

**TOWN OF  
APPLE VALLEY, CALIFORNIA**

**AGENDA MATTER**

**Subject Item:**

**TOWERCO II LLC WIRELESS SITE AGREEMENT**

Previously, the Town Council directed staff to market Town-owned properties to telecommunication service providers for the purpose of generating additional revenue to the Town as a result of the placement of telecommunications monopoles on Town property. A lease agreement was approved between the Town and New Cingular in September 2007. New Cingular is proposing to assign the lease agreement to Towerco II, LLC. The terms of the lease agreement allows Cingular to assign or transfer the agreement to Towerco II, LLC with consent of the owner. The agreement goes on to mention that this consent will not be unreasonably withheld, delayed or conditioned. Therefore, a request has been made to approve the transfer. A Landlord Consent to Assignment and Estoppel Certificate agreeing to the terms of the original lease agreement has been submitted. This lease agreement, allowed the construction of a wireless monopine and related equipment within a 750 square foot fenced lease area within Corwin Park, approved under Conditional Use Permit No. 2005-021.

The Agreement is similar to those which were previously approved, in that it has an initial term of five (5) years and four (4) renewal, five (5) year terms with several negotiated items that include:

- The initial rental rate is \$2,210 per month and contains an annual CPI escalator of not less than three-percent and not more than five-percent;
- A one-time bonus payment of \$20,000;
- In the event the Lessee subleases (Co-location) an additional payment of twenty percent (20%) of the co-location rent will be paid to the Town.

The attached Agreement has been executed by Towerco II, LLC and will go into effect upon approval by Council of the Agreement and execution of same by the Mayor. Based upon the foregoing, staff recommends adoption of the form motion.

**Recommended Action:**

That the Town Council approve the transfer of the Lease Agreement from New Cingular to Towerco II LLC, and the Town for the purpose of installing a telecommunication facility at Corwin Park.

**Proposed by:** Director of Economic & Community Development      **Item Number** \_\_\_\_\_

**Town Manager Approval:** \_\_\_\_\_      **Budget Item**  Yes  No  N/A

**LANDLORD CONSENT TO ASSIGNMENT AND ESTOPPEL CERTIFICATE**

**WHEREAS**, the TOWN OF APPLE VALLEY, a municipal corporation ("Landlord"), and NEW CINGULAR WIRELESS PCS, LLC, a Delaware limited liability company ("Assignor") are parties to that certain Communications Site Lease Agreement dated as of September 13, 2007 ("Lease"), a copy of which Lease is attached hereto as Exhibit A, wherein Landlord leased to Assignor the property therein described ("Premises");

**WHEREAS**, Assignor intends to assign to TOWERCO II LLC, a Delaware limited liability company ("Assignee") all of Assignor's right, title and interest in the Lease; and

**WHEREAS**, Landlord desires to consent to such assignment upon the terms and conditions herein.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties intending to be legally bound hereby agree as follows:

1. Landlord hereby consents to the assignment of Assignor's right, title and interest in the Lease to Assignee.
2. Landlord further agrees that upon such assignment, Assignor shall be released from any and all liabilities and obligations under the Lease.
3. Each of the parties represents and warrants to the others that each such party is duly authorized to execute and deliver this Consent to Assignment and Estoppel Certificate.
4. This Consent to Assignment and Estoppel Certificate may be executed in counterparts, all of which together shall constitute one and the same instrument.
5. This Consent to Assignment and Estoppel Certificate may be recorded in the real property records of the County in which the Premises are located.
6. Assignee will assume all of Assignor's responsibilities and liabilities under the Lease, including the obligation to pay rent in accordance with the terms of the Lease, to the extent arising after and attributable to periods after the effective date of the assignment. Assignor will remain responsible for all obligations and liabilities attributable to the period preceding the assignment.

In addition to the consent provided herein, Landlord hereby certifies to Assignee that:

- (i) Assignor is the present tenant under the Lease;
- (ii) Attached hereto as Exhibit A is a true, correct and complete copy of the Lease in effect by and between Landlord and Assignor together with all amendments

thereto, which Lease and amendments, if any, constitute the entire agreement between the parties;

(iii) The Lease is in full force and effect in accordance with its terms, and neither Landlord nor, to the best of Landlord's knowledge, Assignor has commenced any action under the Lease, has communicated its intention to do so to the other party, or has given or received any notice with respect to the termination of the Lease;

(iv) Upon commencement, the term of the Lease shall be five (5) years, and is subject to four (4) renewal options each of five (5) years in duration;

(v) Pursuant to Section 3 of the Lease, the initial monthly rental fees under the Lease will be \$2,210.00;

(vi) Upon commencement of construction, Assignee (who, at that point, shall be the current lessee under the Lease) shall make a one-time lump sum payment of \$20,000.00 to Landlord;

(vii) The current monthly rental fees under the Lease are to be paid to Landlord at the following address:

Town of Apple Valley  
14955 Dale Evans Parkway  
Apple Valley, CA 92307  
Phone: (760) 240-7000  
Facsimile No.: (760) 240-7399

(viii) All rents and other sums due and payable under the Lease as of the date of this letter have been paid in full; and

(ix) Neither Assignor nor Landlord is in default under the Lease.

[Signatures on the following pages]

IN WITNESS WHEREOF, the parties have executed this Consent to Assignment and Estoppel Certificate as of \_\_\_\_\_, 2008.

WITNESS:

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

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

LANDLORD  
TOWN OF APPLE VALLEY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Mayor

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Town Manager

STATE OF CALIFORNIA      )  
  )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_ and \_\_\_\_\_,

who proved to me on the basis of satisfactory evidence to be the persons whose names is are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

Name \_\_\_\_\_

(typed or printed)

(Seal)

WITNESS:

ASSIGNOR

NEW CINGULAR WIRELESS PCS, LLC

By: AT&T MOBILITY CORPORATION

Its: Manager

[Signature]  
Print Name: TIMOTHY R. LOONIS

By: [Signature]  
Name: JON MORRIS  
Title: DIRECTOR, SEEL / MAS

[Signature]  
Print Name: WARREN WERSTATE

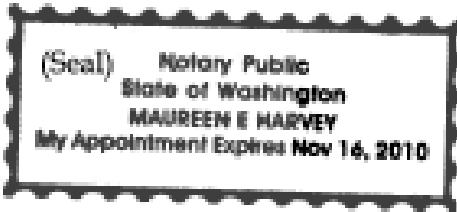
STATE OF WASHINGTON )  
  )  
COUNTY OF KING                  )

On October 2, 2008 before me, MAUREEN HARVEY, the undersigned, a Notary Public in and for said State, personally appeared JON MORRIS, DIRECTOR, STRATEGIC REAL ESTATE INITIATIVES, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/these~~ authorized capacity(ies), and that by his/~~her/these~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of WASHINGTON that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.  
[Signature]  
Signature \_\_\_\_\_

Name MAUREEN HARVEY  
(typed or printed)



WITNESS:

ASSIGNEE  
TOWERCO II LLC

Angela Edwards-Rash

Print Name: Angela Edwards-Rash

Deborah Campbell

Print Name: Deborah Campbell

By:

David Hunt

Name:

David Hunt

Title:

Vice President + CFO

STATE OF North Carolina )

COUNTY OF Wake )

SS:

On the 29<sup>th</sup> day of September in the year 2008, before me, the undersigned, personally appeared David Hunt, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Matthew S. Massarelli

Notary Public

**MATTHEW S. MASSARELLI**

NOTARY PUBLIC

Wake County

North Carolina

My Commission Expires February 10, 2013

EXHIBIT A

Communications Site Lease Agreement

Market: Los Angeles  
Cell Site Number: E80019-01  
Cell Site Name: Corwin Park  
Fossil Asset Number: \_\_\_\_\_

## COMMUNICATIONS SITE LEASE AGREEMENT

THIS COMMUNICATIONS SITE LEASE AGREEMENT ("Agreement"), dated as of 2007, is between NEW CINGULAR WIRELESS PCS, LLC, A DELAWARE LIABILITY COMPANY, having a mailing address of 6100 Atlantic Boulevard, Norcross, Georgia 30071 ("Lessee") and TOWN OF APPLE VALLEY, A MUNICIPAL CORPORATION having a mailing address of 14955 Dale Evans Parkway, Apple Valley, CA 92307 ("Owner").

The parties hereto agree as follows:

**1. Property and Use.** Owner is the owner of the real property described in Exhibit A commonly known as 18575 Corwin Road, Apple Valley, CA 92307 in the County of San Bernardino, State of California (Assessor's Parcel Number: 0473-092-03) ("Property") and Owner hereby leases to Lessee, the site described as land consisting of approximately seven hundred fifty (750) square feet, upon which Lessee will construct its equipment base station and antenna structure; and space required for cable runs to connect communications equipment and antennas, in the location(s) on the Property shown on Exhibit B, together with a non-exclusive easement for access thereto and to the appropriate, in the discretion of Lessee, source of electric and telephone facilities (collectively, the "Site"). The Site may be used by Lessee for any lawful activity in connection with the provisions of mobile/wireless communications services, including without limitation, the transmission and the reception of radio communication signals on various frequencies and the construction, installation, removal, replacement, maintenance, modification and operation of radio communications facilities, equipment for the transmission and reception of signals, related antennas, equipment, back-up power sources (including generators and batteries), cable, wiring and fixtures, utility lines, transmission lines, and, if applicable, an antenna structure with supporting structures and improvements (collectively, "Lessee's Facilities"). Owner grants rights of ingress to and egress from the Site to Lessee, Lessee's employees, agents, contractors, subcontractors and assigns for the above stated purpose. Owner shall provide Lessee, Lessee's employees, agents, contractors, subcontractors and assigns with access to the Site twenty-four (24) hours per day, seven (7) days per week, at no charge to Lessee. Lessee will use the Site in a manner which will shall not cause undue inconvenience to Owner.

Prior to the Commencement Date, Owner agrees to permit Lessee ingress and egress to the Site to conduct such surveys, structural strength analysis, subsurface boring tests and other reasonably necessary tests (collectively "Tests") as Lessee may deem necessary to determine the suitability of the Site for Lessee's Facilities and for the purpose of preparing for the construction of Lessee's Facilities, at the sole cost of Lessee. Lessee will notify Owner of any proposed Tests or pre-construction work and will coordinate the scheduling of same with Owner, and will return the Property to the same condition existing prior to the Tests.

**2. Term.** The term of this Agreement (the "Initial Term") is five (5) years, commencing on the earlier of the Lessee commencement of construction of Lessee's Facilities, or sixty (60) days after the issuance of a local building permit for Lessee's Facilities ("Commencement Date"). This Agreement will be automatically renewed on the same terms and conditions as set forth herein, except that Rent shall be

Signature Lines  
2008



increased as set forth below, for four (4) additional terms (each a "Renewal Term") of five (5) years each, unless Lessee provides Owner notice of intention not to renew not less than ninety (90) days prior to the expiration of the Initial Term or any Renewal Term.

**3. Rent.** On the Commencement Date Lessee will commence payment of rent in advance in equal monthly installments of Two Thousand Two Hundred Ten and no/100 Dollars (\$2,210) ("Rent") (until increased as set forth herein), partial months to be pro-rated. If Rent payments begin on a day other than the first day of a calendar month, Lessee may prorate Rent for the remainder of the calendar month in which Rent commences, and thereafter, Lessee shall pay a full month's Rent on the first day of each calendar month, except that payment shall be prorated for the final fractional month of this Agreement. The initial Rent payment will be forwarded by Lessee to Owner within sixty (60) days after the Commencement Date. The rent due hereunder will be increased on each anniversary of the Commencement Date to an amount equal to the amount of the monthly installment of rent payable during the preceding year increased by the greater of (i) three percent (3%) or (ii) the percentage change in the CPI during such year. "CPI" means the Consumer Price Index -All Urban Consumers for the Los Angeles-Riverside-Orange County Area (1982-84 = 100) published by the United States Department of Labor, Bureau of Labor Statistics (or a reasonably equivalent index if such index is discontinued). In no event will the amount of the monthly installment of rent due following such adjustment be greater than five percent (5%) of the amount of such installment during the preceding 12-month period.

Upon commencement of construction of Lessee's facility, lessee shall make a one-time lump sum payment of Twenty Thousand Dollars (\$20,000.00) to owner.

**4. Title and Quiet Possession.** Owner represents and warrants (a) that it is the owner of the Site and Property, and has full rights of ingress to and egress from the Site; (b) that it has the right to enter into this Agreement; (c) that the person signing this Agreement has the authority to sign; (d) that Lessee is entitled to access to the Site at all times and to the quiet possession of the Site throughout the Initial Term and each Renewal Term so long as Lessee is not in technical default beyond the expiration of any cure period; and (e) that Owner shall not have unsupervised access to the Site or to Lessee's Facilities.

**5. Assignment/Subletting.** Lessee will not assign or transfer this Agreement without the prior written consent of Owner, which consent will not be unreasonably withheld, delayed or conditioned; provided, however, Lessee shall have the right without consent but upon notice to Owner, or assign its rights under this Agreement to any of its subsidiaries partners, or affiliates or successor legal entities or to any entity acquiring substantially all of the assets of Lessee in the market defined by the Federal Communications Commission in which the Property is located, and further provided that any such successor entity assumes all of Lessee's obligations under this Agreement. Tenant shall have the right to sublease the Premises, in whole or in part, without Owner's consent. In the event that Tenant subleases any portion of the Premises, Tenant will pay to Owner twenty (20) percent of the Co-location rent.

**6. Notices.** All notices must be in writing and are effective only when deposited in the U.S. mail, certified and postage prepaid, or when sent via overnight delivery. Either party may change the designated notice address upon written notice, which shall be effective upon receipt by other party, If Lessee is to pay Rent to a payee other than the Owner, Owner shall notify Lessee in advance in writing of the payee's name and address. Notices to Lessee shall be sent to:

c/o AT&T Mobility LLC  
Attn: Network Real Estate Administration  
Re: Cingular Wireless Cell Site #: ES0019-01  
Site Name: Corwin Park  
6100 Atlantic Boulevard  
Norcross, Georgia 30071

With a copy concurrently to:  
AT&T Mobility LLC  
Attn: Legal Department  
Re: Cingular Wireless Cell Site #: ES0019-01  
Cell Site Name: Corwin Park  
5601 Legacy Drive, Bldg. A  
Plano, Texas 75024

Notices to Owner must be sent to:  
Town of Apple Valley  
Attn:  
14955 Dale Evans Parkway  
Apple Valley, CA 92307  
Phone: (760) 240-7000  
Fax: (760) 240-7399

**7. Improvements.** Owner agrees to cooperate with Lessee with respect to making application for and obtaining any required licenses, permits, and any and all other necessary approvals for the Site and such improvements that may be required for Lessee's intended use of the Site. Lessee shall have the right to install any warning signs on or about the Site required by federal, state, or local law. All of Lessee's construction and installation work shall be performed at Lessee's sole expense and in a good and workmanlike manner, subject to the Owner's reasonable satisfaction. Title to Lessee's Facilities and any equipment placed on the Site by Lessee shall be held by Lessee or its equipment lessors or assigns. Lessee's Facilities shall not be considered fixtures. Upon expiration of this Agreement or within sixty (60) days after an early termination of this Agreement Lessee shall remove its equipment and improvements and will restore the Site to the condition existing on the Commencement Date, except for underground conduit and foundations, ordinary wear and tear and damage by fire or other casualty loss.

**8. Compliance with Laws.** Owner represents that the Property (including the Site), and all improvements located thereon, are and shall remain in substantial compliance with building, life/safety, disability and other laws, codes and regulations of applicable governmental authorities. Lessee will comply with all applicable laws directly relating to Lessee's operation of Lessee's Facilities and the improvements constructed by Lessee at the Site.

**9. Interference.** Lessee will resolve technical interference problems with other equipment located at the Site as of the Commencement Date or with any equipment that Lessee attaches to the Site at any future date when Lessee desires to add additional equipment to the Site.

**10. Utilities.** Owner represents that utilities are available for Lessee's use of the Site. Lessee will pay for all utilities for the use, operation, and maintenance of Lessee's Facilities at the Site. Should Lessee find, in

its sole discretion, now or in the future, that existing utilities are inadequate, Lessee shall have the right, with the prior written consent of Owner, which shall not be unreasonably withheld, conditioned or delayed, to install additional utilities, at Lessee's expense, and to improve the present utilities on the Site (including, but not limited to the installation of back-up power). Lessee shall have the right to place utilities on (or to bring utilities across) the Property, with the prior written consent of Owner, which shall not be unreasonably withheld, conditioned or delayed, in order to service the Lessee's Facilities at the Site. Owner will cooperate with Lessee in Lessee's efforts to bring utilities to Lessee's Facilities from any location provided by Owner or the servicing utility, including signing any easement or other instrument reasonably required by the utility company.

**11. Termination.** Lessee may terminate this Agreement at any time by notice to Owner without further liability if (i) Lessee does not obtain all permits, consents, easements, non-disturbance agreements or other approvals (collectively, "approval") reasonably desired by Lessee or required from any governmental authority or any third party related to or reasonably necessary to operate Lessee's Facilities system, or if any such approval, is canceled, expires or is withdrawn or terminated, or (ii) if Owner fails to have proper ownership of the Site or authority to enter into this Agreement or a title report shows any defects of title or any liens or encumbrances which, in the opinion of the Lessee, may adversely affect Lessee's use of the Site, or (iii) if Lessee, for any other reason, in its sole discretion, determines that the Site is inappropriate for Lessee's intended use. Upon termination, all prepaid rent shall be retained by Owner, unless termination is pursuant to (ii) above or is a result of Owner's default.

**12. Default.** If either party is in default under this Agreement for a period of (a) fifteen (15) days following receipt of notice from the non-defaulting party with respect to a default which may be cured solely by the payment of money, or (b) thirty (30) days following receipt of notice from the non-defaulting party with respect to a default which may not be cured solely by the payment of money, then, in either event, the non-defaulting party may pursue any remedies available to it against the defaulting party under applicable law, including, but not limited to, the right to terminate this Agreement. If the non-monetary default may not reasonably be cured within a thirty (30) day period, this Agreement may not be terminated if the defaulting party commences action to cure the default within such thirty day period and proceeds with due diligence to fully cure the default.

**13. Indemnity.** Owner and Lessee each indemnifies the other against and holds the other harmless from any and all costs (including reasonable attorneys' fees) and claims of liability or loss which arise out of the ownership, use and/or occupancy of the Site by the indemnifying party. This indemnity does not apply to any claims arising from the sole negligence or intentional misconduct of the indemnified party. The indemnity obligations under this Section will survive the termination of this Agreement.

**14. Hazardous Substances.** Owner represents that it has no knowledge of any substance, chemical or waste, including but not limited to, asbestos, polychlorinated biphenyls (PCBs), petroleum or other fuels, (collectively, "hazardous substance") on or under the Site or Property that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation. Lessee will not introduce or use any such substance on the Site in violation of any applicable law. Owner shall indemnify and hold Lessee harmless from and against all claims, actions, damages, fines, liabilities, costs and expenses (including attorneys and expert fees) arising, directly or indirectly, from the presence of any substance on, under or around the Property or the Site, unless said substance was actually brought onto the Property or Site by Lessee. This obligation to indemnify Lessee shall include damages, costs and expenses incurred in

connection with any investigation, cleanup, remediation, monitoring, removal or restoration related to the presence of any substance. This indemnity shall survive the expiration or termination of this Agreement.

**15. Subordination/Non-disturbance.** This Agreement is subordinate to any lien, mortgage or deed of trust now of record against the Property. However, promptly after this Agreement is fully executed, Owner will use diligent efforts to obtain a non-disturbance agreement reasonably acceptable to Lessee from any present mortgagee(s) or holder(s) of a deed of trust confirming that Lessee's right to quiet possession of the Site during the Initial Term and any Renewal Terms of this Agreement shall not be disturbed, so long as Lessee is not in technical default under this Agreement beyond any applicable cure periods.

**16. Taxes.** Lessee will be responsible for payment of all personal property taxes assessed directly upon and arising solely from its use of Lessee's Facilities on the Site. Lessee will pay to Owner any increase in real property taxes attributable solely to any improvements to the Site made by Lessee within sixty (60) days after receipt of satisfactory documentation indicating calculation of Lessee's shares of such real estate taxes and payment of the real estate taxes by Owner. Owner will pay when due all other real estate taxes and assessments attributable to the Property of which the Site is a part.

**17. Insurance.** Lessee will procure and maintain commercial general liability insurance, with limits of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage liability, with a certificate of insurance to be furnished to Owner within thirty (30) days of written request. Such policy will provide that cancellation will not occur without at least fifteen (15) days prior written notice to Owner. Each party to this Agreement shall maintain standard form property insurance ("All Risk" coverage) equal to at least 90% of the replacement cost covering their respective property interest. Each party hereby waives any rights of recovery against the other for any loss or damage covered by the property insurance policies maintained by the waiving party. Each party will cause each insurance policy obtained by it to provide that the insurance company waives all rights of recovery against the other party in connection with any property damage covered by such policy. Lessee shall name Owner as an additional insured with respect to the above Commercial General Liability insurance, which insurance shall be primary and not contributing with other insurance available by the Owner. Lessee shall have the right to self-insure with respect to any of the above insurance.

**18. Maintenance.** Lessee will be responsible for repairing and maintaining Lessee's Facilities at the Site in a proper operating and safe condition; provided, however, if any such repair or maintenance is required due to acts of Owner, its agents or employees, Owner shall reimburse Lessee for the reasonable costs incurred by Lessee to restore the damaged areas to the condition which existed immediately prior thereto. Owner shall not be responsible for any vandalism to Lessee's property. Owner, at its own expense, will maintain and repair all other portions of the Property and the Site, including all access roadways from the nearest public roadway to the Site, in a proper operating and reasonably safe condition. If Lessee causes damage to any portion of the Property or Site, including access roadways, it shall promptly repair same, at its own expense.

**19. Destruction of Site.** If the Site or the Property is destroyed or damaged so as in Lessee's judgment to hinder its effective use of the Property, Owner will use reasonable efforts to make available to Lessee within five (5) days a temporary site on the Property (or on other property owned or controlled by Owner) which in Lessee's reasonable discretion is equally suitable for Lessee's use. Lessee may construct, operate, and maintain substitute Lessee's Facilities thereon until Lessee's Facilities are fully restored and

operational on the Site. Rent shall abate in full during any time that Lessee is unable to operate Lessee's Facilities on the Property. Alternatively, Lessee may elect to terminate this Agreement as of the date of the damage or destruction by so notifying Owner no more than 30 days following the date of damage or destruction.

**20. Miscellaneous.** (a) This Agreement applies to and binds the heirs, successors, executors, administrators and assigns of the parties to this Agreement; (b) This Agreement is governed by the laws of the State of California; (c) If requested by Lessee, Owner agrees promptly to execute and deliver to Lessee a recordable Memorandum of this Agreement in the form of Exhibit C attached hereto; (d) This Agreement (including the Exhibits) constitutes the entire agreement between the parties and supersedes all prior written and verbal agreements, representations, promises or understandings between the parties, and any amendments to this Agreement must be in writing and executed by both parties; (e) If any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, will not be affected and each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law; and (f) The prevailing party in any action or proceeding in court or mutually agreed upon arbitration proceeding to enforce the terms of this Agreement is entitled to receive its reasonable attorneys fees and other reasonable enforcement costs and expenses from the non-prevailing party including appeals, if any; and (g) the terms and conditions of this Agreement which by their sense and context survive the termination, cancellation, or expiration of this Agreement will so survive; and (h) Lessee has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice.

**21. Nonbinding Until Fully Executed.** This Agreement is for discussion purposes only and does not constitute a formal offer by either party. This Agreement is not and shall not be binding on either party until and unless it is fully executed by both parties.

The following Exhibits are attached to and made a part of this Agreement: Exhibit A and B.

[SIGNATURE PAGE FOLLOWS]

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

WITNESSES:

Town of Apple Valley

[Signature]

Print Name: La Toke McKeown

Town of Apple Valley

[Signature]

Print Name: La Toke McKeown

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

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

"OWNER"

TOWN OF APPLE VALLEY  
A MUNICIPAL CORPORATION

By: [Signature]

Print Name: Rich Poole

Its: Mayor

Date: 9-13-07

By: [Signature]

Print Name: Bever Williams

Its: Town Manager

Date: 9-13-07

"TENANT"

NEW CINGULAR WIRELESS PCS, LLC,  
A DELAWARE LIMITED LIABILITY COMPANY

By: [Signature]

Print Name: Emily Vaughan

Its: Site Development Manager

Date: 9-10-07

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

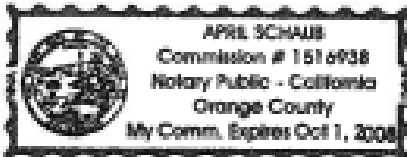
County of Los Angeles } ss.

On 8/10/07 before me, April Schaub, Notary Public

personally appeared Emily Vaughan

personally known to me

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Place Notary Seal Above

April Schaub  
Signature of Notary Public

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

RIGHT THUMBPRINT OF SIGNER  
Top of thumb here

Signer is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

RIGHT THUMBPRINT OF SIGNER  
Top of thumb here

Signer is Representing: \_\_\_\_\_

**EXHIBIT A**

**DESCRIPTION OF PREMISES**

to the Agreement dated \_\_\_\_\_, 2007, by and between Town of Apple Valley, as Owner, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Tenant.

The Premises are described and/or depicted as follows:

THAT CERTAIN REAL PROPERTY IN SECTION 12, TOWNSHIP 5 NORTH, RANGE 4 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

THAT PORTION OF THE WEST ONE-HALF OF THE EAST ONE-HALF, OF THE NORTHWEST ONE-QUARTER OF THE NORTHWEST ONE-QUARTER OF SAID SECTION 12, LYING SOUTH OF THE COUNTY ROAD, AS CONVEYED TO THE COUNTY OF SAN BERNARDINO, BY DEED DATED JANUARY 6, 1947 AND RECORDED JANUARY 18, 1947, IN BOOK 1982 PAGE 381 OFFICIAL RECORDS OF SAID COUNTY.

Assessor's Parcel No: 0473-092-03

Notes:

1. This Exhibit may be replaced by a land survey and/or construction drawings of the Premises once received by Tenant.
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.

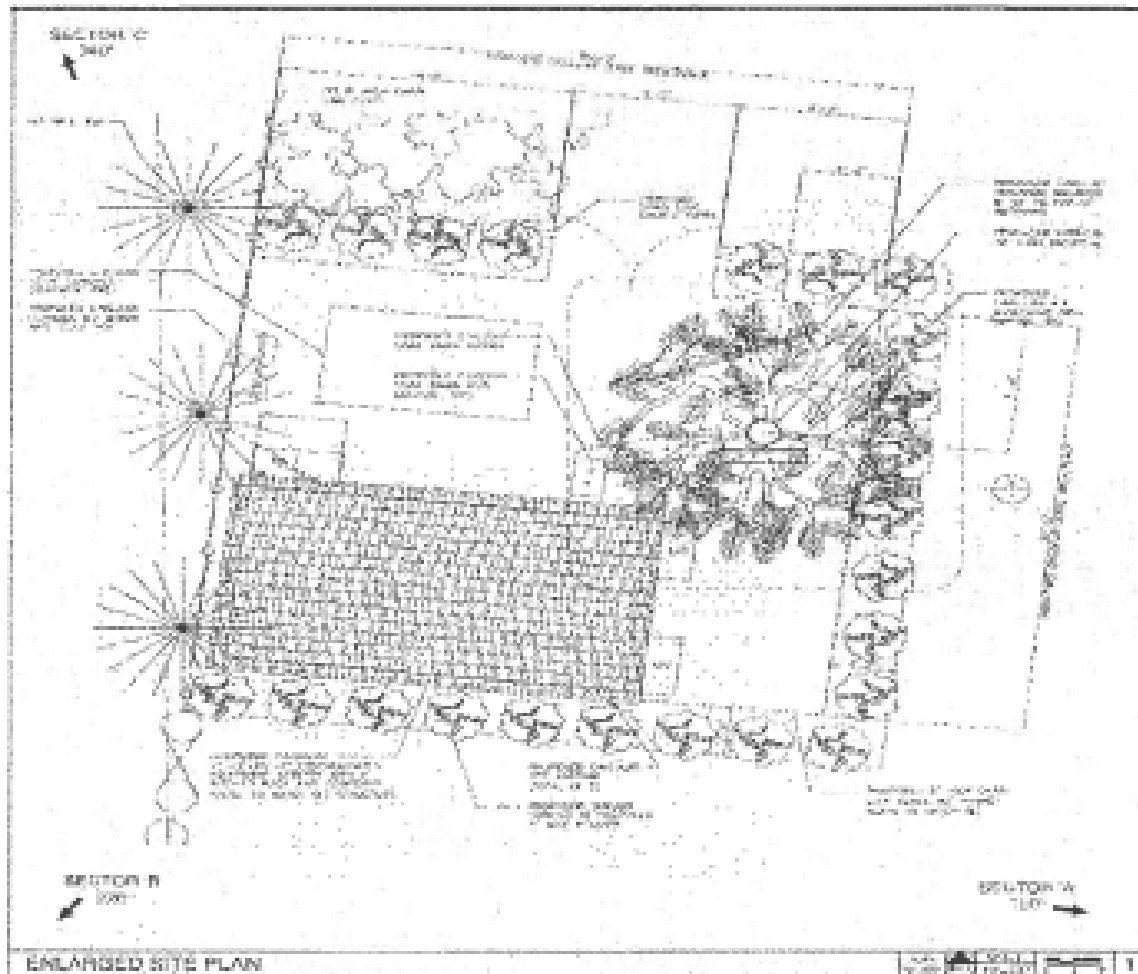


## EXHIBIT B

### DESCRIPTION OF PREMISES

to the Agreement dated \_\_\_\_\_, 2007, by and between Town of Apple Valley, as Owner, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Tenant.

The Premises are described and/or depicted as follows:



#### Notes:

1. This Exhibit may be replaced by a land survey and/or construction drawings of the Premises once received by Tenant.
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.

Rev. 3/2004  
Structure Lease