



## LEGISLATIVE MEMORANDUM

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Matthew Morton, City Manager

**THRU:** Brian Robinson, PhD., Deputy City Manager

**DATE:** May 7, 2026

**RE:** Consideration of a new colocation ground site lease with New Cingular Wireless PCS, LLC, a Delaware limited liability company, adjacent to the wireless communication tower at 1050 Malabar Road.

### SUMMARY:

The City is the landlord for various ground lease agreements for cellular towers located throughout the City. Often, the City enters into a separate lease agreement for ground space adjacent to an existing tower to accommodate additional carrier equipment.

The City has negotiated a new colocation ground lease agreement with New Cingular Wireless PCS, LLC, a Delaware limited liability company, to utilize 240 sq ft of adjacent ground space next to the main wireless communication monopole tower located at Public Works, 1050 Malabar Road, which was constructed on May 27, 1998, by STC Two, LLC. The lease terms include an initial 5-year term and four (4) optional 5-year renewals (See attached agreement with site diagram). The public benefit of this expansion includes enhanced cellular coverage with increased data bandwidth.

The annual rent is **\$24,000**, commencing at the start of the new term and increasing by **2%** each year. Table 1 shows that the negotiated proposal will generate an additional **\$331,216.02** over the previously proposed lease. If all renewals are executed to complete the 25-year agreement, the final lease will expire in May 2051. The ground lease has a co-termination clause that applies immediate termination if the main tower lease ends. This proposal reflects the City's commitment to ensuring that all cell tower agreements or renewals are meticulously reviewed and updated.

**Table 1**

*Lease Revenue Calculation*

	<b>Previous Proposal New Lease Area</b>	<b>New Proposal - New Lease Area</b>
<b>Lease Term</b>	<b>\$12,000/yr with an annual 3 % escalator</b>	<b>\$24,000/yr with a yearly 2% escalator</b>
Year 1	\$12,000.00	\$24,000.00
Year 2	\$12,360.00	\$24,480.00
Year 3	\$12,730.80	\$24,969.60
Year 4	\$13,112.72	\$25,468.99
Year 5	\$13,506.11	\$25,978.37
Year 6	\$13,911.29	\$26,497.94
Year 7	\$14,328.63	\$27,027.90
Year 8	\$14,758.49	\$27,568.46
Year 9	\$15,201.24	\$28,119.83
Year 10	\$15,657.28	\$28,682.22
Year 11	\$16,127.00	\$29,255.87
Year 12	\$16,610.81	\$29,840.98
Year 13	\$17,109.13	\$30,437.80
Year 14	\$17,622.40	\$31,046.56
Year 15	\$18,151.08	\$31,667.49
Year 16	\$18,695.61	\$32,300.84
Year 17	\$19,256.48	\$32,946.86
Year 18	\$19,834.17	\$33,605.79
Year 19	\$20,429.20	\$34,277.91
Year 20	\$21,042.07	\$34,963.47
Year 21	\$22,323.53	\$36,375.99
Year 22	\$22,993.24	\$37,103.51
Year 23	\$23,683.04	\$37,845.58
Year 24	\$24,393.53	\$38,602.49
Year 25	\$22,323.53	\$36,375.99
<b>Total</b>	<b>\$437,511.17</b>	<b>\$768,727.19</b>

**REQUESTING DEPARTMENTS:**

City Manager's Office

City Attorney's Office

**FISCAL IMPACT:**

The ground lease will generate \$768,727.19 over the life of the agreement, starting with an annual rent of \$24,000 with a 2% annual escalator.

**STAFF RECOMMENDATION:**

Motion to authorize the City Manager or designee to execute the colocation ground lease and optional renewals with New Cingular Wireless PCS, LLC, a Delaware limited liability company, for the ground space adjacent to the Public Works main cellular tower at 1050 Malabar Road.

**ATTACHMENTS:**

1. Ground Lease Agreement

## GROUND LEASE AGREEMENT

This Ground Lease Agreement (the "Agreement") is made by and between CITY OF PALM BAY, a municipal corporation, with its principal offices at 120 Malabar Road SE, Palm Bay, FL 32907 ("City"), and NEW CINGULAR WIRELESS PCS, LLC, a Delaware limited liability company with its principal offices at 1025 Lenox Park Blvd NE 3rd Floor, Atlanta, GA 30319 ("Lessee"). City and Lessee are at times collectively referred to hereinafter as the "Parties" or individually as the "Party."

### WITNESSETH

WHEREAS, the City owns that certain plot, parcel, or tract of land (hereinafter referred to as the "Property") more particularly described on Exhibit A. The address of the Property is 1050 Malabar Road, NW, Palm Bay, Brevard County, Florida;

WHEREAS, the City entered into a Lease Agreement with SprintCom ("Monopole Owner") for the installation of a Wireless Communication Monopole on May 27, 1998 (as amended and assigned, the "Lease Agreement"), on a portion of the Property being described as 24 feet by 35 feet (875 square feet), the Lease Agreement has subsequently been assigned to STC Two, LLC, the current Monopole Owner;

WHEREAS, the City amended the Lease Agreement on March 23, 2017, to extend the terms to May 31, 2043, unless sooner terminated, and to update the notice address to the current leaseholder;

WHEREAS, Lessee desires to operate at the Property in connection with its federally licensed communications business to provide space for certain of Lessee's equipment necessary or advisable for the operation of its antennas and associated communications fixtures and equipment installed or to be installed on the antenna structure owned by the Monopole Owner, which is located on the Property or adjacent property, and therefore would like to enter into a lease with the City for the continued use of the Property; and

WHEREAS, this Agreement serves a public purpose as Lessee's communication equipment is instrumental in providing telecommunications service to a significant portion of the population in this area and the Lessee's rental payments provide a source of revenue to the City.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration, the sufficiency of which is hereby conclusively acknowledged, the Parties agree as follows:

### ARTICLE I. DEFINITIONS

For all purposes of this Agreement, each of the following terms shall have the meaning set out or referred to below.

"*Adjustment Year*" – the calendar year 2026 and, each Lease Year thereafter as provided in this Agreement.

"*Base Rent*" – As defined in Paragraph 4.1.

"*Business Hours*" – Monday through Friday from 8:00 a.m. to 5:00 p.m., e.s.t. and, specifically excluding any national and other holidays when the City of Palm Bay is not open for business to the general public.

“*Claim*” and “*Claims*” – all demands, claims, and causes of action, lawsuits, complaints, counterclaims, crossclaims, third party complaints, administrative actions, regulatory actions, code board and other governmental actions, arbitration and all other proceedings.

“*Claim Notice Period*” – five (5) Business Days from the delivery of the Claim Notice.

“*Indemnified Party*” and “*Indemnitee*” – the Party that is entitled to or is seeking or otherwise entitled to be indemnified under this Agreement.

“*Indemnifying Party*” and “*Indemnitor*” – the Party that has the obligation or purportedly has the duty to indemnify the other Party under the terms of this Agreement.

“*Legal Requirements*” – (i) all local, state and federal laws, orders, and regulations applicable to the Premises and the Property, and use of the Premises and the Property, and the health and welfare of Lessee’s employees, invitees, licensees or customers; (ii) any easements, agreements, restrictions, and recorded matters affecting or Relating to the Premises; and (iii) all agreements entered into by City and Lessee with regard to the Premises, including Lessee’s insurance policies, and all requirements under the policy.

“*Relating To*” and “*Relate To*” – by reason; based on; in connection with; to enforce; to interpret; relating to; arising from; pertaining to; for; and words of similar meaning.

“*Third Party*” – a Person that is not a Party to this Agreement.

“*Third Party Claim*” – any Claim asserted, filed, and prosecuted, by any Third Party that may result in a Loss to a Party to this Agreement.

“*Third Party Offer*” – a settlement offer from the Third Party “Relating To” the Third Party Claim.

## ARTICLE II. PREMISES

2.1 Grant. The City hereby grants to the Lessee, for the purposes of installation, operation, maintenance, and management of a communications facility (collectively, “Lessee’s Use”):

- a) The right to use approximately 240 square feet of ground space (“Land Space”) together with a non-exclusive right of way and easement for the installation of lines, wires, cables, circuits, conduits, poles, and associated equipment, improvements, fixtures, and appurtenances for utility and similar services as described in Exhibit B, attached hereto and incorporated herein by reference, for the placement of Lessee’s communications equipment to connect Lessee’s equipment located or to be located on the antenna structure owned by the Monopole Owner with Lessee’s communications facility; and
- b) Lessee shall have the non-exclusive right of pedestrian and vehicular access to and from the Property, by the access way designated by the City (“Access Route”) or public road, and
- c) The “Premises” shall include the Land Space, Rights-of-Way, and the Access Routes; and
- d) The Lessee shall abide by all terms and conditions set forth in this Agreement.

- 2.2 Site Plan, Exhibit B shall include a detailed site plan, and a description of Lessee's communications equipment installed or to be installed on the Premises. Lessee shall provide, prior to execution of this Agreement, detailed plans and specifications setting forth a description and location of any proposed or existing communications equipment to be installed, replaced or maintained. The same information shall be provided to the City as an amendment to the Agreement, if:
- a) The Lessee is extending or replacing an existing or prior Agreement with this Agreement.
  - b) The Lessee desires to amend or relocate the Lessee's Land Space, Right-of Way, and/or Access Route, and/or add additional communications equipment, unless such equipment is a like-equipment replacement, modification, or upgrade of Lessee's communications facility that does not increase the existing footprint of the Premises.
- 2.3 Written Approval Required. Lessee shall not install any equipment or commence any work on the Property until the City has approved, in writing, Lessee's plans and specifications; such approval will not be unreasonably withheld, delayed or conditioned. The parties agree that the City's execution shall indicate its approval of Lessee's plans and specifications, if any.
- 2.4 Limitation on Installation of Equipment. Lessee's installation of Lessee's equipment on the Property shall be limited to the Premises, and Lessee shall not have the right to use the City's equipment or other portions of the Property.
- 2.5 Ownership of Improvements. The communications equipment including fencing and other screening, and other improvements shall be at Lessee's expense. Lessee shall have the right to replace, repair, add to or otherwise modify its communications equipment, fencing and other screening, or other improvements and the frequencies over which the communications equipment operates. Lessee shall only be required to obtain City consent for modifications that are not shown on the engineering drawings approved by City. Modifications approved by City may result in an increase to the Base Rent if such use expands the use of the Premises or adversely impacts adjacent portions of the Property.

### **ARTICLE III. TERM**

- 3.1 Effective Date. This Agreement shall be effective the date approved by the City Council ("Effective Date") and shall terminate on the fifth (5<sup>th</sup>) anniversary of the last day of the calendar month in which the Effective Date occurs ("Initial Term"), unless terminated earlier in accordance with the provisions of this Agreement, the ("Expiration Date").
- 3.2 Renewal Option. While this Agreement is in full force and effect, and provided that Lessee is not in default of any of the terms, covenants, and conditions, the Initial Term of this Agreement shall automatically extend for four (4) option periods of five (5) years each ("Option Periods"). The Option Periods shall automatically renew upon all terms and provisions of this Agreement with all Rent adjustments remaining in full force and effect unless Lessee delivers to City, no later than ninety (90) days prior to the last day of the Initial Term, and if applicable, the last day of the Option Period, written notice of Lessee's election not to renew this Agreement ("Non-Renewal Option Notice"). The Initial Term and any Option Periods are collectively referred to as the Term ("Term").

### **ARTICLE IV. RENT**

- 4.1 Rental Fees. Lessee shall pay Rent during the term of this Agreement to City as follows:

- a) LESSEE agrees to pay Twenty-Four Thousand 00/100 (\$24,000.00) Dollars annually to City (“Base Rent”). Rental payments shall be due in equal monthly installments on the first day of the month, in advance, to City at 120 Malabar Road SE, Palm Bay, FL 32907, Attn. Finance, or to such other person, firm, or place as City may, from time to time, designate in writing at least thirty (30) days in advance of any rental payment due date by notice given in accordance with Paragraph 18.1 below. The initial rental payment shall be delivered by Lessee no later than thirty (30) days after the Effective Date of this Agreement. Upon agreement of the Parties, Lessee may pay rent by electronic funds transfer and in such event, City agrees to provide to Lessee bank routing information for such purpose upon request of Lessee.
- b) Rent to be paid to CITY shall be paid in legal tender, without counterclaim, set off or deduction of any kind or nature whatsoever (except as otherwise stated in this Agreement) and without notice or demand.
- c) Payment made five (5) days or more after the date due shall be subject to a One Hundred (\$100.00) Dollars late fee, which shall be paid within thirty (30) days of Lessee’s receipt of written notice thereof given in accordance with Paragraph 18.1 below.
- d) As of the Effective Date and on the same day of each Adjustment Year thereafter during the Term of this Agreement and all Option Period(s), if any, the Base Rent for that year shall be increased by an amount equal to two (2%) percent of the then current Base Rent. In addition to the Base Rent, Lessee agrees to pay any increase in any taxes or fees due to City in accord with the provisions of this Lease. The annual increased Base Rent will continue to be paid in monthly installments as provided in this Agreement.

## ARTICLE V. TAXES AND FEES

5.1 Taxes. If City is required by law to collect any federal, state, or local tax, fee, or other governmental imposition (“Tax”) from Lessee, then City shall bill such Tax to Lessee in the manner and for the amount required by law, Lessee shall promptly pay such billed amount of Tax to City, and City shall remit such Tax to the appropriate tax authorities as required by law; provided, however, that City shall not bill to or otherwise attempt to collect from, Lessee any Tax with respect to which Lessee has provided City with an exemption certificate or other reasonable basis for relieving City of its responsibility to collect such tax from Lessee. Lessee shall reimburse City for the Attributable Amount (as defined below) of taxes or assessments levied on the lands or other property owned by City, under the following circumstances, and following receipt by Lessee of all of the documents listed below:

- a) There has been an increase in the taxes and assessments levied upon the lands or property, City improvements and other property of City, that is attributable solely to Lessee leasehold improvements on the Premises (“Qualified Increase”), as initially measured for the period beginning immediately before the Lessee leasehold improvements are made to the Premises and ending on the first succeeding assessment date (“Base Amount”), and, with respect to any subsequent assessment period, any increase in the taxes and assessments levied upon the lands or other property that is a Qualified Increase over the Base Amount (the Base Amount or any subsequent Qualified Increase over the Base Amount shall be hereinafter referred to as the “Attributable Amount”);
- b) City shall provide Lessee with copies of all notices of assessment on or including the Premises immediately upon receipt, but in no event later than one-hundred and twenty

(120) days after the date of such notice of assessment, along with sufficient written documentation evidencing any Qualified Increase;

- c) City shall provide Lessee with written notice including evidence that City has timely paid the taxes and assessments that are the subject of the notice of assessment in question; and
- d) City shall provide to Lessee any other documentation reasonably requested by Lessee to allow Lessee to evaluate the Attributable Amount and to reimburse to City as required hereunder. If City fails to provide such notices within such one-hundred and twenty (120) day period, Lessee shall have no obligation to reimburse City for the Attributable Amount for the year covered by the assessment and all subsequent years to the extent that:
  - 1. City continues to fail in providing timely notice following receipt of subsequent assessment notices, or
  - 2. Lessee is precluded from challenging such assessment with the appropriate government authorities.
- e) City shall timely pay to the appropriate taxing or governmental authority the full amount of the assessed taxes or assessments, but City may seek reimbursement from Lessee as provided in this Agreement.

#### **ARTICLE VI. UTILITIES**

- 6.1 Utilities. Lessee shall arrange for its own utility services, either by agreement between Lessee and existing user or users, or, if permitted by the local utility company servicing the Property, by obtaining a separate meter for electricity or other utilities which shall be billed to an account placed in Lessee's name. Lessee shall be responsible for paying for such account.
- 6.2 Temporary Power. Lessee shall be permitted during the Term of this Agreement, to install, and maintain (during any power interruption at the Premises), a temporary power source, and all related equipment and appurtenances within the Premises, or elsewhere on the Property in such locations as reasonably approved by the City. Such approval shall not be unreasonably withheld, conditioned or delayed. Lessee shall have the right to install conduits connecting the temporary power source and related appurtenances to the Premises.
- 6.3 Obstruction of Access Route. In the event any public utility is unable to use the Access Route, the City hereby agrees to grant an additional access route(s) either to Lessee or to the public utility at no cost to Lessee only if there is no cost to the City.

#### **ARTICLE VII. GOVERNMENT APPROVALS**

- 7.1 Government Approvals. Lessee's Use is contingent upon (i) Lessee's ability to secure a lease or license with Monopole Owner for space on Monopole Owner's antenna structure and such lease or license remaining in full force and effect during the Term hereof and (ii) Lessee obtaining all the certificates, permits, and other approvals (collectively "Government Approvals") that may be required by any Federal, State, or Local authorities (collectively, "Government Entities"). City shall cooperate with Lessee in its effort to obtain and maintain any Government Approvals.

#### **ARTICLE VIII. CONSTRUCTION OF IMPROVEMENTS.**

- 8.1 Access. City agrees to allow Lessee access to the Premises during ordinary business hours (8:00 a.m. - 5:00 p.m. Monday through Friday) for regular maintenance and repairs. In the event Lessee needs access after ordinary business hours, neither Lessee nor anyone acting on behalf of Lessee shall commence any non-emergency work in or about the Premises without three (3) business days advance written notice to City. City agrees to allow Lessee twenty-four (24) hours a day, seven (7) days a week access to the Premises for emergency repairs which do not require heavy equipment to be deployed.
- 8.2 Installation Timing. Lessee's installation communication equipment on the Premises shall be performed on dates and at times approved by the City in writing and shall not interrupt or interfere with the City's operation of the Property unless the City agrees to such interruption or interference. The City's approval of the dates/times shall not be unreasonably withheld, conditioned or delayed.
- 8.3 City Representative. The City shall have the right to have a representative present during the Lessee's installation of Lessee's equipment on the Premises.
- 8.4 Repair and Emergency Work. In the event of an unexpected repair or emergency, Lessee may commence such repair and emergency response work as required under the circumstances, provided that Lessee shall notify the City as promptly as possible before such repair or emergency work commences or as soon thereafter as possible if advance notice is not practicable.

#### **ARTICLE IX. CONDITION OF PROPERTY**

- 9.1 Condition of Property. Lessee has inspected and is familiar with the physical condition of the Property. Lessee acknowledges and agrees that, except as provided in this Agreement, City makes no representation or warranty, express or implied, written or oral, with respect to the present physical or other condition of the Property, including, but not limited to, any of the following:
- a) The physical condition of the Property, including the environmental condition of the Property, unless described in this Agreement; and
  - b) The suitability of the Property for the uses intended by Lessee including, without limitation, any proposed construction upon the Property.
- 9.2 City's Knowledge of Toxic Substances. The City represents that it has no actual 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.

#### **ARTICLE X. TERMINATION**

- 10.1 Lessee's Right to Terminate. Lessee may, unless otherwise stated, immediately terminate this Agreement upon written notice to City, without penalty or further liability: (i) if any applications for such Government Approvals should be finally rejected; (ii) if any Government Approval issued to Lessee is canceled, expires, lapses or is otherwise withdrawn or terminated by any Government Entity; (iii) if Lessee determines that such Government Approvals may not be obtained in a timely manner; (iv) if Lessee determines any structural analysis is unsatisfactory, or (v) if Lessee's agreement with the Monopole Owner is terminated for any reason. Otherwise, Lessee may terminate this Agreement with three (3) months prior notice and the payment of an early termination fee equal to six (6) month's rent, if Lessee determines the use of the Premises is obsolete or

unnecessary. Lessee shall not be entitled to a refund of any rents paid and must comply with the terms of the Agreement for removal of communications equipment or other improvements.

- 10.2 City's Right to Terminate. City may, unless otherwise stated, immediately terminate this Agreement upon written notice, if in its sole discretion, Lessee's use constitutes a nuisance or unreasonably interferes with the City's use of the Property and Lessee fails to cure such nuisance or interference within thirty (30) days after written notice from City specifying the failure.
- 10.3 Termination Upon Default. Either Party may terminate upon the default of the other Party as provide in Article XX of this Agreement.

## **ARTICLE XI. INDEMNIFICATION**

11.1 Indemnification. Lessee shall defend, indemnify, and hold harmless the City, against and from any and all claims asserted Relating To any one or more of the following: (i) Lessee's entry on City's Property and any work conducted on the Property and Lessee's lease, possession, and use of the Premises; (ii) Lessee's use and any activity permitted by the Lessee or its employees, guests, or invitees in or about the Premises; (iii) Lessee's failure to comply with any Legal Requirements Relating To the Premises and any other law, rule, regulation, or order of any governmental authority; (iv) Lessee's Default as defined in this Agreement; (v) any Hazardous Substances and Biologicals which are released, discharged, presented, or placed on, in, under, or affecting all or any portion of the Property during the term of this Agreement, by Lessee or any of Lessee's employees, agents, contractors, guests, or invitees; and (vi) a material breach of any representation by Lessee set forth in this Agreement. All indemnification obligations shall survive the termination or expiration of this Agreement. Notwithstanding anything to the contrary as contained in this Agreement, in no event shall Lessee's indemnification obligations under this Article extend to any claims to the extent arising from or Related To the negligence or willful misconduct of City, or its employees, agents, contractors, or invitees at the Property.

11.2 **THIS INDEMNIFICATION COVENANT SHALL APPLY TO ALL CLAIMS AND LOSSES ATTRIBUTABLE IN WHOLE OR PART TO LESSEE'S NEGLIGENT ACTS OR OMISSIONS.**

11.3 Third Party Claim Procedures.

- a) *Claim Notice.* The Party that first obtains notice of a Third-Party Claim subject to the indemnification covenants set forth in this Agreement, shall promptly deliver a Claim Notice to the other Party, but in no event later than five (5) Business Days after such Party first obtains notice of the Third-Party Claim.
- b) *Indemnifying Party Notice.* The Indemnifying Party shall either deliver an "Assumption Notice" or a "Dispute Notice" within the Claim Notice Period to the Indemnified Party.
- c) *Dispute Notice.* If a Party disputes the other Party's claim for indemnification Relating To the Third-Party Claim, the Disputing Party shall deliver to the other Party a Dispute Notice within the Claim Notice Period. In the event that Disputing Party fails to timely deliver to the other Party a Dispute Notice within the Claim Notice Period, then, in such event, the Disputing Party having the purported duty to Indemnify under this Agreement shall be deemed to have irrevocably and irrefutably admitted the obligation under the Agreement to indemnify the Indemnified Party for the Losses and Claims included in the Third Party Claim and incurred by Indemnified Party; and the amount or estimated amount of such

Third Party Claim specified in the Claim Notice and all obligations of the Disputing Party to pay for the attorney fees and costs to defend against such Third Party Claim, shall be conclusively deemed a debt, liability, and admitted obligation of the Disputing Party.

- d) *Defending Party.* Notwithstanding anything to the contrary, in the event that City is the purported Indemnified Party or delivers an Assumption Notice to Lessee, then City shall have the sole and absolute right to: (i) conduct the defense of the Third-Party Claim; (ii) choose the attorneys providing the legal representation; and (iii) diligently prosecute the Third-Party Claim to a final resolution. Notwithstanding the foregoing, if the CITY has the purported duty to indemnify the Lessee under this Agreement and repudiates such duty in a written notice to Lessee or fails to assume the defense of such Third-Party Claim, then in such event, the Lessee may proceed with: (iv) the conduct the defense of the Third-Party Claim; and (v) choose the attorneys providing the legal representation; and (vi) diligently prosecute the Third-Party Claim to a Final Resolution. Nothing in this Agreement shall be construed to be waiver of sovereign immunity by the City. City's indemnification of Lessee is in an amount not to exceed the monetary limits on liability set forth in Section 768.28, Florida Statutes, as this statute may be amended from time to time. The provisions and limitations of Section 768.28, Florida Statutes, as amended from time to time, are deemed to apply to this ground lease to indemnify as though this statute applied to waiver of sovereign immunity, liability, and damages for claims or action arising in tort or contract.
- e) *Conduct of Defense.* The Defending Party shall have the right to settle or otherwise defend the Third-Party Claim to Final Resolution. The Defending Party shall keep the other Party reasonably informed of significant proceedings in the defense of the Third-Party Claim, to the extent possible without waiving any attorney client privilege. The other Party may participate in, but not control, any defense of any Third-Party Claim, at the other Party's sole cost and expense. The Indemnifying Party shall advance and pay when due all attorney fees, expert's fees, and other costs and expenses incurred in defense of the Third-Party Claim. All Parties shall cooperate with Defending Party and its attorneys in contesting any Third-Party Claim, and in asserting defenses, and, if appropriate, asserting any cross-claims, third party actions and counterclaim(s).
- f) *Settlement Rights.* In the event that the Defending Party receives a Third-Party Offer or if the Defending Party intends to communicate a Defending Party Offer, in either event, the Defending Party shall provide timely and prompt prior reasonable notice of the Third-Party Offer or the Defending Party Offer, as applicable, to the other Party. In the event that an Assumption Notice has been timely delivered by the Indemnifying Party to the Indemnified Party, then in such event, any settlement of the Third-Party Claim shall require the prior written approval of both the Indemnifying Party and the Indemnified Party. Notwithstanding anything to the contrary; however, in the event that the Defending Party desires to accept a Third Party Offer or communicate the Defending Party Offer, and the other Party does not agree to either the Defending Party Offer or to accept such Third Party Offer, then, in such event(s), the other Party shall be required to deposit with the attorneys of record for the Defending Party, funds in the amount equal to the "Loss Estimate." In the event that the other Party fails or refuses to escrow the "Loss Estimate" then, in such event, the Defending Party shall have the unilateral and absolute right to settle the Third-Party Claim and seek recovery of the full indemnification Claims and Losses due from the other Party as provided in the Lease. Notwithstanding anything to the contrary, in the event that the Defending Party is also the Indemnifying Party, then in such event, the Defending Party shall have no right to settle the Third Party Claim unless the settlement is conditioned

upon and the Defending Party pays the full settlement amount and the Indemnifying Party performs all covenants of the settlement without any cost or obligation to the Indemnified Party and the settlement agreement shall include a full and complete release of the Indemnified Party from the Third Party Claim and any final judgment. Additionally, notwithstanding anything to the contrary, the Defending Party shall not have the right to enter into any settlement of any Third Party Claim that would lead to Claim or Loss or create any financial or other obligation on the part of the Indemnified Party or which provides for injunctive or other equitable or non-monetary relief applicable to the Indemnified Party, or which does not include an unconditional release of the Indemnified Party.

- g) *Coverage Dispute.* In the event of a Coverage Dispute, the Parties shall have the following rights and obligations. Both the Lessee and the City may file an action, lawsuit or other proceeding as allowed by Florida law seeking a Final Resolution of the Coverage Dispute including without limitation a pleading seeking declaratory judgment under Chapter 86, Florida Statutes, to resolve the Coverage Dispute. If the Disputing Party has timely delivered a Dispute Notice to other Party within the Claim Notice Period and if such Coverage Dispute is resolved in favor of the Disputing Party by Final Resolution, then, in such event, the Disputing Party shall be entitled to recover and other Party shall pay all attorney fees and costs incurred by the Disputing Party in the Coverage Dispute and any Claim and Loss “Relating To” the Third-Party Claim. If other Party claiming entitlement to indemnification is the prevailing party in the Coverage Dispute, then, in such event, other Party shall be entitled to recover and the Disputing Party shall pay to the other Party all reasonable attorney fees and costs incurred by the other Party Relating To the Coverage Dispute and all Claims and Losses incurred by other Party Relating To the Third-Party Claim.

## ARTICLE XII. INSURANCE

12.1 Insurance Requirements. Lessee shall, carry and maintain insurance of the types and to the limits specified below, at its own expense and without cost to the City. Prior to renewal, non-renewal, or cancellation, of any required insurance policy that is not replaced, at least thirty (30) days advance written notice shall be given to City. The Certificate of Insurance shall be mailed to the City of Palm Bay, 120 Malabar Rd. SE, Palm Bay FL 32907, and should reference this Agreement.

- a) *Commercial General Liability:* limits of One Million (\$1,000,000.00) Dollars each occurrence, Two Million (\$2,000,000.00) Dollars general aggregate combined single limit for bodily injury and property damage liability. This shall include premises/operations, personal and advertising injury, products, completed operations, contractual liability, including the indemnification and hold harmless clause of the contract. This policy of insurance shall be considered primary to and not contributing with any insurance maintained by the City of Palm Bay and shall name the City of Palm Bay as an additional insured with waiver of subrogation noted on the Certificate of Liability. The policy of insurance shall be written on an “occurrence” form.
- b) *Business Automobile:* limits of liability of Five Million (\$5,000,000.00) Dollars each accident, combined single limit for bodily injury and property damage. This shall include coverage for:
1. Owned Automobiles
  2. Hired Automobiles

### 3. Non-Owned Automobiles

- c) *Umbrella/Excess Liability*: umbrella/excess coverage with limits of One Million (\$1,000,000.00) Dollars excess of Commercial General Liability, Automobile Liability and Employers Liability. (This coverage is optional if Lessee has Two Million (\$2,000,000.00) Dollars General Aggregate under the Commercial General Liability Policy.) Any combination of primary and umbrella coverage to meet limits required.
- d) *Workers' Compensation*: The Lessee shall provide and maintain workers' compensation insurance for all employees in the full amount required by statute and full compliance with the applicable laws of the State of Florida. The policy must include Employers' Liability insurance with limits of:
  - 1. Each Accident One Hundred Thousand (\$100,000.00) Dollars
  - 2. Disease – Policy Limit Five Hundred Thousand (\$500,000.00) Dollars
  - 3. Disease – Each Employee One Hundred Thousand (\$100,000.00) Dollars

Lessee shall endeavor to insure that any sub-contractors maintain appropriate levels of workers' compensation insurance.

12.2 Deductible Clause. Lessee will declare self-insured retention or deductible amounts.

12.3 Insurance Rating. All insurance carriers shall be rated "A" or better by the most recently published A.M. Best Rating Guide. It shall be the responsibility of Lessee to insure that all subcontractors comply with the same insurance requirements listed above.

12.4 Waiver of Subrogation. To the extent permitted by law, City and Lessee shall not be liable by way of subrogation or otherwise to each other (or to any insurance company insuring the other party) for any loss or damage to any property of the City and Lessee as the case may be, covered by insurance to the extent of such insurance, even though such loss or damages might have been occasioned by the negligence of the City and Lessee or their respective agents, employees, invitees or guests. This release shall be in effect only so long as the applicable insurance policy shall contain a clause or endorsement to the effect that the aforementioned waiver shall not affect the right of the insured to recover under such policy and each party shall use its best efforts, including payment of any additional premiums, to have its insurance policy contain the standard waiver of subrogation clause. In the event City's and Lessee's insurance carrier declines to include in such carrier's policy a standard waiver of subrogation clause City and Lessee as the case may be, shall promptly notify the other party of, in which event the other party shall not be required to have its insurance policy contain such waiver of subrogation clause and this Paragraph shall be of no force and effect.

12.5 Limitation of Liability. Except for indemnification as provided in this Agreement, or a violation of law, neither Party shall be liable to the other, or any of their respective agents, representatives, or employees for any lost revenue, lost profits, diminution in value of business, loss of technology, rights or services, loss of data, or interruption or loss of use of service, incidental, punitive, indirect, special, trebled, enhanced or consequential damages, even if advised of the possibility of such damages, whether such damages are claimed for breach of contract, tort (including negligence), strict liability or otherwise, unless applicable law forbids a waiver of such damages.

## **ARTICLE XIII. PERMITTED FREQUENCY AND INTERFERENCE**

- 13.1 Authorized Frequencies. The Lessee is only authorized to use its equipment to transmit and receive on the frequencies for which it is authorized to operate by the FCC. The Lessee warrants and represents that Lessee is licensed to transmit and receive such frequencies it will use by the FCC. Lessee shall notify City immediately upon any change in the status of its FCC Licenses applicable to the Property. Lessee shall be permitted to transmit and receive frequencies as it needs, without City's approval, provided said alterations do not violate this Agreement. The LESSEE agrees to provide the City written notification of Lessee's frequencies if requested by the City to resolve interference issues or issues related to public safety.
- 13.2 Non-exclusive Use. The City may enter into agreements with other lessees for their communications equipment, so long as the exercise thereof does not materially and adversely interfere with any of Lessee's rights hereunder or materially and adversely affect Lessee's permitted use of the Premises, or any part thereof, or otherwise violate any other provision of this Agreement. Lessee acknowledges that the City is also leasing other portions of the Property to other tenants for the purpose of transmitting and receiving telecommunication signals.
- 13.3 Noninterference. Lessee agrees that the installation, maintenance, and operation of its communication equipment will not interfere with any equipment of the City or other lessees within the Property that existed as of the Effective Date of this Agreement so long as such existing users operate or continue to operate within their respective frequencies and in accordance with all applicable laws and regulations. In the event Lessee's installations interfere with such equipment, Lessee will, upon written notice by the City staff or its designee, correct and eliminate such interference, including but not limited to, at Lessee's option, powering down such equipment and later powering up such equipment for intermittent testing. If the interference relates to the City's emergency operations, Lessee shall immediately halt such interference upon written notice by the City staff or its designee. If the interference relates to the public safety radio system, Lessee will halt the interference within a reasonable period of time not more than one (1) calendar day. If the interference relates to other operations, Lessee will halt the interference within a reasonable period of time not more than ten (10) calendar days from the date of notification. If the interference cannot be resolved, City and Lessee shall be entitled to terminate this Agreement.
- 13.4 Remedies to Interference. The City will not use, nor will the City permit its employees, tenants, invitees, or agents to use any portion of the Property which interferes with Lessee's communication equipment, the operations of Lessee, or the rights of Lessee under this Agreement unless such interference relates to a matter of emergency operations or public safety. The City will cause such interference to cease within twenty-four (24) hours after receipt of the written notice of interference from Lessee unless such interference is otherwise justified based on a matter of emergency operations or public safety. In the event any such interference does not cease within the aforementioned cure period then the parties acknowledge that Lessee will have the right, with respect to third-party tenants/lessees (in addition to any other rights that it may have at law or in equity) to elect to enjoin such interference, or with respect to the City, or to third-party tenants, to terminate this Agreement upon notice to the City.
- 13.5 Interference with City-owned Facilities. The primary use of the Property shall be for municipal purposes. Lessee's use of the Premises shall not interfere or impede the City's use of the Property for municipal purposes. Lessee agrees to eliminate any interference its operations causes to City-owned facilities on the Property at the expense of Lessee and without installation of extra filters on City-owned equipment. The City agrees to work with Lessee to try to resolve interference as may be received from City-operated telecommunications; however, if the interference cannot be resolved without affecting or impeding the purpose of the City's operations, within thirty (30) days of such interference either party will be entitled to terminate this Agreement.

#### **ARTICLE XIV. REMOVAL AT END OF TERM**

- 14.1 Requirement to Remove Communications Equipment. Within ninety (90) days of the expiration or earlier termination of the Agreement, Lessee shall remove its communications equipment and restore the Premises to its original condition, reasonable wear and tear and casualty damage excepted. City agrees and acknowledges that the communications equipment shall remain the personal property of Lessee and Lessee shall have the right to remove the same at any time during the Term, whether said items are considered fixtures and attachments to real property under applicable laws.

#### **ARTICLE XV. TRANSFER OF PROPERTY**

- 15.1 Transfer of Property. In the event of any sale or transfer of the Premises, such sale or transfer shall be under and subject to this Agreement and any such purchaser or transferee shall recognize Lessee's rights under the terms of this Agreement. City shall be deemed released of all obligations, duties, and liabilities under this Agreement arising out of any act, occurrence or omission occurring after consummation of such sale or transfer; and the transferee shall be deemed, without any further modification of this Agreement, to be City's successor in interest as to the benefits of this Agreement and to have assumed all of the duties of City as the named "City" under this Agreement.

#### **ARTICLE XVI. QUIET ENJOYMENT**

- 16.1 Quiet Enjoyment. City covenants that Lessee, on paying the rent and performing the covenants herein, shall peaceably and quietly have, hold and enjoy the Premises. City represents and warrants to Lessee as of the Effective Date, and covenants during the Term that City has full authority to enter into and execute this Agreement and that there are no liens, judgments, covenants, easements, restrictions, or other impediments of title that will adversely affect Lessee's Use.

#### **ARTICLE XVII. ASSIGNMENT**

- 17.1 Assignment. Lessee may not assign this Agreement, or any interest herein, or otherwise sell, transfer or convey any right, title or interest Lessee may have in the Property, without the prior written consent of City. Any such assignment without the City's prior written consent shall be void and of no effect, provided however, that Lessee shall have the right to assign, sell or transfer its interest under this Agreement, to (i) an affiliate or subsidiary of Lessee or of Lessee's parent company or (ii) to any entity which acquires all or substantially all of the Lessee'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. If Lessee intends to assign or sublease the Property, Lessee shall deliver prior written notice and a request for approval to City within a reasonable time prior to the proposed commencement date of such sublease or assignment ("Lessee's Notice"). Lessee's Notice shall set forth: (i) the name of the proposed sublessee or assignee, (ii) a copy of the proposed sublease or assignment and the relevant terms of any sublease; and (iii) any other relevant information about the proposed sublessee or assignee required by City. In the event of subletting, City's consent may be predicated, among other things, upon City becoming entitled to collect and retain a percentage of the rentals payable under the sublease. Notwithstanding any permitted assignment or subletting, Lessee shall at all times remain directly, primarily, and fully responsible and liable for the payment of all Rent, Taxes, and fees as set forth in this Agreement and in compliance with all of its obligations under the terms, provisions, and covenants of this Agreement.

#### **ARTICLE XVIII. NOTICE**

18.1 Notice. Except for notices pursuant to Paragraphs 6.2, 8.4 and 13.4 which are permitted via electronic mail, all notices must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice).

City: City of Palm Bay, Florida  
120 Malabar Road SE  
Palm Bay, Florida 32907

With a Copy to: City Attorney  
120 Malabar Road SE, Suite 201  
Palm Bay, Florida 32907

Lessee: New Cingular Wireless PCS, LLC  
Attn: Tower Asset Group - Lease Administration  
Re: Cell Site #: 331414;  
Cell Site Name: Malabar and Heritage Pkwy Ground Only FL  
Fixed Asset #: 15992034  
1025 Lenox Park Blvd NE 3rd Floor  
Atlanta, Georgia 30319

With a copy to: New Cingular Wireless PCS, LLC  
Attn.: Legal Dept – Network Operations  
Re: Cell Site #: 331414;  
Cell Site Name: Malabar and Heritage Pkwy Ground Only FL  
Fixed Asset #: 15992034  
208 S. Akard Street  
Dallas, TX 75202-4206

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

## **ARTICLE XIX. DEFAULT**

19.1 Lessee's Default. It shall be a default of this Agreement by Lessee if Lessee , upon thirty (30) days prior written notice from the City of such default:

- a) Fails to make any payment required by this Agreement within ten (10) days of the date payment is due;
- b) Fails to maintain the required insurance coverage as provided in this Agreement;
- c) Assigns, sublets, or otherwise voluntarily transfers any interest in this Agreement except as approved in writing by the City and as provided in this Agreement; or
- d) Fails to comply with any other term of this Agreement and does not remedy the failure within thirty (30) days after written notice by the City or, if the failure cannot reasonably be remedied in such time, if the Lessee does not commence a remedy within the allotted thirty (30) days and diligently pursue the cure to completion within ninety (90) days after

the initial written notice. The cure periods set forth in this Article do not extend the period of time Lessee has to cure interference as provided in this Agreement or provide a greater time than expressly provided in any other Article of this Agreement.

- 19.2 City's Default. City shall not be in default unless City fails to perform a material obligation of City expressly provided in this Agreement, within thirty (30) business days after delivery of prior written notice by Lessee to City, specifying in such notice how City has failed to perform such obligation and how such alleged default may be cured by City. If the nature of City's default is such that more than thirty (30) business days are required to cure such default, then, in such event, City shall not be in default if City commences performance within ten (10) business days and thereafter diligently pursues the same to completion.
- 19.3 Remedies. In the event of a Default, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such default, the non-defaulting Party may terminate this Agreement or pursue any remedy available to the non-defaulting Party as provided under Florida law. Further, upon a Default, the non-defaulting Party may at its option (but without obligation to do so), perform the defaulting Party's duty or obligation. The reasonable costs and expenses of any such performance by the non-defaulting Party shall be due and payable by the defaulting Party upon receipt of an itemized invoice. Nothing contained in this Article shall be deemed to require City to postpone filing a lawsuit until the date when this Agreement would have expired if it had not been terminated. Failure of City to declare any default immediately upon its occurrence, or delay in taking any action in connection with the default, shall not be deemed as a waiver by City of its rights under this Agreement.

## ARTICLE XX. ENVIRONMENTAL

- 20.1 Environment, Health and Safety Laws. Lessee shall conduct its business in compliance with all applicable laws governing the protection of the environment or employee health and safety ("EH&S Laws"). Lessee shall indemnify and hold harmless the City from claims to the extent resulting from Lessee's violation of any applicable EH&S Laws or to the extent that Lessee causes a release of any regulated substance to the environment. City shall indemnify and hold harmless Lessee from all claims resulting from the City's violation of any applicable EH&S Laws or the City's release of any regulated substance to the environment. The Parties recognize that Lessee is only leasing a small portion of the Property, and that Lessee shall not be responsible for any environmental condition or issue unless related to Lessee's specific activities and responsibilities. In the event that Lessee encounters any hazardous substances that do not result from its activities, Lessee may notify City and seek to relocate its facilities to avoid such hazardous substances to a mutually agreeable location or, if Lessee desires to remove at its own cost all or some the hazardous substances or materials (such as soil) containing those hazardous substances, City agrees to sign any necessary waste manifest associated with the removal, transportation, or disposal of such substances.

## ARTICLE XXI. CASUALTY

- 21.1 Casualty Damages. If a fire or other casualty damages the Property or the Premises and such an extent as to render the Property or Premises unusable by Lessee in whole or in a substantial part, rent shall abate until Lessee's use is restored. City shall have the option and may terminate this Agreement, without any liability to Lessee, by giving written notice to Lessee within sixty (60) days of the date of such damage or destruction ("Damage Option Period") if: (i) the Premises are not capable of being restored to the condition existing prior to the casualty ("Leased Condition") within six (6) months of such damage or destruction ("Repair Period"), as determined by City in its sole discretion; or (ii) if City determines in its sole discretion that the damage to Premises cannot

be economically repaired to the Leased Condition in the Repair Period. If Lessee exercises its option to terminate this Agreement, then the effective date of such Agreement termination shall be the date of the occurrence of such damage or destruction, and the Parties shall be released from their obligations under this Agreement accruing after the termination date, except for such obligations expressly provided in this Agreement to survive termination.

21.2 Option to Terminate due to Casualty. Lessee shall only have the option and right to terminate this Agreement, without any liability to City, by giving written notice to City within the “Damage Option Period” if the Premises are not capable of being restored to its “Leased Condition” within the “Repair Period,” as determined by Lessee in its reasonable discretion, and expressly provided that City notifies Lessee that City does not intend to repair the Premises or in the event that City fails to repair the Premises for use by Lessee during the Repair Period. If Lessee exercises its option to terminate this Agreement, then the effective date of such Lease termination shall be the date of the occurrence of such damage or destruction, and the Parties shall be released from their obligations under this Agreement accruing after the termination date, except for such obligations expressly provided in this Agreement to survive termination. If Lessee intends to exercise this option, then Lessee shall have the obligation to provide prior written notice of termination to City within five (5) Business Days after delivery of notice from City or the expiration of the Repair Period, as applicable, time being of essence.

21.3 Casualty Due to Lessee’s Negligence. Notwithstanding anything to the contrary, if the damage, casualty or loss to the Property is caused by the negligence, fault, or any act or omission of Lessee, or its employees, agents, guests, customers, invitees, or contractors to any degree, then in such event, the Lessee shall be obligated to pay to City all Rent, Additional Rent, and Taxes and any other amounts due under this Agreement and Lessee shall not have the right or option to terminate this Agreement as provided in this Article.

## **ARTICLE XXII. CONDEMNATION**

22.1 Condemnation. If a condemnation of any portion of the Property or Premises impairs Lessee’s Use, Lessee may terminate this Agreement. Lessee may on its own behalf make a claim in any condemnation proceeding involving the Premises for losses related to Lessee’s communications equipment, relocation costs and, specifically excluding loss of Lessee’s leasehold interest, any other damages Lessee may incur as a result of any such condemnation.

## **ARTICLE XXIII. APPLICABLE LAWS**

23.1 Applicable Laws. During the Term, City shall maintain and comply with all applicable laws governing the Property. Lessee shall comply with all laws related to Lessee’s use of the Premises and at Lessee’s sole cost and expense, comply with (i) all laws Relating To Lessee’s use of the Premises for telecommunications and (ii) all building codes requiring modifications to the Premises due to improvements being made by Lessee.

## **ARTICLE XXIV. HOLD OVER**

24.1 Hold Over Tenancy. On or before the Termination Date, Lessee shall deliver possession of the Premises to City, in the same condition they were on the Effective Date of the Lease, except for reasonable wear and tear and Lessee shall: (i) peacefully surrender and deliver up the Premises into the possession of City, in the same condition as of the Effective Date, ordinary wear and tear, excepted; (ii) remove all debris, waste, and signs placed in or about the Premises; (iii) complete any necessary repairs at Lessee’s sole expense; and (iv) if a memorandum was filed in the public

records, Lessee shall file a release. If Lessee remains in possession of the Property or any part thereof, by failing to fulfill conditions (i) – (iv) as identified above, after the expiration of the term without the express written consent of City, such holding over shall be deemed a "tenancy at sufferance"; and, Lessee shall pay to City monthly Base Rent in an amount equal to two hundred (200%) percent of the Base Rent due for the last month immediately preceding the Termination Date, plus all other Additional Rent and other charges due under this Agreement, paid and upon the same terms set forth in this Agreement.

## ARTICLE XXV. MISCELLANEOUS

- 25.1 Entire Agreement. This Agreement contains all agreements, promises and understandings between the City and the Lessee regarding this transaction, and no oral agreement, promises, or understandings shall be binding upon either the City or the Lessee in any dispute, controversy, or proceeding. This Agreement may not be amended or varied except in a writing signed by all Parties. This Agreement shall extend to and bind the heirs, personal representatives, successors and assigns. The failure of either Party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights hereunder shall not waive such rights and such party shall have the right to enforce such rights at any time. Except as expressly set forth in this Agreement, nothing in this Agreement shall grant, suggest, or imply any authority for one Party to use the name, trademarks, service marks, or trade names of the other for any purpose whatsoever. City agrees to execute a Memorandum of this Agreement, which Lessee may record with the appropriate recording officer. This Agreement may be executed in counterparts, including written and electronic forms. All executed counterparts shall constitute one Agreement, and each counterpart shall be deemed an original. All exhibits shall be incorporated into this Agreement. If there is a conflict between the exhibits and the words in this Agreement, the words in the Agreement shall take precedence over the exhibits. The titles, headings, or captions and paragraphs in this Agreement are for convenience only and do not define, limit, extend, explain, or describe the scope or extent of this Agreement or any of its terms or conditions and therefore shall not be considered in the interpretation, construction, or application of this Agreement.
- 25.2 Signs. All signs or symbols placed on the Property by the Lessee shall be subject to the prior written approval of the City which approval shall not be unreasonably withheld, delayed, or conditioned. The Lessee will not place any signs or symbols upon the Property which are visible to the public which could be construed or viewed as advertising. In the event the Lessee shall place signs or symbols on the Property where they are visible from the street and not acceptable to the City, the City may demand the immediate removal of such signs or symbols, and the refusal of the Lessee to comply with such demand within a period of twenty-four (24) hours will constitute a breach of this Agreement, thereby entitling the City to exercise any available legal remedy and to remove the sign or symbol.
- a) Any signs placed upon the Property by Lessee shall be removed at the termination of this Agreement and Lessee shall repair any resulting damage or injury to the Property. If such signs are not removed by Lessee upon termination, then the City may remove the signs and repair any damage at Lessee's expense.
  - b) Notwithstanding other provisions in this Article, any sign mandated by state or federal law or regulation will be approved by the City given reasonable size and dimension.
- 25.3 Dangerous Conditions, Authority for City to Abate. Whenever construction, installation, or excavation of Lessee's communications equipment authorized by this Agreement has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining

public way, street, or public place, or endangers the public, street utilities, or the Property, the City may direct the Lessee in writing, at the Lessee's own expense, to take action to protect the public, adjacent public places, the Property, streets, utilities, and public ways. Such action may include compliance within a reasonable prescribed time.

In the event that the Lessee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, the City may enter upon the property and take such actions as are necessary to protect the public, the adjacent streets, utilities, public right of ways, to maintain the lateral support thereof, or actions regarded as necessary safety precautions; and the Lessee shall be liable to the City for the reasonable costs to cure the condition. The provisions of this Article shall survive the expiration or termination of this Agreement.

25.4 E-Verify. In accordance with Chapter 448.095, Florida Statutes, Lessee shall register and utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Lessee during the term of this Agreement; and

- a. Lessee shall expressly require any subcontractors performing work or providing services pursuant to this Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of this Contract; and
- b. Lessee agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided above, and to make such records available to the City consistent with the terms of the Lessee's enrollment in the program. This includes maintaining a copy of proof of the Lessee's and subcontractors' enrollment in the E-Verify Program.

25.5 Public Entity Crimes. Pursuant to Section 287.133, Florida Statutes, a person or affiliate who has been placed on the convicted vendor list (as those terms are defined in Section 287.133, Florida Statutes, as amended from time to time) following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for "Category Two" for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

25.6 Scrutinized Companies. Lessee certifies that it and its subcontractors, if any, are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, Florida Statutes, the City may immediately terminate this Agreement at its sole option if the Lessee or its subcontractors are found to have submitted a false certification; or if the Lessee or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.

If this Agreement is for more than one million dollars, Lessee certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or engaged with business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, Florida Statutes, the City may immediately terminate this Agreement at its sole option if the Lessee, its affiliates, or its subcontractors are found to have submitted false certification; or if the Lessee, its affiliates, or its subcontractors are placed on the Scrutinized Companies with Activities in Sudan, or the Scrutinized Companies with Activities in the

Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the terms of the Contract.

Lessee agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement. As provided in Section 287.135(8), Florida Statutes, if federal law ceases to authorize these contracting prohibitions, then they shall become inoperative.

25.7 Foreign Disclosure Form. In order for the City to comply with Section 286.101, Florida Statutes, all prospective contractors seeking to contract with the City, where said contract has a value of One Hundred Thousand (\$100,000.00) Dollars or more must disclose to the City any foreign influence as shown in Exhibit C.

25.8 Public Records/Exemptions. In performance of this Agreement, Lessee shall keep books, records, and accounts of all activities related to the Agreement, in compliance with generally accepted accounting procedures. All documents, papers, books, records, and accounts made or received by Lessee in conjunction with the Agreement and the performance of this Agreement shall be open to inspection during regular business hours by an authorized representative and shall be retained by Lessee for a period of three (3) years after termination of this Agreement, unless such records are exempt from Section 24(a) of Article I, Florida Constitution, and Chapter 119, Florida Statutes. All records or documents created by Lessee or provided to Lessee by the City in connection with the activities or services provided herein are public records unless exempt/confidential and Lessee agrees to comply with any request for such public records made in accordance with Chapter 119, Florida Statutes.

25.9 Severability. If any section, sentence, clause or phrase of this Agreement should be held to be invalid or unconstitutional by a court of competent jurisdiction, it shall be considered deleted from this Agreement and shall not invalidate the remaining provisions of this Agreement.

25.10 Merger/Modification. This Agreement constitutes the entire understanding and agreement between the parties as to the subject matter contained within and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution of this Agreement. This Agreement may only be amended or modified by a written instrument duly executed by both parties.

25.11 Governing Law. This Agreement shall be governed, interpreted and construed according to the and the laws of the State of Florida without reference to its choice of law rules, and the Ordinances of the City of Palm Bay.

25.12 Venue. Any action brought to enforce the terms or litigate the terms of this Agreement shall be brought in the venue of Eighteenth Judicial Circuit in and for Brevard County, Florida. Any Federal action may only be initiated in the United States District Court for the Middle District of Florida, Orlando Division.

25.13 Nonjury Trial. **THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN ANY LAWSUIT OR OTHER PRECEEDING "RELATING TO" THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, ANY ACTION TO RESCIND OR CANCEL THIS AGREEMENT AND ANY CLAIMS OR DEFENSES ASSERTING THAT THIS AGREEMENT IS VOID OR VOIDABLE.**

[Signatures appear on the following page.]

**IN WITNESS WHEREOF**, the Parties have set their hands and affixed their respective seals the day and year first above written.

**CITY:**

City of Palm Bay, a municipality incorporated under the laws of Florida

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**LESSEE:**

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

By: AT&T Mobility Corporation, its Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_



**EXHIBIT "A"**

**PROPERTY DESCRIPTION**

The following property located in Brevard County, Florida (the "Property"), to-wit:

All of Parcel "A" as shown on the plat of First Replat in Port Malabar Unit Twenty as recorded in Plat Book 34 at Pages 52 and 53 of the Public Records of Brevard County, Florida, containing 8.86 acres, more or less.

Less and Except

All of Tract "C" Port Malabar Unit 20, as recorded in Plat Book 15, pages 129-139, together with a portion of Parcel "A" First Replat in Port Malabar Unit 20, City of Palm Bay as recorded in plat book 34, pages 52-53, Public Records of Brevard County, Florida. Being more particularly described as follows:

Commencing at the intersection of Malabar Road and Jupiter Boulevard; Thence South 0°48'12" West along the centerline of Jupiter Boulevard a distance of 33.01 feet; Thence South 89°38'57" West a distance of 75.52 feet to the point of beginning; thence continuing along the south right-of-way of Malabar Road South 89°38'57" West a distance of 624.49 feet; thence South 0°48'12" West a distance of 300.00 feet; Thence North 89°38'57" East a distance of 174.69 feet; Thence South 0°48'12" West a distance of 407.55; Thence South 89°11'48" East a distance of 475.20 feet (475.0 feet record) to the west right-of-way of Jupiter Boulevard; Thence North 0°48'12" East along said west right-of way a distance of 691.61 Feet (691.42 Feet record) to the point of curvature of a tangential curve concave to the southwest having a Radius of 25.0 feet and a Central Angle of 91 Degrees 09 Minutes 15 Seconds; thence northerly and westerly along the Arc of said Curve a distance of 39.77 Feet to the Point of Beginning, containing 390,761 square feet, more or less.

Parcel No. 29-36-02-25-A (Acct: 2902932)

This being a portion of the property conveyed to The City of Palm Bay, a Municipal Corporation of the State of Florida from Atlantic Gulf Communities Corporation, a Delaware corporation f/k/a General Development Corporation, a Delaware corporation in deed dated July 29, 1992, and recorded July 31, 1992, in Book 3218 Page 3773.



**EXHIBIT "B"**

**DEPICTION OF THE PREMISES**

**12' X 20' (240 SQUARE FEET) LEASE AREA (AS SURVEYED)**

Being a portion of that certain tract of land as described and recorded in Book 3218, Page 3773 in Office of the County Clerk, Brevard County, Florida, lying in the Northwest 1/4 of Section 2, Township 29 South, Range 36 East and being more particularly described as follows:

Beginning at a point on the southeast corner of a 25' X 35' Lease Area as described and recorded in Book 3849, Page 2107, having an Florida East State Plane Coordinates (North American Datum NAD83-2011): N:1332077.43 E:753373.99; thence S 01°17'11" W a distance of 25.00 feet to a point; thence N 88°42'49" W a distance of 15.00 feet to a point; thence N 01°17'11" E a distance of 25.00 feet to a point; thence S 88°42'49" E a distance of 15.00 feet to the Point of Beginning. Said above-described Lease Area contains 375.0 square feet or 0.009 acres, more or less.

**20' ACCESS EASEMENT (AS SURVEYED)**

Being a portion of that certain tract of land as described and recorded in Book 3218, Page 3773 in Office of the County Clerk, Brevard County, Florida, lying in the Northwest 1/4 of Section 2, Township 29 South, Range 36 East and being more particularly described as follows:

Commence from a found 6"x6" concrete survey monument, stamped LS5057, having Florida East State Plane Coordinates (North American Datum NAD83-2011): N:1331717.43, E:753873.59; said point being the most easterly corner of said certain tract of land; thence N 56°06'02" W a distance of 604.48 feet to a point; thence N 88°42'49" W a distance of 12.00 feet to a point; thence N 01°17'11" E a distance of 10.00 feet to the Point of Beginning of an Access Easement being 20 feet in width lying 10.00 feet each side of the following described centerline; thence N 88°42'49" W a distance of 29.77 feet to a point; thence N 15°45'34" W a distance of 9.53 feet to the Point of Ending. Said above-described Easement contains 785.0 square feet or 0.02 acres, more or less.

[EXCERPT OF SURVEY ON FOLLOWING PAGE







**EXHIBIT "C"**  
**DISCLOSURE OF FOREIGN INFLUENCE**

**NONE**