

Market: VA-WV
Cell Site Number: NF610
Cell Site Name: Hickory
Fixed Asset Number: 10114664

LEASE AGREEMENT

THIS LEASE AGREEMENT ("**Agreement**"), dated as of the latter of the signature dates below ("**Effective Date**"), is entered into by **Southern Shores Civic Association Inc.**, a North Carolina nonprofit corporation, having a mailing address of 5377 N. Virginia Dare Trail, Southern Shores, North Carolina 27949 (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, Georgia 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 148 A Ocean Blvd., Southern Shores, NC 27949, in the County of Dare, State of North Carolina (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. LEASE OF PREMISES.** Landlord leases to Tenant a certain portion of the Property containing approximately 1,550 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**").
- 2. PERMITTED USE.** 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 equipment conceptually shown on **Exhibit 1** will not be deemed to limit Tenant's right to install additional or different equipment, subject to the limitations set out below on the rights granted Tenant herein. Notwithstanding anything to the contrary in this Lease, the Communication Facility shall include a single "stealth flagpole tower" structure (the "**Tower**") no greater than 130 feet tall with such specifications and design as are more particularly shown on **Exhibit 1**, attached hereto and made a part hereof. Tenant, at its expense, shall also construct on the Premises a wall and "Welcome to Southern Shores" sign with such specifications and design as are shown on **Exhibit 1**. If **Exhibit 1** includes drawings of the installation of the Communication Facility, Landlord's and Tenant's execution of this Agreement will signify Landlord's approval of **Exhibit 1** and Tenant's agreement that the appearance of the Communication Facility will be substantially as shown on **Exhibit 1**, subject to "Tenant Changes" as defined below. 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 alterations, upgrades or additions appropriate for Tenant's use of the Premises ("**Tenant Changes**"), provided, however, with respect to Tenant Changes that affect the exterior appearance or location of the Tower, increase noise levels (except those from a temporary generator deployed in response to a power outage) or emanations of light therefrom (except in accordance with FCC or FAA

regulations), Tenant shall first obtain Landlord's prior written approval, such approval not to be unreasonably withheld, conditioned or delayed. 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 on the ground or inside the Tower to the extent such changes are not visible from outside of the Premises, increase the number of antennas and lines inside the Tower or relocate the Communication Facility within the Premises at any time during the term of this Agreement without Landlord's consent. Tenant will be allowed to make such alterations to the Premises in order to accomplish Tenant's Changes and ensure that Tenant's Communication Facility complies with all applicable federal, state or local laws, rules or regulations,

3. TERM.

(a) The initial lease term will be ten (10) years ("Initial Term"), commencing on the Term Commencement Date as defined in Paragraph 3(e) below. The period of time between the Effective Date and the Term Commencement Date shall be defined as the "Due Diligence Period". In consideration of the Due Diligence Period, Tenant shall pay to Landlord [REDACTED] within thirty (30) days of the Effective Date. Such payment shall be immediately considered fully earned by Landlord. The Initial Term will terminate on the last day of the month in which the tenth (10th) annual anniversary of the Term Commencement Date occurs.

(b) This Agreement will automatically renew for three (3) 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 third (3rd) 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 third (3rd) extended term, then upon the expiration of the third (3rd) 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 third (3rd) 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").

(e) As per Paragraph 3(a) above, the Initial Term shall commence, if at all, at the end of the Due Diligence Period on the Term Commencement Date. The "Term Commencement Date" is defined as the earlier to occur of: (a) the date that Tenant is granted a Special Use Permit and all other necessary governmental approvals (collectively, the "Government Approvals") to construct the Communication Facility; or (b) 240 days after the Effective Date, provided, however, that if Tenant, using reasonable diligence, has not been able to obtain the Government Approvals within such 240-day period, Tenant shall have an additional ninety (90) days within which to obtain the Government Approvals by providing a written notice to Landlord of the need for the extension.

(f) During the Due Diligence Period, Tenant will be permitted to enter Landlord's Property to perform, at Tenant's sole cost and expense, surveys, inspections, investigations and tests, including, without limitation, signal, topographical, geotechnical, structural and environmental tests (but no "Phase-II" or water or soil sampling environmental tests without Landlord's approval), in Tenant's discretion to determine the physical condition, suitability and feasibility of the Premises for the Permitted Use ("Due Diligence Inspections"). During the Due Diligence Period, Tenant also will be permitted to prepare, execute and file all required applications to obtain Government Approvals for Tenant's Permitted Use under this Agreement. If Tenant determines, in its discretion, the Premises are not appropriate for Tenant's intended use (or if Tenant otherwise decides, for any reason or no reason, not to commence the Initial Term), or if Tenant is unable to obtain all required Government Approvals, then Tenant may terminate this Agreement (without Termination Fee) upon notice to Landlord at any time prior to the end of the Due Diligence Period. Landlord acknowledges that, prior to the Term Commencement Date, Tenant has limited access to, but no ownership or control of, any portion of Landlord's Property and that

Tenant's access during the Due Diligence Period shall not cause Tenant to be considered an owner or operator of Landlord's Property or the Premises for purposes of environmental laws or otherwise. Tenant agrees to indemnify, defend, and hold Landlord harmless from and against any and all injury, loss, damage to the Property or Premises, or liability (or any claims in respect of the foregoing), costs or expenses to the extent arising from Due Diligence Inspections. Even if Tenant terminates the Agreement during the Due Diligence Period, such indemnification under this Paragraph 3 shall survive termination.

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 monthly rental payment of [REDACTED] ("Rent"), at the address set forth above, on or before the fifth (5th) 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 yearly rent will increase by three percent (3%) over the Rent paid during the previous year.

(c) In addition to any other amounts set forth in this paragraph, Tenant shall also pay to the Landlord, as additional Rent, an amount equal to [REDACTED] per year, for each co-locator, exclusive of Local Government Users as hereinafter defined, ("Co-Locator") that enters into a sublease with Tenant for all or a portion of the Premises ("Co-location Revenue Share"). Landlord acknowledges and agrees that Landlord's Co-location Revenue Share may or may not be passed through as a cost to Co-Locator and agrees that, in the event that Landlord's Co-location Revenue Share is passed through as a cost to Co-Locator, the same shall not be subject to further revenue sharing or mark up. Tenant's obligation to pay Landlord's Co-location Revenue Share to Landlord shall become effective on the date that any such Co-Locator begins to pay rent to Tenant and shall terminate at such time as said Co-Locator's sublease expires or is terminated, and shall be prorated for partial months. Such Co-location Revenue Share shall be payable yearly. Tenant shall, upon written request of Landlord provide Landlord with a redacted copy of any such sublease. Tenant agrees to use its commercially reasonable best efforts to co-locate no less than two Co-Locators on the Communication Facility during the entire Term of this Lease. Co-location Revenue Share amounts shall escalate 3% on the anniversary of the date any such Co-Locator begins to pay rent to Tenant.

(d) All charges payable by Tenant under this Agreement 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 Rent or Co-location Revenue Share which is due and payable without a requirement that it be billed by Landlord. The provisions of the foregoing Paragraph 4(d) shall survive the termination or expiration of this Agreement.

5. TERMINATION. Notwithstanding any provision contained in this Agreement to the contrary, during the Term, Tenant may, in Tenant's sole and absolute discretion and for any and no reason, terminate this Lease without further liability for breach, by delivering prior written notice to Landlord, provided the notice shall be no less than three (3) months before the termination date. In addition, in the event of such termination by Tenant prior to the expiration of this Agreement or any extension thereof, Tenant shall pay Landlord six (6) months Rent at the then current monthly rate ("Termination Fee"). The Termination Fee shall be due to Landlord on or before the effective date of termination.

Provided, however, that no such Termination Fee will be payable on account of a termination of this Agreement by Tenant under any one or more of Paragraphs 3(f) (Due Diligence Period), 8 (Interference), 11(f) (Environmental), 18 (Condemnation) 19 (Casualty) or 23(j) (Severability), of this Agreement.

6. 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 Two Million Five Hundred Thousand Dollars (\$2,500,000) for bodily injury or death/property damage arising out of any one occurrence and in the aggregate; 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 to the extent of the indemnity provided by Tenant under this Agreement. Within thirty (30) days after receipt of a written request, Tenant will provide Landlord with a Certificate of Insurance evidencing the required coverage (together with a copy of the endorsement effecting such coverage, if applicable) or, alternatively, a Uniform Resource Locator ("URL") link to access the Tenant's Memorandum of Insurance website. The Tenant will cause the insurance policy obtained by it to provide that the insurance company waives all rights of recovery by subrogation against the other party (including Landlord) in connection with any damage covered by the policy. Each party waives its right of recovery against the other for any loss or damage covered and paid by the Tenant's insurance policy. Tenant shall provide such insurance coverage through an insurance company authorized to do business in North Carolina and rated A-VII or higher by A.M. Best. Notwithstanding the foregoing, Tenant shall have the right to self-insure against the risks for which Tenant is required to insure against in this Paragraph provided that Tenant shall provide to Landlord reasonable evidence of sufficient financial strength to so self-insure.

7. **COMPLIANCE WITH LAWS.** Tenant shall comply with all applicable laws relating to its possession and use of the Premises. Landlord authorizes Tenant to prepare, execute and file all required applications to maintain Government Approvals for Tenant's Permitted Use under this Agreement and agrees to reasonably assist Tenant with such applications and with maintaining the Government Approvals. Landlord makes no representations or warranties, however, regarding such applications, Government Approvals, zoning, or availability of permits. Obtaining Government Approvals is at the sole risk and expense of Tenant. Furthermore, Landlord bears no obligation under this Agreement to dedicate, sell, lease, or otherwise allow for the use of any property other than the Premises and Access Road specifically described herein.

8. **INTERFERENCE.**

(a) Tenant shall operate the Communication Facility in a manner that will not cause harmful interference with, or a nuisance to, the use or enjoyment of the Property by Landlord or Landlord's tenants, visitors and/or licensees. However, the foregoing sentence will not apply to any radio frequency users on the Property after the Effective Date except for any police, fire, EMS or other local governmental users of the Communication Facility for whom Tenant is by ordinance, law or regulation required to provide tower space ("Local Government Users"). Tenant will coordinate reasonably with Local Government Users to provide tower space, if required, at no cost to Landlord and to ensure no material interference with their antennas, equipment and use. Where there are existing radio frequency user(s) on the Property on or before the Effective Date, the Landlord will provide Tenant, upon execution of this Agreement, 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) Subject to the rights of Local Government Users, above, 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 adversely affects or interferes with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. However, Landlord may license or lease the Property to third parties if the use proposed by such third parties will not adversely affect or interfere with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Tenant's rights hereunder to conduct Tenant's Permitted Use shall be and remain superior to the rights of any such future third party tenant, licensee, or occupant, subject, however, to the provisions of this Paragraph 8.

(c) Landlord reserves the right to license or lease other portions of the Property to other parties during the Term of this Agreement. Accordingly, but subject to the rights of Local Government Users, above, Landlord agrees that any other person or entity who may install communications equipment subsequent to the Effective Date in and/or on the Property will be permitted to install only such communications equipment that is of a type and frequency that does not cause harmful interference to Tenant, Tenant's sublessee(s) or licensee(s), or persons or entities claiming through or under Tenant. In the event any such person or entity's equipment causes interference to Tenant, Landlord will cause the interfering party to take all steps necessary to correct and eliminate the interference or will require the interfering party to cease operations until such interference is removed. In the event

any such interference does not cease within forty-eight (48) hours after receipt of notice of interference from Tenant, then the parties acknowledge that 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. This protection from interference shall be applicable with respect to those operations of Tenant or persons or entities claiming through or under Tenant. Notwithstanding the foregoing, Tenant's right to be free from interference and Landlord's duties concerning the prevention and/or correction of interference shall be subject to this Paragraph 8. Nothing herein shall prevent or prohibit Landlord and its members and their guests from continuing to use the Property for parking and/or from maintaining a park on the Property.

(d) For the purposes of this Agreement, "interference" may include, but is not limited to, any use on the Property by Landlord or by parties claiming the right to use the Property by and through Landlord that causes electronic or physical obstruction with, or degradation of, the communications signals from the Communication Facility.

(e) Notwithstanding anything in this Lease to the contrary, Tenant agrees to provide Local Government Users tower space at no cost to Landlord to the extent, and for such equipment, as may be required by ordinance, law or regulation.

9. INDEMNIFICATION.

(a) Except with respect to hazardous substances, which are provided for in Paragraph 11 (Environmental) below, 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) to the extent arising 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 negligent or intentional act or omission of Landlord, its employees, agents or independent contractors.

(b) Except with respect to hazardous substances, which are provided for in Paragraph 11 (Environmental) below, 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) to the extent 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 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) 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 during the Term; (iii) 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 (iv) if the Property is or becomes encumbered by a deed to secure a debt, mortgage or other security interest, Landlord shall provide promptly to Tenant a Subordination, Non-Disturbance and Attornment Agreement in such lender's standard form; and (v) the Property is not encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements, other than those of record in Dare County, North Carolina, which would materially adversely affect Tenant's Permitted Use and enjoyment of the Premises under this Agreement.

11. ENVIRONMENTAL.

(a) Landlord represents and warrants that to the best of Landlord's actual knowledge, with no duty to investigate, the Property is free of hazardous substances as of the date of this Agreement, and, to the best of Landlord's actual knowledge with no duty to investigate, 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 ("Claims"), to the extent arising from that party's breach of its obligations or representations under Paragraph 11(a). Landlord agrees to hold harmless and indemnify Tenant from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of Landlord for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from subsurface or other contamination of the Property to the extent caused by the acts or omissions of Landlord during the Term. Tenant agrees to hold harmless and indemnify Landlord from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of Tenant for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from the acts or omissions of Tenant and or Tenant's subtenants, Co-Locators and/or any of its or their contractors, subcontractors, licensees or invitees.

(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) Subject to the limited representations of Landlord in Paragraph 11(a) above, Tenant shall conduct, at its own cost and expense a Phase I environmental inspection during the Due Diligence Period and Tenant shall accept the Premises in its "as is," "where is" condition.

(e) In the event Tenant becomes aware of any environmental or industrial hygiene condition or matter relating to the Premises that arises before or after the Term Commencement Date as a result of Landlord's use of the Property, and that, in Tenant's sole determination, renders the condition of the Premises unsuitable for Tenant's use, or exposes 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 and without payment of the Termination Fee.

(f) 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 apply as of the Effective Date. The provisions of this Paragraph 11 will survive the expiration or termination of this Agreement.

12. **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 pedestrian and vehicular access to and over the Property, from an open and improved public road to the Premises, for the installation, maintenance and operation of the Communication Facility and any utilities serving the Premises in the location and as more particularly shown on **Exhibit 1**. To the extent necessary for access to the Premises, Tenant, at its sole cost and expense, shall construct its access road across the Property only in the location shown on **Exhibit 1** (the "Access Road"). Such access shall be twenty-four (24) hour per day, seven (7) day per week, subject to applicable laws, rules, and restrictions. Landlord grants to Tenant a non-exclusive easement for the Term of this Agreement for such Access Road and Landlord agrees to provide to Tenant such codes, keys and other instruments (if and as necessary) for such access at no additional cost to Tenant. Upon Tenant's request, Landlord will execute a separate recordable easement evidencing this right. In the event Tenant is unable to use the Access Road as depicted in **Exhibit 1**, Landlord will

grant Tenant an alternative Access Road, the location of such alternative Access Road to be mutually agreed upon by the parties, in their reasonable judgment. Landlord will provide Tenant with one (1) parking space for Tenant's use, at all times throughout the Term of this Agreement, at no additional cost to Tenant, such space to be located within the Access Road, as more particularly shown on Exhibit 1.

13. 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 expiration or termination of this Agreement, Tenant shall remove from the Premises (and, if applicable, the Property) all of Tenant's above-ground improvements and any foundations to a depth of 3' below grade, and Tenant shall, to the extent reasonable, restore the Premises (and, if applicable, the Property) 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. This Paragraph 13 shall apply to all events of termination or expiration under this Agreement, including, without limitation, under Paragraphs 18 and 19, below.

14. MAINTENANCE/UTILITIES.

(a) Tenant will keep and maintain the Premises (including the wall) and the Access Road in good condition, reasonable wear and tear and damage from the elements excepted. Landlord will be responsible for maintenance of landscaping on the Property, including any landscaping installed by Tenant as a condition of this Agreement or any required permit, as well as for maintenance of any signage or logo located on the wall. Tenant will monitor the appearance of the tower and the block wall in the course of routine maintenance and will paint or clean both, in part or in whole, promptly as needed. Painting or cleaning shall be deemed "needed" any time the appearance of the paint becomes dingy or begins to peel or show signs of rust. As "dingy" is a term open to interpretation, the parties agree Landlord shall have the final say in the event the parties disagree on whether painting or cleaning are necessary. Landlord shall have the right to demand, in writing, painting or cleaning any time it reasonably determines such work is necessary.

(b) 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, such charges to be billed directly to Tenant. 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.

(c) To the extent beyond Landlord's reasonable control or not attributed to any negligence or intentional misconduct of Landlord, Landlord will not be liable for any damage or injury which may be sustained by Tenant or any other person, as a consequence of the failure, breakage, leakage or obstruction of the water, plumbing, steam, sewer, waste or soil pipes, roof, drains, leaders, gutters, valleys, down spouts or the like or of the electrical, gas, power, conveyor, refrigeration, sprinkler, air-conditioning or heating systems, elevators or hoisting equipment, or by reason of the elements, or attributable to any interference with, interruption of or failure, beyond the reasonable control of Landlord, of any services to be furnished or supplied by Landlord.

(d) For any flagpole antenna structure, Landlord will be solely responsible for the following: (i) providing and installing a flag of Landlord's choice (or no flag at all, in Landlord's discretion); (ii) paying for electricity to light the flag (if Landlord chooses to install a flag and light it); (iii) maintaining and replacing the lights and flag, if any, as needed; and (iv) complying with all flag protocols including, but not limited to, raising and lowering the flag as required. Landlord shall have access to the Premises for the limited purpose of complying with the requirements of this Paragraph 14(d).

15. DEFAULT AND RIGHT TO CURE.

If either party is in default under this Agreement for a period of thirty (30) days following receipt of written notice from the non-defaulting party (provided, however, that with respect to Tenant's non-payment of Rent, Co-location Revenue Sharing or other monetary payments due from Tenant hereunder, Landlord shall only be required to provide fifteen (15) business days' written notice,), the non-defaulting party may pursue any remedies available to it against the defaulting party at law and in equity, including, but not limited to, the right to terminate this Agreement. If a non-monetary default cannot reasonably be cured within a 30-day period, this Agreement may not be terminated if the defaulting party commences action to cure the default within the 30-day period and proceeds with due diligence to fully cure the default.

16. ASSIGNMENT/SUBLEASE. Tenant shall have the right, without Landlord's consent, to assign this Agreement to affiliates, subsidiaries, parent companies, or to any entity which acquires all or substantially all of the Tenant's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition, or other business reorganization. Such assignees shall have net assets in excess of \$10 Million. Otherwise, assignment of this Agreement by Tenant will require Landlord's consent, not to be unreasonably withheld, conditioned, or delayed. Upon notification to Landlord of such assignment, Tenant will be relieved of all future performance, liabilities and obligations under this Agreement. Tenant has the right to sublease (or otherwise transfer or allow the use of) all or any portion of the Premises in the ordinary course of business to Co-Locators or Local Government Users on the Communication Facility with notice to but without the consent of Landlord; any other subleases shall be considered assignments hereunder.

17. NOTICES. All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. 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 #: NF610; Cell Site Name: Hickory (VA-WV)
Fixed Asset No: 10114664
12555 Cingular Way, Suite 1300
Alpharetta, GA 30004

With a required copy of the notice sent to the address above to AT&T Legal at:

New Cingular Wireless PCS, LLC
Attn: AT&T Legal Department
Re: Cell Site #: NF610; Cell Site Name: Hickory (VA-WV)
Fixed Asset No.: 10114664
15 East Midland Avenue
Paramus, NJ 07652

The copy sent to the Legal Department is an administrative step which alone does not constitute legal notice.

If to Landlord: Southern Shores Civic Association Inc.
5377 N. Virginia Dare Trail
Southern Shores, NC 27949

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) business days of such transfer, Landlord or its successor will send the below-listed documents to Tenant. Until Tenant receives all such documents, Tenant shall not be responsible for any failure to make payments under this Agreement and reserves the right to withhold payments due under this Agreement.

- a. Old deed to Property
- b. New deed to Property
- c. Bill of Sale or Transfer
- d. Copy of current Tax Bill
- e. New IRS Form W-9
- f. Completed and Signed AT&T Payment Direction Form
- g. Full contact information for new Landlord including all phone number(s)

18. CONDEMNATION. In the event Landlord receives notification of any condemnation proceedings affecting the Property, Landlord will use its best efforts to provide notice of the proceeding to Tenant within forty-eight (48) 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.

19. CASUALTY. Landlord will use its best efforts to provide notice to Tenant of any casualty or other harm affecting the Property within forty-eight (48) hours of the time Landlord become aware of the casualty or other harm. If any part of the Communication Facility or Property is damaged by casualty or other harm so as to render the Premises unsuitable, in Tenant's reasonable 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 casualty or other harm. 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 agrees 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, provided, however, that such license to use the Property shall not extend beyond ninety (90) days, unless Landlord and Tenant negotiate a reasonable time period or extension thereof during which Tenant may operate a replacement transmission facility on the Property.

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. Tenant shall pay Landlord any increase in Landlord's property taxes with respect to the Property to the extent attributable to improvements to the Premises made by Tenant, including, without limitation, ad valorem taxes for the Premises to the extent that such taxes commence being assessed as a result of the location of the Communication Facility on the Premises. Landlord shall provide Tenant with copies of all assessment notices on or including the Premises promptly upon receipt, along with sufficient written documentation detailing any assessment increases attributable to the leasehold improvements, but in no event later than thirty (30) days after receipt by Landlord. Tenant shall have the right to contest, in good faith, the validity or the amount of any tax or assessment levied against the Property and/or 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 Property and/or 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/RENTAL STREAM OFFER.

(a) Landlord shall be permitted to sell, lease or use any of the Property for any use, but such sale, lease or use shall be subject to this Agreement during the Term of this Agreement. 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.

(b) 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 which Landlord would be willing to accept ("Purchase Offer"), Landlord shall immediately furnish Tenant with a copy of the Purchase Offer, together with a representation that the Purchaser 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 Paragraph 22), 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 termination 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. The failure by a party to enforce any provision of this Agreement or to require performance by the other party will not be construed to be a waiver, or in any way affect the right of either party to enforce such provision thereafter.

(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 in which the Premises are located, 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; and (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; and (viii) the singular use of words includes the plural where appropriate.

(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) **Affiliates.** All references to "Tenant" shall be deemed to include any Affiliate of New Cingular Wireless PCS, LLC using the Premises for any Permitted Use or otherwise exercising the rights of Tenant pursuant to this Agreement. "Affiliate" means with respect to a party to this Agreement, any person or entity that (directly or indirectly) controls, is controlled by, or under common control with, that party. "Control" of a person or entity means the power (directly or indirectly) to direct the management or policies of that person or entity, whether through the ownership of voting securities, by contract, by agency or otherwise.

(i) **Survival.** Any provisions of this Agreement relating to indemnification shall survive the termination or expiration hereof. In addition, any terms and conditions contained in this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall so survive.

(j) **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.

(k) **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.

(l) **Severability.** If any provision of this Agreement is held invalid, illegal or unenforceable by a court or agency of competent jurisdiction, (a) the validity, legality and enforceability of the remaining provisions of this Agreement are not affected or impaired in any way if the overall purpose of the Agreement is not rendered impossible and the original purpose, intent or consideration is not materially impaired; and (b) the parties shall negotiate in good faith in an attempt to agree to another provision (instead of the provision held to be invalid, illegal or unenforceable) that is valid, legal and enforceable and carries out the parties' intentions to the greatest lawful extent. If any such action or determination renders the overall performance of this Agreement impossible or materially impairs the original purpose, intent or consideration of this Agreement, and the parties are, despite the good faith efforts of each, unable to amend this Agreement to retain the original purpose, intent and consideration in compliance with that court or agency determination, either party may terminate this Agreement upon sixty (60) days' prior written notice to the other party.

(m) **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.

(n) **Subordination.** This Agreement shall be subject and subordinate to any and all mortgages and deeds of trust which now or in the future encumber or affect the Property, including the Premises, and to all renewals, modifications, and extensions of such mortgages. Tenant shall execute and return any subordination, non-disturbance, and attornment agreement reasonably requested by Landlord within ten (10) business days of receipt. Tenant shall, at the written request of Landlord or any mortgagee of Landlord, furnish such mortgagee with notice of any default by Landlord at least thirty (30) days prior to the exercise by Tenant of any rights and/or

remedies of Tenant hereunder arising out of such default. Should Landlord's mortgagee become the owner of the Property through foreclosure, Tenant will attorn to Landlord's mortgagee as Landlord under this Agreement.

(o) **WAIVER OF JURY TRIAL. EACH PARTY, TO THE EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING UNDER ANY THEORY OF LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE TRANSACTIONS IT CONTEMPLATES.**

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

"LANDLORD"

Southern Shores Civic Association Inc., a North Carolina nonprofit corporation

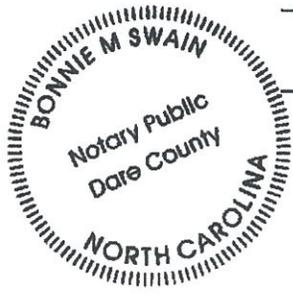
By: [Signature] PRES SCSA
Print Name: ROSS MITCHELL PRES SCSA
Date: 6/13/13

LANDLORD ACKNOWLEDGMENT

STATE OF North Carolina)
CITY / COUNTY OF Dare) SS:

The foregoing instrument was acknowledged before me this June 13, 2013 by Ross Mitchell (name of person acknowledged).

[Signature]
(Signature of Person Taking Acknowledgement)
Notary Public Bonnie Swain
(Title or Rank) (Printed Name)
1-10-15
(Registration Number) (Commission Expiration Date)



"TENANT"

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

By: AT&T Mobility Corporation
Its: Manager

By: [Signature]

Printed Name: David C. Tuck

Its: Area Manager of Construction and Engineering

Date: 3-7-13

TENANT ACKNOWLEDGMENT

COMMONWEALTH OF VIRGINIA)
) SS:
COUNTY OF HENRICO)

The foregoing instrument was acknowledged before me this March 7, 20 13, by David C. Tuck, Area Manager of Construction and Engineering of AT&T Mobility Corporation, on behalf of New Cingular Wireless PCS, LLC.

[Signature]
(Signature of Person Taking Acknowledgement)
Notary Public Leslie M. Delaney
(Title or Rank) (Printed Name)
7516671 11-30-16
(Registration Number) (Commission Expiration Date)



EXHIBIT 1

DESCRIPTION OF PREMISES

Page 1

to the Agreement dated 6-13, 2013, by and between **Southern Shores Civic Association Inc.**, a North Carolina nonprofit corporation, as **Landlord**, and **New Cingular Wireless PCS, LLC**, a Delaware limited liability company, as **Tenant**.

The Premises are described and/or depicted as follows:

PIN Number: **021906000**

A 1550 Sq. ft. portion of the property described below located at:

Site Address: **148-A Ocean Blvd., Southern Shores, NC 27949**

Jurisdiction in which site is located: **Town of Southern Shores in Dare County**

Notes:

1. This Exhibit may be replaced by a land survey and/or construction drawings of the Premises once received by Tenant so long as Landlord has approved such survey or drawings as reasonably consistent with the Exhibit.
2. Any setback of the Premises from the Property's boundaries shall be the distance required by the applicable governmental authorities.
3. Width of access road shall be the width required by the applicable governmental authorities, including police and fire departments.
4. 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, provided, however, that for this Communication Facility all antennas and cabling will be located within the tower itself, except for the Local Government Users.