term, at its own cost and expense, the following insurance: (i) "All Risk" property insurance for its property's replacement cost; (ii) commercial general liability insurance with a minimum limit of liability of combined single limit for bodily injury or death/property damage arising out of any one occurrence; and (iii) Workers' Compensation Insurance as required by law. The coverage afforded by Tenant's commercial general liability insurance shall apply to Landlord as an additional insured, but only with respect to Landlord's liability arising out of its interest in the Property and its leasing of the Premises to the Tenant.

#### 8. INTERFERENCE.

- (a) Where there are existing radio frequency user(s) on the Property, the Landlord will provide Tenant with a list of all existing radio frequency user(s) on the Property to allow Tenant to evaluate the potential for interference. Tenant warrants that its use of the Premises will not interfere with existing radio frequency user(s) on the Property so disclosed by Landlord, 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.
- (b) Landlord will not grant, after the date of this Agreement, a lease, license or any other right to any third party for the use of the Property, if such use may in any way adversely affect or interfere with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will notify Tenant in writing prior to granting any third party the right to install and operate communications equipment on the Property.
- (c) Landlord will not use, nor will Landlord permit its employees, tenants, licensees, invitees or agents to use, any portion of the Property in any way which interferes with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will cause such interference to cease within twenty-four (24) hours after receipt of notice of interference from Tenant. In the event any such interference does not cease within the aforementioned cure period then the parties acknowledge that Tenant will suffer irreparable injury, and therefore, Tenant will have the right, in addition to any other rights that it may have at law or in equity, for Landlord's breach of this Agreement, to elect to enjoin such interference or to terminate this Agreement upon notice to Landlord. Notwithstanding the foregoing, the Tenant accepts the current use of the Property by Landlord including, but not limited to, its housing of a shooting range and, in no event, shall Tenant be entitled to make a claim under this section that this current use violates Tenant's rights under this section.

#### 9. **INDEMNIFICATION.**

- (a) Tenant agrees to indemnify, defend and hold Landlord harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly from the installation, use, maintenance, repair or removal of the Communication Facility or Tenant's breach of any provision of this Agreement, except to the extent attributable to the grossly negligent or intentional act or omission of Landlord, its employees, agents or independent contractors.
- (b) Landlord agrees to indemnify, defend and hold Tenant harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising directly from the actions or failure to act of Landlord or its employees or agents, or Landlord's breach of any provision of this Agreement, except to the extent attributable to the grossly negligent or intentional act or omission of Tenant, its employees, agents or independent contractors.
- (c) Notwithstanding anything to the contrary in this Agreement, Tenant and Landlord each waives any claims that each may have against the other with respect to consequential, incidental or special damages.

#### 10. WARRANTIES.

- (a) Tenant and Landlord 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) Landlord represents and warrants that: (i) Landlord solely owns the Property as a legal lot in fee simple, or controls the Property by lease or license; (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 Tenant's Permitted Use and enjoyment of the Premises under this Agreement; (iii) as long as Tenant is not in default then Landlord grants to Tenant sole, actual, quiet and peaceful use, enjoyment and possession of the Premises; (iv) Landlord'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 Landlord; and (v) if the Property is or becomes encumbered by a deed to secure a debt, mortgage or other

security interest, Landlord will provide promptly to Tenant a mutually agreeable Subordination, Non-Disturbance and Attornment Agreement.

#### 11. ENVIRONMENTAL.

- (a) Landlord represents and warrants that, to the best of Landlord's knowledge and belief, the Property is free of hazardous substances as of the date of this Agreement, and, to the best of Landlord's knowledge, the Property has never been subject to any contamination or hazardous conditions resulting in any environmental investigation, inquiry or remediation. Landlord and Tenant agree that each will be responsible for compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene condition or other matters as may now or at any time hereafter be in effect, that are now or were related to that party's activity conducted in or on the Property.
- (b) Landlord and Tenant agree to hold harmless and indemnify the other from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of the indemnifying party for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is related to (i) the indemnifying party's failure to comply with any environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or matters as may now or hereafter be in effect, or (ii) any environmental or industrial hygiene conditions that arise out of or are in any way related to the condition of the Property and activities conducted by the party thereon, unless the environmental conditions are caused by the other party.
- (c) The indemnifications of this Paragraph 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. The provisions of this Paragraph 11 will survive the expiration or termination of this Agreement.
- (d) In the event Tenant becomes aware of any hazardous materials on the Property, or any environmental or industrial hygiene condition or matter relating to the Property that, in Tenant's sole determination, renders the condition of the Premises or Property unsuitable for Tenant's use, or if Tenant believes that the leasing or continued leasing of the Premises would expose Tenant to undue risks of government action, intervention or third-party liability, Tenant 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 Landlord.
- ACCESS. At all times throughout the Term of this Agreement, and at no additional charge to Tenant, Tenant and its employees, agents, and subcontractors, will have twenty-four (24) hour per day, seven (7) day per week pedestrian and vehicular access to and over portions of the Property for the installation, maintenance and operation of the Communication Facility and any utilities serving the Premises. Landlord grants to Tenant an easement for such access and Landlord agrees to provide to Tenant such codes, keys and other instruments necessary for such access at no additional cost to Tenant. Landlord acknowledges that in the event Tenant cannot access the Premises, Tenant shall incur significant damage. If Landlord fails to provide the access granted by this Paragraph 12, such failure shall be a default under this Lease. In connection with such default, in addition to any other rights or remedies available to Tenant under this Lease or at law or equity, Landlord shall pay Tenant, as liquidated damages and not as a penalty, \$500.00 per day in consideration of Tenant's damages, including, but not limited to, its lost profits, until Landlord cures such default. Landlord and Tenant agree that Tenant's damages in the event of a denial of access are difficult, if not impossible, to ascertain, and the liquidated damages set forth herein are a reasonable approximation of such damages. Upon Tenant's request, Landlord will execute a separate recordable easement evidencing this right. In the event any public utility is unable to use the access or easement provided to Tenant then the Landlord agrees to gram additional access or an easement either to Tenant or to the public utility, for the benefit of Tenant, at no cost to Tenant. As long as Tenant has access and easements to the Premises, nothing herein shall require the Landlord to clear lands, install roads and/or trails.

REMOVAL/RESTORATION. All portions of the Communication Facility brought onto the Property by Tenant will be and remain Tenant's personal property and, at Tenant's option, may be removed by Tenant at any time during the Term. Landlord covenants and agrees that no part of the Communication Facility constructed, erected or placed on the Premises by Tenant will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of the Landlord that all improvements of every kind and nature constructed, erected or placed by Tenant on the Premises will be and remain the property of the Tenant and may be removed by Tenant at any time during the Term. Within one hundred twenty (120) days of the termination of this Agreement, Tenant will remove all of Tenant's above-ground improvements and Tenant will, to the extent reasonable, restore the Premises to its condition at the commencement of the Agreement, reasonable wear and tear and loss by casualty or other causes beyond Tenant's control excepted. Notwithstanding the foregoing, Tenant will not be responsible for the replacement of any trees, shrubs or other vegetation, nor will Tenant be required to remove from the Premises or the Property any structural steel or any foundations or underground utilities. Tenant must, however, take such reasonable steps to render any unremoved items safe such that they do not constitute nuisances on the Property. Any failure on the part of the Tenant to remove all of Tenant's above-ground improvements within one hundred twenty (120) days of the termination of this Agreement, shall entitle Landlord to declare such improvements as Landlord property and in the event Landlord makes such declaration to Tenant in writing Tenant shall lose all ownership rights to such improvements. Absent declaration by the Landlord, however, Tenant shall have the affirmative obligation to remove such improvements or be liable to the Landlord for expenses incurred by Landlord in removing them.

#### 14. MAINTENANCE/UTILITIES.

(a) Tenant will keep and maintain the Premises in good condition, reasonable wear and tear and damage from the elements excepted. Landlord 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.

Tenant will be responsible for paying on a monthly or quarterly basis all utilities charges for electricity, telephone service or any other utility used or consumed by Tenant on the Premises. In the event Tenant cannot secure its own metered electrical supply, Tenant will have the right, at its own cost and expense, to submeter from the Landlord. When submetering is required under this Agreement, Landlord will read the meter and provide Tenant with an invoice and usage data on a monthly basis. Landlord agrees that it will not include a markup on the utility charges. Landlord further agrees to provide the usage data and invoice on forms provided by Tenant and to send such forms to such address and/or agent designated by Tenant. Tenant will remit payment within thirty days of receipt of the usage data and required forms. Failure by Landlord to perform this function will limit utility fee recovery by Landlord to a 12-month period. If Tenant submeters electricity from Landlord, Landlord agrees to give Tenant at least 24 hours advanced notice of any planned interruptions of said electricity. Landlord acknowledges that Tenant provides a communication service which requires electrical power to operate and must operate twenty-four (24) hour per day, seven (7) day per week. If the interruption is for an extended period of time, in Tenant's reasonable determination, the Landlord agrees to allow Tenant the right to bring in a temporary source of power for the duration of the interruption. Landlord will fully cooperate with any utility company requesting an easement over, under and across the Property in order for the utility company to provide service to the Tenant. Landlord will not be responsible for interference with, interruption of or failure, beyond the reasonable control of Landlord, of such services to be furnished or supplied by Landlord.

### 15. <u>DEFAULT AND RIGHT TO CURE.</u>

(a) The following will be deemed a default by Tenant 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 Landlord of such failure to pay; or (ii) Tenant's failure to perform any other term or condition under this Agreement within forty-five (45) days after receipt of written notice from Landlord specifying the failure. No such failure, however, will be deemed to exist if Tenant has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Tenant. If Tenant remains in default beyond

any applicable cure period, Landlord 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 Landlord and a breach of this Agreemen:: (i) failure to provide access to the Premises or to cure an interference problem within twenty-four (24) hours after receipt of written notice of such default; or (ii) Landlord'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 Tenant specifying the failure. No such failure, however, will be deemed to exist if Landlord has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord. If Landlord remains in default beyond any applicable cure period, Tenant will have the right to exercise any and all rights available to it under law and equity, including the right to cure Landlord's default and to deduct the costs of such cure from any monies due to Landlord from Tenant.
- 16. <u>ASSIGNMENT/SUBLEASE</u>. (a) Tenant will have the right to assign this Agreement or sublease the Premises and its rights herein, in whole or in part, without Landlord's consent. Upon notification to Landlord of such assignment, Tenant will be relieved of all future performance, liabilities and obligations under this Agreement.
- (b) Tenant shall have the right to sublease all or portion of the Premises or tower to any other carrier ("Co-locator"). Tenant agrees to pay to Landlord as additional rent, an amount equal to fifteen percent (15%) of any rents received by Tenant from each Co-locater to which space is subleased. Such additional rent shall be hereinafter referred to as ("Co-locater Rent"). In the event Tenant has a pass-through agreement with any such Co-locater regarding Co-locater Rent, the Co-locater Rent will be paid by the Co-locater to the Tenant as a pass-through, and shall be promptly forwarded by the Tenant to the Landlord.
- 17. <u>NOTICES.</u> 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. Notices will be addressed to the parties as follows:

If to Tenant:

New Cingular Wireless PCS, LLC

Attn: Network Real Estate Administration

Re: Cell Site #\_SR2587; Cell Site Name: West Hartland - Riverton (CT)

Fixed Asset No: 10133872\_

12555 Cingular Way, Suite 1300 Alpharetta, Georgia 30004

With a copy to:

New Cingular Wireless PCS, LLC

Attn: Legal Department

Re: Cell Site #\_SR2576; Cell Site Name: West Hartland-Riverton (CT)

Fixed Asset No: 10133872

340 Mt. Kemble Avenue Morristown, NJ 07960

If to Landlord:

The Ring Mountain Hunt Club, Incorporated

Attn: President

17 Balance Rock Road Hartland, CT 06027

With a copy to:

Thomas G. Benneche, Esq.

Benneche Law Firm 885 Hopmeadow Street Simsbury, CT 06070

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

In the event of a change in ownership, transfer or sale of the Property, within ten (10) days of such transfer, Landlord will send the below documents to Tenant. In the event Tenant does not receive such appropriate documents, Tenant shall not be responsible for any failure to pay the current landlord

- a. Old deed to Property
- b. New deed to Property
- c. Bill of Sale or Transfer
- d. Copy of current Tax Bill
- e. New W-9
- f. New Payment Direction Form
- g. Full contact information for new Landlord including all phone numbers
- 18. <u>CONDEMNATION</u>. In the event Landlord receives notification of any condemnation proceedings affecting the Property, Landlord will provide notice of the proceeding to Tenant within forty-eight (43) hours. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's sole determination, to render the Premises unsuitable for Tenant, this Agreement will terminate as of the date the title vests in the condemning authority. The parties will each be entitled to pursue their own separate awards in the condemnation proceeds, which for Tenant will include, where applicable, the value of its Communication Facility, moving expenses, prepaid Rent, and business dislocation expenses, provided that any award to Tenant will not diminish Landlord's recovery. Tenant will be entitled to reimbursement for any prepaid Rent on a prorata basis.
- CASUALTY. Landlord will provide notice to Tenant of any casualty affecting the Property within forty-eight (48) hours of the casualty. If any part of the Communication Facility or Property is damaged by fire or other casualty so as to render the Premises unsuitable, in Tenant's sole determination, then Tenant may terminate this Agreement by providing written notice to the Landlord, which termination will be effective as of the date of such damage or destruction. Upon such termination, Tenant will be entitled to collect all insurance proceeds payable to Tenant on account thereof and to be reimbursed for any prepaid Rent on a prorata basis. If notice of termination is given, or if Landlord or Tenant undertake to rebuild the Communications Facility, Landlord aggress to use its reasonable efforts to permit Tenant to place temporary transmission and reception facilities on the Property at no additional Rent until such time as Tenant is able to activate a replacement transmission facility at another location or the reconstruction of the Communication Facility is completed.
- 20. WAIVER OF LANDLORD'S LIENS. Landlord waives any and all lien rights it may have, statutory or otherwise, concerning the Communication Facility or any portion thereof. The Communication Facility 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 Landlord consents to Tenant's right to remove all or any portion of the Communication Facility from time to time in Tenant's sole discretion and without Landlord's consent.
- 21. TAXES. Landlord shall be responsible for payment of all ad valorem taxes levied upon the lands, improvements and other property of Landlord. Tenant shall be responsible for all taxes levied upon Tenant's leasehold improvements (including Tenant's equipment building and tower) on the Premises. Landlord shall provide Tenant with copies of all assessment notices on or including the Premises immediately upon receipt, but in no event later than thirty (30) days after receipt by Landlord. If Landlord fails to provide such notice within such time frame, Landlord shall be responsible for all increases in taxes for the year covered by the assessment. Tenant shall have the right to contest, in good faith, the validity or the amount of any tax or assessment levied

against the Premises by such appellate or other proceedings as may be appropriate in the jurisdiction, and may defer payment of such obligations, pay same under protest, or take such other steps as Tenant may deem appropriate. This right shall include the ability to institute any legal, regulatory or informal action in the name of Landlord, Tenant, or both, with respect to the valuation of the Premises. Landlord shall cooperate in the institution and prosecution of any such proceedings and will execute any documents required therefore. The expense of any such proceedings shall be borne by Tenant and any refunds or rebates secured as a result of Tenant's action shall belong to Tenant.

#### 22. SALE OF PROPERTY/RIGHT OF FIRST REFUSAL.

- If Landlord, at any time during the Term of this Agreement, decides to sell, subdivide or rezone any of the Premises, all or any part of the Property or Surrounding Property, to a purchaser other than Tenant, Landlord shall promptly notify Tenant in writing, and such sale, subdivision or rezoning shall be subject to this Agreement and Tenant's rights hereunder. Landlord agrees not to sell, lease or use any areas of the Property or Surrounding Property for the installation, operation or maintenance of other wireless communications facilities if such installation, operation or maintenance would interfere with Tenant's Permitted Use or communications equipment as determined by radio propagation tests performed by Tenant in its sole discretion, any such testing to be at the expense of Landlord or Landlord's prospective purchaser, and not Tenant. If the radio frequency propagation tests demonstrate levels of interference unacceptable to Tenant, Landlord shall be prohibited from selling, leasing or using any areas of the Property or the Surrounding Property for purposes of any installation, operation or maintenance of any other wireless communications facility or equipment. Landlord shall not be prohibited from the selling, leasing or use of any of the Property or the Surrounding Property for non-wireless communication use. In the event the Property is transferred, the new landlord shall have a duty at the time of such transfer to provide Tenant with a completed IRS Form W-9, or its equivalent, and other related paper work to effect a transfer in Rent to the new landlord. The provisions of this Paragraph 22 shall in no way limit or impair the obligations of Landlord under Paragraph 8 above.
- If at any time after the Effective Date, Landlord receives a bona fide written offer from a third party seeking an assignment of the rental stream associated with this Agreement ("Purchase Offer"), Landlord shall immediately furnish Tenant with a copy of the Purchase Offer, together with a representation that the Purchase Offer is valid, genuine and true in all respects. Tenant shall have the right within thirty (30) days after it receives such copy and representation to match the Purchase Offer and agree in writing to match the terms of the Purchase Offer. Such writing shall be in the form of a contract substantially similar to the Purchase Offer. If Tenant chooses not to exercise this right of first refusal or fails to provide written notice to Landlord within the thirty (30) day period, Landlord may assign the rental stream pursuant to the Purchase Offer, subject to the terms of this Agreement (including without limitation the terms of this Subparagraph 22(B), to the person or entity that made the Purchase Offer provided that (i) the assignment is on the same terms contained in the Purchase Offer and (ii) the assignment occurs within ninety (90) days of Tenant's receipt of a copy of the Purchase Offer. If such third party modifies the Purchase Offer or the assignment does not occur within such ninety (90) day period, Landlord shall re-offer to Tenant, pursuant to the procedure set forth in this subparagraph 22(b), the assignment on the terms set forth in the Purchase Offer, as amended. The right of first refusal hereunder shall (i) survive any transfer of all or any part of the Property or assignment of all or any part of the Agreement; (ii) bind and inure to the benefit of, Landlord and Tenant and their respective heirs, successors and assigns; (iii) run with the land; and (iv) terminate upon the expiration or earlier tennination of this Agreement.

#### 23. MISCELLANEOUS.

- (a) Amendment/Waiver. This Agreement cannot be amended, modified or revised unless done in writing and signed by an authorized agent of the Landlord and an authorized agent of the Tenant. No provision may be waived except in a writing signed by both parties.
- (b) Memorandum/Short Form Lease. Either party will, at any time upon fifteen (15) business days prior written notice from the other, execute, acknowledge and deliver to the other a recordable

Memorandum or Short Form of Lease. Either party may record this Memorandum or Short Form of Lease at any time, in its absolute discretion.

- (c) 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.
- (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. This Agreement will be governed by the laws of the state of Connecticut without regard to conflicts of law.
- (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 but not limited to"; (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; (vi) reference to a default will take into consideration any applicable notice, grace and cure periods; and (vii) to the extent there is any issue with respect to any alleged, perceived or actual ambiguity in this Agreement, the ambiguity shall not be resolved on the basis of who drafted the Agreement.
- (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 encumbrance of the Premises. 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. Landlord agrees to provide Tenant 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 Tenant.
- (i) No Electronic Signature/No Option. The submission of this Agreement to any party for examination or consideration does not constitute an offer, reservation of or option for the Premises based on the terms set forth herein. This Agreement will become effective as a binding Agreement only upon the handwritten legal execution, acknowledgment and delivery hereof by Landlord and Tenant.
- (j) 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.
- (k) 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.
- (l) Legal Fees. Tenant agrees to pay Landlord's reasonable legal fees for the review of this Agreement and in a onetime amount not to exceed within thirty (30) days of reasonable proof of the same.

IN WITNESS WHEREOF, the parties have caused this Agreement to be effective as of the last date written below.

WITNESSES:	"LANDLORD"			
Print Name: Down Ruckank Print Name: MARIE R RUCKANK	The Ring Mountain Hunt Club, Incorporated  By:     Common   Common			
Print Name: Kewn L. Mason  Print Name: Parack Nyston	"TENANT" New Cingular Wireless PCS, LLC, By: AT&T Mobility Corporation Its: Manager  By: Print Name: Robert W. Donovan			
<del></del>	Its: Real Estate and Construction Manager			
	Date: 11-18-09			

[ACKNOWLEDGMENTS APPEAR ON THE NEXT PAGE]

## TENANT ACKNOWLEDGMENT

STATE OF Mussachusetts )	
) SS:	
COUNTY OF M. 3 dle se x )	
On the 18th day of 10v.	, 2001, before me personally appeared Robert W. Donourn,
and acknowledged under oath th	
New Cingular Wireless PCS, the	named in the attached instrument,
and as such was authorized to execute this instr	at he is the KEGN Manger of named in the attached instrument,
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	My Commission Expires:
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•	
	The Ring Mountain Hunt Club, Incorporated
Witnessed by:	a Connecticut corporation
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Bland	By: Lamar d. Elety
Name Ream Down	Name: Lewrood R. Debray
41 000	Title: President
Mani & Durbout	
Name: MARIE R BURBO	
STATE OF CONNECTICUT	
ss: Hartle	and the second
COUNTY OF Litchfield	
COOM I OI CITAIN CIO	
The foregoing instrument was acknowle	ledged before me this 10th day of November , 2009, by
Leaned R. DeGray Preside	of The Ring Mountain Hunt Club, Incorporated, a
Connecticut corporation, on behalf of the corpo	ration.
·	
	aiot n. dee
	Napre: Casol N. Lee
	Notary Public/Commissioner of the Superior Court
	مناجع وفساوا والمارية
	My Commission Expires: 11-30-2013

### EXHIBIT 1

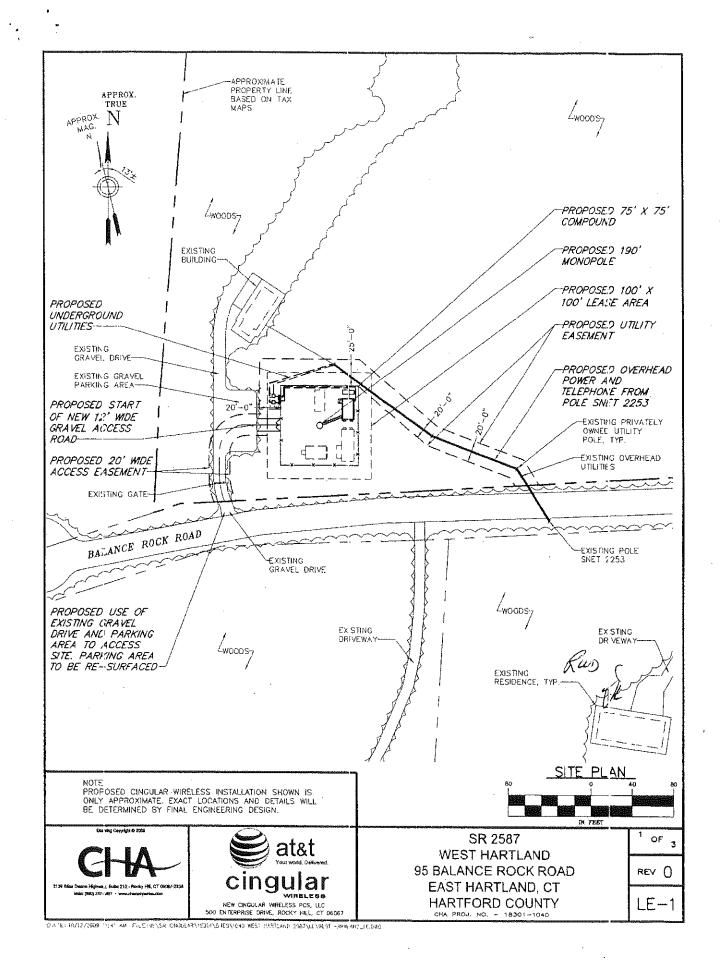
# DESCRIPTION OF PREMISES Page $\underline{\underline{\ \ }}$ of $\underline{\underline{\ \ \ \ \ }}$

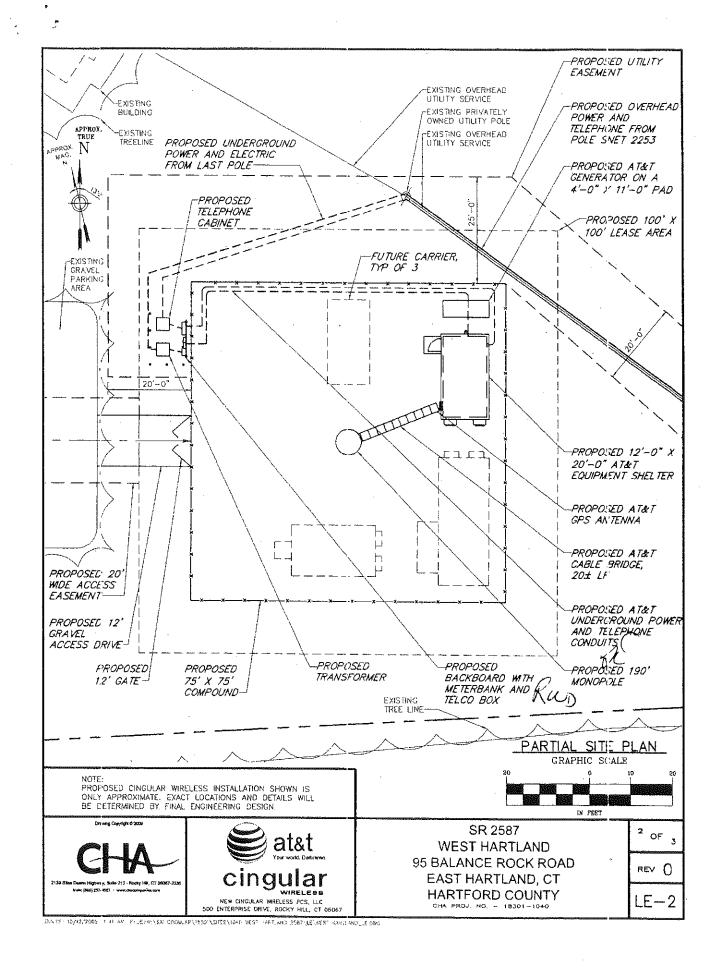
to the Agreement dated	November 18	_, 200 <u>_</u> 1, by	and between 1	ne Rinal	Mountain	Hunt Chy a
corporation,	as Landlord,	and	New Cinarle	ur Wiy	elen PL	5, a
LLC	, as Tenant.					<del></del>

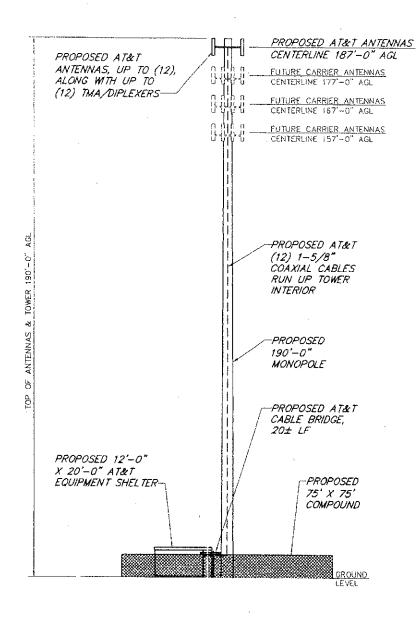
The Premises are described and/or depicted as follows:

#### Notes:

- This Exhibit may be replaced by a land survey and/or construction drawings of the Premises once received by Tenant.
- Any setback of the Premises from the Property's boundaries shall be the distance required by the applicable governmental authorities. Width of access road shall be the width required by the applicable governmental authorities, including police and fire departments.
- The type, number and mounting positions and locations of antennas and transmission lines are illustrative only. Actual types, numbers and mounting positions may vary from what is shown above.







TOWER ELEVATION



NOTE: PROFOSED CINGULAR WIRELESS INSTALLATION SHOWN IS ONLY APPROXIMATE. EXACT LOCATIONS AND DETAILS WILL BE DETERMINED BY FINAL ENGINEERING DESIGN.

District Copyright & 200



2136 Sãos Destre Highery, Suite 212 - Rodry His, CT 08067-2338 Marc (886) 287-1567 - terre checomorphic com



NEW CINGULAR WIRELESS PCS, LLC 500 ENTERPRISE DRIVE, ROCKY HILL, CT 06067 SR 2587
WEST HARTLAND
95 BALANCE ROCK ROAD
EAST HARTLAND, CT

HARTFORD COUNTY CHA PROJ. NO. - 18301-1040

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